

PORT

to

THE PRESIDENT

by

EMERGENCY BOA

NO. 232

*SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13027
DATED NOVEMBER 15, 1996
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED*

*Investigation of disputes between Southeastern Pennsylvania Transportation Authority
and the Brotherhood of Locomotive Engineers*

(National Mediation Board Case No. A-12627)

*WASHINGTON, D.C.
FEBRUARY 27, 1997*

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I. CREATION OF THE EMERGENCY BOA

Emergency Board No. 232 (the Board) was established by the President pursuant to Section 9a of the Railway Labor Act, as amended, 45 U.S.C. §159a, and by Executive Order 13027, dated November 15, 1996. The Board was ordered to investigate, report its findings and select a final offer regarding unadjusted disputes between the Southeastern Pennsylvania Transportation Authority (SEPTA) and certain of its employees represented by the Brotherhood of Locomotive Engineers (BLE). A copy of the Executive Order is attached as Appendix A.

On November 15, 1995, the President appointed Arnold M. Zack, an arbitrator, of Boston, Massachusetts, as Chairman of the Board, and arbitrators Roberta L. Golick of Sudbury, Massachusetts and Shyam Das, of Philadelphia, Pennsylvania *as* members. The National Mediation Board appointed Joyce M. Klein, Esq. as Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. THE CARRIER

SEPTA is a regional agency created in 1964 to consolidate and operate privately owned transportation services in the City of Philadelphia and the four surrounding Pennsylvania counties of Bucks, Chester, Delaware and Montgomery. In 1983, pursuant to the Rail Passenger Services Act, as amended by the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. §590, SEPTA assumed operation of commuter rail lines previously operated by the Consolidated Rail Corporation (Conrail).

SEPTA operates a total of 2358 bus and rail vehicles over 129 routes. It carries an annual total of 292 million passengers and operates 71 million route miles annually. SEPTA employs approximately 10,000 employees. Approximately 8,100 of those employees are covered by Agreements with 17 Union and Organizations. SEPTA's Commuter Rail Division employs 1588 employees including the employees covered by the Agreement at issue in this proceeding.

SEPTA has four operating divisions: (1) the City Transit Division which provides bus, subway, trackless trolley and light rail service in the City of Philadelphia, (2) the Suburban Transit division which provides bus, trolley and third rail interurban service in the four suburban counties, (3) the Paratransit Division which uses independent contractors to provide services to physically impaired individuals in Philadelphia and the four suburban counties and (4) the Commuter Rail Division. SEPTA's Commuter Rail Division operates 346 rail cars on seven routes, all sharing three stations in Center City Philadelphia. The Commuter Rail Division also provides service to Wilmington, Delaware and Trenton, New Jersey. The Commuter Rail Division serves approximately eight percent of the total passengers carried by SEPTA. Every week, the Commuter Rail Division carries approximately 89,000 passengers. Its passenger service operates over a system covering approximately 282 miles of track.

B. THE ORGANIZATION

The General Committee of Adjustment of the Brotherhood of Locomotive Engineers (BLE) represents approximately 180 locomotive engineers employed by SEPTA. Approximately 25 percent

of SEPTA's engineers who transferred from Conrail continue to retain "flow back" rights to employment on Conrail.

THE HISTORY OF DISPUTES

In 1983 the dispute over the terms and conditions of the transfer of commuter rail operations from Conrail to SEPTA led to the creation of Emergency Board No. 196 and a subsequent 108-day strike before the parties reached settlement. Since that time, SEPTA and BLE have resolved their major disputes through negotiations and mediation without the assistance of an emergency board.

In this round of negotiations, in accordance with the Act, BLE served a Section 6 notice on July 20, 1993 for changes in rates of pay, rules and working conditions. The parties were unable to reach an agreement on the issues during negotiations. Consequently, on April 5, 1994, BLE filed an application for the NMB's mediation services. Despite mediation conducted by then NMB Chairwoman Magdalena G. Jacobsen and Mediators John J. Bavis, Samuel J. Cognata and Robert E. Cerjan, and intermittent negotiations by the parties, little progress at settling the dispute had been made by May of 1996. On May 31, 1996, the NMB proffered arbitration of the dispute under Section 5 of the Act. In the weeks that followed this proffer, NMB Member Jacobsen and Mediator Bavis made further attempts to assist the parties to resolve their dispute. However, their efforts were unsuccessful and, on June 18, 1996, BLE rejected the proffer of arbitration. On that same date, the NMB released the parties from mediation, establishing a thirty-day "cooling off" period.

President Clinton created Emergency Board No. 231 on July 18, 1996, and, on August 16, 1996, PEB No. 231 issued its report and recommendations to the President. When the recommendations of PEB No. 231 did not prompt a resolution of the disputes, NMB Member Magdalena G. Jacobsen conducted a public hearing on September 5, 1996 at which the parties discussed their reasons for not accepting the recommendations of PEB No. 231. Mediator Bavis made further attempts to assist the parties and conducted mediation in the public interest. At the end of the status quo period following the report and recommendations of PEB No. 231, SEPTA requested that President Clinton create a second emergency board to select final offers. On November 15, 1996, the President created this Board.

IV. ACTIVITIES OF THE EMERGENCY BO

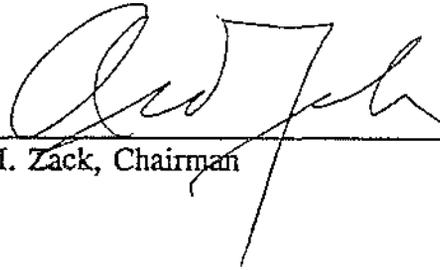
An organizational meeting was held with the parties on November 19, 1996, at which time procedural issues were discussed, ground rules were set and the schedule was determined. The parties agreed to incorporate the record before Emergency Board No. 231 into the record in this matter. Pursuant to the schedule set at the organizational meeting, Emergency Board Counsel Joyce Klein facilitated the parties' simultaneous exchange of final offers on December 14, 1996. On December 21, 1996, the Board convened formal proceedings in Philadelphia, Pennsylvania, at which it heard statements in support of the final offers. The Board held executive sessions on December 20, 1996 in Philadelphia, Pennsylvania and on December 30 and 31, 1996 in Washington DC. At the organizational meeting and at the formal hearings, the Emergency Board urged the parties to resolve their dispute and suggested the parties seek mediation assistance from

NMB Mediator Bavis. On January 8, 1997, Chairman Zack met with the parties to urge further efforts towards resolution. On January, 11, 1997, through the efforts of Mediator Bavis, the parties-reached a -tentative agreement to resolve their dispute. On January 13, and February 7, 1997, extensions was granted to afford the parties time to ratify their tentative agreement.

RT

This Emergency Board is pleased to report to the President that the parties' agreement, reached through the efforts of NMB Mediator John J. Bavis, has been ratified and the dispute has been resolved. We wish to express particular thanks to Joyce Klein for her assistance and counsel.

Respectfully,



Arnold M. Zack, Chairman

Roberta L. Golick, M b



Shyam Das, Member

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE
A DISPUTE BETWEEN THE SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY AND ITS EMPLOYEES REPRESENTED BY
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

A dispute exists between Southeastern Pennsylvania Transportation Authority and certain of its employees represented by the Brotherhood of Locomotive Engineers.

--The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 *U.S.C.* 151 et *seq.*) (the "Act")

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

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

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

Section 1. Establishment of the Board. There is established effective 12:01 a.m., eastern standard time, on November 16, 1956, 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.

Section 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.

Section 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.

Section 4. Records Maintenance. The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

Section 5. Expiration. The board shall terminate upon submission of the report provided for in section 2 of this order.

William J. Clinton