REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 221

Submitted Pursuant to Executive Order No. 12795
Dated March 31, 1992
and Section 10 of
The Railway Labor Act, as Amended

Investigation of dispute between the Consolidated Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employes.

(National Mediation Board Case No. A-12260)

Washington, D.C.

May 28, 1992
The President
The White House
Washington, D.C.

Dear Mr. President:

On March 31, 1992, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12795, you established an Emergency Board to investigate a dispute between the Consolidated Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employes.

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,

[Signature]

Benjamin Aaron, Chairman
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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 221 (the 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. 12795. The Board was ordered to investigate and report its findings and recommendations regarding an unadjusted dispute between the Consolidated Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employes (BMWE). A copy of the Executive Order is attached as Appendix "A."

On April 3, 1992, the President appointed Benjamin Aaron of Santa Monica, California, as Chairman of the Board. Preston J. Moore of Oklahoma City, Oklahoma, Eric J. Schmertz of Riverdale, New York, David P. Twomey of Quincy, Massachusetts, and Arnold M. Zack of Boston, Massachusetts, were appointed as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The Consolidated Rail Corporation

The Consolidated Rail Corporation (Conrail) is the fifth largest freight railroad in the country in terms of revenue ton-miles and miles operated. The carrier is the largest railroad system in the Northeast-Midwest quadrant of the United States, operating over a network of approximately 13,400 route miles serving the areas east of the Mississippi River and north of a line running from Washington, D.C., to St. Louis, Missouri. In 1990, the railroad handled 84.1 billion revenue ton-miles generating revenues of $3.3 billion. Conrail carries approximately 3.6 million carloads per year, about one-eighth of the national total.
Conrail is an important connection for most of the other large railroads in the nation. In addition, Conrail connects with 158 shortline railroads.

B. The Brotherhood of Maintenance of Way Employes

The Brotherhood of Maintenance of Way Employes (BMWE) represents approximately 5,200 employees who principally perform track laying and surfacing work, roadway maintenance, and certain bridge, building and structural work.

III. ACTIVITIES OF THE EMERGENCY BOARD

The parties to the disputes met with the Emergency Board in Washington, D.C., on April 6, 1992, to discuss procedural matters.

On April 13-15, 1992, the Board conducted hearings regarding the issues in Washington, D.C. The parties were given full and adequate opportunity to present oral testimony, documentary evidence, and argument in support of their respective positions. A formal record was made of the proceedings.

The parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until May 28, 1992.

The BMWE presented its position through written statements and oral testimony by Mac A. Fleming, President, BMWE; Jed Dodd, General Chairman, BMWE; Thomas R. Roth, President of the Labor Bureau, Inc.; Ivy Silver, Principal at Leshner, Silver & Associates; Joel Myron, BMWE; James Cassese, BMWE; and John Davidson, General Chairman, BMWE. The organization was represented by William A. Bon, Jr., Esq., General Counsel of the BMWE.
Conrail presented its position through written statements and oral testimony by James A. Hagen, Chairman, President and Chief Executive Officer of Conrail; Robert W. Anestis, President of Anestis & Company; Charles I. Hopkins, Jr., Chairman, National Carriers' Conference Committee; Charles H. Fay, Ph.D., Associate Professor of Industrial Relations and Human Resources, Institute of Management and Labor Relations, Rutgers University; Seymore Burchman, Principal with Simpson and Company; Richard Pyson, Vice President - Transportation, Conrail; G. Raymond Weaver, Assistant Vice President - Labor Relations, Conrail; John B. Rossi, Jr., General Counsel - Labor, Conrail; Jeffrey Burton, Senior Director - Labor Relations, Conrail; Bob Dawson, General Superintendent - Safety, Conrail; and Robert E. Swert, Vice President - Labor Relations, Conrail. Conrail was represented by Ralph J. Moore, Jr., Esq., of Shea and Gardner.

Pursuant to the request of the Board, on April 27, 1992, the parties presented written lists of the issues they deemed still in dispute before the Board.

After the close of the hearings, the Board met in executive session to prepare its Report and Recommendations. The entire record considered by the Board consists of approximately four hundred and seventy (470) pages of transcript and sixteen hundred (1,600) pages of exhibits.

IV. HISTORY OF THE DISPUTE

On or about June 10, 1988, the BMWE, in accordance with Section 6 of the Railway Labor Act, served notice on Conrail of its demands for changes in the provisions of the existing collective
bargaining agreement. The BMWE, on May 19, 1989, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12260.

Mediation was undertaken by Mediators Robert J. Cerjan and Thomas R. Green. These efforts were unsuccessful.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the BMWE and Conrail the opportunity to submit their controversy to arbitration. Conrail declined the proffer of arbitration. Accordingly, on March 4, 1992, the NMB notified the parties that it was terminating its mediatory efforts.

On March 5, 1992, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President of the United States that, in its judgment, the dispute threatened to substantially interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order 12795 on March 31, 1992, to create, effective April 3, 1992, this Board to investigate and report concerning the dispute.
V. INTRODUCTION

The threshold question before us concerns the impact on this Presidential Emergency Board 221 of the recommendations of PEB 219, as enacted by Congress, and as reviewed by the Special Board.

Most of the nation's Class I line haul railroads, including Conrail, and their labor organizations, including the Brotherhood of Maintenance of Way Employees (BMWE), except their Conrail Federations, were involved in the proceedings before PEB 219. The BMWE Federations representing maintenance of way employees of Conrail, however, elected not to participate in the national bargaining and were not party to the proceedings before PEB 219.

The unresolved contract issues before us between Conrail and the BMWE cover some of the same subjects as those considered by PEB 219. The recommendations of PEB 219, as reviewed by the Special Board, are in effect between the carriers and their organizations, either as the basis of settlements or as enacted by Congress. They cover such matters as wages, health benefits, skill differentials, incidental work rule, subcontracting, moratorium, and successorship.

Conrail's position is that the findings and recommendations of PEB 219 constitute a pattern; it offered to settle on that basis with the BMWE. More favorable recommendations to the BMWE would in its view be unfair to the vast majority of employees working under the PEB 219 recommendations, would seriously disturb morale and orderly labor relations by establishing materially different conditions of employment among employees similarly situated, cause "leapfrogging, me-tooism, and whipsawing" by other labor
organizations as they competed with each other for superior benefits, and inevitably result in destabilization of parity arrangements, historical differentials, and established relationships.

Conrail claims that there is a history of so-called pattern bargaining in the railroad industry pursuant to which substantive agreements covering significant groups of employees have been replicated for other employees similarly situated. Additionally, Conrail argues that on the merits, there is no justification for recommendations favorable to the BMWE that exceed those proposed by PEB 219 on the same issues.

The BMWE views this proceeding differently. It rejects the pattern theory and asserts that it is entitled to a de novo inquiry and a new set of recommendations by this Board on the merits of each of the issues in dispute. It emphasizes its lawful right to sever its bargaining from other rail labor organizations. It disagrees with the view that it is bound by the recommendations of PEB 219, in whose proceedings it did not participate.

In short, the BMWE disputes the alleged history of pattern applications in the railroad industry and rejects the claim that the recommendations of PEB 219 themselves constitute a pattern. It argues that a pattern does not emerge from terms and conditions which, rather than being voluntarily negotiated, were imposed by legislative fiat on a majority of the affected work force. Instead, it claims that based on their job duties, skills and hazards, as well as on relevant economic data and occupational comparisons, the employees it represents are entitled to the benefits and conditions sought irrespective of what PEB 219
recommended as the basis of settlement for others. Finally, the BMWE denies, for the previously stated reasons, that any such results on the merits would be destabilizing.

That the BMWE employees on Conrail were not party to the proceedings before PEB 219 is reason enough to conclude that the recommendations of that Board do not constitute an automatically binding pattern on them. As a present reality, however, effective for a substantial majority of the industry's employees, those recommendations cannot be ignored in deciding the issues affecting the BMWE and Conrail.

The economic bargaining relationships between Conrail and the BMWE, between Conrail and the other rail labor organizations, and the hierarchical structure among the members of all the organizations make the recommendations of PEB 219 relevant and material. Certainly, the BMWE was aware, when it elected to stay out of the PEB 219 proceedings, that specific findings of fact and recommendations would be made that dealt with the identical issues now in dispute between Conrail and the BMWE, and that those recommendations would apply to the majority of the unionized workforce.

We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest.

Therefore, because the recommendations of PEB 219 are now in effect for most of the unionized employees in the railroad industry, we conclude that significant variations for the BMWE-
represented employees on Conrail that change previously linked or stabilized economic and work relationships with other rail employees would produce the destabilization that we think must be avoided. We recognize, however, that exceptions may be made in special, compelling circumstances.

The foregoing reasons justify, in our opinion, treating the recommendations of PEB 219 as presumptively applicable to the BMWE and Conrail in this case, whether or not they are characterized as a pattern. The presumption, however, is a rebuttable one. We shall weigh all the factors in each issue before us, including persuasive reasons, if any, why a given PEB 219 recommendation should not be made applicable to BMWE-represented employees on Conrail. Ultimately, we must make each decision on the basis of the total record before us.

VI. ISSUES, POSITIONS OF THE PARTIES AND RECOMMENDATIONS

A. WAGES

PEB 219 made the following general wage recommendations:

1. A lump-sum payment of $2000 to each employee upon the signing of the agreement.
3. A 3-percent lump-sum payment effective July 1, 1992, which is to be considered as a cost-of-living adjustment and not part of the wage base.
4. A 3-percent lump-sum payment effective January 1, 1993, which is to be considered as a cost-of-living adjustment and not part of the wage base.
5. A 3-percent general wage increase effective July 1, 1993.
6. A 3-percent lump-sum payment effective January 1, 1994, which is to be considered as a cost-of-living adjustment and not part of the wage base.

7. A 4-percent general wage increase effective July 1, 1994.

8. A 2-percent lump-sum payment effective January 1, 1995, which is to be considered as a cost-of-living adjustment and not part of the wage base.

9. A cost-of-living adjustment for each 6-month period, beginning July 1, 1995, based upon the COLA formula which has previously been utilized by the parties.

The BMWE wage proposal is as follows:

1. General increases in all basic rates of pay in accordance with the following schedule:
   
   - July 1, 1988 4 percent
   - July 1, 1989 4 percent
   - July 1, 1990 4 percent
   - July 1, 1991 3 percent
   - July 1, 1992 3 percent
   - July 1, 1993 3 percent

2. Additional quarterly adjustments in all rates of pay commencing January, 1992, by application of an automatic cost-of-living escalator clause based on a formula providing a 1-cent increase in hourly rates for each .3-point rise in the CPI-W (1967 = 100).

3. Elimination of reduced entry rates.

4. A one-time adjustment for MW repairmen to bring their rates up to that for a Class I Machine Operator.

Conrail offers the same increases recommended by PEB 219, except that it proposes that the first three-percent general increase not be effective until the date of its new agreement with the BMWE.
The BMWE contends that its wage proposal is designed primarily to recover the loss in real wages the Conrail employees it represents have consistently sustained since 1978. The BMWE also points out that the Consumer Price Index (CPI) varies by region, and that in the northeast region, the center of Conrail's operations, the cost of living is higher than the average for the country. According to the BMWE, pay rates for key maintenance of way positions are now substantially below going rates for comparable and often identical jobs in other industries. Thus, in a comparison with 14 selected outside industry agreements, the BMWE found that the average increase in those industries between July 1, 1988, and January 1, 1992, was 14 percent, whereas Conrail employees, including those represented by the BMWE, received nothing. Similarly, the BMWE asserts that in respect of both current wage rates and past wage progress, Conrail workers are substantially below their commuter rail and urban transit rail counterparts.

Far from being in economic distress, the BMWE asserts, Conrail has led the financial recovery of Class I railroads during the 1980s, and particularly since 1988, when the carriers and the major organizations last reached a contract through direct negotiations. According to the BMWE, moderate increases in labor costs coupled with historic productivity increases have caused unit labor costs on Conrail to drop precipitously since 1980. The BMWE contends that unit cost control affected price competition and freight rate compression, and produced a stable operating revenue trend over the past 10 years. The consequent increase in net income lifted Conrail's profitability to record levels and turned it into one of the nation's most profitable railroads.
Conrail Position

Conrail declares that the BMWE wage proposal is unacceptable for two basic reasons. First, it would place a tremendous financial burden on Conrail (approximately $52 million in wages and payroll taxes over the entire contract period) in excess of the cost of the PEB 219 recommendations, assuming that there will be no change in present manning levels. Second, Conrail contends that applying the PEB 219 wage recommendations to its employees represented by the BMWE is fair; it preserves equity between those employees and other Conrail employees and between its maintenance of way employees and their counterparts on other rail carriers.

Conrail asserts that its financial condition is not as strong as the BMWE represents. It points out that it is not a big coal or grain hauler, but tends to haul more truck-competitive freight. According to Conrail, it is still not earning the cost of capital; unless it can manage to do so, it will continue to shrink as it liquidates assets. For example, from 1980 to the present, its mileage has been reduced from 18,000 to 12,000 miles and its work force from 80,000 to 12,000 employees.

The consequences of granting the BMWE's wage proposal, Conrail alleges, would be to give a substantial advantage to its major rail competitors, CSX Transportation Company and the Norfolk Southern Corporation. Moreover, its ability to reduce prices so as to attract traffic away from trucks would be seriously impaired.

Recommendation

As is apparent from our comments in the introduction to this Report, we think it inappropriate to treat this case as if it existed in a vacuum. We cannot ignore the fact that labor organizations representing a majority of the employees in the railroad industry recently participated in proceedings before PEB
219, asked for general wage increases approximating what the BMWE is proposing, sought to justify such increases with arguments quite similar to those advanced by the BMWE in this case, and ultimately accepted, or were statutorily bound by, the recommendations of PEB 219. However compelling the evidence adduced by the BMWE in support of its position may seem, if considered without regard to what has occurred in the railroad industry in the past year, we are bound to conclude that endorsement of its wage proposal would be profoundly destabilizing to the present wage structure of the railroad industry. We therefore decline to recommend it.

In keeping with the general approach we have taken in respect of the wage issue in this case, we recommend that the parties adopt the general wage and cost-of-living increases and time schedule for such wage adjustments recommended by PEB 219. Achievement of the wage stability the carriers advocate can be attained only by making the first three-percent general increase effective on the same date (July 1, 1991) as that applicable to the organizations covered by the PEB 219 recommendations. We see no reason why the BMWE should suffer any loss of retroactivity simply because it declined to participate in the proceedings before PEB 219, which it had the legal right to do.

B. ENTRY RATES

BMWE Position

The BMWE seeks the elimination of entry rates. It asserts that the current five-year progression from 75 percent of the top rates is not justified, that it establishes a two-tier compensation system victimizing those who suffer the worst seasonality of employment, and that it subsidizes Conrail through inadequate wages.
Conrail Position

Conrail argues that the recommendations of PEB 219 on this issue should be followed. PEB 219 recommended an exclusion from this rule for foreman, mechanics, and production gang members operating heavy, self-propelled equipment requiring skill and experience. Conrail points out that that recommendation was incorporated into the national BMWE settlement, which also provided that any questions of coverage should be submitted to the Contract Interpretation Committee.

Recommendation

BMWE employees in the highest-rated positions who work for freight carriers other than Conrail have already been granted the exclusion from wage progression sought by the organization in this case. There is some merit, however, in applying lower entry rates and wage progression to those working in lower-paying positions, in as much as they are likely to be less productive until they master the full range of their job duties. Nevertheless, we find a five-year progression based upon a 75 percent hiring rate to be inequitable in the light of both the lesser-skilled nature of the work involved and the greater burdens seasonality of employment imposes upon them. Accordingly, we recommend that the exclusion from rate progression accorded by PEB 219 be extended to BMWE employees of Conrail, and that those not covered by that exclusion be granted a two-year rate progression commencing at 90 percent and advancing to 95 percent at the end of the first year and to full rate at the end of the second year.

C. RATE OF PAY FOR MAINTENANCE OF WAY REPAIRMAN

BMWE Position

The BMWE proposes raising the hourly rate of the Maintenance of Way Repairman ($13.63) to that of Class One Operator ($14.06).
It asserts that the increase is justified by the increasing complexity of the machinery for which these employees are responsible. It argues that they must be qualified in skilled repairing and welding, file hazardous material reports for the Department of Transportation, make highway rail inspections, repair and maintain company trucks, and the like. It notes that they work adjacent to IAM mechanics who do the same work at $14.29 per hour, and that granting this proposal would help to reduce the disparity in compensation between the crafts for performing the same tasks.

In its oral presentation before this Board, the BMWE further proposed the introduction of a standard tool list, and that Maintenance of Way Repairmen be compensated for the purchase of such tools, and for their repair or replacement if they are broken or stolen while being used for the carrier. The BMWE asserts that these tools are extremely expensive and that the present requirement that Repairmen purchase them at their own cost constitutes a subsidy to the employer of thousands of dollars and is an unfair condition of continued employment.

Conrail Position

Conrail denies any justification for a rate increase for the Maintenance of Way Repairman, contending that there is no correlation between the skill requirement of repairing equipment and the skill and dexterity requirements for operating the complex units. It notes that the Repairman, unlike the Class One Operator, need not know track geometry or other technical aspects associated with the operation of the machine, and argues that because the two classifications are not comparable, the proposal should be denied.

On the issue of tool allowance, Conrail asserts that mechanic purchase and ownership of tools is a universally accepted practice, that the carrier supplies all specialized tools, and that adoption
of the BMWE proposal would not only be costly, but would also be subject to great abuse, because of unsupported claims of theft or loss, and the additional temptation of using such carrier-supplied tools for the employees private business use.

Recommendation

The BMWE proposal to increase the rate of Maintenance of Way Repairman to that of Machine Operator Class One fails to recognize the differences in level of skill and responsibility for the respective classifications. That a comparable classification in the IAM unit is compensated at a higher rate does not justify the BMWE's claim in this case. Its proposal should be withdrawn.

On the issue of tool allowance, the widely-prevailing practice among mechanics regardless of industry is that they purchase their own tools. Only by adherence to that practice is it possible to assure that mechanics exercise due care in using and protecting the tools. In the absence of persuasive evidence in this case to support the organization's claim that Conrail should depart from that prevailing practice, we recommend that the BMWE proposal be withdrawn.

D. HEALTH AND WELFARE

BMWE Position

BMWE proposes that there be a plan solely for BMWE-represented employees of Conrail and their dependents, separate and apart from the National Plan, and funded entirely by Conrail. Alternatively, it seeks creation of a subgroup consisting of BMWE-represented employees and their dependents maintained within the National Plan for separate experience-rating purposes, again funded by Conrail. It rejects employee sharing of any increases in Plan costs.
Conrail Position

Conrail asserts that the National Plan, as changed pursuant to the national BMWE settlement based on the recommendations of PEB 219, including the recommendation that the Plan continue to be experience-rated as a whole, should apply to Conrail employees represented by the BMWE. It argues that based on the recommendations of PEB 219 and the national BMWE settlement, Conrail employees represented by BMWE should share in increases in Plan costs, in an amount equal to the lesser of 25 percent of year-to-year increases or 50 percent of applicable COLAs (after crediting employees with the cash reserves used to pay current benefits in 1993 and 1994).

Recommendation

This is an issue that should be resolved on the basis of the recommendation of PEB 219, as clarified by the Special Board, with the changes applicable to the other organizations. To do otherwise would create different health and welfare plans among the employees of Conrail, with different cost contributions. The disaffiliation of the BMWE-represented employees could detract from the fiscal vitality of the National Plan, with the attendant risk that benefits, experience-ratings, and costs may differ. We think this would be destabilizing both to the relationship among those employees and their representative organizations and to labor relations between Conrail and those organizations.

The BMWE proposal should be withdrawn, and the Conrail proposal, based on the PEB 219 recommendation, including the sharing of cost increases, should be adopted.
E. SUBCONTRACTING

BMWE Position

The BMWE proposes that subcontracting be barred without the written concurrence of the General Chairman. It asserts that the current provision for providing notice to the organization, with recommendation thereafter, has not resulted in Conrail's rescinding its commitment to subcontract. It argues that maintenance of way employees have the skills to do roofing, blacktopping, and culvert cleaning, and that even if Conrail currently lacks the necessary equipment for completing such tasks, bargaining-unit employees could do the work on either rented or purchased equipment.

Conrail Position

Conrail contends it is essential that it continue to retain control over subcontracting without being subject to a BMWE veto. It asserts that contracting out work utilizing highly technological equipment and skills is the most cost-efficient method of handling such complex, capital-intensive tasks; that the owners of such equipment require its operation by their own personnel; and that purchase of such equipment by Conrail would entail an enormous capital investment while precluding access to ever more technologically advanced equipment. It urges the Board to follow the precedent of PEB 219 and permit continuation of the current arrangements governing subcontracting.

Recommendation

The existing practice of subcontracting provides the employer with access to the latest technological equipment without the need to expend substantial capital funds. Although some of the tasks currently being subcontracted might fall within the competence of bargaining-unit personnel, the present procedures would appear better suited to determine the appropriateness of such
subcontracting than would the requirement of General Chairman concurrence for any subcontracting. The BMWE proposal should be withdrawn.

F. SUCCESSORSHIP

BMWE Position

The BMWE proposes a rule requiring Conrail to condition any sale or lease of any portion of the railroad upon provision for successorship by the organization as bargaining representative, and continuation of collective bargaining agreements for the benefit of employees who are employed by such successor. It would provide lifetime compensation protection to affected employees if the acquirer does not comply with the foregoing. It asserts that such benefit protection has been an accepted condition of such transactions since the Washington Job Protection Act of 1936, and that it is essential to protect employees against efforts to undermine unionization and union benefits through the creation of wholly-owned subsidiaries that secure trackage without labor protection and then transfer the same to nonunion entities. It asserts that the implementation of this kind of rule with Conrail is the only viable protection against the ICC's standards, which would permit such undermining of traditional union rights and protections.

Conrail Position

Conrail contends that the BMWE position is not bargainable because the ICC has jurisdiction to approve line sales and leases if it believes them to be in the public interest. The ICC position, it continues, is that it will enforce such protection agreements as are voluntarily reached through collective bargaining. It urges this Board to follow the precedent of PEB 219 in declining to impose such an agreement on the parties. It argues
that Conrail, like other carriers, must be free to transfer and sell its property without the imposition of job protection impediments that would bar such transfers and sales while increasing property abandonments. The NMB, it asserts, provides the appropriate procedures for employees on such successor properties to determine their choice, if any, of bargaining representative, and that the BMWE proposal contravenes the accepted principles of the Railway Labor Act.

Recommendation

We find that this issue is properly subject to collective bargaining. However, as virtually no other carrier has a successorship protective clause in its agreements, we find that it would be profoundly destabilizing to recommend such a clause to the organization requesting it.

G. MINIMUM WORKFORCE

BMWE Position

The BMWE proposes that each seniority district, subdepartment, and classification be manned by a minimum complement of maintenance of way employees; that such employees be provided 12 months' pay; that a 30 percent cap be placed on the portion of the force used in production units; and that there be no reduction of minimum forces through attrition or abandonment or line sales except through a buyout of $100,000 per employee. It argues that there is clear evidence of the need for Conrail to devote greater attention to maintenance and upkeep of its right of way; that the BMWE has lost 5,000 jobs on Conrail since 1982; that maintenance of way employees suffer more from seasonal layoffs than do other crafts, with only 50 percent of them working year-round and 20 percent working less than six months, and that there is a clear tradition and recognition of the importance of job protection for displaced or
dismissed railroad employees. It contends that the current procedure for partial compensation through supplemental unemployment benefits creates an undue hardship on workers and their families, placing some among those eligible for food stamps, and that Conrail has the need and ability to fund the retention of a permanent workforce.

Conrail Position

Conrail contends that the BMWE workforce stabilization proposal would double its annual wage and fringe benefit cost; that the minimum workforce assignments prescribed by the BMWE would necessitate hiring 3,989 more employees than it has at present; that work requirements, system seniority restrictions, and seasonality impediments would force it to compensate idle employees; and that conformity to the PEB 219 recommendations would provide a reasonable level of protection for employees without threatening the carrier's survival.

Recommendation

Although the evidence shows that Conrail can make more effective use of its workforce by devoting more manpower to both maintenance and production work and can place its seasonal employees on a more secure economic footing by endeavoring to lengthen their annual periods of production, we do not agree that the solution to those problems rests in providing guaranteed year-round employment to its workforce at present, let alone increased levels of staffing.

The seasonal nature of maintenance of way work cannot be denied. Although half the workforce is employed on a year-round basis, the other half suffers not only reduced periods of annual employment, but also resultant economic hardship for themselves and their families. As many of these drift into other employment,
Conrail reduces its pool of qualified employees. Inasmuch as the evidence shows that the average workyear for Conrail's maintenance of way employees is 9.6 months, we believe it appropriate to minimize the extent to which shorter-term employees are employed.

This issue was addressed by PEB 219 for the BMWE and the other freight carriers. We believe it would be destabilizing to depart from the recommendation for a guarantee of six months' work and the supplemental unemployment benefit referred to therein.

H. PRODUCTION UNITS

BMWE Position

The BMWE proposes that employees assigned to production units engaged in tie renewal, rail renewal, surfacing, and undercutting be afforded meals and lodging during the workweek. It asserts that Conrail has relied on the technicality of production jobs being assigned to a fixed headquarters to avoid the payment of away-from-home expenses to employees who are, in fact, working remote distances from their homes. The BMWE would bar the designation of a fictional headquarters point to avoid such payments.

Conrail Position

Conrail asserts that under Rule 24(a), employees housed in camp cars or company-provided lodging facilities are furnished three meals per day, and that under Rule 18, Sec. 2, employees taken off assigned territory to work elsewhere will also be provided meals and lodging. However, such benefits are not provided to employees who customarily carry midday lunch and are not held away from their assigned territory for an unreasonable time beyond the evening meal hour. It argues that the only production unit with employees who are not entitled to meals and lodging during the workweek is one with a fixed headquarters, a
situation that occurred only twice in more than three months in 1991. It asserts that employees who work such units do so of their own volition. It represents that the daily cost for such housing and feeding would be approximately $35 per employee, and points out that it could arguably be applied as well to support forces normally assigned to the territory in which a production unit is working. It urges that the proposal be denied.

Recommendation

The evidence shows that employees who are in production units are provided lodging and meals in most cases. However, the evidence also shows a practice of the carrier assigning employees to headquarters which are moved from time to time, resulting in the production units assigned to those transitory headquarters being forced to stay away from home in order to meet their employment responsibilities. We believe that assigning them as crews based at fixed headquarters ignores the reality of the extended periods of their being required by the distance of work sites to stay away from home, and incurring the costs associated therewith.

In the light of these occurrences, and the evidence that production crews do, in fact, remain away from home under such circumstances, we recommend the payment of a $35-per day allowance to production crews in cases in which the location of their headquarters changes from that in effect at the time of bidding.
I. COMBINING AND REALIGNING SENIORITY DISTRICTS

Conrail Position

Conrail proposes that the Board adopt the recommendations of PEB 219 in giving the carrier the option to realign and combine seniority districts. It asserts that the present districts are too many in number and do not match the management territories used to operate the system. It contends that the districts must be changed to conform to the lines of the predecessor railroads now encompassed within its larger transportation system.

BMWE Position

The BMWE contends that the present system of districts was agreed upon in 1982; that there is no justification for adopting the recommendation of PEB 219; that there has been no demonstration that the Conrail proposal would result in cost savings; and that any problem of imbalance between work and number of employees in seniority districts can be addressed by allowing voluntary transfer of employees. It objects to Conrail's plan to establish a company-wide seniority system under which employees would be forced to compete on a system-wide basis to maintain and hold jobs. Such a practice, it continues, would reduce the value of seniority accumulated on smaller rosters of individual seniority districts, dislocate employees, uproot families, and move homes. It urges that the proposal be denied.

Recommendation

After reviewing the evidence on this issue, the Board concludes that we lack sufficient information to redraw regional or district lines. Accordingly, we recommend that the parties develop a procedure for dealing with this issue similar to that recommended by PEB 219, namely, that if Conrail desires to combine or realign seniority districts, it should give 30 days' written notice to the
affected employees and the BMWE. If the parties are unable to reach agreement within 90 days of serving that notice, the matter may be submitted to arbitration in accordance with a procedure mutually agreeable to them.

J. REGIONAL AND SYSTEM-WIDE GANGS

Conrail Position

Conrail asserts its need for relief on regional gangs to permit it fully to utilize expensive and specialized rail production machinery over an extended production season. It argues that continuity of gang consists would enhance gang productivity. It states that artificial territorial barriers slow work and increase cost by reducing employee productivity, create manpower shortages and duplications and disrupt employment and program continuity.

BMWE Position

The BMWE claims that the carrier proposal would require employees to work the entire length of the Eastern and Western halves of the Conrail territory in order to hold a production job, and that the need to travel such great distances would curtail the employees' ability to return home on a rest day. It would, it continues, also reduce the likelihood of successful bids on positions near home. In the absence of any persuasive showing of operational need, the BMWE urges that the proposal be denied.

Recommendation

Regional and system-wide gangs are justified on highly technical and expensive equipment being operated by a large number of skilled employees. We therefore recommend that these gangs be used regionally and system-wide. We expect the carrier to share the work among all qualified employees.
K. WORKWEEK AND REST DAYS

Conrail Position

Conrail requests authorization to designate any two days in a seven-day week as rest days; to schedule work on the basis of four 10-hour days per seven-day week or other compressed schedule; and to extend the number of days that may be worked consecutively during which period employees would accumulate rest days. It asserts that the national BMWE settlement gives carriers greater flexibility to schedule weekend work and that it should be permitted comparable relief.

BMWE Position

The BMWE argues that many factors of the national settlement are already included in the parties' present agreement. It contends that the concessionary rules recommended by PEB 219 grant the carriers freedom to vary workweeks without a showing of operational need and constitute an erosion of the basic principles which govern present agreements of all nonoperating crafts. It concludes that abandonment of the current Monday-Friday workweek except in cases of operational need would destroy the forty-hour work rule granted by PEB 66 in 1949.

Recommendation

Four 10-hour work days would permit the carrier more fully to utilize some gangs. Therefore, we recommend that Conrail's proposal be adopted, with the understanding that at least one rest day be on a Saturday or Sunday. The normal workweek should be five consecutive days, with Saturday or Sunday off. The carrier cannot satisfactorily perform necessary work with all employees having Saturday and Sunday off.
L. STARTING TIME

Conrail Position

Conrail seeks the PEB 219 standard in starting times for production crews between 4:00 a.m. and 11:00 a.m., with 36 hour notice of changes and without changes for five consecutive days. PEB 219 did not permit production crews or regular assignments to have a midnight to 4:00 a.m. starting time. It contends that comparative service requirements make it increasingly critical that maintenance of way work be performed at times that do not disrupt train schedules, so that the carrier can perform up to shippers' standards for on-time delivery in the highly competitive transportation industry. It asserts that it has sophisticated computer programs to schedule efficient interfacing of train operations and maintenance work if allowed effectively to coordinate maintenance schedules without penalties when rail traffic is light. The present starting time window of 6:00 a.m. to 8:00 a.m. does not allow the carrier the necessary flexibility to accomplish its goals with the requisite large blocks of uninterrupted time relief granted to other carriers by PEB 219.

BMWE Position

The BMWE seeks to retain the 6:00 a.m. to 8:00 a.m. starting time (5:00 a.m. to 8:00 a.m. from May 1-September 30) or otherwise by agreement. It notes that it has agreed to many adaptations, that the proposed expansion of starting times is onerous; that it would constitute a substantial decline in working conditions, restricting employees time to travel home and increasing risks of injury and accident at night. It urges that because the Conrail proposal has no demonstrable need and destroys negotiated conditions it should be denied.

-26-
Recommendation

The intensity of traffic results in the work of gangs being interrupted and a resultant loss of substantial working time. Maintenance of Conrail's competitive position requires that it have greater flexibility in fixing starting times. Therefore, the Board recommends adherence to the recommendations of PEB 219 and the interpretations thereunder as necessary for the carrier to operate in an efficient and economic manner.

M. WORKSITE REPORTING

Conrail Position

Conrail contends that pay time for BMWE employees working at any jobsite away from their assigned headquarters, or for those who have no assigned headquarters, should begin and end at the worksite instead of when reporting to headquarters or camp unit, as at present. The carrier points out that unlike virtually all other employees, BMWE production employees away from home are paid for nonproductive time spent commuting between the worksite and their lodgings each day. Conrail proposes to end this category of pay for time not worked.

The carrier notes that PEB 219 recommended modification of the rule so that pay time commences at the worksite or the designated reporting site, provided there is adequate off-highway parking at the site. Conrail also notes that the recommendation further provides compensation for commuting time over 15 minutes both to and from the worksite on the first day of change in its location.

BMWE Position

The BMWE alleges that Conrail informed it that time paid for traveling to the jobsite currently averages about two hours per day. The organization contends this claim is incredible because
the carrier has the flexibility provided in the 1982 Rules Agreement substantially to reduce any travel time. The BMWE further points out that there are 10 additional locations which are adequate for maintenance gang headquarters. The Union points out that Management production has the flexibility in the New Jersey seniority district to have camp car employees no further than approximately six miles from the jobsite.

The BMWE asserts that, from time to time, maintenance of way employees have to travel a long distance from their homes to a motel or a camp car, and then they must deadhead from that temporary lodging to the jobsite. It argues that the proposed changes would eliminate the incentive to keep camp cars close to the work site, and that because employees come to work clean they should be paid until they have cleaned up at the end of their shifts at headquarters or camp cars.

Recommendation

The Board has reviewed the findings of PEB 219 and all the evidence submitted by Conrail and the BMWE. It recommends that the BMWE production gangs be paid travel time from camp cars and motels to and from the worksite except for 15 minutes going and 15 minutes returning. This should induce the carrier to designate worksite reporting locations which are more convenient to the place of work.

N. VACATION RULE

BMWE Position

The BMWE proposes that full-time union officials be allowed to accrue service for vacation eligibility, rather than having vacation entitlement frozen at the levels in effect when they went to work for the organization. It would make the benefit applicable to any employee who has been on union leave of absence since July
1, 1988, retroactive to the date such leave began. It argues that
the current practice imposes an unfair financial impediment on
those opting to work for the BMWE, and discourages such activity.
It notes that the employees affected would still be required to
achieve eligibility for vacation on their return to regular
employment, and that the proposal would affect only the quantum of
vacation entitlement.

The BMWE further proposes that employees be entitled to take
their vacations in one-day increments. It declares that such a
benefit is desirable for employees who need to attend to personal
affairs from time to time, noting that the benefit is currently
provided to employees on commuter lines.

Conrail Position

Conrail objects to both proposals. It argues that the union-
business credit would force Conrail to reward an employee with
vacation credits even though it gains no benefits from the
employee's labor. It asserts the proposal is for a gratuitous
advantage and would urge its denial, as well as the denial of the
claim for retroactivity.

On the issue of the daily vacation increments, Conrail asserts
that the December 17, 1941, National Vacation Agreement does not
contemplate taking vacation in less than weekly increments, and
this is essential to facilitate the carrier's scheduling of work
with expectation of full crews being available for the full
workweek.

Recommendation

The BMWE proposal for continued accumulation of vacation
credit while on leave of absence for union business would provide
appropriate recognition of the employees' seniority with the
carrier and place them on a vacation level approximating that of 
their peers who did not go on union leaves of absence. Because 
Conrail has recognized the continued seniority and employment 
status of employees on union leave of absence, and because 
entitlement to such vacation in any particular year is dependent on 
the employee's fulfillment of the work requirements for eligibility 
that year, we recommend that the benefit be adopted, but without 
the retroactivity proposed by the BMWE.

On the issue of single-day vacation increments, we do not 
believe the BMWE has presented a persuasive case. Vacation, 
particularly for those who spend such extended periods away from 
home, should be taken for its avowed purpose: to provide extended 
periods of rest and rehabilitation with families, at home, and away 
from work. Employees currently have available two personal days 
for purposes addressed in the BMWE proposal. Vacation periods, we 
believe, should be confined to five-day increments. The BMWE 
proposal on this issue should be withdrawn.

O. WORKING FOREMEN

BMWE Position

The BMWE urges restriction of foremen to supervisory duties 
and elimination of that part of the scope rule which states that 
the "foreman works with employees assigned under his supervision." 
The BMWE takes the position that Conrail has stretched the 
flexibility in the scope rule far beyond the intentions of the 
parties when they negotiated the rule. The organization accuses 
Conrail of undermining the seniority system by transferring job 
 duties to the foreman classification.
Conrail Position

Conrail contends that if the BMWE proposal were adopted, it would be forced to add a variety of employees, such as vehicle operators, machine operators, and trackman. Conrail estimates the cost would be approximately $30 million.

Recommendation

The Board has reviewed the testimony and evidence submitted by the BMWE and finds no basis for altering the traditional concept of foremen as working foremen. To do so would restrict the number of employees in the classification, as well as access of bargaining unit employees to the greater authority and better wages that the present foreman classification provides. The proposal should be withdrawn.

P. SAFETY

BMWE Position

The BMWE proposes that Conrail enter into an agreement with it concerning workplace safety. The proposal includes creation of a joint labor-management health and safety committee, which would meet monthly and make inspections of the railroad each month. Under the proposal, Conrail would pay BMWE-represented employees for their committee work.

Conrail Position

Conrail contends that the BMWE proposal is a more detailed version of the safety program that the national BMWE proposed to PEB 219. On that basis Conrail urges that this Board should recommend that Conrail and the BMWE adopt a national settlement in all respects, including a moratorium on proposals regarding safety programs. Further, Conrail points to the fact that in mid-1988 it introduced a new safety program, based on joint labor-management
participation and cooperation involving all crafts. Conrail states that this program has produced measurable increases in employee safety, particularly for BMWE employees, whose injury rate is only about 25 percent of what it was in 1988.

**Recommendation**

The Board has studied and considered all of the evidence submitted by both parties. We are of the opinion that the evidence is insufficient to justify recommending any modification of the present safety program. Therefore, we recommend that the BMWE proposal be withdrawn.

Q. **SAFETY SHOES**

**BMWE Position**

The BMWE proposes the payment of $200 in January of each year to reimburse the employees for the cost of safety shoes for the year. It asserts that the figure represents the true cost of such shoes and that the $30 per year currently provided for the purchase of two pairs of shoes is inadequate.

**Conrail Position**

Conrail objects to the BMWE proposal on the grounds that it is merely a cash advance, with no correlation to the cost of the shoes, and that it constitutes an increase of well over 500 percent beyond the present allowance.
Recommendation

We believe the present allowance of $30 for two pairs of safety shoes is inadequate in light of cost increases since that figure was agreed upon. An increase in the allowance to $60 per year for the purchase of two pairs of safety shoes is more reasonable. We recommend accordingly.

R. MEAL PERIODS

BMWE Position

The BMWE proposes a first meal period between the fourth and fifth hour of the advertised tour of duty to stabilize and regularize the employees' workday by providing a regular meal period without an inordinately long unbroken period of work. It also seeks a second meal period in conjunction with overtime work at such time as would prevent the carrier from manipulating overtime work for its avoidance. The BMWE asserts that a regularized meal period at the fourth hour of work is reasonable in light of the physical exertion and exposure to the elements which characterizes maintenance of way work. It argues that employees are entitled to a reasonable break for rest as well as eating, and that the three-hour window between the fourth and seventh hours set forth in the PEB 219 recommendations is an unfair deprivation of such a break.

Conrail Position

Conrail asserts that the existing meal period between the fourth and sixth hours should be retained; that the one-hour window proposed by the BMWE is extremely small and disruptive to its work and scheduling demands.
Recommendation

The BMWE proposal for a lunch period between the fourth and fifth hour of the advertised tour of duty is, we believe, unreasonably short to accommodate the scheduling of work so that all employees are able to benefit from it. We believe that the scheduling of meals between the fourth and sixth hour of the tour is a more reasonable time period to schedule employees so that they can benefit from it. We recommend that an additional meal period be provided for those on overtime assignment five hours after their lunch meal.

S. TRAVEL ALLOWANCE

BMWE Position

The BMWE proposes an increase in the weekend travel allowance from the current $6.00 per trip for Division Units and $7.50 per trip for Inter Regional Units to $25 per trip for Division Units and $40 per trip for Inter Regional Units. It asserts that its proposal would more fully compensate the actual out of pocket expense incurred by employees who must travel far from home to work such jobs.

Conrail Position

Conrail asserts that the present level of allowance is adequate; that the proposed increases of 316.6 percent and 433.3 percent are not justified by cost of living increases; and that the payment of allowances is a benefit extended by Conrail to maintenance of way employees provided under the agreements in effect on the other railroads.
**Recommendation**

Although there have been increases in the cost of travel since the existing Rule-23 allowances were agreed upon, those increases have not been sufficiently great to justify fully the augmented allowances here sought by the BMWE. We recommend an increase in the allowance to $10 per trip for Division Units and $12 per trip for Inter Regional Units. These adjustments would make up for any increased travel costs since the existing figures were negotiated.

**T. CAMP CAR**

**BMWE Position**

The BMWE proposed an amendment to Rule 38 of the collective bargaining agreement which would eliminate the top bunk in all camp cars, and limit to a maximum of five the number of employees housed in any single camp car, with penalties for violations. The BMWE contends that at present 10 employees are required to live in a total space of 9 feet 10 inches by 42 feet, or an approximate total of 420 square feet. Further, it points out that such space is not unencumbered, but includes bunks, toilets, sinks, showers, furnace, etc. The organization urges this Board to recommend a standard that would provide 30 square feet of unencumbered space for each employee.

**Conrail Position**

Conrail advises that the Federal Railway Administration (FRA) is directly responsible for the enforcement of the Hours of Service Act, which provides, among other things, that it is unlawful for a railroad to house its employees in sleeping quarters which are not safe, sanitary, and clean. Conrail states that the FRA has issued an interpretation statement and guidelines, effective January 1, 1994, which include specific space requirements for each person,
i.e., a minimum of 90 square feet in a facility where workers cook, live, and sleep, 48 square feet of floor space for each occupant of sleeping quarters, and window space equal to not less that 10 percent of the floor space for living quarters; also, there must be at least 36 inches laterally and 30 inches end to end between each bed or bunk. Conrail states that it is already in full compliance with the above standards, as well as with the FRA standards requiring all sleeper cars to be equipped with climate control systems. Conrail adds that if the proposed amendment went into effect, it would be compelled to acquire 23 new camp cars, at a cost of approximately $1.5 million. Finally, the carrier points out that Rule 38(d) of the collective bargaining agreement provides for joint inspection of the camp cars to correct any improper conditions prior to the start of the production season.

Recommendation

The Board finds the evidence is insufficient to require standards in excess of those set by the FRA, but does recommend that if all the FRA's standards are not now in place, they should be effectuated by January 1, 1993.

U. MORATORIUM

We recommend a moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Notices for changes under Section 6 of the Railway Labor Act accordingly may be served by any of the parties or another party no earlier than November 1, 1994.
VII. ISSUES NOT DEALT WITH

Any and all issues in dispute before this Emergency Board on which there are no recommendations, or which are not mentioned in this Report, shall be deemed withdrawn.

VIII. CONCLUSION

These recommendations represent our best judgement on the merits and equities of the issues in dispute. They also represent our estimate of a fair and realistic package of conditions, benefits, and benefit changes that, as a totality, should provide a basis for an acceptable, overall settlement.

We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impracticable to ask that the parties adopt these recommendations unconditionally and without modification. As the Railway Labor Act does not make them binding, we expect that the parties will make adjustments as needed, or if necessary, subject them to major revision. In any case, we hope that we have provided a well-marked road map for good faith use by the parties in completing their contracts through the process of free collective bargaining. We express to the parties our profound thanks for the intelligent, comprehensive, and professional presentation of their cases and for their patience and cooperation with our procedures. We also
acknowledge with thanks the assistance of Roland Watkins, the Special Assistant to the Board.

Respectfully,

Benjamin Aaron, Chairman

Preston J. Moore, Member

Eric J. Schmertz, Member

David P. Twomey, Member

Arnold M. Zack, Member
EXECUTIVE ORDER
- 1 2 7 9 5 -

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE CONSOLIDATED RAIL CORPORATION AND ITS EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

A dispute (NMB Case No. A-12260) exists between the Consolidated Rail Corporation and its employees represented by the Brotherhood of Maintenance of Way Employes.

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

In the judgment of the National Mediation Board, this dispute threatens substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Section 1. Creation of Emergency Board. There is created, effective April 3, 1992, a board of five members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The board shall report to the President on May 3, 1992, with respect to this dispute.

Sec. 3. Maintaining Conditions. As provided by section 10 of the Act, from the date of the creation of the board and for 30 days after the board has submitted its report to the President, no change in the conditions out of which the dispute arose shall be made by the railroads or the employees, except by agreement of these parties.
Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,

March 31, 1992.
REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 222

Submitted Pursuant to Executive Order No. 12796
Dated March 31, 1992
and Section 10 of
The Railway Labor Act, as Amended

Investigation of disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations.


Washington, D.C.
May 28, 1992
The President  
The White House  
Washington, D.C.  

Dear Mr. President:

    On March 31, 1992, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12796, you established an Emergency Board to investigate disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations.

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

Respectfully,

Benjamin Aaron, Chairman
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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 222 (the 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. 12796. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the National Railroad Passenger Corporation and their employees represented by certain labor organizations. Copy of the Executive Order is attached as Appendix "A."

On April 3, 1992, the President appointed Benjamin Aaron of Santa Monica, California, as Chairman of the Board. Preston J. Moore of Oklahoma City, Oklahoma, Eric J. Schmertz of Riverdale, New York, David P. Twomey of Quincy, Massachusetts, and Arnold M. Zack of Boston, Massachusetts, were appointed as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The National Railroad Passenger Corporation

The National Railroad Passenger Corporation (Amtrak) provides passenger service to 500 communities in 45 states nationwide. There are 60,500 daily passengers and 253 daily trains on Amtrak's nationwide route system; approximately half are passengers on the Northeast Corridor which runs between Washington, D.C., and Boston, Massachusetts. Outside the corridor, Amtrak provides short-distance passenger service to nearly 14,000 daily passengers in ten corridors nationwide, four of which serve more than 1,000 passengers daily. In the largest of these, Amtrak serves 4,700 passengers traveling between Los Angeles and San Diego, California.
In addition to passenger operations, Amtrak generates $50 million in annual revenue from mail and express service. The majority of this service operates over the Northeast Corridor. The United States Postal Service is the largest customer, representing 92 percent of its nonpassenger revenue.

B. The Labor Organizations

The disputes before the NMB involved ten labor organizations that collectively represent most of Amtrak’s employees. They are:

American Train Dispatchers Association (ATDA)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employees (BMWE)
International Association of Machinists & Aerospace Workers (IAM&AW)
International Brotherhood of Boilermakers and Blacksmiths (IBB&B)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Firemen & Oilers (IBF&O)
Transport Workers Union (TWU)
Transportation Communications International Union (TCU)
United Transportation Union (UTU)

III. ACTIVITIES OF THE EMERGENCY BOARD

The parties to the disputes met with the Emergency Board in Washington, D.C., on April 6, 1992, to discuss procedural matters.

On April 16-22, 1992, the Board conducted hearings regarding the issues in Washington, D.C. The parties were given full and adequate opportunity to present oral testimony, documentary evidence, and argument in support of their respective positions. A formal record was made of the proceedings.
The parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until May 28, 1992.

The carrier presented its position through written statements and oral testimony of W. Graham Clayton, Jr., Chairman and Chief Executive Officer of Amtrak; David Z. Zurowsky, Senior Director - Resource Management, Amtrak; John P. Prokopy, Director - Market Planning, Amtrak; William C. Harsh, Jr., Mercer Management Consulting, Inc.; John P. Lange, Assistant Vice President - Labor Relations, Amtrak; Robert M. Burk, Chief Mechanical Engineer, Amtrak; John Livingood, Director-Labor Relations, Amtrak; Harold Bongarten, Bongarten Associates; G.R. Simons, Bongarten Associates; John J. Cunningham, Assistant Chief Engineer - Maintenance of Way and Structures, Amtrak; George Daniels, Vice Chairman of the National Railway Labor Conference; John S. Lightner, General Superintendent-Transportation, Amtrak; and David S. Evans, National Economic Research Associates, Inc. Amtrak was represented by Harry A. Rissetto, Esq., of Morgan, Lewis & Bockius.

The TCU's presentation consisted of written statements and oral testimony by Robert A. Scardelletti, International President, TCU; Mitchell M. Kraus, Esq., General Counsel, TCU; Robert Wojtowicz, TCU; William Fairchild, General President of the Brotherhood of Railway Carmen Division, TCU; Joel Parker, International Vice President, TCU; and James J. Kilgallon, President of Ruttenberg, Kilgallon and Associates.

The TWU's presentation consisted of written statements and oral testimony by George Leitz, President, Transport Workers Union of America and Joseph Madison, TWU. The organization was represented by Asher Schwartz, Esq., of O'Donnell, Schwartz, Glanstein & Rosen.
The ATDA's presentation consisted of written statements and oral testimony by Robert J. Irvin, President, ATDA; Harry Brandt, Assistant Chief Train Dispatcher, Amtrak; and James J. Kilgallon. The ATDA was represented by Michael S. Wolly, Esq., of Mulholland & Hickey.

The IBEW's presentation consisted of written statements and oral testimony by James A. McAteer, International Representative, IBEW; Robert Wood, Director of Research and Economic Department, IBEW; and Neil S. Gladstein, IBEW.

The IAM&AW's presentation consisted of written statements and oral testimony by Robert Reynolds, General Chairman, IAM District 19; Thomas R. Roth, President of the Labor Bureau, Inc.; and Ivy Silver, Principal at Leshner, Silver & Associates. The IAM&AW was represented by Joseph Guerrieri, Jr., Esq., and John A. Edmond, Esq., of Guerrieri, Edmond & James.

The BMWE's presentation consisted of written statements and oral testimony by Jed Dodd, General Chairman, BMWE; Ivy Silver; and Thomas R. Roth. The Organization was represented by William A. Bon, Jr., Esq., General Counsel of the BMWE.

The BLE's presentation consisted of written statements and oral testimony by Edward Dubroski, General Secretary/Treasurer, BLE and Ronald E. Wiggins, General Chairman.

Pursuant to the request of the Board, on April 27, 1992, the parties presented written lists of the issues which they deemed still in dispute before the Board.

After the close of the hearings, the Board met in executive sessions to prepare its Report and Recommendations. The entire record considered by the Board consists of approximately eight
hundred (800) pages of transcript and thirty-three hundred (3,300) pages of exhibits.

IV. HISTORY OF THE DISPUTE

On or about January 20, 1988, the IBEW, in accordance with Section 6 of the Railway Labor Act, served notice on Amtrak of its demand to change the existing collective bargaining agreements. Amtrak served notice on or about April 1, 1988. The IBEW served an additional notice on or about April 18, 1988. Amtrak, on October 14, 1988, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12103. Mediation was undertaken by Member Javits and Mediator Richard A. Hanusz.

On or about April 1, 1988, Amtrak served notice on the BMWE. The BMWE, on May 1, 1988, served notice on Amtrak of its demands for changes in the existing agreements covering employees on the Northeast Corridor portion of the Amtrak system. The BMWE, on December 6, 1988, applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12198.

On or about June 24, June 28 and July 25, 1988, the UTU served notice on Amtrak. Amtrak made counter proposals on or about January 5, 1989. Amtrak, on April 20, 1989, applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12246.

On or about April 1, 1988, Amtrak served notice on the BMWE of its demands for changes in the provisions of the collective bargaining agreements. The BMWE, on or about April 11, 1988 and May 13, 1988, served its notices on Amtrak. On May 30, 1989, Amtrak applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12263. Mediation was undertaken concurrently with NMB Case No. A-12198.
Amtrak served notice on the Joint Council of Carmen, Helpers, Coach Cleaners and Apprentices (composed of the TWU and the Brotherhood of Railway Carmen division of the TCU) of its demand for changes in the provisions of the collective bargaining agreements on or about April 1, 1988. The Joint Council, on or about May 18, 1988, served notice of its demands for changes. On June 14, 1989, Amtrak and the Joint Council applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12268.

The BLE served notice on or about June 30, 1988. Amtrak served a counterproposal on March 9, 1989. The BLE, on June 25, 1989, applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12290.

Amtrak served the American Railway and Airway Supervisors Association, a Division of the TCU, notice of its demands for changes on or about April 1, 1988. ARASA/TCU served, on or about May 30, 1988, a notice on Amtrak. On July 27, 1989, ARASA/TCU applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12291.

Amtrak served notice on or about April 1, 1988, to the ATDA. On or about June 1 and July 1, 1988, the ATDA served notices. The ATDA, on September 27, 1989, applied for the NMB's mediatory service. The application was docketed as NMB Case No. A-12309.

On or about January 20, 1988, the IAM&AW served notice on Amtrak of its demand for a change in the collective bargaining agreements. Amtrak, on or about April 18, 1988, served notice of its demands for changes in the collective bargaining agreements. The IAM&AW served an additional notice on or about April 18, 1988. The IAM&AW, on November 3, 1989, applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12318.
Amtrak served notice on the IBF&O on or about April 1, 1988. The organization served notices on May 19 and June 10, 1988 and December 28, 1989. On May 22, 1990, the IBF&O applied to the NMB for its mediatory services. The application was docketed as NMB Case No. A-12391.

On or about April 1, 1988, Amtrak served notice on the IBB&B of its demands. The IBB&B, on or about May 31, 1988, served its notice on Amtrak. The IBB&B, on May 3, 1991, applied for the NMB's mediatory service. The application was docketed as NMB Case No. A-12467.

All of the mediation efforts were unsuccessful.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered all the organizations and Amtrak the opportunity to submit their controversy to arbitration. In NMB Case Nos. A-12198, A-12246, A-12263 and A-12290, Amtrak declined the proffer of arbitration. The organizations declined the proffer in NMB Case Nos. A-12291, A-12309, A-12318 and A-12467. Amtrak and the respective organizations declined the proffer in NMB Case Nos. A-12103 and A-12268. Accordingly, on March 4, 1992, the NMB notified all the parties that it was terminating its mediatory efforts.

On March 5, 1992, 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 substantially to interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order 12796 on March 31, 1992, to create, effective April 3, 1992, this Board to investigate and report concerning these disputes.
V. INTRODUCTION

The threshold question before us concerns the impact on this Presidential Emergency Board 222 of the recommendations of PEB 219, as enacted by Congress, and as reviewed by the Special Board.

The members of Emergency Boards 220 and 221 concluded that the recommendations of PEB 219 were presumptively applicable to the issues before those Boards, but rebuttable for persuasive reasons, issue-by issue. The determinative standard was whether a variation from what PEB 219 recommended would destabilize existing relationships between and among the parties involved in proceedings before those two Boards.

That presumption was founded primarily on the fact that organizations representing a majority of employees of carriers appearing before Emergency Boards 220 and 221 are now bound by the recommendations of PEB 219.

That is not the case with Amtrak. It has settled with a number of organizations representing about half of its employees on a wage package different from that recommended by PEB 219. By doing so, it has introduced into the present case an "internal model" different from that established by PEB 219. In short, through negotiations and its position before us, it has taken itself out of the PEB 219 mold, at least as to wages. Hence, the possibility of a "destabilizing" effect between those bound by the PEB 219 recommendations and others gaining a better wage benefit is not present. This is not to say that the PEB 219 recommendations may not be relevant. Rather, they will be considered, where appropriate, on the same footing as other probative material.
VI. ISSUES, POSITIONS OF THE PARTIES, RECOMMENDATIONS

A. APPLICABLE TO ATDA, BLE, BMWE, IAM, IBEW, JCC

1. WAGES

Amtrak Wage Proposal

Amtrak has proposed either adherence to the PEB 219 recommendations, or in consideration of their requested work rule relief, the following schedule of general wage increases to the labor organizations involved in the cases before PEB 222.

- $2,000 lump sum - Immediate
- 5 percent - Upon ratification
- 4 percent - October 1, 1992
- 2 percent - January 1, 1993
- 3 percent - October 1, 1993
- 4 percent - October 1, 1994
- 2 percent - July 1, 1995

Amtrak also proposes a cost-of-living adjustment for each six-month period, beginning July 1, 1995, based upon the COLA formula previously utilized by the parties.

JCC Wage Proposal

The JCC proposes the following schedule of general wage increases:

- 4 percent - July 1, 1988
- 5 percent - July 1, 1989
- 5 percent - July 1, 1990
- 5 percent - July 1, 1991
- 3 percent - January 1, 1992
- 2 percent - July 1, 1992
The JCC also proposes the abolition of all entry level rates. In addition, it requests that all positions designated as Coach Cleaner/Equipment Servicers receive a further $.30 per hour increase, and that wage differentials for the second and third tricks be paid in the amounts of $.25 and $.30 per hour, respectively.

ATDA Wage Proposal

The ATDA proposes the following schedule of base rate increases and lump sum payments:

<table>
<thead>
<tr>
<th>Base Rate Increases</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>4 percent</td>
<td>May 1, 1991</td>
</tr>
<tr>
<td>3 percent</td>
<td>July 1, 1991</td>
</tr>
<tr>
<td>2 percent</td>
<td>October 1, 1991</td>
</tr>
<tr>
<td>4 percent</td>
<td>October 1, 1992</td>
</tr>
<tr>
<td>2 percent</td>
<td>January 1, 1993</td>
</tr>
<tr>
<td>3 percent</td>
<td>October 1, 1993</td>
</tr>
<tr>
<td>4 percent</td>
<td>October 1, 1994</td>
</tr>
<tr>
<td>Parity with Conrail: 1.8 percent for train dispatchers and power directors; .6 percent for assistant chief dispatchers</td>
<td>January 1, 1995</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lump Sum Payments</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$2,000</td>
<td>Signing date</td>
</tr>
<tr>
<td>$1,401</td>
<td>July 1, 1992</td>
</tr>
<tr>
<td>$1,401</td>
<td>January 1, 1993</td>
</tr>
<tr>
<td>$1,443</td>
<td>January 1, 1994</td>
</tr>
<tr>
<td>$1,000</td>
<td>January 1, 1995</td>
</tr>
</tbody>
</table>

IBEW Wage Proposal

(On February 11, 1992, Amtrak and the IBEW reached an interim agreement covering, among other things, the IBEW wage demands for the period, July 1, 1988, through March 1, 1992.)
The IBEW proposes the following schedule of general wage increases:

<table>
<thead>
<tr>
<th>Percent</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>October 1, 1992</td>
</tr>
<tr>
<td>3</td>
<td>January 1, 1993</td>
</tr>
<tr>
<td>4</td>
<td>October 1, 1993</td>
</tr>
<tr>
<td>4</td>
<td>October 1, 1994</td>
</tr>
</tbody>
</table>

In addition, the IBEW seeks a "skill adjustment" of four percent, to become effective with the consummation of an agreement with Amtrak.

IAM Wage Proposal

The IAM proposes the following schedule of general wage increases:

<table>
<thead>
<tr>
<th>Percent</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>July 1, 1988</td>
</tr>
<tr>
<td>5</td>
<td>July 1, 1991</td>
</tr>
<tr>
<td>3</td>
<td>January 1, 1992</td>
</tr>
<tr>
<td>3</td>
<td>July 1, 1993</td>
</tr>
<tr>
<td>3</td>
<td>March 1, 1994</td>
</tr>
<tr>
<td>3</td>
<td>January 1, 1995</td>
</tr>
</tbody>
</table>

In addition, the IAM asks that all rates of pay be adjusted every six months, commencing July 1, 1992, by application of an automatic cost-of-living escalator clause based on a formula providing a one-cent increase for each .3 percent rise in the CPI-W (1967=100). Also, the IAM proposes a $.25 per hour shift differential for employees required to work a second shift and a $.35 per hour shift differential for those required to work a third shift.

BMWE Wage Proposal

The BMWE proposes the following schedule of general wage increases:

<table>
<thead>
<tr>
<th>Percent</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>July 1, 1988</td>
</tr>
<tr>
<td>4</td>
<td>July 1, 1989</td>
</tr>
<tr>
<td>4</td>
<td>July 1, 1990</td>
</tr>
<tr>
<td>5</td>
<td>July 1, 1991</td>
</tr>
<tr>
<td>5</td>
<td>July 1, 1992</td>
</tr>
<tr>
<td>5</td>
<td>July 1, 1993</td>
</tr>
<tr>
<td>5</td>
<td>July 1, 1994</td>
</tr>
</tbody>
</table>
The BMWE also proposes the elimination of reduced entry rates, and equalization of rates of pay of the same classifications between the southern and northern districts. In addition, the BMWE asks that all rates of pay be adjusted every six months, commencing July 1, 1992, by application of an automatic cost-of-living escalator clause based on a formula providing a one-cent increase for each .3 percent rise in the CPI-W.

**BLE Wage Proposal**

As nearly as the Board can determine, the BLE is asking, at a minimum, for general increases of 4.5 percent in 1988; 4.4 percent in 1989; 4.1 percent in 1990; 3.6 percent in 1991; and thereafter, 5 percent annually for the duration of its contract with Amtrak. It also wants cost-of-living allowances equivalent to the post-moratorium COLA recommended by PEB 219. Finally, the BLE demands full retroactivity, i.e., "[E]ach engineer who worked during the pendency of this dispute will receive the applicable percentage increases for the period he or she worked, without exception."

**Amtrak Position**

Amtrak points out that its proposals are consistent with the pattern established in agreements already reached with other organizations on Amtrak that provided greater wage settlements for additional rules relief. Such pattern agreements have been reached with the following organizations: The Amtrak Service Workers Council (ASWC), the Transportation Communications Union (TCU), the American Railway and Airway Supervisors (ARASA-M/E, ARASA-M/W, and ARASA-OBS), the Brotherhood of Railroad Signalmen (BRS), the Sheet Metal Workers' International Association (SMWIA), and the International Brotherhood of Boilermakers and Blacksmiths (IBB). Two of the organizations comprising elements of the ASWC -- the Transport Workers Union (TWU) and the TCU -- have accepted the pattern settlement. Those two unions also are part of the Joint Council of Carmen and Coach Cleaners (JCC), which, however, has not accepted the pattern settlement.
Amtrak advises that it has now negotiated agreements covering more than 60 percent of its workforce. More than 50 percent of those employees are covered by the Amtrak pattern. Agreements reached with the ARASA (ME), the SMWIA, the IBB, and the International Brotherhood of Firemen and Oilers (IBF&O) cover approximately 26 percent of Amtrak's shopcraft employees.

Amtrak argues that its wage proposal is clearly more beneficial to its employees than that proposed by PEB 219. It also claims that the proposed increases are competitive when compared to labor market increases and considering Amtrak's special financial situation and ability to pay. Amtrak insists, moreover, that its proposed wage package is fair. It provides a shopcraft journeyman with an increase of $2.79 per hour (from $12.81 to $15.60) over the life of the agreement, for a total of 21.7 percent.

According to Amtrak, its financial position, despite substantial improvement in the 1980s, is still shaky. The carrier states that it is experiencing a short-term crisis: revenue and cash reserves are very low, and a budget deficit of $67 million is projected for FY 1992, even after receiving a federal operating subsidy in excess of $330 million. Indeed, it points out, the results for FY 1992 are hardly encouraging: ridership is down 5.6 percent; revenue is down .9 percent; expenses are up 1.8 percent.

Summing up, Amtrak declares that in order to survive it must hold down its costs and increase its capital investments, so that it can expand by extending its routes to areas needing more rail passenger service. It contends that its pattern proposal is consistent with those objectives and fair to its employees.

Organizations Positions
Each of the organizations whose wage proposals are summarized above presented extensive and detailed statements of its position
on the wage issues. A common theme, however, ran through all the presentations. It can be summarized as follows:

Amtrak workers in general have suffered a serious diminution of real pay over the course of the past decade, as well as a substantial further decline during the pendency of contract negotiations leading up to the proceeding before this Board.

The wage progress of Amtrak workers has been substandard when measured against that of almost all relevant comparators.

Amtrak wage levels for all classifications are below those paid to comparable workers in other industries throughout the U.S.

Even under the organizations' proposals, a full recapturing of lost wage progress will not be accomplished.

Recommendation

As we noted in the Introduction to this Report, through its negotiations with other rail labor organizations and in its position before us, Amtrak has removed itself from the so-called pattern resulting from the PEB 219 wage recommendations and the resultant federal law. It has, in fact, established a wage pattern of its own, now covering about 50 percent of its employees. To ignore that pattern and to grant each of the organizations here involved its own wage demand would reduce Amtrak's wage structure to chaos. We decline to make such a recommendation.

As the members of this Board stated in our Report in PEB 221, "We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its inevitably destabilizing consequences, is damaging to the public interest." That observation seems to us to
be equally applicable to the instant case.

Despite the appeal of some of the claims advanced by the organizations in this case in support of their wage proposals and their request for skill differentials, we believe that Amtrak's wage proposal should be adopted. Because the JCC did not persuade us of the merit of its proposal to abolish entry rates, we recommend that it be withdrawn.

The proposals of the JCC and the IAM for increased shift differentials should be withdrawn.

2. TOTAL QUALITY COMMITMENT

Amtrak Position

Amtrak proposes that the Board recommend adoption of its contract language on total quality commitment. It states that a joint approach involving employees and supervisors at the local level is essential to delivering total quality. It requests language stating that local supervisors and employees are encouraged to implement cooperative approaches, including quality circles, to improve quality.

Organizations Positions

Some of the organizations have expressed opposition to this proposal; others have not.

Recommendation

The achievement of quality performance and service is essential to the success of Amtrak and to the job security of its employees. The parties recognize this and appreciate that its attainment is based upon mutual cooperation, respect, and dedication. Although we do not think that this goal need be incorporated in their collective bargaining agreement, we encourage them to give joint attention to it and to consider undertaking mutually agreed-
upon arrangements to achieve that objective.

B. APPLICABLE TO IAM, IBEW, JCC

1. COMPOSITE MECHANIC AND MECHANIC A & B
   AND INCIDENTAL WORK RULE

Amtrak Position

Amtrak's proposal for a composite mechanic and Mechanic A & B classifications are related, and will be considered together.

Under the title "employee utilization," Amtrak seeks more work assignment flexibility in the assignment of both shopcraft and operating employees than would be available under the incidental work rule of the National Agreement. Its proposal, applicable to the JCC, the IBEW, and the IAM, is that "employees perform work they are capable of performing (after appropriate training) including work not traditionally associated with their craft."

Additionally, Amtrak seeks to establish Mechanic A & B classifications applicable to the JCC, the IBEW, and the IAM.

Amtrak claims that it needs further efficiencies in its shops. In the maintenance area, the carrier asserts, it is common for employees to possess mechanical aptitude and skills extending beyond artificial work-assignment barriers created by existing labor agreements. Performing assignments based on skills and abilities rather than classification, Amtrak insists, is an absolute necessity if it is to move forward.

Amtrak claims that present classification of work rules are complicated, location-specific arrangements of work jurisdiction. They divide work among crafts in a manner that bears no relation to the skills and abilities of the employee involved. It argues that employees from three or four crafts should not be required to work
on a project when the tasks involved are within the skills of one or, at most, two. Amtrak seeks increased productivity as the indispensable counterpart to the wage rate increase in the Amtrak wage and work rule pattern.

Amtrak points out that this flexibility has been agreed to by the SMWIA, the ARASA, the IBB&B, and the IBF&O, and that its proposal provides that no existing employee will be furloughed as a result of the rule relief.

Amtrak proposes the restructuring of its shopcraft employee classifications into two skill levels of work, Mechanic A and Mechanic B, with incumbent journeymen classed as A at the present journeyman rate. Only new hires and incumbent Helpers will be classified as B at a rate 85 percent of the Mechanic A rate. Future hires will be subject to the new classifications and rate structure, including entry rate schedules.

According to Amtrak, its proposal would allow for better utilization of skilled manpower by assigning the preponderance of work not of a journeyman level, to Mechanics B, and the skilled journeyman work to Mechanics A.

Organizations Positions

Each of the affected organizations strongly opposes the composite mechanic and Mechanic A and B proposals. Their collective position may be summarized as follows:

The purpose in establishing the composite mechanic classification is to obliter ate all craft lines on Amtrak. The proposal constitutes an unwarranted modification of the current system, is directly contrary to historical practice, and conflicts with the Railway Labor Act and the NMB's craft and class rulings, which have been consistently construed to provide that employees be represent
ed in system-wide crafts or classes. Moreover, the proposal has been rejected by emergency boards since 1966.

The IAM, the IBEW, and the JCC claim that the incidental work rule, as extended by PEB 219, is all that Amtrak needs, and should be fully implemented for a period of time before a "radical" proposal such as the composite mechanic classification is considered.

The significance of settlements with SMWIA, IBF&O, and IBB&B in which composite mechanic provisions were accepted, is discounted. Together, the three organizations constitute only 19 percent of the shopcraft employees. According to the shopcrafts involved in this case, the three smaller organizations agreed to the proposal for self-preservation in the face of diminishing work within their crafts.

The IAM, the IBEW, and the JCC opposition to Mechanic A and Mechanic B classifications follows the same lines as their opposition to composite mechanic or employee utilization.

The IAM interprets the proposal to mean that one-half the workforce represented by the IAM would be at the lesser B rate, resulting in a significant lowering of IAM wage rates by reclassification of the majority of the craft as lower-skilled. Newly hired IAM mechanics, it charges, would work side by side with more senior employees doing the same work at lower wage rates. The IAM attacks the proposal as a two-tiered system that will inevitably result in lowered morale and productivity.

The IBEW interprets the proposal as Amtrak's attempt to establish a second-class group of craft workers that would be paid substandard wages. The IBEW argues that a craft work environment is entirely different from that of a production or manufacturing environment, and that while efficiency may be obtained by fragment-
ing the latter, the opposite result occurs when the work of a craftsman is fragmented. The IBEW concludes that the Amtrak proposal amounts to nothing more than a wage concession disguised as a classification scheme.

The JCC views the Mechanic A & B proposal as "another look at the composite mechanic." At 85 percent of the journeyman rate, it points out, the Mechanic B wage rate is 30 cents an hour less than helpers currently earn. The craft is basically comprised of journeymen, with only 3 percent as helpers. According to the JCC, the Mechanic A & B proposal would result in one-half the workforce being classified at the B rate, and over time, substantially more in that category.

Recommendation

We find no pattern as a result of agreements on "work flexibility" or "employee utilization" programs with a few of the smaller crafts; they represent a very small part of the workforce, and it appears that implementation of their arrangements will depend on similar arrangements with the major craft organizations.

What we do find, however, is that the proposal for a composite mechanic (or "employee utilization") and for the creation of Mechanic A & B classifications are premature. PEB 219, rejected a composite mechanic classification, but it did reiterate and expand the incidental work rule. PEB 219 said inter alia:

"...we are persuaded that the time has come to eliminate some of the restrictions which unnecessarily add time, costs, and delays to the accomplishment of shopcraft work. Too that end the Board recommends that: (1) The coverage of the rule be expanded to include all shop craft employees and the back shop. (2) "Incidental Work" be redefined to include simple tasks that require neither special training nor special tools. (3) The Carriers be allowed to assign such simple tasks to any craft employee capable of performing them for
a maximum of two hours per work day, such hours not to be considered when determining what constitutes a "preponderant part of the assignment."

We believe that recommendation is sufficient. The incidental work rule has not yet been fully implemented, and therefore has not yet been tested. We agree with the organizations that experience under that rule should be fully evaluated before the other Amtrak proposals discussed above are considered on their merits.

2. EXERCISE OF SENIORITY RIGHTS UNDER THE REDUCING & INCREASING OF FORCES RULES

Amtrak Position
Amtrak seeks to amend the rules pertaining to reducing and increasing forces, which govern how employees move from one position to another in the event of job abolishment or displacement. Amtrak proposes the following modifications:

1. Require employees whose positions are abolished to exercise their displacement rights within 5 days of notice to be effective on the date of abolishment.

2. Require displaced employees to exercise displacement rights under two working days thereafter.

3. Require displacement of junior employees when an employee chooses to displace where positions are substantially the same or identical with the same hours, rest days, and supervisor.

4. When facility improvements require relocation of forces/operations, arrange forces at a facility without abolishing and readvertising positions when the hours, work days, assigned duties, conditions and/or rest days are unchanged.

5. Assign employees who fail to exercise displacement rights within specified time frames
to either displace the junior employee or be assigned to any available position or work at the location.

Amtrak presents a number of examples which it states demonstrate the need for reform in the exercise of seniority rights. It contends that the proposed changes will stabilize the workforce and cut down on the disruptive movement across jobs and work areas.

Organizations Positions

The IAM opposes Amtrak’s proposal to reduce the advance notice Amtrak is required to give regarding decreasing and increasing force rules. It states that employees need as much advance notice of changes as possible.

The IAM also opposes the proposed change that would require displaced employees to exercise displacement rights within two days after the displacement. It states that there are so many factors that an employee needs to consider in large facilities like Beech Grove or Wilmington that the time should not be reduced from seven days to two. The IAM opposes, as well, Amtrak’s proposal that an employee who chooses to displace, when positions are substantially the same or identical with the same hours and rest days and supervisor, must displace the junior employee. The IAM states that the proposal deprives the senior employee of significant job possibilities.

Finally, the IAM opposes Amtrak’s proposal that when the relocation of forces or operations within the facility occurs due to facility improvements, the forces or operations can be moved without readvertising the involved positions. The organization sees no reason to modify the existing rule, pointing out that it has always tried to cooperate with Amtrak any time there is a demonstrated needed to move people.
The JCC objects to Amtrak's proposals. 

Amtrak notes the IBEW's opposition to its proposals.

Recommendation

The Board recommends that Amtrak's proposals be adopted by the IAM, the IBEW and the JCC. We believe that these concessions are needed to allow the carrier more quickly to stabilize its forces in the event of job abolishments or displacements, and will lead to significant productivity gains as a result.

3. PHYSICAL EXAMINATIONS

Amtrak Position

Amtrak proposes to extend to all shopcraft employees the medical examination schedule followed by the majority of its employees. It seeks a rule that allows the carrier the option of requiring employees who do not perform service for the company for 30 calendar days to submit to a complete medical examination to determine their fitness for service. Amtrak states that an absence of 30 days may suggest that a serious event or change has occurred, and that Amtrak is obligated to ensure that its employees are in good physical and mental condition, and capable of performing duties without harm to themselves or others. Amtrak seeks consistent contract language on this subject with all of its unions.

Organizations Positions

The IAM does not accept Amtrak's proposal relating to a required medical examination for employees who are off for more than 30 days. It states that employees may be off for numerous reasons that do not involve ill health. It also asserts that Amtrak has leeway under the existing agreement, Article 23, to determine an employee's physical fitness for service at any time it deems appropriate. Moreover, it points out, certain machinists in
safety-sensitive positions or subject to the Hours of Service Act are subject to random drug testing under FRA regulations.

The JCC objects to Amtrak's proposals.

Amtrak notes the IBEW's opposition to its proposal.

Recommendation

We are persuaded that Amtrak's proposal is reasonable. There is sufficient justification for the proposal in Amtrak's duty to the public and its own employees to make certain that Amtrak employees are medically fit, so that Amtrak service is performed in a safe manner. The Board recommends that Amtrak's proposal be adopted by the IAM, the IBEW, and the JCC.

C. APPLICABLE TO BMWE, IAM, JCC

1. HEALTH AND WELFARE, CONTRIBUTIONS AND SUPPLEMENTAL SICKNESS

Organizations Position

The organizations seek a separate plan for Amtrak employees they represent and their dependents.

Amtrak Position

Amtrak argues that the recommendation of PEB 219, as clarified by the Special Board, and as applicable to all the other organizations with which it has contracts, should be made applicable to these organizations. Included, Amtrak asserts, are the numerous detailed changes in the plan that are identical as to each organization. The changes include provisions for employee cost-sharing commencing in 1993.

Recommendation

This is an issue that should be resolved on the basis of the recommendation of PEB 219, as clarified by the Special Board, with
the changes applicable to the other organizations. To do otherwise would create different health and welfare plans among employees of Amtrak. The disaffiliation of the employees of the three organizations could detract from the fiscal vitality of the National Plan, with the attendant risk that benefits, experience-ratings, and costs may differ. We think this would be destabilizing both to the relationships among the employees and their representative organizations and to labor relations between Amtrak and those organizations.

The organizations' proposals should be withdrawn, and the Amtrak proposal, based on the PEB 219 recommendation, including the sharing of cost increases, should be adopted.

D. APPLICABLE TO IAM and IBEW

1. MONTHLY RATED POSITIONS

Amtrak Position

Amtrak seeks the elimination of monthly rates and the conversion of monthly rated positions to hourly rated positions when they become vacant due to attrition. The jobs affected are roadway mechanic on the Boston Division and shop extension electrician on the West Coast Division, represented respectively by the IAM and the IBEW. These positions pay a monthly rate based on a scheduled 40-hour workweek with an additional eight hours' straight time for Saturday, whether worked or not. Hourly overtime pay does not begin until after the 50th hour worked in the week.

Amtrak's case centers on the roadway mechanic in the Boston Division. It states that there are few instances of such employees working more than 40 hours per week, and those instances are limited to individuals whose duties include securing high-speed surfacing and ballast cleaning equipment. Amtrak claims these employees averaged 41.7 hours of work, Monday through Friday, and
were paid a guaranteed eight hours for Saturday. Amtrak concludes that it is paying excess money.

Organizations Positions

Neither the IAM nor the IBEW responded to this proposal.

Recommendation

We see no reason to continue for new hires an arrangement that requires Amtrak to pay for time not worked. The IAM and the IBEW have not explained the reasons for this guarantee, nor has the IAM rebutted Amtrak's statistics showing that only a few roadway mechanics work on Saturday, with most gaining the extra eight hours' pay without working. On the other hand, Amtrak has provided no information on Saturday work or nonwork by the shop extension electrician in the West Coast Division. It is our recommendation therefore, that the monthly rate shall continue for incumbent roadway mechanics, but that for new hires the pay may be changed from a monthly rate to an hourly rate, with overtime in accordance with the contract for hourly-paid employees. The same shall apply to shop extension electricians only if the facts as to them are the same as with the roadway mechanics.

E. APPLICABLE TO ATDA

1. COMBINING TERRITORIES AND JOBS

Amtrak Position

Amtrak seeks to relax present restrictions on blanking or combining positions. It wants the same right to determine manning as it has with other nonoperating groups with seven-day assignments, so that it will no longer need to use two employees when only one is required, or obtain the organization's approval for these changes. Amtrak seeks a recommendation that would enable it to combine positions on those shifts or days when there is a decreased workload.
ATDA Position

The American Train Dispatchers Association (ATDA) sees no need to change the present requirement that its General Chairman, together with the carrier, must agree to permit blanking and combining. The organization claims that Amtrak has not shown any need for a change, and that if Amtrak's proposal is accepted, the ATDA will have no effective remedy if its contrary position in a particular case is upheld. In respect of the latter point, the organization contends that appeals to the Railroad-Train Dispatchers Joint Committee take a minimum of 90 days to decision, during which the combining or blanking would have long since been implemented. Moreover, it claims that Amtrak now states that the decisions of the Committee are not final and binding.

The ATDA cites several examples of Amtrak's present ability unilaterally to change the number of positions on a shift or add or abolish jobs as traffic volume changes. The organization claims that it has been cooperative in agreeing to the combining of territories, and points out that only once in 16 years has an Amtrak proposal for combining been rejected.

The ATDA also notes that PEB 219 rejected a similar proposal by the carriers. It claims that there are distinct differences between combining in repair facilities or clerical offices and the combining of dispatching functions. The latter involves substantial safety issues justifying organization consent for combining, particularly because dispatcher manning is at minimum levels.

The ATDA discounts its agreement on this proposal with Conrail. It would not have made such an agreement, it explains, had it known that Conrail, too, now deems the decisions of the Committee to be nonbinding and has refused to comply with them. In sum, the organization insists on a continued voice in the matter in light of its safety liability and potential stress factors. It
recognizes legitimate needs for reducing force (as on weekends) and has agreed to such reductions. According to the ATDA, the issue should be negotiated on a case-by-case basis.

Recommendation

Amtrak does not say that the ATDA has not been cooperative in circumstances in which reductions in traffic justify either the combining of jobs or the extension of territories. The organization has cited several instances when its General Chairman agreed to combine jobs and to change territorial restrictions. Conversely, Amtrak has not given specific examples of situations, which it believed warranted job combinations or territory changes, when the General Chairman has refused to agree to such changes. That being so, we see no pressing justification for Amtrak's proposal that it have the right to act unilaterally, when so far such requirements have been met by mutual agreement.

We recommend that Amtrak withdraw its proposal on combining jobs and territory changes. However, as it is a traditional managerial right to determine which jobs are actively worked, we see no reason why Amtrak cannot unilaterally decide on job blanking. We recommend that its right to do so be recognized, provided that another employee does not perform the duties of the blanked job.

2. QUALIFYING PAY

Amtrak Position

At present, dispatchers are paid while obtaining "territorial qualifications". Amtrak claims that guaranteed payment for all time spent qualifying leads to abuses. It alleges that employees bid to different assignments, thereby pyramiding qualifying pay and causing unnecessary expenses and an unstable workforce. Amtrak wishes to put a stop to what it characterizes as "professional qualifiers."
ATDA Position

The ATDA denies that its members manipulate bids to pyramid qualifying pay or otherwise abuse the process. It points out that the procedure is rigid, coming into play only when a vacancy occurs, and may be used only when the bidding employee has been displaced. It notes that whatever the carrier spends on qualifying time and pay is off-set by later uses of the newly qualified employee, such as on assignments to maintain any desk in an office or to fill vacancies created by leaves and sickness, without additional compensation. The ATDA also argues that if employees must qualify on their own time, they will hurry their qualifying with an eye toward the cost they personally incur or take the chance of working a job even if unqualified, with unsafe consequences. Use of rest time for qualifying, it points out, has obvious inimical effects on safety. Finally, the organization argues that it would distort the seniority system to permit junior employees to qualify while senior employees are unable to take time off to do so.

Recommendation

Amtrak alleges abuses, but has not particularized them. Qualifying on territories is a contractual part of a dispatcher’s job security, when he or she is displaced. We fail to see under that circumstance why the dispatcher should be required to become familiar with a new territory and its job duties on his or her own time and without compensation. As the dispatcher has the right to qualify only when displaced, and is required to remain in the job after qualifying until again displaced, we do not see how alleged abuses by so-called "professional qualifiers" can be either widespread or represent a problem for Amtrak that it cannot control.

Accordingly, it is our recommendation that there be no change in the present qualifying rule.
3. POSTING ALLOWANCE/CALL ALLOWANCE

Amtrak Position

Amtrak claims that there is no justification for continuing the $10.00 a day payment when a new employee is assigned to work with a more experienced employee. It argues and proposes that seasoned employees should be reasonably required to provide some on-the-job instruction without additional payment.

Amtrak also proposes eliminating the two-hour penalty payment when a management official calls a dispatcher at home for information regarding movement that the dispatcher was involved with during his or her tour of duty.

ATDA Position

The ATDA contends that the $10.00 a day posting allowance is appropriate and moderate compensation for the extra duties and potential liability attendant to training new employees.

As to the call allowance, the organization points out that Amtrak is not required to pay $2.00 for calls to an off-duty employee except when such a call is of a nonemergency nature. In the ATDA's view, such a charge is an appropriate deterrent to an unnecessary intrusion on an employee's time off.

Recommendation

In our opinion, the $10.00 a day posting allowance is reasonably related to and justified by the additional instructional duties assumed by the experienced employee. The $2.00 call pay can be controlled by Amtrak, which is required to pay it only for nonemergency calls. We recommend that Amtrak withdraw its proposals.
4. SICK LEAVE

Amtrak Position

Amtrak claims that present sick leave benefits for ATDA-represented employees are well in excess of agreements with other Amtrak crafts. It points out that a dispatcher can receive sick benefits for up to 240 days in a calendar year, leading to excessive costs and encouraging abuses. Amtrak proposes alternatives. One is to reduce costs by not paying for the first day of illness and by paying reduced percentage amounts on the days for which benefits are paid. For new hires, benefits would be at parity with other Amtrak agreements. Another is a proposal that existing employees get benefits that are the same as what new employees would receive, but with an "up-front 'bank' of days credited."

ATDA Position

The ATDA responds to Amtrak's reduced sick leave proposal with a counter proposal, namely, to reduce daily full pay benefits for all employees to 90 percent; deny pre-1982 hires sick pay in the first day of sickness annually after 10 sick days are used; and, for new employees, off-set all sick pay by RUIA benefits, with a scale of sick days dependent on years of service. It also proposes that dispatchers be eligible for an additional supplement of 70 percent pay, less RUIA, excluding the first four days of each succeeding sickness absence, under a defined schedule. The ATDA views this as a significant concession, which reasonably accommodates Amtrak's concerns while maintaining an acceptable level of benefits.

Recommendation

There is inadequate evidence in the record to support a recommendation in favor of the diminution of sick leave benefits as proposed by Amtrak. More important, changes proposed by Amtrak might have a destabilizing effect, as other employees would be
working under different sick leave benefits. On the other hand, the ATDA has made a counter proposal which, if implemented, would appear to provide some savings to Amtrak, albeit not as much as if Amtrak's proposals were accepted. We think that the ATDA counter proposal should be implemented as a means of generating savings in the form of a voluntary give-back.

E. APPLICABLE TO BLE

1. REDESIGNATION OF FIREMEN, FIREMEN MANNING, RATES & ROSTERS

Amtrak Position

Amtrak proposes that employees classified as passenger firemen be redesignated as assistant engineers. Under its current agreement, Amtrak employs passenger firemen on its off-corridor trains when the scheduled running time of the assignment exceeds four hours. These assignments are called "must-fill assignments." In addition, certain assignments in off-corridor service are identified as "blankable fireman assignments" and may be filled by a passenger fireman under certain limited circumstances. Amtrak has offered to increase the passenger fireman rate, in increments, by $2.28 an hour over the life of the contract, over and above the contractual raises. Amtrak proposes that the must-fill requirement be increased to five hours running time, and blankable positions be eliminated, and that one extra board be established at each off-corridor crew base, which would be guaranteed 40-hours' pay at this newly-created rate.

Amtrak states that its blankable firemen positions are down from 23 to two. And, if under the new language an assistant passenger engineer would not have a place to go, he or she would have to take an engineer's position in the work zone. If none is available, these individuals would have an opportunity to occupy the two blankable positions.
**BLE Position**

The BLE objects to increasing the running time from four hours to five hours before the must-fill requirement applies. The BLE states that any proposal to combine the engineer and fireman rosters must have protection built into it to protect prior rights of firemen in their crew bases.

The BLE also objects to the carrier's request for the establishment of common extra boards. It states that the original off-corridor agreement called for the establishment of application pools for future engine service positions. It states that a proposal to merge extra boards is premature while the pools exist, because these individuals have a contractual right to new engineer positions.

**Recommendation**

The Board recommends that the title of passenger fireman should be redesignated assistant passenger engineer. This title reflects the fact that such employees must be qualified locomotive engineers, and are expected to share the duties of operating a train with a passenger engineer. Also, the name would be the same as used in the auto train service.

The Board recommends that Amtrak's proposal to increase the running time before the must-fill requirement applies from four to five hours be withdrawn. Amtrak has not presented persuasive evidence that it is safe for one individual to operate a passenger train for five straight hours.

The Board recommends that Amtrak's proposal to increase the off-corridor rate for the newly designated assistant passenger engineer position by $2.28 per hour in the phases proposed by Amtrak be adopted.
The Board recommends that Amtrak eliminate the two remaining blankable positions, subject to the limited rights of the former firemen who could have occupied such blankable positions again to fill these positions, if they cannot occupy any engineer or assistant engineer position in their respective work zones. The BLE has not demonstrated to this Board that Amtrak has a continuing contractual obligation to fill new engineer positions with individuals in "application pools" established under the original off-corridor agreement, as opposed to the present passenger firemen (qualified locomotive engineers) employed on Amtrak's off-corridor trains.

The Board recommends that the parties negotiate an agreement combining the engineers and firemen rosters. The new roster must have protection built into it to protect prior rights of former firemen in their crew bases. Once the questions on the combining of the rosters are resolved, the Board recommends that the parties negotiate an agreement on both the establishment of one extra board at a location to fill both passenger engineer and assistant passenger engineer vacancies and the manner in which each vacancy is to be filled. The extra boards shall be guaranteed 40 hours per week. Employees on the extra board shall be paid at the rate applicable to the position occupied and for the entire weekly period (if the employee is available); and the employee shall be guaranteed the money equivalent of 40 straight-time hours at the assistant passenger engineer rate of pay. However should individuals listed on the present passenger engineer seniority roster as of May 28, 1992, be on the new extra board, their guaranteed rate shall be at the engineer rate of pay.

2. APPLY THE "8 WITHIN 9" TO THE NORTHEAST CORRIDOR

Amtrak Position

Amtrak proposes to make the method of pay in the Northeast Corridor the same as is applicable now to the majority of engineers
in off-corridor service, under the "8 within 9" rule. Passenger engineer assignments in the Northeast Corridor run on a turnaround basis, with a passenger engineer having anywhere from a one to four hour paid release period at the turning point of the assignment. This proposal would give Amtrak credit for one of those paid hours if the assignment operates in excess of eight hours.

**BLE Position**

The BLE states that Amtrak alone has control over the working hours of engineers in the corridor. It points out that scheduling is done only by Amtrak. It states that Amtrak is seeking to cut the pay of crews in the corridor.

**Recommendation**

The agreement covering passenger engineers in the Northeast Corridor setting forth the method of paying for passenger engineers is presumptive evidence that both sides recognized that passenger engineers are subject to Amtrak's direction during the release period. Moreover, it is not controverted that Amtrak alone controls the scheduling of the engineers on the corridor. The carrier has not demonstrated to this Board that an underlying change in the basis for the agreement has occurred to justify the one-hour reduction in pay that would apply to the affected engineer. We therefore recommend that Amtrak's proposal be withdrawn.

### 3. REDUCTION OF YARD SERVICE RATE FOR NEW HIRES

**Amtrak Position**

Amtrak proposes to reduce by 10 percent the hourly rate of pay for yard service engineers hired after the date of the agreement. Existing employees would be grandfathered. Amtrak pays its engineers assigned to yard service the same hourly rate as that of engineers who operate over-the-road. This rate is considerably higher than the national rate for freight yard service.
BLE Position

The BLE responds that it was Amtrak that wanted an across-the-board single hourly rate of pay. Now, the BLE states, the carrier wishes to undo the deal by creating a permanent two-tier wage system on the property.

Recommendation

We recommend that new yard service engineers shall serve at 90 percent of the hourly rate just for the first two years of their service.

4. AUTO TRAIN: EXTRA BOARDS

Amtrak Position

Fifteen passenger engineers and assistant passenger engineers are covered under a separate collective bargaining agreement for auto train service. The territory covered by the auto train is basically the same as the territory encompassed in off-corridor work zones 5 and 6. Amtrak’s proposal is to use one extra board in zone 5, with the board to be located in Washington D.C., to protect both the auto train and off-corridor vacancies. It also wants the option to eliminate the auto train extra board at Sanford, Florida, in zone 6, at a future time. Amtrak states that its proposal will increase administrative efficiency and eliminate the waste of manpower resources resulting from duplicate extra boards covering the same territory.

BLE Position

The BLE states that Amtrak has not demonstrated an operational need for the change. The BLE further states that Amtrak does not want to change anything in the separate collective bargaining agreements, except those few things that would benefit the carrier. Auto train engineers must spend four more hours away from home than other Amtrak engineers before earning held-away-from-home payments.
Yet, according to the BLE, Amtrak does not want to correct that inequity.

Recommendation

Amtrak has effectively made out a case that increased administrative efficiency and elimination of the waste of manpower resources will be achieved by its proposal for zone 5. We therefore recommend that the auto train extra board at Lorton, Virginia, be eliminated and the existing work zone 5 extra board located in Washington, D.C., be used to cover auto train vacancies. Amtrak must allocate a percentage of extra board positions to auto train employees and must guarantee that no existing auto train or work zone 5 employee will be furloughed as a direct result of this combination of extra boards. An employee called off the extra board would be paid at the rate of the position worked and under the terms of the agreement covering the service. Because Sanford, Florida, is not within the effective reach of the Jacksonville extra board, we recommend that Amtrak's proposal for zone 6 be withdrawn.

5. CERTIFICATION ALLOWANCE

BLE Position

The BLE proposes that each engineer should receive a monthly allowance of $250 for each full month he or she maintains certification. The BLE believes that this allowance is justified by the high speed operation of Amtrak trains and the critical position occupied in the safety chain by the engineer.

Amtrak Position

Amtrak opposes the BLE proposal on the ground that the parties agreed to a pay structure based on a straight hourly rate of pay and the elimination of arbitraries.
Recommendation

The Board fully recognizes the high degree of competence required of passenger engineers and the significant responsibilities of their position. The factors cited by the BLE as justification for the proposed certification payment are factors which are properly considered when establishing the engineers' hourly rate of pay. The BLE has not presented additional justification for a certification payment. The Board recommends that the proposal be withdrawn.

6. EXTRA BOARD MARK OFFS

BLE Position

The BLE proposes that the guaranteed extra board rule be amended to provide that an engineer who marks off will have his guarantee reduced by the greater of a pro-rata share of the guarantee or the earnings of the assignment the engineer would have worked. The BLE ties its discussion of this issue to its discussion of its proposal on the need for sick pay and the contention that sick engineers may be forced by economic consideration to run passenger trains. It states that under the present rule an engineer loses his or her entire weekly guarantee if the engineer marks off for a single day because of illness.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

Amtrak provides the economic guarantee of 40 hours of pay per week for those engineers who hold themselves available for service on a 24-hour-a-day basis for their entire workweek. The guaranteed payment is made as an incentive for engineers to maintain their availability for their entire workweek, and when an individual fails to be available, his or her entire guarantee is lost. We are persuaded that an exception is warranted for engineers who cannot
for a sixth day in a workweek consisting of three class days followed by three workdays.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

On this issue the BLE makes a brief proposal and Amtrak presents no response. We are not satisfied that the record justifies a determination on the merits of the BLE proposal. There is simply not enough information before us to make an informed decision. We recommend that the proposal be withdrawn.

9. PAY FOR QUALIFYING TIME

BLE Position

The BLE proposes that engineers be paid for all qualifying time, up to a maximum period for each territory based on a schedule negotiated by the parties. Pay for qualifying time is essential to promoting the highest performance levels for engineers, according to the BLE. It argues that paid qualifying time would markedly enhance safety by easing the financial burden on the engineer. The organization further states that when it suits Amtrak's purposes, Amtrak will pay for the engineer who must requalify, but it will not pay for others, after their first qualification.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

The record establishes that on certain occasions engineers are not paid for qualifying time. We are not persuaded that there is sufficient evidence before the Board to justify a change in the existing practice. The proposal should be withdrawn.
10. HOURS OF SERVICE ACT

**BLE Position**

The BLE seeks a rule that would make engineers whole when they cannot work their assignment due to the Hours of Service Act. The BLE explains that an engineer may be ordered to report late for his or her regular assignment and, as a result, will not have a sufficient rest period to work the next assignment. Consequently, the engineer will lose the opportunity to earn pay for that assignment.

**Amtrak Position**

Amtrak does not present a position on this proposal.

**Recommendation**

We are persuaded that engineers need relief for those situations when, due to the Hours of Service Act, they cannot work their regular assignment, through no fault of their own. The BLE proposal will have no destabilizing effect on other operating craft employees, because the UTU and Amtrak have negotiated a rule on this matter. The Board recommends that the parties adopt a rule that will allow the engineer so affected the earnings of his or her missed assignment for the calendar day, with a maximum of eight hours' pay.

11. SERVICE CREDITS AND RELIEF DAY

This Board has disposed of a number of the BLE issues dealing specifically with firemen in its discussion of some Amtrak proposals. Some ambiguity may possibly exist on service credits for firemen, and that matter is dealt with below.

**BLE Position**

The BLE states that the current agreements between the BLE and Amtrak contain a multitiered wage system that provides for a five...
year wage progression beginning at 75 percent of the full rate. An increasing number of new hires in engine service bring with them considerable prior experience. Amtrak credits this experience for those new hires engaged as engineers, but it does not do so for firemen. The BLE proposes that firemen also receive credit for prior engine service experience.

Amtrak Position
Amtrak does not present a position on this proposal.

Recommendation
We believe that this issue is resolved by our recommendation that firemen be redesignated as assistant engineers.

12. CALLING RULES

BLE Position
The BLE proposes that the calling rules be amended to provide engineers the option of obtaining two additional hours rest beyond that required by the Hours of Service Act. The BLE also proposes that engineers be given the right to request an eight hour call.

Amtrak Position
Amtrak opposes the BLE proposal. It asserts that it has worked out reverse lodging agreements with the BLE to accommodate employees rest requirements in conjunction with the calling rules.

Recommendation
The Board recognizes that the requirements of service for passenger engineers, including the calling rules, place very significant demands upon them. However, this Board does not have sufficient information before it to justify the changes that the BLE seeks on Amtrak. The BLE has not demonstrated that the provisions it would like to modify are more onerous than those which apply to other engineers or other operating craft employees
throughout the country. The Board recommends that the proposals be withdrawn.

13. MEAL ALLOWANCE

**BLE Position**

The BLE proposes that the meal allowance paid employees held away from home be raised from $4.15 to $10.00.

**Amtrak Position**

Amtrak does not present a position on this proposal.

**Recommendation**

The Board notes that $4.15 is not a sufficient allowance for a meal. We recommend that the parties increase this allowance to $5.00 upon the signing of a new agreement. Also, effective November 1, 1994, the parties should increase the allowance to $6.00. Such allowance would be in parity with the operating crafts represented by the UTU, who now have a meal allowance of $5.00, which will be increased to $6.00 on November 1, 1994.

14. AUTO TRAIN: HELD-AWAY-FROM-HOME COMPENSATION

**BLE Position**

The BLE proposes extending to auto train service the present held-away-from-home compensation rule. It asks the Board to correct an anomalous situation that affects the small number of engineers who work in auto train service. Auto train engineers presently may be held away from home for up to 16 hours before they become eligible for compensation. Other off-corridor engineers, including some who work on other trains traveling the same route as the auto train, become eligible for compensation at the expiration of 12 hours. The BLE states its belief that the auto train rule is an anachronism that should be abolished, given the small number of employees involved.

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Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

The evidence presented by the BLE is insufficient to justify changing the present agreement. We recommend that its proposal be withdrawn.

G. APPLICABLE TO BMWE

1. ENTRY RATES

BMWE Position

The BMWE seeks the elimination of entry rates. It asserts that the current five-year progression from 75 percent of the top rate is not justified, that it establishes a two-tier compensation system victimizing those who suffer the worst seasonality of employment, and that it subsidizes Amtrak through inadequate wages.

Amtrak Position

Amtrak argues that the recommendations of PEB 219 on this issue should be followed. PEB 219 recommended an exclusion from this rule for foremen, mechanics, and production gang members operating heavy, self-propelled equipment that requires skill and experience.

Recommendation

BMWE employees in the highest-rated positions who work for freight carriers other than Conrail have already been granted the exclusion from wage progression sought by the organization in this case. There is some merit, however, in applying lower entry rates and wage progression to those working in lower-paying positions, in as much as they are likely to be less productive until they master the full range of their job duties. Nevertheless, we find a five-year progression based upon a 75 percent hiring rate to be
inequitable in the light of the lesser-skilled nature of the work involved and the greater burdens seasonality of employment imposes upon them. Accordingly, we recommend that the exclusion from rate progression accorded by PEB 219 be extended to BMWE employees of Amtrak, and that those not covered by that exclusion be granted a two-year rate progression commencing at 90 percent and advancing to 95 percent at the end of the first year and to full rate at the end of the second year.

2. PER DIEM

Amtrak Position
Amtrak proposes it have the option of providing per diem payments of $29 for travelling gangs in place of the requirement of maintaining camp cars. It asserts that the Northeast Corridor is relatively compact compared to the size of other properties; that there are abundant overnight accommodations and lodgings available in the area; that many employees live nearby and commute; and that its proposal will reduce the burdens of camp maintenance and expenditure.

BMWE Position
The BMWE asserts that Amtrak's proposal is inadequate; that employees who are required to live away from home are unable to do so at the rates provided by the carrier; that the area does not have abundant inexpensive facilities; and that the amount of per diem should be increased.

Recommendation
Amtrak has the authority to determine whether to continue the operation of camp cars or to provide a reasonable level of per diem to cover the cost of lodging and meals to replace the facilities at the camp cars. The organization's claim for additional per diem has merit. The allowance should be raised to $35 to cover the actual cost of food and lodging.
3. TRAVEL ALLOWANCE INCREASES

**BMWE Position**

The BMWE asserts that employees incur considerable personal expense driving from their homes to temporary lodging locations and returning home on rest days. It proposes that a greater portion of the actual expense be compensated, and that employees be given cost-of-living adjustments of this benefit for the life of the contract.

**Amtrak Position**

Amtrak does not present a position on this proposal.

**Recommendation**

The BMWE has not presented sufficient information to support its proposals. We recommend that it be withdrawn.

4. RESTRICTED EXERCISE OF SENIORITY

**Amtrak Position**

Amtrak proposes that BMWE employees be restricted from bidding on lower-rated and lateral jobs and that employees holding temporary jobs fill them when those jobs become a permanent position. Amtrak also proposes that when displacements occur, the most junior employee be displaced.

Amtrak points out that when a senior employee exercises seniority to bid to an equal or lower-rated position, the carrier loses a certain level of experience, which when taken cumulatively, reduces the productivity of its work force. It also claims that even when an employee makes a voluntary lateral bid, the make-up and stability of a gang is affected by the movement and results in a loss of productivity.
Amtrak proposes that when a displacement is made within a gang, the junior such employee in that classification be bumped. It claims that at the present time employees engage in "chain bumping" which disrupts the work force until the junior employee is finally bumped.

Amtrak also proposes that furloughed employees be required to list on their furlough papers the work zones to which they will accept recall. An employee who then failed to respond to a recall for such work zone or zones would forfeit seniority. The carrier further proposes a rule which would prevent an employee recalled to a new position being displaced by an active employee. Amtrak points out that at the present time employees may leave their existing jobs without notice to their supervisors and bump the recalled employee.

According to Amtrak, it agreed with the BMWE that available "qualified" employees must fill vacancies. The problem involves the definition of the term "qualified." Currently, any employee on the seniority roster of the vacant position is deemed "qualified." Amtrak urges that the definition needs to include those trained but not on the roster. It argues that those who have been trained are qualified, whether they are on the seniority roster or not.

BMWE Position

The BMWE takes the position that management has demanded many far-reaching, fundamental changes in the right of the organization to exercise and obtain seniority. It urges that the change proposed by Amtrak would eliminate the equity earned by each BMWE member and replace it with a sophisticated version of the notorious "shape-up" system which existed on the nation's waterfront. The BMWE notes that the current rule permits employees to bid as many times as they wish within a calendar year, with certain exceptions. This includes bidding up at the earliest opportunity. The
organization argues that there certainly should be no requirement to bid the higher-rated position at the first opportunity.

**Recommendation**

The Board finds that the proposals of Amtrak seeking to limit the current right to bid or bump imposes restrictions on the employees' right to move between positions. The Board recommends that employees be permitted to make one lateral bid per calendar year unless excepted from the limitation by the Assistant Chief Engineer. Also, the employees may voluntarily displace once per calendar year in a lower-rated position. The foregoing recommendations protect the employees' rights to some job movement while at the same time satisfying some of the carriers' concerns that employee movements might be excessive. The other proposal by Amtrak on forfeiture of seniority in a higher classification while working on a lower classification is not justified and should be withdrawn.

5. REGIONAL AND SYSTEM-WIDE GANGS

**Amtrak Position**

Amtrak proposes that geographical restrictions on the use of traveling gangs be eliminated throughout the Northeast. Amtrak explains that these traveling gangs are frequently high-production units requiring experienced operators; therefore, the loss of highly proficient employees when equipment is sent across jurisdictional boundaries reduces productivity, disrupts the work force, and necessitates finding productive work for the special employees who are relieved from duty when the machine leaves their jurisdiction.

Amtrak asserts that its equipment is expensive and that operators require training experience, and skill. The cost of the recently purchased Unimat Interlocking Surfacing Tamper was $900,000. However, Amtrak alleges it has been restricted by its
labor agreements from obtaining the maximum return on such investment.

According to Amtrak, the traveling gangs are popular because of compressed work weeks, overtime opportunities, per diem payments and the satisfaction of working with sophisticated, state-of-the-art equipment.

BMWE Position

The BMWE contends that there is no need to change the existing system of regional and system-wide gangs; that the employer has been able to utilize its high technology equipment under agreement between the parties; that employees should not be faced with the burden of extended travel from their homes; and that 53 percent of the employees do not return to traveling gangs.

Recommendation

The evidence is persuasive that high-technology equipment such as the Unimat Interlocking Surfacing Tamper requires employees who are trained and skilled in its operation. We recommend that geographical restrictions on the use of traveling gangs working on high-technology equipment be eliminated throughout the Northeast.

6. VACATION RULE

BMWE Position

The BMWE proposes that full-time union officials be allowed to accrue service for vacation eligibility, rather than having vacation entitlement frozen at the levels in effect when they went to work for the organization. It would make the benefit applicable to any employee who has been on union leave of absence since July 1, 1988, retroactive to the date such leave began. It argues that the current practice imposes an unfair financial impediment on those opting to work for the BMWE, and discourages such union activity. It notes that the employees affected would still be
required to achieve eligibility for vacation on their return to regular employment and that the proposal would affect only the quantum of vacation entitlement.

The BMWE further proposes that employees be entitled to take their vacations in one-day increments. It declares that such a benefit is desirable for employees who need to attend to personal affairs from time to time, noting that such benefit is currently provided to employees on commuter lines.

Amtrak Position

Amtrak objects to both proposals. It argues that the union-business credit would force Amtrak to reward an employee with vacation credits even though it gains no benefits from the employee's labor. It asserts the proposal is for a gratuitous advantage and would urge its denial as well as the denial of the claim for retroactivity.

On the issue of the daily vacation increments, Amtrak asserts that the December 17, 1941, National Vacation Agreement does not contemplate taking vacation in less than weekly increments, and this is essential to facilitate the carrier's scheduling of work with expectation of full crews being available for the full workweek.

Recommendation

The BMWE proposal for continued accumulation of vacation credit while on leave of absence for union business would provide appropriate recognition of the employees' seniority with the carrier and place them on a vacation level approximating that of their peers who did not go on union leaves of absence. Because Amtrak has recognized the retention of seniority and employment status of employees on union leave of absence, and because entitlement to such vacation in any particular year is dependent on the employee's fulfillment of the work requirements for eligibility
that year, we recommend that the benefit be adopted, but without the retroactivity proposed by the BMWE.

On the issue of single-day vacation increments, we do not believe the BMWE has presented a persuasive case. Vacation, particularly for those who spend such extended periods away from home, should be taken for its avowed purpose: to provide extended periods of rest and rehabilitation with families, at home, and away from work. Employees currently have available two personal days for purposes addressed in the BMWE proposal. Vacation periods, we believe, should be confined to five-day increments. The BMWE proposal on this issue should be withdrawn.

7. CLOTHING ALLOWANCE

BMWE Position

The BMWE seeks partial compensation for safety shoes and clothing that wear out at work. It asserts that the work of the maintenance of way employees often involves working with substances that are destructive of clothing; that the current allowance for payment of work shoes is inadequate; and that there is justification in increasing the allowance for both clothing and safety shoes. It seeks an allowance of $250 per year.

Amtrak Position

Amtrak takes the position that the current allowance levels are appropriate for both safety shoes and clothing; that shoes and clothes are not usually provided by employers in the industrial sector; that they both have use outside the work environment; and that the BMWE's proposal should be denied.

Recommendation

We do not believe an adequate case has been made out for requiring Amtrak to provide work clothing for bargaining-unit members. That portion of the claim should be withdrawn. However,
we do believe that the allowance for safety shoes, which has remained unchanged since 1988, should be raised in recognition of the increasing cost of such items in the intervening years. We recommend that the allowance for safety shoes be increased to $60 per year, payable at the first of the year.

8. WORK CLASSIFICATION SIMPLIFICATION

Amtrak Position

Amtrak points out that at the present time there are over 70 different classifications or positions listed in Section B of the Scope and Work Classifications Rule of the Amtrak/BMWE (NEC) Agreement. According to Amtrak, many of these are archaic and not used, and others perpetuate arbitrary distinctions unrelated to the skills that could be expected of an employee. The carrier proposes to simplify and standardize the classifications on the Amtrak system and make them consistent with modern work practices.

Amtrak also proposes the creation of the Technician classification in the track subdepartment. It alleges that this classification would encompass both the operation and repair/maintenance of highly mechanized and complex equipment. Amtrak explains that the Technician classification is not intended to replace the Repairman classification, but rather to work in concert with it.

Amtrak also proposes one classification for track welding. Presently, track welding is separated into Electric Arc, Oxygen/Acetylene, and Thermit categories. Amtrak argues that by combining all track welding into one classification, new job opportunities will open up for the existing senior welders, and future technological developments will not disadvantage current employees. Amtrak states that it is committed to providing further necessary training.
The proposed classification structure includes a combination B&B Mechanic/Trackman classification. Amtrak notes that this classification has been in use in Florida, under the Amtrak/BMWE (Corp) Agreement, since January 15, 1985, and has proved to be a cost-effective agreement that has functioned without complaint from the BMWE. The carrier notes that similar agreements with the BMWE have recently been reached for the Los Angeles and San Jose, California, Commuter Services.

Amtrak points out that its proposal would not reduce the pay rated for any existing employee. When rates are rationalized, employees whose pay rates would otherwise be reduced will be "red circled" until such time as their pay rates are exceeded by those under this proposal.

BMWE Position

The BMWE acknowledges the benefits of classification simplification. Rather than eliminate vacant classifications, however, it urges that they be merged with other classifications, in order to protect the employees' right to such work in the future. In addition it opposes the creation of new classifications such as Technician and B&B Mechanic/Trackman.

Recommendation

The Board recommends that instead of being eliminated, vacant classifications be merged with those that are active. We recommend the establishment of the new classifications proposed by Amtrak. We are persuaded that this will be cost-effective and that the employees will not be adversely affected economically or in terms of job security.
9. WORKSITE REPORTING

Amtrak Position

Amtrak proposes that the workday for BMWE employees begin and end at the worksite in the same manner that it does for nonrailroad employees, who commute one to two hours each way to their jobs.

Amtrak points out that current rules require pay to begin and end at established headquarters or camp cars, instead of at the worksite. The carrier also notes that headquartered employees may actually have a shorter commute with the change, which is estimated to save over $3.4 million per year.

Amtrak also proposes that gangs which have consistent or at least readily predictable worksites report in advance of starting times to assembly points near such worksites, where they would be transported by Amtrak to the job. Again, the carrier points out that the employees' pay would start and stop at the worksite.

Amtrak cites a recent agreement with the Brotherhood of Railroad Signalmen, which incorporated such principles in the worksite reporting provision of their Construction/Rehabilitation Gang Rule.

BMWE Position

The BMWE would agree that employees housed in hotels and fed in restaurants should be required to assemble 15 minutes in advance of a bulletined starting time and not draw pay until after such assembly time. This would obviate the need for employees to spend hours of commuting each day, so that the carrier can avoid the inconvenience of moving temporary lodging to maintain close proximity to daily worksites.
We believe that it is unfair and unreasonable for an employee to report to headquarters or a camp car and then be required to travel two hours to a worksite without compensation. We recommend that the specific Amtrak proposal be withdrawn, but do recommend that the employees be paid for all travel time in excess of 15 minutes from established headquarters or camp cars to the worksite, and also be paid for all travel time, less 15 minutes, from the worksite to established headquarters or camp cars.

10. TRAINING PROGRAM

Amtrak Position

Amtrak contends that under the present training scheme employees have the freedom to bid into training programs from any location on the system, but no obligation to take the position for which trained. It asserts that instead of junior employees benefiting from the training, it is invoked by the more senior employees as a break from regular tasks or to learn a new skill as a hedge against furlough. This practice, it continues, wastes from $2,000 to $13,500 per person per course in training costs, inasmuch as only 30 percent of those trained take the positions, thus depriving the employer of the skills which the training program was designed to fill. The carrier proposes limiting the bidding for such training to the work zone where the skill need exists. It also proposes giving preference in selection to the lower-rated employees in the specific area and subdepartment, and requiring, in the absence of any bid for the skill in which trained, that the employer have the right to lock a trained employee into the position for from nine to 12 months. It would also restrict compensation to eight hours of pay per day of training and travel.

BMWE Position

The BMWE objects to Amtrak's attempts to restrict access to such training, and to its effort to deprive senior employees of the
training opportunities. It also objects to the carrier's proposal to force trainees into any position, location, or shift it wishes. It proposes that the present compensation of 24 continuous hours for travel time be retained.

Recommendation

Although we are unwilling to deprive employees throughout the system, regardless of their seniority, of their present right to bid for available training opportunities, the evidence indicates that the present training procedure has failed to provide management with the necessary number of trained employees to fulfill its needs. We believe that Amtrak is entitled to a reasonable expectation that its skill needs will be met by those who have completed the training. Accordingly, we recommend that access to such training be retained in its present form, including compensation for the time spent in travelling thereto, but that in the absence of any acceptable bidders for vacancies in such positions, the employer have the right to select one of the three most junior employees who have completed such training for assignment to the vacant position, with the understanding that the employee remain therein for a minimum period of one year.

11. CLAIMS AND GRIEVANCES

Amtrak Position

Amtrak proposes that the BMWE be required to progress claims denied by the carrier's highest officer within 90 days, instead of nine months. Amtrak also proposes that all appeals should state the grounds for the appeal and the reason why previous claim responses were not acceptable.

Amtrak contends that the BMWE continues to file grievances similar if not identical to previous claims that have proceeded to arbitration and been denied by arbitrators. Amtrak points out that it is less expensive to pay the claim than it is to take the claim
to arbitration. The carrier contends the disciplinary process suggested by the BMWE is unnecessary.

BMWE Position

The BMWE has proposed the discovery type rule in order to quickly determine whether a grievance/claim is valid; this would require the carrier to supply all relevant information to the organization. The BMWE requests that the carrier provide it with all documents which will be used in the disciplinary hearings at least five days prior to the investigation, and that the carrier be compelled to bring all witnesses necessary to investigations.

The BMWE contends that the Railway Labor Act requires nine months and the reduction from nine months to 90 days might not only be in violation of the Act but would also place the onus on the member to move quickly in the event the organization chooses not to pursue his/her case. The BMWE states that it does provide reasons why previous claim responses were not acceptable in conference with the carriers. It insists that the process is technical enough as it now stands.

Finally, the BMWE proposes that the Agreement include clear language with strict guidelines relating to when employees are removed from service.

Recommendation

We recommend that the nine months presently allowed to progress claims be reduced to 90 days, which we believe to be an adequate period of time for the parties to process the claim. The employee may not be knowledgeable about the process but he or she has ready access to the assistance of the local chairman in processing the claim.

Amtrak's proposal that all appeals should state the grounds for the appeal and the reason why previous claims were not
acceptable should be withdrawn. Such a requirement places an excessive burden on the employee or the organization without appreciable benefit to the process.

The BMWE has urged that it be provided, five days in advance, with copies of all documents the carrier intends to submit at the investigation. That arrangement would provide the BMWE with an opportunity to determine the validity of the claim, and perhaps lead to settlement or withdrawal of claims.

The BMWE contends that it is now required to bear the expense of some witnesses whom it deems to be necessary for the defense of the accused. The carrier is currently required to bear the expense of all "necessary" witnesses. We recognize that there is a difference of opinion as to who is a "necessary" witness, which will be resolved on appeal.

We recommend that the carrier be required to supply five days prior to the hearing all documents to be used in any investigation; that the present language providing a nine-month period for progressing claims denied by the carrier's highest officer be reduced from nine months to 90 days; that the present language requiring the presence of necessary witnesses be retained without change; and that the present language regarding removal of employees from service be retained without change.

12. SAFETY

**BMWE Position**

The BMWE proposes a joint labor-management Health and Safety Committee, composed of an equal number of management and union representatives. The organization also proposes creation of a joint labor/management Health and Safety Committee in each BMWE seniority district. Finally, the BMWE proposes that employee members of the committee shall be paid at their regular rate for
any time required to investigate and meet on safety and health problems.

Amtrak Position
Amtrak contends that the proposed committee would be burdensome and unnecessary. It also asserts that the present safety committee has performed well and that Amtrak has an extremely good safety record.

Recommendation
The evidence is persuasive that the present safety program has improved substantially. We do not favor the proposals for change made by the BMWE and recommend that they be withdrawn.

13. NORTHEAST CORRIDOR AGREEMENT

Amtrak Position
Amtrak seeks to eliminate meals, lodging, and travel allowances currently provided to certain production and other special gangs, and to substitute therefor a flat $29 per diem allowance.

BMWE Position
BMWE contends that the allowance is inadequate to compensate employees for actual out-of-pocket expenses that would be incurred if housing and meals were no longer provided.

Recommendation
The increased cost of lodging and meals along the northeast corridor would suggest that the allowance of $29 in place of meals and lodging would not suffice. While we are unwilling to agree to the full reimbursement of the cost of meals and lodging, we do believe an increase to $35 is warranted, and so recommend.
14. ELIMINATION OF ARBITRARIES

Amtrak Position

Amtrak proposes that payment of eight hours' minimum for "Protect Service" under the Northeast Corridor Agreement Rule 54 be eliminated; that Rule 30 be amended to provide that when changing from standard time to daylight saving time, employees working one hour less be compensated for actual hours worked, and when standard time is restored, employees be compensated actual time worked at straight time; and that employees called in for work not continuous with their regular assignment be compensated for actual time worked on a per-minute basis.

Amtrak argues that arbitrary payments, which include "Protect Service" assignments under Rule 54 of Amtrak/BMWE (NEC) Agreement, reflect time not worked by employees for which compensation should not be received. Also, Amtrak urges that special payments associated with changing to and from daylight saving time should be eliminated.

Amtrak points out that Rule 54, which is entitled "Protect Service on Holidays or Employee's Rest Day," requires the payment of eight hours at time and one-half if employees are required to report to protect service. It notes that this rule is a carry-over from the 1945 Pennsylvania Railroad Company-Maintenance of Way Employees Agreement. According to Amtrak, this rule has been used infrequently and is applicable only to employees required to report for duty without specific assignment, to guard special train movements, and simply to be promptly available in case of trouble. It charges that an arbitration award on Amtrak years later improperly enlarged the rule to apply it to a regular overtime assignment.
BMWE Position

BMWE contends that the so-called arbitrary under the 1991 Agreement between the parties is not really an arbitrary, but is a payment to employees who perform work under extraordinary conditions. It points out that this work is generally done at a time when employees should either be sleeping or attending to home matters, and represents not only pay for work but also compensation for substantial disruption of an employee's life. With reference to service performed on holidays under Rule 54, the BMWE contends that employees assigned to work on a holiday or a Sunday should be guaranteed eight hours of work at time and one-half.

The BMWE urges that the provisions of current Rule 53(a) of the Agreement should be modified to guarantee the employee four hours of straight time when required to perform service outside of and not continuous with the regularly assigned working hours. The organization also rejects Amtrak's proposal to pay employees for only 39 hours for the work week when daylight savings time begins. It notes that employees base their budget on a 40-hour paycheck.

Recommendation

We recommend that all three of Amtrak's proposals be withdrawn. Pursuant to Rule 54, an employee is and should continue to be entitled to time and one-half compensation when performing work on a holiday or rest day that would otherwise be spent at home.

We see no reason to depart from the parties' negotiated arrangement to accommodate to change of hours on moving in and out of daylight saving time. It would be unfair to reduce the weekly take-home pay in the spring, or to deprive employees of the negotiated right to time and one-half after eight hours under the overtime rule.
Amtrak's proposal regarding employees being compensated for actual time worked on a per-minute basis in connection with work not continuous with their assignment is not justified. Interruption of off hours has a substantial detrimental effect on personal time. We recommend that employees be paid for a minimum of four hours under such circumstances, and for actual time worked beyond four hours.

15. INTRACRAFT WORK

Amtrak Position

Amtrak proposes that when intracraft work of an incidental nature is performed, employees will be paid only the rate of their position.

Amtrak states that it is not attempting to eliminate distinctions between jobs within the BMWE. The carrier points out that under the Scope and Work Classification Rules, employees of one classification may perform work of another classification. It states that this is reiterated in Rule 58, with the proviso that employees filling higher-rated positions must be paid at the rate of the higher classification.

Amtrak states that despite the clear contract language, 12 disputes were progressed through three steps of the grievance procedure last year, but the organization did not bring one of these claims to arbitration. It objects that the meritless claims constitute a total waste of effort and resources.

Amtrak states that it should be able to assign incidental intracraft work without dispute or employee expectation of increased payments. Moreover, it argues that incidental work is not equivalent to filling a position and should not be compensated as such.
Amtrak asks for explicit recognition that intracraft assignments shall not be the basis of time claims. It believes that recognition of these intracraft work principles would be consistent with those enumerated in the recent national settlement.

BMWE Position

The BMWE refers to the following language in the current Scope Rule paragraph (e):

... The listing of the various classifications is not intended to require the establishment or the prevent the abolition of positions in any classification, nor to require the maintenance of positions in any classifications. The listing of work under a given classification is not intended to assign work exclusively to that classification. It is understood that employees of one classification may perform work of another classification subject to the terms of existing rules or agreement between the parties hereto.

It states that since Amtrak's inception in 1976 this language has existed in the current agreement, and that it is virtually identical to the language in the imposed national agreement-titled "Intracraft Work Rule". The organization believes that the language in the current agreement provides management with extreme flexibility to work employees out of or across classifications. It also suggests that Amtrak is trying to create a discipline and claims process under which no discipline or claims could be processed.

Recommendation

We agree with Amtrak that it has the right under the Scope and Work Classification Rules to require BMWE employees of one classification to perform work of another classification. Moreover, we are persuaded that when work of an incidental nature is performed, employees performing such work should receive the applicable rate of their position only. Rule 58 requires that
employees be upgraded when "filling" a higher-rated position. However, upgrading is not required and should not be expected when an employee is asked to perform work incidental to his or her own duties or service, which has been traditionally associated with another higher-rated classification. Performing incidental work of this nature should not constitute a basis for any time claims by or on behalf of the employees performing the work or by other employees. Should an employee be assigned to fill a higher-rated position, that employee continues to have the right to be paid at the rate of the higher classification, as required by the agreement, and has the right to have a time claim filed and progressed.

We recommend that Amtrak's proposal be adopted and applied according to the above discussion.

16. INTERCRAFT WORK

Amtrak Position

Amtrak proposes that work may be assigned to BMWE-represented employees even if not traditionally associated with that craft; and that work traditionally "owned" by the BMWE may be assigned to other crafts. It states that the purpose of this proposal is twofold: to preempt disputes over what exactly is "traditionally associated" with the BMWE craft; and to promote a concept of teamwork that will provide for the efficient use of personnel and cost-effective, quality service.

Amtrak states that it is not uncommon in the maintenance area for employees to have skills that transcend the artificial work assignment barriers created by the labor agreements. The carrier identifies certain employee utilization agreements it has negotiated with other unions as support for the developing acceptance of the employee utilization concept.
Amtrak proposes that it will not furlough employees in service on the date of this agreement as a result of the implementation of this proposal.

BMWE Position

The BMWE considers Amtrak's proposal to be most problematic. It states that it is an attempt to permit bargaining unit work defined by the BMWE's scope rule to be performed by anyone at management's discretion. The BMWE believed this proposal to be a serious attack on the integrity of its collective bargaining agreement with Amtrak.

Recommendation

We are not persuaded by Amtrak's position. If Amtrak were allowed to assign work traditionally assigned to the BMWE craft to other crafts, and if Amtrak were allowed to assign the work of other crafts to the BMWE, at its discretion, the craft lines of all of the affected labor organizations would be destroyed. A much more substantial record than that presented by the carrier would be needed to support such a proposal. We recommend that Amtrak's proposal be withdrawn.

17. WORKWEEK

Amtrak Position

Amtrak proposes that any two or three consecutive days may be designated as rest days so that maintenance of way work can be scheduled on the days when work can be done most efficiently. Present workweek rules require Amtrak to give employees Saturday and Sunday off when they are employed in an operation that works five days a week, but Amtrak has an agreement with the Special Construction Gang permitting weekend work with weekday rest days. Amtrak cites figures showing heavy commuter traffic at Pennsylvania Station in New York City, 30th Street Station in Philadelphia,
Union Station in Washington, South Station in Boston, and Union Station in Chicago. Amtrak notes that some of those stations maintain seven-day coverage for the purpose of general maintenance and protection against potential breakdowns. Amtrak, however, cannot presently assign additional BMWE-represented B&B mechanics, plumbers, or similar craftsmen to a project that would take advantage of the weekends or evenings, when passenger traffic is comparatively light, without incurring overtime.

Amtrak proposes that it should have the option to establish compressed workweeks, rather than schedule five, eight-hour days, when conditions make them appropriate. At present, it may schedule four-day weeks of 10-hour days only for traveling gangs. It argues that longer shifts (e.g., 10 hours) would permit Amtrak to take advantage of the 9:00 pm to 6:00 am light-traffic period.

BMWE Position

The BMWE denies the operational need for any change. It asserts that the existing rules provide the flexibility sought by Amtrak. The organization argues that it can work Saturday as a regular day if the need is shown. The BMWE rejects the idea of straight-time pay for 10-hour days away from home, eight days in a row; it objects to giving Amtrak what it calls carte blanche to create chaos in employees' work lives, and urges that the proposal be denied.

Recommendation

The great number of passengers during working hours results in excessive interruptions to crews doing essential maintenance tasks. The proposal by Amtrak would result in substantial savings and increased ease of performing essential maintenance work. On that basis, we recommend that Amtrak be permitted to schedule four-day weeks of 10 hours per day, provided that there is one Saturday or Sunday rest day per week.
18. STARTING TIME

Amtrak Position

Amtrak proposes that it be given discretion to schedule and adjust the starting times for BMWE-represented employees to meet the exigencies of service, subject to the restriction that, except in emergencies, employees will receive adequate notice of any change in their starting times or workweeks.

Amtrak notes that at the present time the starting times of assignment must be between 6:00 a.m. and 8:00 a.m. The carrier has negotiated some relief from these restrictions for its special construction gangs under the 1976 Special Construction Gang Agreement. It points out that presently the vast majority of employees must be scheduled to work at times when because of train traffic, they will be the least productive.

Amtrak proposes that it be allowed to schedule work at any time without penalty. It declares that it is difficult to schedule work between 6:00 a.m. and 8:00 a.m. as specified by the contract. It asserts that the weekday train traffic on the Northeast Corridor is so heavy that work during the day is constantly disrupted, and it argues that working during light traffic hours would be both safer and more productive.

BMWE Position

The BMWE takes the position that there is no showing of any operational need for changes in the present structure of starting times; that there could be abuses in granting Amtrack the right to start gangs at any time without penalty; and that the carrier is able to achieve its necessary scheduling with the present schedules and rules for starting times.
**Recommendation**

The evidence of the pressures of continual train traffic on its routes where trains pass every 15-30 minutes persuades us of the need for Amtrak to have greater flexibility in starting its crews. We recommend that it be given the right to commence crew workdays at any time. For those starting times other than existing starting times crew members will receive $.55 per hour in addition to their regular compensation.

19. **OVERTIME**

**Amtrak Position**

Amtrak proposes that overtime should not be paid until the employee has completed 40 hours in a week.

**BMWE Position**

The BMWE contends that for many years the agreement has included overtime for all time worked over eight hours and that there is no justification for modifying that overtime rule.

**Recommendation**

It appears to us that this issue may have been withdrawn by Amtrack. If not, we see no persuasive reason for departure from the present commitment of both parties to adhere to the overtime rule for those employees currently working a five-day eight-hour per day work week. We see a different situation for employees who will be working a routine four-day week of 10 hours per day. For them, we recommend that overtime be paid after 10 hours' work per day or after 40 hours' work per week.

20. **PAID HOLIDAYS**

**Amtrak Position**

Amtrak seeks the deletion of one holiday.
BMWE Position
The BMWE seeks the addition of a holiday commemorating the birth of Martin Luther King, Jr.

Recommendation
We believe the current complement of holidays is consistent with the practice under other collective bargaining agreements in the industry, and do not believe any increase or decrease is merited.

21. COMBINED SENIORITY DISTRICTS

Amtrak Position
Amtrak proposes that the geographic boundaries between the various seniority districts in the northeast be removed. It argues that the present boundaries make no sense and result in illogical restrictions on the use of employees; that seniority districts generally limit the use of employees beyond specific geographic boundaries; and that the efficient assignment of routine maintenance, even within communities, is restricted by seniority districts. Amtrak points out that in the vicinity of Boston and New York City, when work needs to be done which is just on the other side of a district line from the working employees, that work cannot be performed by them, but employees must be brought from miles away to perform it. Moreover, Amtrak asserts that employees would gain job stability and more opportunity to work under its proposal. Finally, Amtrak states that it is willing to provide the current employees in each of the present seniority districts with preferential treatment when exercising seniority in their current district.

BMWE Position
The BMWE takes the position that under the Amtrak proposal, employees would have to travel much further distances, and would
eliminate traditional ties to the carrier and the area where they provide service. The organization points out that at present there are two large territories, and that Amtrak already has the right to run some crews in both.

**Recommendation**

The evidence indicates that the present boundaries result in unreasonable restrictions to the efficient operation of the carrier.

The maintenance of way forces in the East are divided in four seniority districts and covered by two collective bargaining agreements. We recommend that geographic boundaries between the various seniority districts be removed, and that Amtrak be required to provide current employees in each of the present seniority districts with preferential treatment (prior rights) when exercising seniority in their current districts.

**H. APPLICABLE TO IAM**

1. **SUBCONTRACTING**

**IAM Position**

The IAM proposes that Amtrak adopt Article II of the 1964 Agreement with the recommendations imposed by PEB 219, but with extensive restrictions. The IAM states that this protection is needed because Amtrak contracts out a great deal of work that has been performed by Amtrak machinists, or that should be performed by Amtrak machinists.

The IAM requests that the issue of electrical power purchase agreements (EPPAs) be addressed separately. It requests that EPPAs be outlawed, or put under the umbrella of the September 25, 1964,
Agreement. Alternatively, it requests that its Section 6 notice on EPPAs be exempt from the moratorium provision of the Report.

Amtrak Position

Amtrak states that it is not a party to the September 25, 1964, Agreement. It refers to 45 U.S.C. Section 565 (e) (1), which it states is the subcontracting provision by which it is governed, and which also contains a no-furlough statutory guarantee relating to subcontracting. Amtrak states that the IAM has not shown that Amtrak has abused subcontracting to the detriment of the IAM.

Recommendation

45 U.S.C. Section 565(e)(1) states:

(e) Contracts not to result in layoff

(1) Except as provided in paragraph (2) of this subsection, the Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the Corporation or any railroad providing intercity rail passenger service on October 30, 1970, and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

The record indicates that when Amtrak has engaged in subcontracting, it has adhered to the statutory no-furlough guarantee.

Based on Special Board 102-29's response to Shopcraft Request No. 4, which determined that EPPAs are within the scope of the September 25, 1964, Agreement, it is now established that EPPAs are considered a form of subcontracting. Thus, IAM-represented employees would be protected from furlough under the statutory guarantee should Amtrak pursue such an arrangement.

Accordingly, the Board recommends that the IAM proposal on subcontracting, including its Section 6 notice on EPPAs, be withdrawn.
2. JOB CLASSIFICATION

IAM Position

The IAM seeks a recommendation that eliminates the Mechanical Technician classification or, alternatively, makes such a classification subject to the bidding and bumping provisions of the agreement. The organization states that Amtrak has abused the selection of employees for this classification, causing an employee morale problem.

According to the IAM, the Mechanical Technician was a kind of lead mechanic, and the position was created for the purpose of instructing. Subsequently, the IAM was able to get language in its agreement with Amtrak on this classification that specifically required that mechanical technicians had to be instructing others. According to the IAM, the present rule states that all things being equal, the most senior individual is supposed to be the technician, but staff management has the discretion to decide whether or not to select that person, and the organization does not have a right to challenge the decision. The IAM seeks a recommendation requiring Amtrak to utilize the Field Technician - Train Riders machinist classification across the entire Amtrak system.

Amtrak Position

Amtrak states that it has dealt with the issue of skill differentials among shopcraft employees by establishing wage differentials.

The carrier states in respect of the Field Technician - Train Riders classification that the work is currently performed by other crafts and by management. Moreover, Amtrak points out that the IBEW represents a significant number of train riders across the Amtrak system.
Recommendation

Inasmuch as the IAM entered into an agreement with Amtrak, granting it certain unilateral rights regarding the selection of employees for the Mechanical Technician classification, the organization must show persuasive reasons why it should either be released from this bilateral agreement or the agreement should be changed.

The IAM has not shown any change in the instructional duties of the job, nor has it shown any change in the carrier's need for the classification from that which obtained when the bilateral agreement was reached. Additionally, we are not persuaded by the allegations of abuse in Amtrak's selection process.

We thus conclude that the IAM did not make out a persuasive case to justify either its release from the agreement and allowing for the elimination of the Mechanical Technician or modification of the agreement. The record before us shows that the IAM has four differentials, the JCC "several" and the IBEW eight. It would be destabilizing to the current structure of the shopcrafts were the Board to recommend that the Mechanical Technician classification be subject to the changes proposed by the IAM.

Because the IAM does not represent all train riders on the Amtrak system, a basis does not exist to recommend that Amtrak assign machinist Field Technician - Train Riders across the entire system. Accordingly, the Board recommends that both IAM proposals be withdrawn.

3. SUPERVISORS' SENIORITY RETENTION

IAM Position

The IAM seeks to revise Article VII - Seniority Retention, of the December 18, 1987, Agreement to provide that supervisors must
pay a fee equivalent to monthly IAM membership dues to retain or accumulate seniority.

**Amtrak Position**

Amtrak does not present a position on this proposal.

**Recommendation**

PEB 211 addressed the matter of supervisors' seniority retention in its Report. It recommended in part that "person[s] promoted on or after October 1, 1986 must pay the appropriate fee to retain or accumulate seniority." We recommend that the IAM proposal be adopted to the extent that it requires supervisors to pay the appropriate fee to retain or accumulate seniority.

4. ADDITIONAL PAID HOLIDAY

**IAM Position**

The IAM proposes that Amtrak add an additional paid holiday by granting each employee an additional day of paid personal leave.

**Amtrak Position**

Amtrak points out that the median number of holidays reported in a Bureau of National Affairs survey is 11, and that Amtrak already provides 11 paid holidays for its employees.

**Recommendation**

The record does not indicate that the machinists have fewer paid holidays than other Amtrak employees or that the number of paid holidays is out of line with what other machinists in the railroad industry receive.

The Board recommends that the proposal be withdrawn.
5. AUTO TRAIN: AGREEMENT FOR IAM

Amtrak Position

At present, machinists do not work on the auto train.

Amtrak proposes special provisions for such work. It states that the IAM is the only organization representing mechanical employees that has not entered into an auto train service agreement. Amtrak argues that its proposal will put the IAM on the same footing as the other shopcrafts in auto train service.

IAM Position

The IAM responds that there is no justification for Amtrak's seeking a separate, substandard agreement for machinists to service the auto train. The IAM claims that such agreements do away with its C-2 protection, the 40-hour workweek, the five-day workweek, and overtime.

Recommendation

The Board is not prepared to require members of any organization to work involuntarily in a special category of service that offers conditions of employment different from those obtaining elsewhere in the carrier's service. This is especially so in the case of the auto train, inasmuch as this service has been run since its inception without machinists.

The Board recommends that Amtrak's proposal be withdrawn.

6. REVISION OF RULE 44

IAM Position

The IAM proposes to revise Rule 44 to provide that local chairmen may investigate alleged violations of the collective
bargaining agreement during regularly scheduled hours without loss of time or service credit. The IAM believes that Amtrak changed the longstanding practice in the industry in 1990 when it required local chairmen to punch out to discuss any problem involving IAM members, supervisors, or the collective bargaining agreement. The organization wanted to strike over the matter, but a U.S. District Court judge persuaded the parties to arbitrate. The arbitrator upheld Amtrak's position. The organization points out that Amtrak uses the local committee and the local chairman during regularly scheduled working hours when it is to its benefit, such as taking care of the realignment of forces or the administration of overtime.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

In 1990 Amtrak arbitrated the issue of whether or not the local chairman was entitled to investigate alleged violations of the collective bargaining agreement during regularly scheduled hours without loss of time or service credit. Amtrak's position was upheld by the arbitrator. Especially in view of the award rejecting the IAM position, the organization has the burden of demonstrating to this Board that the representation rights of employees are significantly impaired by requiring the local chairman to punch out when investigating grievances. Because this has not been shown, the Board recommends that the proposal be withdrawn.
7. DISTRIBUTION OF AGREEMENTS

IAM Position

The IAM proposes that Amtrak print and distribute to each IAM represented Amtrak employee a revised, consolidated copy of the controlling collective bargaining agreement. It points out that the most recent printed version of the Amtrak-IAM agreement is the one effective September 1, 1977. The organization states that when this type of printing is done in the railroad industry, the railroads have always incurred the cost of providing employees with copies of these agreements.

Amtrak Position

Amtrak does not present a position on this proposal.

Recommendation

It is important that employees have an up-to-date agreement which identifies employees' rights and responsibilities regarding wages, hours, and working conditions. The Board recommends that the IAM proposal be adopted.

I. APPLICABLE TO IBEW

1. SUBCONTRACTING

IBEW Position

The IBEW seeks to apply the provisions of Article II of the September 25, 1964, Agreement, as revised and amended to date, including the recommendations of PEB 219, with the exception that neutrals should be appointed under the provisions of Section 3 of the Railway Labor Act. The IBEW sets forth certain work that is
not to be considered subcontracting; and identifies specific work that must not be subcontracted. The IBEW recognizes, however, that from time to time emergencies will exist; and it sets forth a process for resolving those situations.

Amtrak Position

Amtrak states that it is not a party to the September 25, 1964, Agreement. It refers to 45 U.S.C. Section 565 (e)(1), which it states is the subcontracting provision by which it is governed, and which also contains a no-furlough statutory guarantee relating to subcontracting. Amtrak states that it has not been shown that it has abused subcontracting.

Recommendation

45 U.S.C. Section 565 (e)(1) states:

(e) Contracts not to result in layoff

(1) Except as provided in paragraph (2) of this subsection, the Corporation shall not contract out any work normally performed by employees in any bargaining unit covered by a contract between the corporation or any railroad providing intercity rail passenger service on October 30, 1970, and any labor organization, if such contracting out shall result in the layoff of any employee or employees in such bargaining unit.

There has been no showing in the record before this Board that Amtrak has not lived up to its no-furlough statutory guarantee. Moreover, it has not been demonstrated that Amtrak has abused its subcontracting rights.

The Board recommends that the IBEW proposal be withdrawn.
2. ADDITIONAL PAID HOLIDAY

IBEW Position

The IBEW proposes that the Board recommend the birthday of Martin Luther King, Jr. as a holiday. It states that such a holiday is consistent with the Federal Government's holiday schedule, and would also constitute recognition of the important contributions made by American minorities to our society.

Amtrak Position

Amtrak states that it has offered to each organization to exchange a personal holiday for the Martin Luther King, Jr. holiday, and that all organizations have refused this offer. It points out that the median number of holidays granted employees, as reported in a Bureau of National Affairs survey is 11; Amtrak already gives its employees 11 paid holidays.

Recommendation

The IBEW has not offered persuasive reasons why its request for the additional holiday should be approved. We recommend that the proposal be withdrawn.

J. APPLICABLE TO JCC

1. NEW CLASSIFICATION OF WORK RULE FOR CARMEN

JCC Position

The JCC requests that this Board recommend the adoption of the new classification of work rule it proposes. The rule is a synthesis of current carmen rules on the national freight railroads. The JCC states that the rule accurately describes the
work currently done by carmen on Amtrak. It asserts that Amtrak has refused over the years to follow through on an initial understanding Amtrak had reached with the JCC to adopt a national classification of work rule.

**Amtrak Position**

Amtrak does not present a position on this proposal.

**Recommendation**

The JCC concedes that the carrier has refused over the years to agree to a national classification of work rule for carmen. The rule proposed would give carmen exclusive right to all of the work listed in it. The JCC has not demonstrated that it exclusively performs all of the listed work, systemwide. The Board recommends that the proposal be withdrawn.

---

2. **PART-TIME COACH CLEANERS**

**Amtrak Position**

Amtrak makes its part-time proposal applicable to both mechanics and coach cleaners, subject to a cap on the number of part-time positions, which is not to exceed 10 percent of the full-time positions covered. Amtrak states that the use of part-time positions would permit it to restructure its work assignments more effectively to meet its servicing needs. Moreover, it points out that part-time positions would also be useful as a supplement to full-time forces where equipment is added to accommodate seasonal service requirements. In addition, it asserts, part-time coach cleaners could be used to provide extra attention to cleaning food service cars, and part-time positions would permit the establishment of more full-time Monday-through-Friday positions.
**JCC Position**

The JCC asserts that it would be absurd to extend the part-time rule to carmen, given the training and skill level necessary to enter that craft. The JCC has offered a rule allowing for part-time coach cleaners under certain circumstances, with a requirement that full-time positions be established if duties exceed four hours in a 24-hour period.

**RECOMMENDATION**

It makes sense to allow part-time coach cleaners where there is insufficient work for full-time positions. The Board is confident that the JCC and Amtrak can reach agreement on this matter, setting forth in workable detail when and where part-time coach cleaners may be used and when service requirements would justify the establishment of full-time positions at the locations.

The Board recommends that only coach cleaners be employed part-time, under the conditions set forth above.

3. AUTO TRAIN: RULES 11 AND 13

**JCC Position**

By agreement dated August 31, 1983, Amtrak was permitted to be exempt from Rule 11 (Workday and Workweek) and Rule 13 (Overtime), in its auto train service. These exemptions were made at a time when the auto train was operating three days per week. Currently, the auto train operates on a regular, five-day-per-week schedule. The JCC contends that there is no longer any reason for the continued exemption from Rules 13 and 11.
Amtrak Position

Amtrak states that the auto train service was and remains unique; therefore, this service should continue to be exempt from Rule 13 and Rule 11. It proposes that carmen be allowed to get to overtime faster, by crediting certain payments for working on a holiday towards overtime.

Recommendation

The mere fact that the auto train was operating three days a week when the agreement between Amtrak and the JCC was signed in August, 1983, and that it now operates five days a week, does not provide a sufficient basis to change the Auto Train agreement dealing with workdays and workweek. The JCC has not demonstrated that the auto train agreement governing workdays and workweek was based on a three-day operating schedule. We therefore recommend that the JCC proposal to have Rule 11 apply to auto train service be withdrawn.

The JCC proposal to have Rule 13 apply to JCC auto train service would allow overtime to be paid under the Schedule Agreement. We see no destabilizing effect in such a proposal. Amtrak, in testimony before the Board, stated its willingness to provide some overtime relief to the carmen, the IBEW, and the IBB&B forces on the auto train. We think that stabilization would be served by establishing rule parity between the JCC and the IBF&O, which obtained the right in collective bargaining to be paid overtime under the Schedule Agreement. We therefore recommend that the JCC proposal on Rule 13 be adopted.

K. APPLICABLE TO ALL PARTIES

1. MORATORIUM

We recommend a moratorium period for all matters on which notices might properly have been served when the last moratorium
ended on July 1, 1988, to be in effect through January 1, 1995. Notices for changes under Section 6 of the Railway Labor Act accordingly may be served by any of the parties on another party no earlier than November 1, 1994.

VII. ISSUES NOT DEALT WITH

Any and all issues in dispute before this Emergency Board on which there are no recommendations, or which are not mentioned in this Report, shall be deemed withdrawn.

VIII. CONCLUSION

These recommendations represent or best judgement on the merits and equities of the issues in dispute. They also represent our estimate of a fair and realistic package of conditions, benefits, and benefit changes that, as a totality, should provide a basis for an acceptable, overall settlement.

We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impacticable to ask that the parties adopt these recommendations unconditionally and without modification. As the Railway Labor Act does not make them binding, we expect that the parties will make adjustments as needed, or if necessary, subject them to major revision. In any case, we hope that we have provided a well-marked road map for good faith use by the parties in completing their contracts through the process of free collective bargaining. We express to the parties our profound thanks for the intelligent, comprehensive, and professional presentation of their cases and for their patience and cooperation with our procedures. We also
acknowledge with thanks the assistance of Roland Watkins, the Special Assistant to the Board.

Respectfully,

Benjamin Aaron, Chairman

Preston J. Moore, Member

Eric J. Schmertz, Member

David P. Twomey, Member

Arnold M. Zack, Member
EXECUTIVE ORDER

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES
BETWEEN THE NATIONAL RAILROAD PASSENGER CORPORATION AND ITS
EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between the National Railroad Passenger Corporation and its employees represented by certain labor organizations as designated on the attached list, which is made a part of this order.

These disputes have not been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151-188) ("the Act").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Sec. 1. Creation of Emergency Board. There is created, effective April 3, 1992, a board of five members to be appointed by the President to investigate the 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 on May 3, 1992, with respect to these disputes.

Sec. 3. Maintaining Conditions. As provided by section 10 of the Act, from the date of the creation of the board and for 10 days after the board has submitted its final report to the President, no change in the conditions out of which the disputes arose shall be made by the railroads or the employees, except by agreement of these parties.
Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,
March 31, 1992.
LABOR ORGANIZATIONS


American Train Dispatchers Association
Brotherhood of Locomotive Engineers
Brotherhood of Maintenance of Way Employes
International Association of Machinists & Aerospace Workers
International Brotherhood of Blacksmiths & Boilermakers
International Brotherhood of Electrical Workers
International Brotherhood of Firemen & Oilers
Transport Workers Union
Transportation Communications Union - ARASA
Transportation Communications Union - Carmen Division
United Transportation Union
REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 220

Submitted Pursuant to Executive order No. 12794
Dated March 31, 1992
and Section 10 of
The Railway Labor Act, as Amended

Investigation of disputes between CSX Transportation, Inc., and the railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the International Association of Machinists and Aerospace Workers.

(National Mediation Board Case Nos. A-11544, A-12250 and A-11071)

Washington, D.C.
May 28, 1992
The President
The White House
Washington, D.C.

Dear Mr. President:

On March 31, 1992, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 12794, you established an Emergency Board to investigate disputes between CSX Transportation, Inc., and certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the International Association of Machinists and Aerospace Workers.

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

Respectfully,

Benjamin Aaron, Chairman
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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 220 (the 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. 12794. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between CSX Transportation, Inc., and the National Carrier's Conference Committee of the National Railway Labor Conference (NRLC) and their employees represented by the International Association of Machinists and Aerospace Workers (IAM). The Board was also ordered to investigate and report its findings and recommendations concerning a specific dispute between CSX Transportation, Inc. and the IAM&AW. Copy of the Executive Order is attached as Appendix "A."

On April 3, 1992, the President appointed Benjamin Aaron of Santa Monica, California, as Chairman of the Board, Eric J. Schmertz of Riverdale, New York, and David P. Twomey of Quincy, Massachusetts, as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Assistant to the Board.

II. PARTIES TO THE DISPUTE

A. The Carriers' Conference

The carriers involved in this dispute include most of the Nation's Class I line haul railroads and terminal and switching companies. They are named in the attachment to Appendix "A". The carriers are represented in this dispute through powers of attorney provided to the NLRC and its negotiating committee (carriers).
B. CSX Transportation, Inc.

CSX Transportation, Inc. is a Class I line haul freight railroad headquartered in Jacksonville, Florida.

C. The IAM&AW

The IAM&AW represents approximately 7800 employees involved in this dispute. This organization represents the craft or class of the carriers' employees who maintain and repair (i) all types of locomotive and freight cars, (ii) work equipment, and (iii) shop machinery and equipment. These employees also operate and maintain the carriers' stationary power plants and power stations.

III. ACTIVITIES OF THE EMERGENCY BOARD

The parties to the dispute met with the Emergency Board in Washington, D.C., on April 6, 1992, to discuss procedural matters.

On April 7-9, 1992, the Board conducted hearings regarding the issues in Washington, D.C. The parties were given full and adequate opportunity to present oral testimony, documentary evidence and argument in support of their respective positions. A formal record was made of the proceedings.

The parties agreed to and the President approved an extension of the time that the Emergency Board had to report its recommendations until May 28, 1992.

The IAM&W presented its position through written statements and oral testimony by John F. Peterpaul, International Vice President of the IAM&AW; Milton Jolly, General Chairman of the IAM&AW on CSX Transportation, Inc.; Steven Thompson, machinist employed by the Burlington Northern Railroad; Michael J. McCarthy, machinists employed by the National Railroad Passenger
Corporations; Ron Acampora, road mechanic employed by the National Railroad Passenger Corporation; Charles D. Easley, Grand Lodge Representative for the IAM&AW; Thomas R. Roth, President of the Labor Bureau, the Inc; and Ivy Silver, Principal at Leshner, Silver & Associates. The IAM&CAW, was represented by Joseph Guerrieri, Jr., Esq., of guerrieri, Edmond and James.

The Carriers presented their position through written statements and oral testimony by James A. Hagen, Chairman, President and Chief Executive Officer of the Consolidated Rail Corporation and Chairman of the Association of American Railroads; Charles I. Hopkins, Jr., Chairman, National Carriers' Conference Committee; Carl S. Sloane, Professor of Business Administration and consultant to Mercer Management Consulting; Robert W. Anestis, President of Anestis & Company; William E. Honeycutt, General Manager Mechanical Facilities, Norfolk Southern Corporation; Charles H. Fay, Ph.D., Associate Professor of Industrial Relations and Human Resources, Institute of Management and Labor Relations, Rutgers University, David S. Evans, Vice President of National Economic Research Associates, Inc.; Joseph J. Martingale, Vice President of Towers, Perrin, Forster & Crosby; Edward L. Bauer, Jr., Assistant Chief Mechanical Officer, Burlington Northern Railroad; Purtis Miller, Director of System Locomotive Shop, Union Pacific Railroad; and Edward Latchford, of CSX Transportation, Inc. The Carriers were represented by Ralph J. Moore, Jr., Esq., and Benjamin W. Boley, Esq. of Shea and Gardner.

CSX Transportation presented its position through written statements and oral testimony by David Miller, Assistant Vice President - Mechanical Operations and Planning, CSX Transportation Company; Edward Latchford, Vice President - Finance, CSX Transportation Company.
Pursuant to the request of the Board, on April 27, 1992, the parties presented written lists of the issues which they deemed still in dispute before the Board.

After the close of the hearings, the Board met in executive session to prepare its Report and Recommendations. The entire record considered by the Board in this dispute consists of approximately six-hundred (600) pages of transcript and twenty-seven hundred (2,700) pages of exhibits.

IV. HISTORY OF THE DISPUTE

A. NLRC/IAM&AW

By letter dated January 12, 1988, the NRLC advised the NMB that the Health and Welfare issues from the previous 1984 Section 6 notice were unresolved and requested that the NMB reopen that case (NMB Case No. A-11544) for further mediation. The NRLC, on July 25, 1988, was informed by the NMB that the case was reopened pursuant to its request. On October 27, 1989, the NMB notified the parties that it would commence mediation of the remaining Health and Welfare issues.

On or about January 20 and April 18, 1988, the IAM&AW, in accordance with Section 6 of the Railway Labor Act, served notice on the individual railroads of its demands for changes in the provisions of numerous existing collective bargaining agreements. The railroads, on or about August 17, 1988, served their notices on the IAM&AW. The NRLC, on October 13, 1988, applied to the National Mediation Board (NMB) for its mediatory service. The application was docketed as NMB Case No. A-12250.

The NMB subsequently decided to conduct the mediation of the unresolved 1984 and the current 1988 Health and Welfare issue concurrently. Mediation of the non-Health and Welfare issues was
undertaken by Member Joshua M. Javits and Mediators Samuel J. Cognata and Richard A. Hanusz. A separate mediation on the Health and Welfare issues was handled by Chairman Javits and Mediators Robert J. Cerjan and Thomas R. Green. All of these efforts were unsuccessful.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the IAM&AW and the NRLC the opportunity to submit their controversy to arbitration. The organization declined the proffer of arbitration. Accordingly, on March 4, 1992, the NMB notified the parties that it was terminating its mediatory efforts.

B. CSX Transportation, Inc.

The IAM&AW, on or about October 30, 1981, served notice on CSX Transportation of its demand for a change in the existing collective bargaining agreements. On April 14, 1982, the IAM&AW applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-11071.

On March 2, 1992, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the IAM&AW and CSX Transportation the opportunity to submit their controversy to arbitration. The Organization declined the proffer of arbitration. Accordingly, on March 4, 1992, the NMB notified the parties that it was terminating its mediatory efforts.

C. NMB's Recommendations

On March 5, 1992, 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 various sections of the country of essential transportation service.
The President, in his discretion, issued Executive Order 12794 on March 31, 1992, to create, effective April 3, 1992, this Board to investigate and report concerning these disputes.
V. INTRODUCTION

The threshold question before us concerns the impact on this Presidential Emergency Board 220 of the recommendations of PEB 219 as enacted by Congress, and as reviewed by the Special Board.

The same carriers currently before us were before PEB 219. The organizations before PEB 219 represent about 95 percent of the organized work force employed by the freight carriers. The International Association of Machinists (IAM), the single organization before us in PEB 220, was not party to the PEB 219 proceedings; it represents an estimated five percent of the organized work force on the Class I railroads.

The unresolved contract issues before us between the carriers and the IAM cover the same subjects as those considered by PEB 219. The recommendations of PEB 219, as reviewed by the Special Board, are in effect between the carriers and all organizations except the IAM, either as the basis of settlements or as enacted by Congress. They cover such matters as wages, health benefits, skill differentials, incidental work rule, subcontracting, moratorium, and successorship.

The carriers' position is that the findings and recommendations of PEB 219 constitute a pattern; they offered to settle on that basis with the IAM. Recommendations more favorable to the IAM would in their view be unfair to the vast majority of employees working under the PEB 219 recommendations; would seriously disturb morale and orderly labor relations by establishing materially different conditions of employment among employees who work "elbow-to-elbow", cause "leapfrogging, me-tooism, and whipsawing" by other labor organizations as they competed with each other for superior benefits; and inevitably result in destabilization of parity arrangements, historical differentials, and established relationships.
The carriers claim that there is a history of so-called pattern bargaining in the railroad industry pursuant to which substantive agreements covering significant groups of employees have been replicated for other employees similarly situated. This is particularly true, they say, as between the IAM and the International Brotherhood of Electrical Workers (IBEW), which have been in "lockstep" with each other, and which began bargaining jointly in this round of negotiations.

Additionally, the carriers argue that on the merits, there is no justification for recommendations favorable to the IAM that exceed those proposed by PEB 219 on the same issues.

The IAM views this proceeding differently. It rejects the pattern theory and asserts that it is entitled to a de novo inquiry and a new set of recommendations by this Board on the merits of each of the issues in dispute. It emphasizes its lawful right to sever its bargaining from the IBEW and from other rail labor organizations. It disagrees with the view that it is bound by the recommendations of PEB 219, in whose proceedings it did not participate.

In short, the IAM disputes the alleged history of pattern applications in the railroad industry and rejects the claim that the recommendations of PEB 219 themselves constitute a pattern. It argues that a pattern does not emerge from terms and conditions which, rather than being voluntarily negotiated, were imposed by legislative fiat on 60 percent of the affected work force. It also points to wage differences between operating and craft employees that may well be changed if and when skill differentials are determined either by this Board or by the Skills Committee established pursuant to the recommendation of PEB 219. As far as the IAM is concerned, the possibility of such changes negates any notion of a presently existing pattern. Instead, it claims that based on their job duties, skills and hazards, as well as on
relevant economic data and occupational comparisons, the employees it represents are entitled to the benefits and conditions sought, irrespective of what PEB 219 recommended as the basis of settlement for others. Finally, the IAM denies, for the previously stated reasons, that any such results on the merits would be destabilizing.

That the IAM was not party to the proceedings before PEB 219 is reason enough to conclude that the recommendations of that Board do not constitute an automatically binding pattern on it. As a present reality, however, effective for 95 percent of the industry's employees, those recommendations cannot be ignored in deciding the issues affecting the IAM.

The economic and bargaining relationships between the carriers and the IAM and the other rail labor organizations, and the hierarchical structure among the members of all the organizations make the recommendations of PEB 219 relevant and material. Certainly, the IAM was aware, when it elected to stay out of the PEB 219 proceedings, that specific findings of fact and recommendations would be made that dealt with the identical issues now in dispute between the carriers and the IAM, and that those recommendations would apply to the overwhelming majority of the unionized work force.

We consider it critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent. Conversely, we believe that political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest.

Therefore, because the recommendations of PEB 219 are now in effect for most of the unionized employees in the railroad industry, we conclude that significant variations for the IAM-
represented employees that change previously linked or stabilized economic and work relationships with other rail employees would produce the destabilization that we think must be avoided. We recognize, however, that exceptions may be made in special, compelling circumstances.

The foregoing reasons justify, in our opinion, treating the recommendations of PEB 219 as presumptively applicable to the IAM and the carriers in this case, whether or not they are characterized as a pattern. The presumption, however, is a rebuttable one. We shall weigh all the factors in each issue before us, including persuasive reasons, if any, why a given PEB 219 recommendation should not be made applicable to IAM-represented employees. Ultimately, we must make each decision on the basis of the total record before us.

VI. ISSUES, POSITIONS OF PARTIES AND RECOMMENDATIONS

A. WAGES

PEB 219 made the following general wage recommendations:

1. A lump-sum payment of $2000 to each employee upon the signing of the agreement.
3. A 3-percent lump-sum payment effective July 1, 1992, which is to be considered as a cost-of-living adjustment and not part of the wage base.
4. A 3-percent lump-sum payment effective January 1, 1993, which is to be considered as a cost-of-living adjustment and not part of the wage base.
5. A 3-percent general wage increase effective July 1, 1993.
6. A 3-percent lump-sum payment effective January 1, 1994, which is to be considered as a cost-of-living adjustment and not part of the wage base.
7. A 4-percent general wage increase effective July 1, 1994.
8. A 2-percent lump-sum payment effective January 1, 1995, which is to be considered as a cost-of-living adjustment and not part of the wage base.

9. A cost-of-living adjustment for each 6-month period, beginning July 1, 1995, based upon the COLA formula which has previously been utilized by the parties.

In the case before PEB 220, the IAM proposes to modify that formula as follows:

Machinists represented by the IAM seek to receive general wage increases and COLAs, which are immediately rolled into the wage base, according to the following schedule:

<table>
<thead>
<tr>
<th>Date</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 1988</td>
<td>10 percent</td>
</tr>
<tr>
<td>July 1, 1992</td>
<td>3 percent</td>
</tr>
<tr>
<td>Effective date</td>
<td>$2000 retroactive lump sum</td>
</tr>
<tr>
<td>July 1, 1992</td>
<td>3 percent (rolled in COLA)</td>
</tr>
<tr>
<td>January 1, 1993</td>
<td>3 percent</td>
</tr>
<tr>
<td>January 1, 1994</td>
<td>3 percent (rolled in COLA)</td>
</tr>
<tr>
<td>January 1, 1995</td>
<td>2 percent (rolled in COLA)</td>
</tr>
<tr>
<td>Semiannual formula</td>
<td>COLAs commencing July 1, 1995</td>
</tr>
</tbody>
</table>

The carriers' proposal is to give the IAM-represented machinists what PEB 219 recommended, except that the first three-percent general increase would not be effective until the date of its new agreement with the IAM.

IAM Position

The IAM contends that the skilled workers it represents on the railroads have fallen behind comparably skilled employees in other industries. It also points out that since the expiration of the last collective bargaining agreement in 1988, while machinists' wages have been frozen on the railroads, the cost of living has risen over 16 percent. The organization emphasizes that it is not
even seeking a full recovery of the real wages railroad machinists have lost as a result of uncompensated increases in the cost of living since 1978. According to its calculations, if its full wage demand were granted, and assuming a 3.5-percent annual rate of inflation throughout the balance of the contract period (i.e., until January 1, 1995), railroad machinists' real pay would be restored only to the level that existed in January, 1978.

The IAM explains that the 10-percent general wage increase included in its proposal reflects a "skill differential," but it asserts that the 10-percent general increase is fully justified and required, regardless of how it is characterized.

Anticipating a claim by the carriers that they cannot afford to pay the wage increases it demands, the IAM asserts that the carriers are not in economic distress. It cites unprecedented productivity increases, accelerating car loadings, reduction in fuel prices, and recent helpful legislation among other factors bolstering the railroads' financial position.

Carriers Position
The carriers view the recommendations of PEB 219 as a constructive compromise, a balance between competing interests of the parties: wage increases versus productivity advances. Questions of pattern aside, they believe that the wage recommendations are fair and should apply to the machinists as well as to the other shopcrafts already covered. The key wage comparison for the IAM, they insist, is with the railroad shopcrafts, especially with the IBEW.

The carriers indicate a willingness to study the question whether journeyman machinists should receive a skill differential for specific work. They propose that any disagreement in that regard be submitted to a neutral for arbitration.
Contrary to the IAM, the carriers warn that their financial condition is perilous. They emphasize that while railroad workers' compensation is at the peak of compensation in American industry, the railroads are at the bottom of the heap in terms of profitability, and that only a few have been able to realize a return on their assets that exceeded the cost of capital. The economic outlook for their industry, the carriers argue, is anything but roseate. They foresee further inroads by the trucking industry in their market share; a rise in both fuel prices and taxes; and slower growth. They predict that the continued failure to earn the cost of capital will curtail their ability to attract sufficient funds to modernize equipment and provide service to customers and jobs to employees.

Recommendations

As is apparent from our comments in the introduction to this Report, we think it inappropriate to treat this case as if it existed in a vacuum. We cannot ignore the fact that labor organizations representing 95 percent of the employees on the freight railroads recently participated in proceedings before PEB 219, asked for general wage increases approximating what the IAM is proposing, sought to justify such increases with arguments quite similar to those advanced by the IAM in this case, and ultimately accepted, or were statutorily bound by, the recommendations of PEB 219. However compelling the evidence adduced by the IAM in support of its position may seem, if considered without regard to what has occurred in the railroad industry in the past year, we are bound to conclude that endorsement of the proposal for a 10-percent general wage increase, even if limited to prospective application, would be profoundly destabilizing to the present wage structure of the railroad industry. We therefore decline to recommend it.

It may well be, as the carriers' own proposal implies, that certain types of work performed by some railroad machinists should receive a skill differential. The IAM insists that such a
determination can and should be made by this Board on the basis of the ample record made before it. The carriers argue, however, that a far more detailed study must be made of the issue than can possibly be undertaken by this Board within the narrow time limits within which it must complete its work. They urge that the entire matter be referred to a body similar to the current Brotherhood of Railroad Signalmen (BRS) Skill Differential Study Committee.

Although we sympathize with the IAM's desire to achieve a speedy resolution of this protracted dispute, we agree with the carriers that the matter of skill differential is best left to study and determination by a tripartite committee headed by a neutral, whose decision in the event of a deadlock between the parties shall be final and binding. We leave it to the parties to establish the committee.

In keeping with the general approach we have taken in respect of the wage issue in this case, we recommend that the parties adopt the general wage and cost-of-living increases and time schedule for such wage adjustments recommended by PEB 219. Achievement of the wage stability the carriers advocate can be attained only by making the first three-percent general increase effective on the same date (July 1, 1991) as that applicable to the organizations covered by the PEB 219 recommendations. We see no reason why the IAM should suffer any loss of retroactivity simply because it declined to participate in the proceedings before PEB 219, which it had the legal right to do.

B. HEALTH AND WELFARE

IAM Position

The IAM seeks a separate plan for its members and their dependents. Although the separate plan replicates the National Plan as revised, the IAM insists that it be funded entirely by the carriers, including any increased costs.
Carriers Position

The carriers argue that the recommendation of PEB 219, as clarified by the Special Board, and as applicable to all the other organizations in contract with them, should be made applicable to the IAM. Included, the carriers assert, are the numerous detailed changes in the plan that are identical as to each union. The changes include provisions for employee cost-sharing commencing in 1993.

Recommendation

This is an issue that should be resolved on the basis of the recommendation of PEB 219, as clarified by the Special Board, with the changes applicable to the other organizations. To do otherwise would create different health and welfare plans among employees of the carriers, with different cost contributions by the employees. The disaffiliation of the IAM-represented employees could detract from the fiscal vitality of the National Plan, with the attendant risk that benefits, experience-ratings, and costs may differ. We think this would be destabilizing both to the relationships among the employees and their representative organizations and to labor relations between the carriers and those organizations.

The IAM proposal should be withdrawn, and the carrier proposal, based on the PEB 219 recommendation, including the sharing of cost increases, should be adopted.

C. INCIDENTAL WORK RULE

Carriers Position

The carriers urge that the preexisting incidental work rule should be amended, in accordance with the recommendations of PEB 219, to include "simple tasks" requiring no special training or tools; to allow up to two additional hours of such work to be done per shift by each craft employee; and to apply to all backshop employees, as well as those in running repair locations.
IAM Position

The IAM opposes PEB 219's proposed expansion of the preexisting incidental work rule. It sees the expansion of the rule as an invasion of its scope rule. Under PEB 219's incidental work rule, according to the IAM's version of what is happening, a skilled machinist may well be replaced by a lower-rated employee, including laborers or firemen and oilers, to fill positions on a rotating two hour basis.

Recommendation

PEB 219's, recommendation on the incidental work rule reads in part as follows:

...[We] are persuaded that the time has come to eliminate some of the restrictions which unnecessarily add time, costs, and delays to the accomplishment of shopcraft work. To that end, the Board recommends that: (1) The coverage of the rule be expanded to include all Shop Craft employees and the back shops. (2) "Incidental Work" be redefined to include simple tasks that require neither special training nor special tools. (3) The Carriers be allowed to assign such simple tasks to any craft employee capable of performing them for a maximum of two hours per work day, such hours not to be considered when determining what constitutes a "preponderant part of the assignment."

Special Board 102-29, in the clarification stage, dealt with two questions, as follows:

Shop Craft Request No. 6

Does the PEB's recommended relaxation of existing work rules allow the carriers to assign an unlimited amount of such work across craft lines?

Clarification or Interpretation of the Special Board

The PEB intended to allow two hours of incidental work per employee per shift.
At the contract clarification stage of Special Board 102-29, the Special Board chose the carriers' statement of the new incidental work rule.

This Board has fully considered all of the IAM's views on the new incidental work rule. On the record before this Board, we cannot justify allowing the machinists craft to deviate from the PEB 219 pattern set forth above. It would be unworkable and unfair if the preexisting incidental work rule were to continue to be applied to the machinists, while all of the other shop craft employees were subject to the new incidental work rule. The Board recommends the adoption of the new incidental work rule, as developed by PEB 219 and Special Board 102-29.

D. SUBCONTRACTING

IAM Position

The IAM offers a series of proposals, "to strengthen the recommendations of PEB 219." The General Chairman representing the IAM employees of CSX Transportation Company (CSXT) presented a statement that he says applies with equal force to the dispute between the IAM and the other carriers as well as to the dispute between the IAM and CSXT. The IAM proposes the following modifications to Article II of the September 25, 1964, Agreement on Subcontracting:

a. Prohibit the continuing or permanent transfer of Machinists' work to third parties without prior agreement with the IAM.

b. Prohibit the subcontracting of work while qualified Machinists are on furlough.

c. Redefine cost criteria for subcontracting to exclude overhead costs and other costs not directly associated with the work in question.
d. Require that the subcontractor pay a prevailing wage which is equivalent to the wages paid in the railroad industry.

The IAM believes that the Article II, Section 2, as amended by PEB 219, is flawed because it permits a carrier to control the timing of the expedited dispute resolution process, and can lead to the inundation of the organization with a series of notices, effectively destroying its ability properly to respond to the carrier's notices. It seeks to amend Section 2 of Article II to provide for a 30-day preliminary notice of a carrier's intent to subcontract.

The IAM contends that the Electrical Power Purchase Agreements, or EPPAs, go beyond subcontracting and are inherently destructive of the 1964 subcontracting agreement. The organization states that the practice is a subterfuge that should be condemned by the Board.

Carriers Position

The carriers contend that the IAM proposals are unreasonable and an attempt effectively to eliminate subcontracting. They state that without the ability to resort to outside contractors under the five criteria allowing subcontracting, as set forth in the 1964 Agreement, carriers would be forced to incur huge unnecessary expenses and delays to essential work.

The carriers state that nothing about the way in which machinists work or the way they are affected by the contracting out rules justifies any changes from the revisions of Article II made by PEB 219 and Special Board 102-29, which are applicable to the other shopcrafts. Moreover, the carriers assert that the same contracting-out rules must apply to machinists, as well as to the other shopcrafts, not only in order to reduce administrative costs,
but also because many jobs being contracted out involve both machinists and nonmachinists work.

The carriers point out that the power purchase agreements are now within the definition of contracting out under the PEB 219 pattern, and that a carrier cannot enter into an EPPA without prior agreement with the affected organization or authorization by a neutral arbitrator.

The carriers state that it is clear that the machinists working for the CSXT are bound by the national bargaining on contracting out.

Recommendation

This Board cannot recommend, on the basis of the record before us, that the IAM alone should have the benefit of the changes it has proposed, while other shopcrafts would be limited to the recommendations of PEB 219, as clarified by Special Board 102-29, and as reduced to contract language. We believe that this would be destabilizing.

The record before this Board does not establish that the new dispute-resolution procedures developed by PEB 219 and Special Board 102-29, and reduced to contract language, are biased in the carriers' favor, as contended by the IAM. Certainly the carriers and the shopcrafts have a duty of good faith and fair dealing in regard to the application and utilization of these procedures. It is the expectation of this Board that the parties will fully live up to those obligations.

Special Board 102-29, in its interpretation and clarification phase, stated:

Shop Craft Request No. 4
Does the definition of covered work which the PEB recommended be included in the revised subcontracting provisions of the September 25, 1964 Agreement mean that
EPPAs and similar arrangements are brought within the scope of the Agreement?

Clarification or Interpretation of the Special Board
The PEB intended that the EPPAs and similar arrangements are within the scope of the September 25, 1964 Agreement.

The Board believes that inclusion of EPPAs within the scope of the September 25, 1964, Agreement provides sufficient and appropriate relief for the IAM concerning power purchase agreements.

The statement of the IAM General Chairman on the CSXT applied not only to the CSXT and the IAM, but with equal force to the dispute between the IAM and all of the other carriers before PEB 220. It is clear that the recommendations of this Board must apply to all of the carriers before it, including CSXT.

The Board recommends that the PEB 219 recommendations, as clarified by Special Board 102-29, and as reduced to contract language, be applied to the IAM. We recommend that the IAM withdraw its proposals to amend Article II of the September 25, 1964, Agreement on Subcontracting.

E. SUCCESSORSHIP/LINE SALES

This issue bears two titles because the parties present it to us with two identifications. The IAM refers to it as "successorship," the carriers, as "line sales."

IAM Position
The IAM seeks a contract clause with "successorship language" that essentially requires that its recognition, its contract and the employment of its members be continued and assumed by a new owner, operator, or lessee of the carrier's line or any part
thereof (e.g., "shortline transfers") in the event of rail line transfers, mergers or any similar transactions.

It argues that under present conditions, the carriers may engage in such practices, leaving machinists suddenly out of work or employed by the short line with grossly substandard wages and working conditions and without union coverage.

Carriers Position

The carriers doubt the bargainability of this issue. Alternatively, they rely on the outcome of the "identical proposal" by PEB 219. They point out that PEB 219 declined to make any recommendations on the proposal and that it would "flout" the intent of Congress in P.L. 102-29 under which Congress withheld this issue from the jurisdiction of the Special Board, and a fundamentally inequitable breach of the pattern principle, to grant the IAM proposal. They assert that the machinists have no greater need for protection from any form of job loss than other shopcraft employees.

Recommendation

We find that this issue is properly subject to collective bargaining. However, as virtually no other carrier has a protective clause in its agreements, we find that it would be profoundly destabilizing to recommend such a clause to the organization requesting it.

F. SOUTHERN PACIFIC LINES

This Board has fully considered the positions of the parties as set forth in their confidential submissions to the Board.

Recommendation

The Board recommends that the IAM and the SP pursue a local process of negotiations concerning wages, culminating if necessary
in arbitration, based on the July 18, 1991, Special Board 102-29 Report regarding the "Southern Pacific Transportation Company."

G. MORATORIUM

We recommend a moratorium period for all matters on which notices might properly have been served when the last moratorium ended on July 1, 1988, to be in effect through January 1, 1995. Notices for changes under Section 6 of the Railway Labor Act accordingly may be served by any of the parties or another party no earlier than November 1, 1994.

VII. CONCLUSION

These recommendations represent our best judgement on the merits and equities of the issues in dispute. They also represent our estimate of a fair and realistic package of conditions, benefits, and benefit changes that, as a totality, should provide a basis for an acceptable, overall settlement.

We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impracticable to ask that the parties adopt these recommendations unconditionally and without modification. As the Railway Labor Act does not make them binding, we expect that the parties will make adjustments as needed, or if necessary, subject them to major revision. In any case, we hope that we have provided a well-marked road map for good faith use by the parties in completing their contracts through the process of free collective bargaining. We express to the parties our profound thanks for the intelligent, comprehensive, and professional presentation of their cases and for their patience and cooperation with our procedures. We also
acknowledge with thanks the assistance of Roland Watkins, the Special Assistant to the Board.

Respectfully,

Benjamin Aaron, Chairman

Eric J. Schmertz, Member

David P. Twomey, Member
EXECUTIVE ORDER

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN CERTAIN RAILROADS AND THEIR EMPLOYEES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Disputes exist between certain railroads and their employees represented by the International Association of Machinists and Aerospace Workers as designated on the attached list, which is made a part of this order.

These disputes have not been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151-188) ("the Act").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive various sections of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act, it is hereby ordered as follows:

Section 1. Creation of Emergency Board. There is created effective April 3, 1992, 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 on May 3, 1992, with respect to these disputes.

Sec. 3. Maintaining Conditions. As provided by section 11 of the Act, from the date of the creation of the board and for 30 days after the board has submitted its final report to the President, no change in the conditions out of which the disputes arose shall be made by the railroads or the employees, except by agreement of these parties.
Sec. 4. Expiration. The board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,

March 31, 1992.
RAILROADS
(NMB Case Nos. A-11544 and A-12250)

Alameda Belt Line Railway
Alton & Southern Railway
Atchison, Topeka & Santa Fe Railway
Burlington Northern Railroad
Canadian National Railways
   Great Lakes Region Lines in U.S.
   St. Lawrence Region Lines in U.S.
Canadian Pacific Limited
CSX Transportation, Inc.
   Baltimore and Ohio Railroad
   Baltimore and Ohio Chicago Terminal Railroad
   Chesapeake and Ohio Railway
   Clinchfield Railroad
Seaboard System Railroad
   Louisville and Nashville Railroad
      (former)
   Seaboard Coast Line Railroad (former)
Western Maryland Railway
Chicago & Illinois Midland Railway
Chicago & North Western Transportation Co.
Colorado & Wyoming Railway
Consolidated Rail Corporation
Denver and Rio Grande Western Railroad
Duluth, Winnipeg & Pacific Railway
Elgin, Joliet & Eastern Railway
Grand Trunk Western Railroad
Houston Belt and Terminal Railway
Illinois Central Railroad
Kansas City Southern Railway
   Louisiana & Arkansas Railway
   Milwaukee (Soo Line)-KCS Joint Agency
Kansas City Terminal Railway
Lake Superior & Ishpeming Railroad
Los Angeles Junction Railway
Manufacturers Railway
Meridian & Bigbee Railroad
Missouri Pacific Railroad
  Galveston, Houston and Henderson Railroad
  Missouri-Kansas-Texas Railroad
  Oklahoma, Kansas & Texas Railroad
Monongahela Railway
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad
Norfolk Southern Railway Company
  Alabama Great Southern Railroad
  Atlantic and East Carolina Railway
  Carolina & Northwestern Railway
  Central of Georgia Railroad
  Cincinnati, New Orleans & Texas Pacific Rwy.
  Georgia Southern and Florida Railway
  Interstate Railroad
  New Orleans Terminal Co.
Norfolk and Western Railway
St. Johns River Terminal Company
Tennessee, Alabama and Georgia Railway
Tennessee Railway
Oakland Terminal Railway
Ogden Union Railway and Depot Co.
Peoria & Pekin Union Railway
Pittsburgh & Lake Erie Railroad
Port Terminal Railroad Association
Portland Terminal Railroad Company
Richmond, Fredericksburg & Potomac Railroad
Sacramento Northern Railway
Southern Pacific Transportation Co.
  Eastern Lines
  Western Lines
Terminal Railroad Association of St. Louis
Texas Mexican Railway
Union Pacific Railroad
Western Pacific Railroad

(NMB Case No. A-11071)

CSX Transportation, Inc.
Louisville and Nashville Railroad
(former)
Seaboard Coast Line Railroad (former)