

REPORT  
to  
THE PRESIDENT

by  
EMERGENCY BOARD

NO. 217

APPOINTED BY EXECUTIVE ORDER 12655,  
DATED NOVEMBER 7, 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.  
JANUARY 6, 1989

LETTER OF TRANSMITTAL

New York, New York  
January 6, 1989

The President  
The White House  
Washington, D.C.

Dear Mr. President:

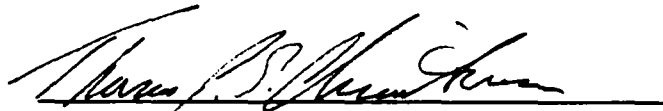
On November 7, 1988, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12655, you created an Emergency Board to investigate a dispute between the Port Authority Trans-Hudson Corporation and its employees represented by the Transportation Communications Union-Carmen Division.

Following its investigation of the issues in dispute, including formal hearings on the record, the Board has prepared its Report and Recommendations for settlement of the dispute.

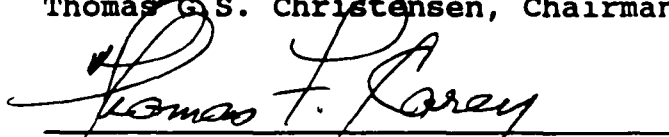
The Board has now the honor to submit to you, in accordance with the provisions of the Railway Labor Act, its selection of the most reasonable final offer for settlement of this dispute.

The Board acknowledges the assistance of Gale L. Oppenberg of the National Mediation Board's staff, who rendered valuable aid to the Board during the proceedings, and particularly in the preparation of this report.

Respectfully,



Thomas G. S. Christensen, Chairman



Thomas F. Carey, Member



Mark L. Kahn, Member

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Appendix A

Executive Order 12655

## I. CREATION OF THE EMERGENCY BOARD

On November 7, 1988, President Ronald Reagan created Emergency Board No. 217 (Board) by Executive Order No. 12655, pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a. The Board was ordered to investigate a dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Transportation Communications Union-Carmen Division. Within 30 days after creation of the Board the parties were ordered to submit final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement, the Board was ordered to submit a report to the President setting forth its selection of the most reasonable offer. A copy of Executive Order 12655 is attached as Appendix "A".

The President appointed Professor Thomas G. S. Christensen as Chairman of the Board. Professor Christensen is a labor-management arbitrator and professor of law at New York University School of Law. The President appointed Dr. Thomas Francis Carey of Jericho, New York, and Dr. Mark Leo Kahn of Detroit, Michigan, as Members of the Board. Dr. Carey and Dr. Kahn are experienced labor-management arbitrators.

## II. PARTIES TO THE DISPUTE

### A. The Carrier

The Port Authority Trans-Hudson Corporation (PATH) is a wholly owned subsidiary of the Port Authority of New York and New Jersey (Port Authority). It is a rail rapid transit system operating on 13.9 miles of track that connect the cities of Newark, Jersey City and Hoboken with the borough of Manhattan in New York City. PATH transports more than 200,000 passengers daily; almost 92% of rail passengers entering New York from New Jersey utilize PATH.

The Port Authority took over the rail line from the bankrupt Hudson and Manhattan Railroad in 1962. In 1963, the first year of operation, PATH had an operating deficit of \$2.3 million. The operating deficit has been steadily rising and PATH reported an operating deficit of \$87.9 million in 1987.

PATH has approximately 1,115 employees, of whom about 1,026 are represented by nine different labor organizations which negotiate fourteen separate collective bargaining agreements.

### B. The Organization

The Transportation Communications Union-Carmen Division (Organization) represents approximately 197 employees in the craft or class of Carmen on PATH. The Organization was formerly called the Brotherhood of Railway Carmen of the United States and Canada. That organization merged with the former Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, and the name of the merged organization was changed to the Transportation Communications Union (TCU). TCU represents 153,000 employees nationwide.

### III. HISTORY OF THE DISPUTE

In May of 1985, the Organization served a notice on PATH pursuant to Section 6 of the Railway Labor Act seeking improvements in wages, rules and benefits. Direct negotiations between the parties were not successful. The parties applied jointly to the National Mediation Board (NMB) for mediation services. The application was docketed as NMB Case No. A-11652. Mediation was conducted by NMB Mediator Paul Chorbajian. The Organization requested a proffer of arbitration from the National Mediation Board in June of 1986. Following a final mediatory effort on June 1, 1988, by NMB Member Walter Wallace and Mediator Richard Hanusz, a proffer of arbitration was made. The Organization rejected the proffer on June 6, 1988, and on June 11, 1988, the 30 day "cooling off" countdown to a possible strike commenced. During the countdown period the NMB conducted public interest mediation led by NMB Member Joshua Javits and NMB Mediator Joseph Anderson. The dispute remained unresolved. On July 9, 1988, President Ronald Reagan created Emergency Board No. 214 to investigate the dispute and imposed a 120 day period during which the parties were required to maintain the status quo.

Herbert L. Marx, Jr. was appointed Chairman and Daniel G. Collins and M. David Vaughn were appointed Members of Emergency Board No. 214. After conducting hearings and collecting evidence, Emergency Board No. 214 made its Report to the President on August 9, 1988, with recommendations for settlement of the dispute.

On September 8, 1988, with the dispute still unresolved, NMB Member Joshua Javits conducted a hearing pursuant to Section 9A of the Railway Labor Act to determine why the parties had not accepted the recommendations of Emergency Board No. 214.

As of November 7, 1988, no resolution had been reached in this case. This Board, Emergency Board No. 217, was therefore created to make a final offer selection.

#### IV. ACTIVITIES OF THE EMERGENCY BOARD

On December 1, 1988, the Board conducted the first of two hearings in New York City. Procedures and substantive issues were discussed and a transcript was made of the proceedings. The Board then received and reviewed the parties' final offers and supporting briefs dated December 7, 1988.

On December 15, 1988, the Board conducted a second hearing on the record to accept substantive evidence and argument in support of each party's final offer and to clarify its understanding of the issues. The parties had previously been told that they could submit reply briefs at this time but did not do so. The Board gave each side an opportunity, during this hearing, to revise its final offer. PATH elected to make no changes, but the Organization used the opportunity to revise one of its proposals.

At both hearings, documents were received from the parties and made part of the record of this case. In addition, the Board requested copies of the collective bargaining agreement and transcript of hearing before Emergency Board No. 214 and these were provided by the Carrier shortly after the December 15, 1988, hearing. The Board met in executive session on January 2 and 3, 1989, to reach a final decision and to prepare this Report to the President.

#### V. PROCEDURAL ISSUES RAISED BY THE PARTIES

The parties presented this Board with some threshold procedural questions. PATH argued at the hearing on December 1, 1988, that Section 9A of the Railway Labor Act requires this Board to select one final offer package and that, in the absence of

agreement by the parties, the Board is not permitted to select the best final offer on an issue by issue basis. The Organization argued that the Board was empowered to select the best final offer on an issue by issue basis and encouraged the Board to do so. The Board noted that some "final offer" Emergency Boards under Section 9A had elected to choose a best final offer as a package, although at least one Board had selected the most reasonable offer on an item by item basis. This Board made no judgment as to the legal merits of either position.

In examining the circumstances of this particular case, this Board found that Emergency Board No. 214 was presented with a large number of issues including numerous work rule changes. Since the issuance of Emergency Board No. 214's Report, no progress had been made to narrow the issues or reduce the dispute. This Board believed that to inform the parties it would select final offers on only a package basis would impel the parties to prioritize their concerns and to present the Board with only those issues which were of most compelling interest to them. Whether or not the Railway Labor Act prescribes that final offers may be considered only on a package basis, we elected to do so under the circumstances of this case. The parties were so informed on December 1, 1988, prior to their submission of final offers.

Each party also asserted that it had the right to submit, as part of its final offer, issues which had not been dealt with in any of the prior stages of this dispute. The parties were in complete agreement on this single point. The Board, however, had serious reservations. First, the Board had a question as to whether such issues were within its jurisdiction. Are issues not previously raised properly a part of the dispute submitted by the President to this Board? Second, even if jurisdiction exists, there is an important policy at stake. The Railway Labor Act envisions an orderly process in which disputes are refined through the stages of direct negotiation, mediation, possible arbitration and Emergency Boards. The Board's position was that it is not appropriate to allow issues to leapfrog the prior stages of the Act and to surface, without prior notice or consideration, in a final offer. The Board communicated this view to the parties.

The final offers, when submitted, did not raise any novel issues, but did propose contracts of differing duration. The Organization proposed a term of 44 months. All prior negotiations in this case were based on a contract term of 36 months. The Board encouraged the parties to agree on duration and to submit offers which reflected that agreement, but the parties were resistant. The Organization feared that an interpretation of the law might prevent it from filing a future Section 6 Notice seeking

improvements for the period between an expired moratorium date and the future signing date of a contract. It therefore felt compelled to seek a longer contract to avoid any possibility of losing negotiation rights for that period of time. The Board did not agree that the Act would prevent filing a Section 6 Notice for that period of time. This Board is not, however, a court of law charged with deciding this issue, although it understands the Organization's concerns. Certainly nothing prevents the parties from signing a longer term agreement. The Board therefore determined that it would receive each party's final offer as submitted and would compare them fully and fairly on their respective merits.

## VI. THE FINAL OFFERS

### A. The Carrier's Final Offer

PATH's final offer consisted of the following elements:

1. Term: 36 months.
2. Wages: June 8, 1985 - 5% increase in all rates  
June 8, 1986 - 5% increase in all rates  
June 8, 1987 - 5% increase in all rates
3. Supplemental Pension Plan: Based on increases to a combination of salary and pension contribution so that, if the benefit were applied solely to salary, the increases would be about 5.2% per annum.
4. Holidays: The addition, prospectively, of Martin Luther King's Birthday as a holiday.
5. Major Medical: An increase from \$100,000 to \$500,000 in the major medical maximum per employee and eligible dependent at no cost to the employee.
6. Life Insurance: An increase in the present paid up life insurance coverage effective at age 65 from \$5,000 to \$10,000 or the option of obtaining an additional \$10,000 life insurance at the prevailing rate.
7. Letter Agreement: The October 26, 1982, letter concerning seven day operations, dental insurance premiums and withholding tax on retroactive payments will be renewed.



B. The Organization's Final Offer

The Organization's final offer consisted of the following elements:

1. Term: 44 months.
2. Wages: June 8, 1985 - 7%  
June 8, 1986 - 7%  
June 8, 1987 - 7%  
June 8, 1988 - 5%
3. Supplemental Pension Plan: PATH's annual contribution should be increased to \$316,638 per year beginning January 1, 1988.
4. Holidays: Addition of Martin Luther King's Birthday as a paid holiday effective in 1986.
5. Major Medical: Individual major medical lifetime maximum to be increased from \$100,000 to \$500,000, as recommended by Emergency Board No. 214.
6. Life Insurance: Life insurance coverage to be increased from \$5,000 to \$10,000, (with an alternate option of \$10,000 increased contributory insurance with the current \$5,000 non-contributory insurance), as recommended by Emergency Board No. 214.
7. Meal Allowance: Increased meal allowance to \$5 after ten hours of work and \$10 after fourteen hours of work, as recommended by Emergency Board No. 214.
8. Lead Mechanics: Parties are to address this matter with a view to finding the means to qualify more employees for use as needed as Lead Mechanics, whether through testing or other means, as recommended by Emergency Board No. 214.
9. Letters of Agreement: 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, as recommended by Emergency Board No. 214. Also, renewal of an 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, as recommended by Emergency Board No. 214.

10. Personal Days: One additional personal day with pay to become effective in January of 1989.

## VII. DISCUSSION

At the hearing before the NMB, following the issuance of the Report of Emergency Board No. 214, the Carrier asserted it would accept all of the recommendations of that Board, despite some reservations, as the basis of an immediate settlement. That, of course, did not take place, and the Carrier's final offer retreated from that position. The Carrier did not offer to renew, as proposed by Emergency Board No. 214, the October 26, 1982, letter regarding furloughs and contracting out of Car Cleaner's work. The Carrier also did not offer an improvement in the meal allowance as proposed by Emergency Board No. 214.

The Organization, in its final offer, dropped numerous rule change proposals and other demands and moved somewhat closer to Emergency Board No. 214's recommendations on wage and productivity increases. The Organization's final offer still differed substantially, however, from Emergency Board No. 214's recommendations in the area of wages, term of contract, the addition of a personal day and retroactivity of a holiday on Martin Luther King's Birthday.

A review of the evidence submitted revealed that PATH had reached eleven agreements with six other labor organizations. Each of those settlements was for 5% per year of a three-year contract. While the Organization had argued that Port Authority Police received substantially higher increases than 5%, Port Authority Police are not employees of PATH. Further, there is no comparability of the work performed by Police and Carmen. Evidence submitted by the Carrier indicates that wages to be earned by PATH Carmen under the Carrier's final offer compare favorably with wages received by Carmen on other commuter railroads in the New York metropolitan area. The Organization's argument that productivity gains entitled the Carmen to increased wages was not persuasive. The Board therefore found that, with respect to wages, the Carrier's final offer was the more reasonable.

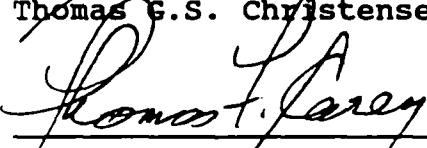
As to other issues, we note that the final offer of each party does not differ radically from the recommendations of Emergency Board No. 214. We consider those recommendations to have been sound ones. Accordingly, we assign controlling weight to the final position of each party on wages.

While our decision to select the most reasonable final offer on a package basis had the salutary effect of reducing the dispute to its most essential elements, it also places the Board in the position of appearing to endorse parts of the Carrier's offer with which the Board does not agree. The Board is disappointed, in particular, by the Carrier's failure to include renewal of the October 26, 1982, letter regarding furloughs and contracting out of Car Cleaner's work. Testimony revealed that this letter had been included in several prior contracts and was regularly renewed. This Board saw no reason to upset this history and would have strongly recommended the letter's renewal. Our concerns are assuaged by the knowledge that our selection of the best final offer will not automatically be imposed on the parties but will become the basis of further negotiations. We would encourage the Carrier to reconsider its position on this issue.

#### VIII. SELECTION OF THE MOST REASONABLE FINAL OFFER

Accordingly, on the basis of the foregoing considerations, this Emergency Board selects as most reasonable the final offer of the Carrier.

  
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Thomas G.S. Christensen, Chairman

  
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Thomas F. Carey, Member

  
\_\_\_\_\_  
Mark L. Kahn, Member

## EXECUTIVE ORDER

12655-

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").

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

Section 9A(e) 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, 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. Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. Maintaining Conditions. As provided by Section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties 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,  
November 7, 1988.