

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 214

APPOINTED BY EXECUTIVE ORDER 12644,
DATED JULY 9, 1988
PURSUANT TO SECTION 9A OF
THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between the Port Authority Trans-Hudson Corporation and its employees represented by the Transportation-Communications Union-Carmen Division

(National Mediation Board Case No. A-11652)

WASHINGTON, D.C.
AUGUST 9, 1988

LETTER OF TRANSMITTAL

NEW YORK, NY,
August 9, 1988.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT:

On July 9, 1988, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12644, you created an Emergency Board to investigate a dispute between the Port Authority Trans-Hudson Corporation and its employees represented by the Transportation Communications Union-Carmen Division.

The Board has now the honor to submit to you, in accordance with the provisions of the Railway Labor Act, its Report and Recommendations concerning an appropriate resolution of the dispute.

Respectfully,

HERBERT L. MARX, Jr., *Chairman.*
DANIEL G. COLLINS, *Member.*
M. DAVID VAUGHN, *Member.*

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 214 (the "Board") was established by the President pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159(a), and by Executive order 12644. The Board was ordered to investigate and report its findings and recommendations regarding a dispute between the Port Authority Trans-Hudson Corporation (PATH) and its employees represented by the Transportation-Communications Union-Carmen Division (TCU-Carmen). A copy of the Executive order is attached as Appendix A.

The President appointed Herbert L. Marx, Jr., of New York City, as Chairman of the Board. Professor Daniel G. Collins of the New York University School of Law and M. David Vaughn of Washington, D.C. were appointed as Members. The National Mediation Board assigned Joseph E. Anderson as Special Assistant to the Emergency Board.

II. PARTIES TO THE DISPUTE

A. THE CARRIER

The Port Authority Trans-Hudson Corporation ("PATH" or the "Carrier") is a rail commuter line which carries more than 200,000 passengers daily between Newark, Jersey City and Hoboken in New Jersey and the World Trade Center and Penn Station in New York City. Though only 13.9 miles long, it serves 13 stations—seven in New Jersey and six in New York. PATH has a fleet of approximately 400 passenger rail cars. About 300 are used daily during peak hours. PATH has 1,115 employees.

PATH is a wholly-owned subsidiary of the Port Authority of New York and New Jersey. The Authority took over the rail line from the bankrupt Hudson and Manhattan railroad in 1962. Since then, as before, the rail line has been an ever-deepening deficit operation. In 1963, with 29.2 million riders, it had a gross operating deficit of \$2.3 million. In 1987, with 51.3 million riders, its gross operating deficit was \$87.9 million.

PATH summarized its operations from 1979 to 1987 as follows:

PATH OPERATING SUMMARY

| | 1979 | 1987 |
|--|---------------|-----------------|
| Total passengers carried | 44,273,038 | 58,190,500 |
| Total passenger miles | 198,073,145 | 306,030,139 |
| Typical weekday morning peak (7 to 10 a.m., Fall).. | 60,942 | 78,851 |
| Employee compensation | \$24,697,800 | \$78,020,000 |
| Total expenses | \$43,017,000 | \$146,150,000 |
| Total revenues | \$14,717,000 | \$58,186,000 |
| Gross operating deficit..... | \$38,448,000 | \$87,964,000 |
| Cumulative gross operating deficit (from Sept. 1962) | \$267,384,000 | \$1,013,078,000 |
| Cumulative capital investment (from Sept. 1962) ... | \$272,424,000 | \$641,698,000 |
| Revenue per passenger | \$0.30 | \$1.00 |
| Cost per passenger..... | \$1.20 | \$2.51 |
| Operating loss per passenger | \$0.90 | \$1.51 |

Causes for the operating losses are, of course, not peculiar to PATH. They are shared by many other public transit operations. As elsewhere, pressure continually to increase fares—PATH fares being set by the Governors of New Jersey and New York—has to be balanced against public interest, necessity, convenience, ridership incentives, and a host of other factors.

B. THE ORGANIZATION

The Transportation-Communications Union-Carmen Division represents 197 employees in the Carmen's craft employed by the Carrier. The remainder of the Carrier's organized employees are represented by eight other unions. The Organization is the former Brotherhood of Railway Carmen of the United States and Canada. The Organization recently merged with the former Brotherhood Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) with the name of the merged Organization changed to the Transportation-Communications Union.

III. HISTORY OF THE DISPUTE

The present dispute originated with the Organization serving in May 1985 a notice under Section 6 of the Railway Labor Act asking for improvements in wages, rules and benefits. Such notice was served pursuant to a moratorium agreement which expired on June 8, 1985. Direct negotiations between the parties were to no avail, and both the Carrier and the Organization applied jointly for mediation by the National Mediation Board.

Mediation began in November 1985 under the direction of Mediator Paul Chorbajian. In June 1986, the Organization requested that

the National Mediation Board release it and proffer arbitration. After a final mediatory effort on June 1, 1988 by Member Walter C. Wallace and Mediator Richard Hanusz, the arbitration proffer was made. This was rejected by the Organization on June 6, 1988. In a further effort to resolve the dispute, however, the National Mediation Board conducted a Public Interest conference led by Member Joshua M. Javits and Mediator Joseph Anderson; following such conference, the dispute remained unresolved.

Significant to this dispute is the recent history of bargaining by the Carrier with the eight organizations representing other employees. Five Organizations have reached agreement with the Carrier calling for changes in wage and benefits levels, with new moratorium periods ending on various dates between October 18, 1988 and May 28, 1989. These Organizations are:

- United Transportation Union
- Transport Workers Union
- American Railway Supervisors Association
- International Brotherhood of Teamsters
- International Brotherhood of Electrical Workers (two units)

Mediation and/or negotiation is in progress with three other Organizations under moratorium agreements which ended on various dates between September 8, 1985 and February 15, 1986. These Organizations are:

- Brotherhood of Locomotive Engineers
- American Train Dispatchers Association
- Brotherhood of Railroad Signalmen.

IV. ACTIVITIES OF THE EMERGENCY BOARD

Through advance notice to the parties, the Board conducted a hearing on the issues in dispute on July 19, 1988 in New York City. The parties were given full opportunity to present evidence, testimony, argument and rebuttal. With consent of the parties, the Board met separately with representatives of the Organization and the Carrier following the formal hearing for further discussion on an informal basis.

In its deliberations to prepare this Report, the Board gave full consideration to the hearing transcript and documents submitted in evidence by the parties.

V. ISSUES IN DISPUTE

The issues in dispute between the Organization and the Carrier are numerous, and the breadth of these differences is wide. No matters of significance were resolved by the parties prior to the establishment of this Board. The issues fit loosely into three catego-

ries: wages, including compensation for claimed productivity gains; benefits; and rules. The issues are listed and described by category; however, the parties have declined to list the issues in priority order, and the description which follows should not be understood as such a listing.

The proposals assume a three-year period, commencing June 8, 1985.

A. WAGES

1. General Wage Increase

The parties have proposed annual increases in the base wage rates in accordance with the following schedules:

[In percent]

| <i>Effective date</i> | <i>Carrier proposal</i> | <i>Organization proposal</i> |
|-----------------------|-------------------------|------------------------------|
| June 8, 1985 | 5 | 7 |
| June 8, 1986 | 5 | 7 |
| June 8, 1987 | 5 | 7 |

The Carrier's proposal is based on a percentage of current wage levels *plus* the existing cents-per-hour contribution made to the Supplementary Pension Plan of the Organization. This is discussed further below. However, for purposes of clarification, the Carrier's offer of 5 percent (of wages plus contribution) would be equivalent to 5.2 percent if such amount were taken entirely in wage level improvement and without any additional cents-per-hour contribution to the Supplementary Pension Plans.

The Organization proposes that all retroactive payments be made within 20 days from the date of agreement. The Carrier has taken no position with respect to the period within which any such payments should be made.

2. Productivity

The Organization has proposed wage increases based on "productivity", in addition to the general wage increases set forth above, in accordance with the following schedule:

[In percent]

| <i>Effective date</i> | <i>Organiza- tion proposal</i> |
|-----------------------|--|
| June 8, 1985 | 3 |
| June 8, 1986 | 3 |
| June 8, 1987 | 3 |

The Carrier denies any compensable productivity gains and has not proposed any productivity-based change in compensation.

B. BENEFITS

1. Pensions

The Organization has proposed that the Carrier pay 30 cents per hour, retroactive to 1985, to alleviate an underfunding of \$66,000 per year reported by its actuary.

The Carrier expresses its willingness to set aside such funds but insists that the contributions must come from the overall amount available for wage increases, rather than as an additional payment.

2. Meal Allowance

The Organization proposes an increase in meal allowances in accordance with the following schedule:

| <i>Hours worked</i> | <i>Present benefit</i> | <i>Organiza- tion proposal</i> |
|----------------------------------|----------------------------|--|
| After 10 hours | \$2.25 | \$5 |
| After 14 hours (additional)..... | \$2.25 | \$5 |

The Carrier proposes no change from the current schedule.

The Organization proposes that meal allowances be paid within seven days. The Carrier agrees to make the payments required within seven days.

3. Major Medical Coverage

The Organization proposes an increase in major medical insurance lifetime benefits from the present level of \$100,000 to \$1,000,000. The Carrier proposes a change to a \$500,000 maximum.

4. Life Insurance Coverage

The Organization proposes an increase in the Carrier-provided life insurance benefit from its present level of \$5,000 per employee to \$50,000. The Carrier proposes an increase in the benefit of either

(a) an additional \$5,000 of Carrier-paid insurance; or (b) an additional \$10,000 of contributory insurance, at the employee's option.

5. Vacations

The Organization proposes vacation benefits as follows:

| <i>Years of service</i> | <i>Present weeks of vacation</i> | <i>Proposed weeks of vacation</i> |
|-------------------------|----------------------------------|-----------------------------------|
| 10 to 15 | 4 | 4 |
| 15 to 20 | 4 | 5 |
| More than 20 | 5 | 6 |

The Carrier proposes no change from the present level of benefits.

6. Dental Insurance

The present dental insurance schedule provides maximum benefits of \$1,000 annually for each covered individual, with a \$25 deductible. The Organization proposes to raise the cap to \$2,000 and to remove the deductible feature. The Carrier proposes no change.

The Organization proposes extension of the provision of a letter of agreement of October 26, 1982 that the Carrier will not seek reimbursement from the Organization for dental premiums paid. The Carrier proposes not to extend that provision.

7. Holidays

The present level of benefits includes 12 holidays. The Organization proposes the addition of Martin Luther King's Birthday and of four hours on Christmas Eve (in addition to the four hours presently provided). The Organization proposes that the additional holiday provisions be retroactive to 1985.

The Carrier has proposed to add Martin Luther King's Birthday but on a prospective basis only.

8. Personal Days

The Organization proposes the addition of two personal leave days. The Carrier proposes no change from the present level of two days.

C. RULES

The Organization proposes rule changes listed below. The Carrier opposes all of these changes.

1. Evening classes for Apprentices to be eliminated and replaced by on-the-job training.

2. Employees providing on-the-job training to be paid at an hourly rate of \$25.
3. All vacancies, when filled, to be accomplished only by assignment of employees on an overtime basis.
4. All time worked on Saturdays or Sundays to be paid at double-time rate.
5. Elimination of practice of Apprentices covering Mechanics' positions after their first year of training.
6. Sick leave for all employees to be payable from the first day for any absence greater than five days.
7. Lead Mechanic positions to be filled on the basis of seniority, with elimination of present testing system.
8. The Carrier's practice of shifting employees from the employee's bulletined position to another position to be prohibited.
9. The Carrier to be required to extend assurances contained in its October 26, 1982 letter as to operation on a seven-day basis solely with assent of the Organization.
10. The Carrier to be required to extend assurances contained in its October 26, 1982 letter that it will not contract out the work of Car Cleaners.
11. The Carrier to be required to extend assurances contained in its October 26, 1982 letter that, if permitted by law, it will withhold not more than 20% of retroactive payments for Federal withholding taxes.
12. The Carrier to be prohibited to contract out any Carmen's work upon completion of the Carrier's new Car Shop.

VI. DISCUSSION

The Carrier observes that it has signed "pattern" agreements for the period at issue with five organizations representing more than half of its organized employees. The "pattern" to which the Carrier refers includes annual five per cent wage increases; an increase in paid-up life insurance to either, at the employee's option, \$10,000 fully paid at age 65, or \$5,000 fully paid and \$10,000 contributory at the group rate; an increase to \$500,000 in lifetime major medical benefits; and the addition of a paid holiday, Martin Luther King's Birthday. The Carrier asserts that there is no justification at all for providing the Carmen with a wage settlement in excess of the pattern; on the contrary, they are the highest paid Carmen in the New York-New Jersey Metropolitan Area, the Carrier's offer is comparable to settlements within that area, and PATH Carmen have at all relevant times enjoyed settlements well in excess of increases in the Consumer Price Index. Furthermore, the Carrier notes, its operating loss per passenger has increased two-thirds over the past decade.

The Organization disputes the existence of any "pattern", contends that the alleged pattern wage increase is in any event inadequate for the Carmen, and asserts that both the prior agreement and recent workload changes justify the payment of a productivity increase to the Carmen. As to the alleged pattern wage increase, the Organization claims the Carrier promised the Organizations which have settled that if pending negotiations produced any larger improvements than those for which they settled, the Carrier would "make it up" to them in the next round of negotiations. The Organization contends that the PATH Carmen are in any event unique in American railroading in that they operate flexibly as "composite mechanics" and are uniquely being called upon by the Carrier to deal with the railroad industry's newest and most advanced technology. Thus, the Organization argues, Carmen are entitled to a substantially greater wage increase than that granted to other employees.

In this connection, the Organization notes that the PATH Police were recently granted a 21 per cent salary improvement over the 36-month period beginning July 1985, and it asserts that the Carmen are entitled to no less in order to maintain "parity". As to the requested productivity increase of three per cent annually, the Organization argues that Section 19 of the prior collective bargaining agreement recognizes a relationship between productivity and wages, and that factually the productivity of the Carmen has increased dramatically, both quantitatively and qualitatively.

A. WAGES AND PRODUCTIVITY

A fundamental premise of the Organization's position on wages appears to be that the Carmen can never agree to settle for the same percentage improvement as other classifications of employees because the Carmen uniquely constitute a "composite" classification and because they are called upon to master and perform advanced technological duties. The Board does not accept this premise. The composite nature of the Carmen's classification has been in place for decades, during which the Organization has zealously bargained for the Carmen, including on two occasions engaging in strikes. We believe that the wage relationships among the various classifications of PATH employees that have evolved in collective bargaining over a period of many years adequately measure differences in skills and responsibilities as well as the presence or absence of work rules that impact on productivity. Thus we cannot accept the Organization's contention that the nature of the Carmen classification in and of itself makes inappropriate the same settlement for the Carmen as for other employees.

We also are not persuaded by the Organization's contention that new and unique technological demands on the Carmen justify a larger wage improvement for them. While it is undisputed that PATH has introduced new cars and rebuilt older ones using advanced technology and has provided necessary in-service training for the Carmen, there is no evidence that the nature of the Carmen's job has materially changed. On the contrary, PATH's Supervisor of Inspection, John Clements, testified that in some respects the new equipment has made the Carmen's job simpler.

The Organization claims that it is entitled to maintain its parity with the "PATH Police". To use salaries of police officers as a gauge for Carmen's rates seems extremely tenuous to the Board. Furthermore, the "PATH Police" are in fact members of the Police Department of the Port Authority of New York and New Jersey, which is responsible for security at all of the Authority's various facilities. We thus reject the Organization's effort to tie the Carmen's wages to those of the Port Authority Police. We believe that the most appropriate comparisons are the historic wage relationships within the PATH workforce and the rates of Carmen on other railroads, particularly Carmen on commuter railroads in the metropolitan area.

On either basis PATH's wage offer of five percent in each of the three years is fair and reasonable. It is, first of all, the pattern that has been unequivocally accepted for the period at issue by a majority of the Organizations representing a majority of PATH employees. Second, it is identical with, or in excess of, the pattern settlements for the same period for the Long Island Rail Road, Metro North and New Jersey Transit, and while it is one percent less in the last two years than that for the New York City Transit Authority, the resulting PATH Carmen's hourly rate would be in excess of that of Carmen on all of the aforesaid railroads including the Transit Authority.

The Organization also seeks a productivity wage increase of three percent for each of the three years. The Board sees no basis in the evidence for this request. The Organization asserts that Section 19 of the Agreement recognizes a relationship between productivity in the number of cars receiving periodic inspections per day, and that Public Law Board No. 1597 so recognized in its Award No. 1. We will assume for purposes of argument that this assertion is accurate and that the parties agreed that the "work force existing on May 31, 1973" would constitute the minimum manning for the periodic inspection of 18 cars per day. Nevertheless, the evidence as to present manning does not establish any deviation from this norm. Clements testified in detail as follows from PATH records: In 1973 when 18 cars per day were being inspected, there were 24 in-

spectors with a support force of eight. In 1976 the number of cars per day inspected was reduced to 13, with 20 inspectors and a support team of 11. There were further reductions in the number of cars inspected per day, culminating in 1981 in six cars being inspected by 12 inspectors with a 12-member support team. In 1983 the number of inspections increased to seven, with 13½ inspectors and a support team of 10½. Since January, 1988, there are 10 cars being inspected per day, by 19 inspectors and a support staff of 11½. The present manning for periodic inspections thus is considerably more ample than in 1973. Then there were 1⅓ inspectors and ⅓ support team members per car. Now there are almost two inspectors and more than one support team member per car inspected.

Having failed by a wide margin to prove a productivity increase in periodic inspections, the Organization also asserts a productivity increase in road care inspections—an increase from 241 to 294 cars in service with no increase in the number of road car inspector: 32. However, Clements testified without contradiction that the Carrier had added four additional inspectors, in the new title of Running Repair Car Inspectors, who were available for road car inspections. Clements also testified that the individuals in the new title had, with the Organization's approval, been taken out of comprehensive overhaul because of reduced need there occasioned by the development of a fleet of new and rehabilitated cars.

B. OTHER ISSUES

Apart from the question of wage increases to be applied over a period of years commencing June 8, 1985 and the related question of wage level change based on the Organization's claim of additional "productivity", there are a number of other issues raised by the Organization. As a preliminary conclusion, the Board finds that these issues are indeed secondary and no doubt could be resolved by the parties themselves when and if the wages and productivity issues are resolved. Nevertheless, the Board will offer its recommendations on each of these points to clarify their nature and to assist in a resolution of the dispute.

Most of the secondary proposals of the Organization, if achieved in whole or in part, would be of direct cost to the Carrier and thus are inevitably and properly perceived by the Carrier as directly related to compensation costs. Others are of less direct economic import and may be considered in a different context.

Involved with all of the differences between the Organization and the Carrier is the obvious fact of chronology. A period of more than three years has passed since the moratorium date of June 8, 1985. When a new agreement is reached to achieve a moratorium

period to end three years later, the parties will already be beyond such date.

Acceptance of the Board's recommendations in Section VII below will thus mean the Organization and the Carrier have the virtually immediate opportunity to meet and to negotiate and agree upon the terms of a prospective Agreement.

VII. RECOMMENDATIONS

Wages and Productivity.—For the reasons outlined in Section VI, above, the Board recommends acceptance by the Organization of the Carrier's proposal of five per cent wage increases to be applicable on June 8, 1985; June 8, 1986; and June 8, 1987. The Board does not recommend any additional wage increase based on productivity.

Supplemental Pension Plan.—The Organization seeks an additional contribution from the Carrier to provide for an alleged insufficiency in reserves in the Supplementary Pension Plan required to maintain the present level of benefits. Support for this was offered in actuarial calculations concerning the fund's status in 1986. The Board cannot determine if the deficiency applies to the current status of the plan's reserves. In any event, contributions to the supplemental pension plans for this Organization and other Organizations have come from an allocation of cents-per-hour contribution closely related to a bargained wage increase. The Carrier has offered to make a cents-per-hour contribution in this instance but continues to insist that such should continue to be considered as an integral part of the wage settlement.

The Board urges the parties to address this issue directly and to determine a new cents-per-hour contribution as part of an overall wage increase. Such contribution can be applied retroactively over one or more years of the new agreement, as may be required to support the present level of fund benefits. The Board does not recommend that any special lump sum contribution be made irrespective of the wage settlement.

Holidays.—The Board recommends the addition of Martin Luther King's Birthday as a paid holiday, consonant with the agreements made with other Organizations. In view of the obvious purpose of holidays (to provide time off with pay for a particular occasion or appropriate premium pay therefor), the Board sees little rational purpose in making the new holiday retroactive. It should be effective on the first occasion following the acceptance of a new agreement. The Board does not recommend a requested additional half-holiday on Christmas Eve.

Insurance Programs.—The Organization seeks major improvements in the maximum amount of major medical insurance cover-

age; improved life insurance; and expansion of the dental care plan. The Carrier has offered to increase the individual lifetime major medical maximum from \$100,000 to \$500,000 and to increase life insurance coverage from \$5,000 to \$10,000 (with an alternate option of \$10,000 increased contributory insurance with the current \$5,000 non-contributory insurance). The Board finds that these Carrier proposals offer substantial improvement and recommends their acceptance by the Organization.

As for the dental care plan, the Organization seeks to increase the annual individual maximum benefits from \$1,000 to \$2,000 and to eliminate the \$25 deductible feature. The present plan compares equally or favorably to comparable plans now in effect elsewhere. In view of other matters (especially wages) which seem of more pressing importance in this dispute, the Board recommends no change in the dental care plan.

Vacations.—The Organization seeks six weeks' vacation after 20 years of service, with the five-week vacation benefit to be applicable after 15 years, instead of after 20 years as at present. The Organization points out that the present vacation schedule has been in effect since 1973, and thus some improvement is warranted. The Organization further points to the achievement in bargaining of a six-week vacation maximum for Long Island Rail Road employees. While improved vacation is clearly a legitimate bargaining objective, the Board does not recommend any change at this time in the belief that the current schedule is sufficiently generous. If any change is to be made within the framework of an overall economic settlement, it should be instituted on a prospective basis only.

Meal Allowance.—The Organization proposes a major improvement in the longstanding meal allowance, which currently calls for remuneration of \$2.25 for ten hours of work and \$4.50 after 14 hours. The Organization seeks \$5 and \$10, respectively, after 10 and 14 hours' work. According to the Organization, this level has been achieved by certain Carrier employees and also is granted elsewhere. The Carrier dismisses this request as an "anachronism" in view of the present and prospective wage level for Organization employees, combined with the premium pay which applies to extra hours of work. The Board finds, however, that meal allowances are in the current agreement for a specific purpose and, in view of the substantial change in food prices since the present level was initiated, recommends that this Organization proposal be adopted.

Lead Mechanics.—Employees are currently required to pass a test in order to be considered for permanent placement in the position of Lead Mechanic, which pays a differential of 62 to 71 cents more than the rate for employees directed by the Lead Mechanic. The Organization seeks to eliminate the test and have the Lead

Mechanic position assigned by seniority, subject to the usual qualification period. The Board sees no basis for denying the Carrier the prerogative for measuring employees' ability for the position through a testing procedure. There are, however, some difficulties involved here, since, as the Organization points out, non-qualified employees are occasionally called upon to fill Lead Mechanic positions on a temporary basis. The Board recommends that this matter be addressed by the parties with a view to finding the means to qualify more employees for use as needed as Lead Mechanics, whether through testing or other means.

Transfers.—The Organization seeks a prohibition on transfers or "shifting" of employees from their bulletined positions for use on temporary assignments. The Board considers this an unreasonable limitation on the Carrier's flexibility and does not recommend this change. Existing rules no doubt govern the extent to which this may be done without abusing employees' rights to their regularly assigned positions.

Personal Days.—Employees represented by the Organization currently are allowed two "personal days" absence, as is the case with other Carrier employees. A pending arbitration award may provide additional benefits as to personal days for the Organization. Under these circumstances, the Board does not recommend the granting of additional personal days within the context of the current bargaining.

Miscellaneous Items.—The Organization proposes the remedying of "inequities in current working conditions". These include changes in the method of apprentice instruction; filling of vacancies by overtime assignment exclusively; doubletime pay for all Saturday and Sunday work; limitation on assignment of apprentices; and change in sick leave allowance (which has been the subject of considerable amendment in previous agreements). The Board has carefully reviewed all of these and recommends that they should not be included in a new agreement.

Letters of Agreement

A. Contracting Out.—The Board recommends, as requested by the Organization, renewal of a Memorandum of Agreement dated October 26, 1982, concerning no furloughing of Organization employees during the next moratorium period and a prohibition on contracting out of work performed by Car Cleaners. The Board does not endorse, however, a much wider prohibition sought by the Organization to prohibit contracting out of *any* Carmen's work once the Carrier's new car shop is in operation. Absent any showing of abuse, the Carrier should not be deprived of this necessary flexibil-

ity, subject to current practice and to such rules as may now be applicable.

B. Other Matters.—The Board recommends the renewal of the October 26, 1982 Memorandum of Agreement, with appropriate change of dates, concerning premium payments for dental insurance; seven-day operation; and tax withholding on retroactive wage payments.

VIII. CONCLUSION

The Board strongly urges the parties to consider the delaying effects of Section 9A of the Act if they fail to reach agreement within the framework of the recommendations presented herein or do not formulate a new agreement promptly with these recommendations serving as guidelines. The chances of significant gain by either side through further lack of mutual accommodation is clearly offset by the uncertainty and disharmony in the parties' relationship at a time when a majority of all other employees have concluded their bargaining for the 1985-88 period and may soon be undertaking another round of bargaining. While the Act provides useful status quo periods to encourage the parties to resolve their differences, such should not be employed simply to test each other's limits of endurance. To this end, the Carrier and the Organization are urged to consider the advantages, and perhaps the inevitability, of accepting the Board's recommendations for settlement and to put argument and discord behind them.

Respectfully,

HERBERT L. MARX, Jr., *Chairman.*
DANIEL G. COLLINS, *Member.*
M. DAVID VAUGHN, *Member.*

APPENDIX

EXECUTIVE ORDER 12644

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE PORT AUTHORITY TRANS-HUDSON CORPORATION AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY THE TRANSPORTATION COMMUNICATIONS UNION-CARMEN DIVISION

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

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

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

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. Establishment of Board. There is established, effective July 10, 1988, a board of three 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 carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The Board shall report its findings to the President with respect to the dispute within 10 days after the date of its creation.

Sec. 3. Maintaining Conditions. As provided by Section 9A(c) of the Act, from the date of the creation of the Board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. Expiration. The Board shall terminate upon the submission of the report provided for in Section 2 of this Order.

RONALD REAGAN.

THE WHITE HOUSE,
July 9, 1988.

