

REPORT
to
THE PRESIDENT
by
EMERGENCY BOARD
NO. 248

SUBMITTED PURSUANT TO

EXECUTIVE ORDER DATED JUNE 15, 2015 ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN NEW JERSEY TRANSIT RAIL AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION/IAM; BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS – TRANSPORTATION DIVISION (UTU); INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS; BROTHERHOOD OF RAILROAD SIGNALMEN; NATIONAL CONFERENCE OF FIREMEN & OILERS, SEIU; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS; AMERICAN TRAIN DISPATCHERS ASSOCIATION; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS; AND TRANSPORT WORKERS UNION OF AMERICA

AND SECTION 9a OF THE RAILWAY LABOR ACT, AS AMENDED

(National Mediation Board Case Nos. A-13737, A-13738, A-13739, A-13740, A-13749, A-13751, A-13752, A-13769, A-13772, A-13773, A-13774, A-13775, A-13776, A-13777, A-13779, A-13782)

WASHINGTON, D.C.
AUGUST 14, 2015

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The Honorable Barack Obama
President of the United States
The White House
Washington, D.C. 20500

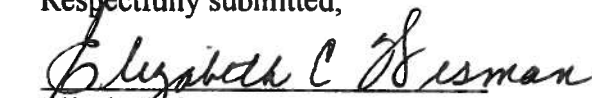
Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order dated July 15, 2015, you established an Emergency Board, effective 12:01 a.m., Eastern Daylight Time, July 16, 2015, to investigate a dispute between New Jersey Transit Rail and certain of its employees represented by the International Brotherhood of Electrical Workers; Transportation Communications International Union/IAM; Brotherhood of Locomotive Engineers & Trainmen; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (UTU); International Association of Machinists & Aerospace Workers; Brotherhood of Railroad Signalmen; National Conference of Firemen & Oilers, SEIU; International Association of Sheet Metal, Air, Rail and Transportation Workers; American Train Dispatchers Association; Brotherhood of Maintenance of Way Employees Division; International Brotherhood of Boilermakers; and Transport Workers Union of America.

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

The Board acknowledges with thanks the assistance of Norman L. Graber, Esq. and Andres Yoder, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings. The Board also thanks Connor M. Parker for his technical assistance.

Respectfully submitted,


Elizabeth C. Wesman, Chairman


Barbara C. Deinhardt, Member



Ann S. Kenis, Member

TABLE OF CONTENTS

I. CREATION OF THE EMERGENCY BOARD	1
II. PARTIES TO THE DISPUTE	1
III. HISTORY OF THE DISPUTE	3
IV. ACTIVITIES OF THE EMERGENCY BOARD.....	5
V. DISCUSSION AND RECOMMENDATIONS	5
VI. SUMMARY OF RECOMMENDATIONS	41
VII. CONCLUSION	43
APPENDIX A – EXECUTIVE ORDER.....	44

I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 248 (“PEB” or “Board”) was established by the President pursuant to Section 9a of the Railway Labor Act (“RLA”), as amended, 45 U.S.C. §151 *et seq.* including §159a, and by Executive Order dated July 15, 2015. The Board was created to investigate and report its findings and recommendations regarding a dispute between New Jersey Transit Rail (“NJT” or “Carrier”) and certain of its employees represented by certain unions (“Organizations”). A copy of the Executive Order is attached as Appendix A.

The President appointed Elizabeth C. Wesman, of Camas, Washington, as Chairman of the Board, and Barbara C. Deinhardt, of Brooklyn, New York, and Ann S. Kenis, of Valparaiso, Indiana, as Members. The National Mediation Board (“NMB”) appointed Norman L. Graber, Esq. and Andres Yoder, Esq. as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

New Jersey Transit Rail

The New Jersey Transit Corporation (“NJ Transit”) is the nation’s largest statewide public transportation provider. NJ Transit operates four subsidiary organizations: (1) NJT; (2) NJT Bus Operations, Inc. (“NJTBO”); (3) NJT Mercer, Inc. and (4) NJT Morris. NJ Transit provides 954,740 passenger trips a day on various transit modes, including 295,740 passenger trips provided by rail, 570,310 passenger trips provided by bus, and 81,953 passenger trips provided by light rail. NJ Transit’s operating expenses exceeded \$2.6 billion in 2014, which included expenses relating to Superstorm Sandy recovery. NJ Transit’s operating revenue was \$986.8 million in 2014, consisting of 46% fare box revenue, 45% other reimbursements, 6% other commercial revenue, and 3% State operating assistance.

NJT is the third largest commuter rail system in the country. The rail transit system now operated by NJT was formerly operated by Conrail until January 1, 1983. NJT's routes overlap with Amtrak and Metro-North Commuter Railroad ("Metro-North") and intersect with Long Island Rail Road ("LIRR") and, to a lesser degree, Southeastern Pennsylvania Transportation Authority ("SEPTA") in the southern part of the State. With a total ridership of 84 million passengers in 2014, NJT operates a complex rail network of passenger rail operations covering a large part of the State, the densest of which is in the northern half of the State with lines feeding into New York City and Hoboken. NJT operates 12 commuter rail lines covering over 530 route miles and 165 rail stations spread across an effective service area of 5,325 square miles, nearly two-thirds of the State. NJT connects major points in New Jersey, New York and Philadelphia.

The New Jersey Transit Rail Labor Coalition

The New Jersey Transit Rail Labor Coalition ("the Coalition") represents all 4,220 unionized rail employees at NJT. The Coalition consists of the following Organizations: International Brotherhood of Electrical Workers ("IBEW"), representing Electrical Workers and Supervisors; Transportation Communications International Union/IAM ("TCU/IAM"), representing Supervisors, Clericals, and Carmen; Brotherhood of Locomotive Engineers & Trainmen ("BLET"), representing Locomotive Engineers, Assistant Engineers, and Engineer Trainees; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (UTU) ("SMART" or "UTU"), representing Yardmasters and Conductors/Trainmen; International Association of Machinists & Aerospace Workers ("IAM"), representing Machinists; Brotherhood of Railroad Signalmen ("BRS"), representing Signalmen; National Conference of Firemen & Oilers, SEIU ("NCFO"), representing Laborers; International

Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART”), representing Railroad, Sheet Metal, Mechanical & Engineering Workers; American Train Dispatchers Association (“ATDA”), representing Train Dispatchers; Brotherhood of Maintenance of Way Employees Division (“BMWED”), representing Maintenance of Way Employees; International Brotherhood of Boilermakers (“IBB”), representing Boilermaker Welders; and Transport Workers Union of America (“TWU”), representing Carmen and Coach Cleaners. Although each of the separate bargaining units commenced negotiations with NJT on an individual basis, they subsequently joined together as a formal Coalition to bargain collectively with NJT.

III. HISTORY OF THE DISPUTE

The current collective bargaining Agreements between the Carrier and the various Organizations became amendable on July 1, 2011. On or about April 1, 2011, pursuant to Section 6 of the RLA, NJT and all of the Organizations duly served formal notices for changes in current rates of pay, rules and working conditions. The Parties were unable to resolve the issues in dispute in direct negotiations. Applications for mediation were filed with the NMB by IBEW, on behalf of Electrical Workers, and TCU/IAM in March 2014; by BLET in June 2014; by SMART – Transportation Division (UTU) in July 2014; by IAM, BRS, and NCFO in November 2014; by SMART and ATDA in December 2014; by IBEW, on behalf of Supervisors, and BMWED in January 2015; and by IBB and TWU in February 2015.

Following the applications for mediation, representatives of all Parties worked with the NMB mediators and with Members of the NMB in an effort to reach agreement. Various proposals for settlement were discussed, considered and rejected. On June 9 and 10, 2015, the NMB, in accordance with Section 5, First, of the RLA, urged NJT and the Organizations to enter

into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA (“proffer of arbitration”). The proffer of arbitration specified that failure to respond by 4:00 p.m., Eastern Daylight Time, on June 12, 2015 would be considered a rejection of the proffer. On June 11, 2015, NJT accepted the NMB’s proffer of arbitration, only in the event that every Organization also accepted the proffer. On June 12, 2015, TCU/IAM and BLET declined the NMB’s proffer of arbitration. None of the other Organizations responded to the proffer.

On June 15, 2015, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Thursday, July 16, 2015.

Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to the dispute is operated, may request the President to establish an Emergency Board. On June 30, 2015, in accordance with Section 9a of the RLA, the Coalition, on behalf of all the Organizations,¹ requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. On July 9, 2015, NJT also requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Thereafter, on July 15, 2015, the President created an Emergency Board, effective July 16, 2015.

¹ On June 30, 2015, TCU filed an individual request for the establishment of a PEB.

IV. ACTIVITIES OF THE EMERGENCY BOARD

Following a preliminary meeting by conference call, the Board issued an organizational letter on July 16, 2015, in which the ground rules for the Board's procedures were set forth. The ground rules set a deadline of July 22, 2015 for the parties to file pre-hearing submissions with the Board. Hearings on the dispute were held on July 27, 28, 29, and 30, 2015, in Newark, New Jersey. All parties were represented by counsel and had a full and fair opportunity to present oral and documentary evidence and argument.

The Chair met informally with the Coalition and NJT on July 30, 2015 in an attempt to facilitate a settlement of the disputes.

The Board met both in a series of telephonic Executive Sessions and in person in Chicago, Illinois to reach consensus regarding our recommendations and to finalize this Report.

V. DISCUSSION AND RECOMMENDATIONS

A. Issues in Dispute

This impasse concerns the following terms of the successor Agreements: 1) general wage increases; 2) contract duration; 3) health insurance contribution levels and plan design; 4) Conductor certification pay; 5) new hire 401(a) contributions; 6) ridership passes; and 7) work rules.

Proposals of the Coalition

The Coalition proposes the following general wage increases ("GWIs") during the term of a six-year Agreement:

Effective Date

General Wage Increase

1/1/2012	2.0%
7/1/2012	1.5%
1/1/2013	1.5%
7/1/2013	1.5%
1/1/2014	1.5%
7/1/2014	1.5%
1/1/2015	1.5%
7/1/2015	1.5%
1/1/2016	1.5%
7/1/2016	1.5%
1/1/2017	1.5%

The Coalition proposal increases wage rates by 17.0% over the six-year term. The proposal represents compounded GWIs of 18.4%, or 2.9% per year, without consideration of the cost impact of other matters in dispute. It is based upon the wage increases recommended by PEBs 244 and 245, which formed the basis for the wage settlements at LIRR and Metro-North, the two commuter rail transit systems operated by the New York Metropolitan Transit Authority (“MTA”). The Coalition is not seeking wage parity with employees at LIRR or Metro-North, who are the highest paid commuter rail employees in the nation. Rather, the Coalition seeks to preserve the relative position of NJT among the comparable commuter railroads in the Northeast, including LIRR, Metro-North, SEPTA and Massachusetts Bay Transportation Authority (“MBTA”).

In addition to being in line with industry norms in the region, the Coalition submits that its wage proposal is consistent with past wage settlements agreed to by NJT and the Organizations that comprise the Coalition. Over the seven rounds of bargaining since the creation of NJT, annual wage increases have averaged 3.2%, ranging from a low of 2.4% in the 2004 round to a high of 5.0% in the 1989 round. The Coalition contends that the Parties’ history

of successful wage negotiations averaging slightly more than 3.0% provides relevant guidance for the Board to consider as the general pace of wage change that has emerged at NJT.

The proposed contract duration of six years with an amendable date of June 30, 2017 is consistent with recent commuter rail settlements, the Coalition argues. By contrast, NJT's proposed 7½-year term is substantially longer than the contract terms currently found in the industry. The Coalition contends that its proposed six-year term provides a necessary break from bargaining for the Parties but also insures that NJT employees are able to return to the bargaining table without undue delay, which might otherwise cause them to slip further behind their peers in the commuter rail industry.

With regard to health care, the Coalition acknowledges the general trend toward increasing health insurance costs. Over the years, the Parties have addressed this issue through bargaining plan design changes and increased contribution rates to help contain those costs. The Coalition now proposes increasing employee health insurance premium contributions from a flat \$81.95 per month to a new formula based on 2% of straight time wages, the same as the contribution rate recently agreed to at LIRR and Metro-North and comparable to health insurance contribution rates adopted on other commuter rails. The increase would apply post-ratification and the increased contributions would be on a pre-tax basis, consistent with the current system.

Under the Coalition's proposal, higher paid employees would contribute more towards the cost of their health care. Based on proposed wage increases, employee contributions would range from \$60.52 to \$151.88 per month starting in January 2017. The average contribution would be \$107.03 per month, representing a 23.4% increase over current contribution rates. To

the Coalition, this proposal represents a fair and equitable balance that takes into account the rising costs of health care, but in a manner consistent with the Parties' bargaining history and industry practice. If the increased health insurance contributions are taken into account, the Coalition's proposed net wage increase is reduced to 18.2% or 2.8% per year.

The Coalition proposes certification pay in the amount of 20 minutes per shift at the straight time rate of pay for any employee working as a Conductor in passenger or non-passenger service who is required to obtain and maintain a Federal Railroad Administration ("FRA") Conductor Certification as a condition of employment. This includes any Assistant Conductor with FRA certification who, at the direction of the Carrier, assumes a Conductor position during a tour. This proposal is based on certification pay that already exists on the property for BLET-represented employees who hold similar certifications.

The Coalition opposes any modifications to new hire 401(a) contributions, particularly objecting to the creation of a two-tier system for current employees and those newly hired.

The Coalition urges that no changes be made with respect to ridership passes, in part because the subject was not fully bargained. Additionally, according to the Coalition, the pass is important to its members both for financial reasons and because parking is often difficult at the Carrier worksites.

The Coalition contends that any other work rule changes proposed by the Carrier were not bargained or discussed by the parties and should not be considered by the Board at this juncture.²

² In its proposal, the Coalition sought to adjust the benefit levels under existing Supplemental Sickness Benefit Plans. The Carrier agreed at the hearing to the Coalition's proposal. Accordingly, the issue has not been addressed by the Board.

Proposals of the Carrier

The Carrier seeks 7½-year Agreements for the period July 1, 2011 through December 31, 2018, with GWIs effective on the following dates:

<u>Effective Date</u>	<u>General Wage Increase</u>
1/1/2012	(\$1000 lump sum payment)
7/1/2013	1.5%
1/1/2014	1.9%
1/1/2015	1.0%
7/1/2015	1.0%
1/1/2016	1.5%
1/1/2017	1.0%
7/1/2017	1.5%
1/1/2018	1.0%

The Carrier proposes that the \$1000 lump sum payment be payable 60 days after ratification of the Agreements to those employees employed on July 1, 2012 and at the time of ratification. It further proposes that retroactivity be paid out in two installments in fiscal years 2016 (December 2015) and 2017 (December 2016). Over the 7½-year successor period through December 31, 2018, NJT proposes a total nominal 10.4% wage increase, representing compounded GWIs of 10.9% in addition to the \$1000 lump sum payment. The average annual wage increase under the proposal is 1.4%.

Central to the Carrier's wage proposal is its assertion that NJT's fragile and uncertain financial condition must drive the resolution of the impasse before the Board. The Carrier maintains that it could never agree to a recommendation that it was unable to fund. Such a recommendation would not represent an agreement the Parties might have fashioned themselves and would likely alter the bargaining relationship they have historically used to settle their

contracts. NJT insists that it has no funds available to pay the cost of the Coalition's proposed contract; it has no accumulated surplus or general reserve and no realistic prospects for obtaining the funds from the State. As it stands, in October NJT will implement a 9% fare increase and a small reduction in service to close a \$56 million dollar budget gap for fiscal year 2016.

According to the Carrier, adopting another fare increase to fund the Coalition's proposal would impose an unconscionable burden on the riding public.

Further, notwithstanding the Coalition's assertions to the contrary, the Carrier claims that the Parties have never modeled their contracts on those reached elsewhere. The Agreements at NJT have been based on the priorities of the Parties during each round of bargaining, consistent with the Carrier's financial constraints. Equally important, other recent public and private wage agreements have paid close attention to the moderation in the growth of the cost of living. Average wage growth has approximated 2% or less. NJT maintains that its offer is in the mainstream of public and private settlements reached since the Great Recession, with proposed wage growth over term allowing Coalition employees to suffer no loss in purchasing power.

The Carrier points out that its proposed 7½-year contract duration is structured to stay within the limits of affordability by delaying retroactivity payments as necessary. NJT submits that the relatively longer term of its proposed contract is appropriate and warranted in light of its financial constraints. In addition, its proposed contract duration provides greater certainty going forward than does the shorter term proposed by the Coalition.

With respect to health care, the Carrier proposes several changes to health insurance contribution levels and plan design. These changes are necessary, the Carrier contends, because health care costs have risen dramatically and will consume unsupportable levels of resources

without proper plan design and utilization controls. First, effective January 1, 2015, the bargaining unit employees would move to a four-tier system (family, couple, parent/child, single). This would provide employees with more flexibility in their choices for health insurance, the Carrier contends.

Second, under the Carrier proposal, effective the first day of the month following the date of ratification, the co-pay for in-network doctors' office visits, including specialists, would increase from \$5 to \$20. The emergency room co-pay would be increased from \$50 to \$75. With regard to prescription drugs, the existing co-insurance plan would change to a co-pay system, the maximum prescription drug co-pay would be changed from \$25 to \$35, and a mail delivery program would be required for maintenance medications.

Third, the Carrier proposes a change from the employee monthly health insurance premium contribution of \$81.95 currently paid by employees to contributions based on a percentage of the monthly premium cost. Effective January 1, 2015, the employee pre-tax monthly health insurance contribution would be 10% of the monthly premium cost. Each year, the percentage would increase by 2.5% until January 1, 2018, when employee pre-tax monthly health insurance contributions would be 20% of the monthly premium cost.

Finally, NJT proposes the addition of a new health insurance plan, called Direct Access. The Carrier contends that this proposed health insurance plan is necessary to keep costs down and to avoid the excise tax projected to be imposed under the Affordable Care Act ("ACA"). Employees hired on or after July 1, 2016 would be eligible to participate only in the new health plan or the current HMO and would pay the percentage of premium contribution rates proposed by the Carrier. Current employees in the PPO may elect inclusion in the new health insurance

plan and would continue to pay the current \$81.95 contribution, but, effective January 1, 2018, those employees would be required to pay 50% of the excise tax required under the ACA.

NJT does not oppose certification pay for UTU Conductors. In contrast to the Coalition's proposed 20-minute certification pay allowance, however, the Carrier proposes a \$10 per shift certification allowance paid to those employees certified as Conductors when performing service as Conductors. NJT argues that its proposal is consistent with recent industry trends and with the recommendations of PEBs 244 and 245.

The other item of economic value is the Carrier's proposed change to the 401(a) pension provisions under the collective bargaining Agreements. For employees hired on or after the date of ratification, NJT would contribute 1% of straight time earnings to employees' 401(a) accounts during their first year of employment, with additional contributions of 1% of straight time earnings each year, up to a maximum of 5% of straight time earnings. Currently, NJT contributes 5% of each employee's annual gross earnings, except for UTU employees hired after January 1, 2009, for whom it contributes 1% of gross earnings during their first year of employment, with an additional contribution of 1% of gross earnings each year up to a maximum of 5% of gross earnings.

The Carrier proposes to eliminate ridership passes or transportation passes. As an NJT witness testified, "management employees have lost their passes and employees at other State agencies have lost their passes. Hence, the reason it's in our demands." NJT Executive Director Ronnie Hakim testified that the proposal was motivated primarily by a State Comptroller report

criticizing “inappropriate perks” for State employees, but added that eliminating the free transit passes for Coalition employees would result in savings to the Carrier of about \$750,000 a year.

Finally, the Carrier proposes what it described as a “more detailed, more uniform anti-discrimination provision.” The substance of the provision was not discussed during the hearings. The Carrier also proposed mandatory direct deposit. Currently, 81% of employees have signed up for direct deposit. Although there would be no cost savings associated with the proposal, it would produce administrative efficiencies.

B. Historical Comparators

The Parties differ with respect to the relevant comparators that should be considered by the Board in support of their respective proposals.

The Coalition suggests that the proximate commuter railroads and their recent settlements should be the relevant comparators to guide the Board’s recommendations on the disputed issues. In particular, the Coalition points to the recommendations of PEBs 244 and 245 in the dispute between the majority of Organizations represented in this PEB proceeding and LIRR, and to the subsequent Memoranda of Agreement. Other comparators proposed by the Coalition include Metro-North, SEPTA and MBTA.³ In addition, the Coalition asks that the Board consider their prior individual agreements with NJT.

³ The Coalition proposes Chicago’s Northeast Illinois Regional Commuter Railroad (“NIRC/METRA”) as an additional comparator. NIRC/METRA’s current agreement is for a six-year term (January 1, 2013 through December 31, 2018). It did not provide for a wage increase for the first six months, but did provide a signing bonus of \$3000 per covered employee upon execution of the agreement. At mid-year (June, 2013) there would be a wage increase of 3.2%, and subsequent mid-year increases of 2.5%, 3.0%, 3.5% and 3.5%, or average wage increases of 3.1% per year (18.7% total). The agreement also provided for increased health insurance contributions equaling a net increase of 2.6% annually. That increase is based upon a starting contribution of \$100 per month as of 2013, increasing to \$125, \$150, \$175, \$200, and \$250 until January 1, 2019, when the agreement becomes amendable.

Long Island Rail Road

The Memoranda of Understanding (“MOU”) between LIRR and the various Organizations provided for a 6½-year agreement. General wage increases were in the amount of 2.0% paid in December of the first year (2010), with 1.5% increases provided on June 16 and December 16 of all subsequent years, for a total percentage increase of 17% or an average annual un compounded increase of 2.6%. The total compounded increase was 18.38%, resulting in an annual compounded net increase of 2.82%. Certification pay for LIRR Conductors was \$10 per full shift worked upon attainment of FRA certification. In addition, as of the date of ratification, employees contributed to the cost of their health insurance for the first time. Contributions were set at 2% of straight time wages. The PEBs had recommended a six-year agreement with compounded GWIs of 18.3%, offset by new health insurance contributions, resulting in an average annual compounded net increase of 2.47%.

Metro-North Commuter Railroad

On January 14, 2015, Metro-North followed the LIRR pattern in reaching an agreement for a 6½-year term. The total nominal wage increase over term was 18.4% or an annual un compounded increase of 2.6%. An employee health insurance contribution of 2% of straight time earnings up to 40 hours a week was established as of ratification.

Southeastern Pennsylvania Transportation Authority

The current SEPTA/TCU-Carmen Agreement, which appears to be typical of the other current SEPTA rail employee agreements, provided for a 5% increase in wages over the 30-month term of the agreement. There was no increase in the employees’ health insurance contributions. The predecessor agreement beginning in 2009 provided for general wage

increases totaling 12% over a five-year term or 2.3% per year. Altogether, the wage change over the 7½-year period was 2.2% per year.

Massachusetts Bay Transportation Authority

The parties reached an agreement for a five-year term with a three-year extension – from July, 2008 to July, 2016. Over the eight-year period, the net wage increase was 2.9% per year, after taking into account increases in health insurance contributions.

Prior NJT Agreements

With respect to internal comparators at NJT, there are no negotiated agreements within the relevant time period. Agreements with every Organization became amendable on July 1, 2011 and remain open. However, the Coalition maintains that there is probative historical data showing the general pattern of wage adjustments since 1983, when NJT assumed operation of the commuter railroad after Conrail was divested of its authority. Following the initial contracts on the property, which were negotiated pursuant to the recommendations of PEB 197, all subsequent collective bargaining has resulted in successful settlements without a strike or intervention by an Emergency Board. Agreements over the history of bargaining have resulted in annual wage increases averaging 3.2%.

<u>Bargaining Round</u>	<u>Average Annual Wage Increases</u>
January 1983	2.6%
July 1986	3.3%
July 1989	5.0%
July 1993	3.0%
July 1997	3.2%
July 2001	3.3%
July 2004	2.4%
MOU 2010	3.2%

The Carrier disputes the validity of comparing its wages and benefits to those of other commuter rail lines. Rather, it contends that the more appropriate comparators for this Board to consider are the most recent agreements between the State of New Jersey and its various unions. Specifically, it points to several agreements between New Jersey Turnpike Authority (“NJTA”) and its major unions, which provided for far less generous wage increases than the Coalition’s suggested comparators. For example, the NJTA/International Brotherhood of Teamsters (“IBT”) Local 97 Memorandum of Agreement provided for two years with 0% increases, followed by yearly (November 1, 2013 through November 1, 2016) increases of 1.0%, 1.75%, 1.9% and 1.9% respectively. That agreement also provided that free commutation would not be offered to any employee entering the bargaining unit on or after May 1, 2015.

A similar Memorandum of Agreement between the NJTA and AFSCME 3914 provided for identical wage increases of 0% and 0% in the first two years of the agreement and, for the years from July 1, 2013 through July 1, 2016, wage increases identical to those cited in the NJTA/IBT contract, above. In addition, that agreement derived its health insurance contribution provision from New Jersey State P.L. 2011 Chapter 78. Toll-free commutation to members of the bargaining unit was eliminated as of December 31, 2015.

NJTA’s agreement with Local 193 of the International Federation of Professional and Technical Engineers provided for 0% wage increases in 2011 and 2012, followed by a 1% increase in 2013 and a 1.75% increase in 2014. In that agreement the health insurance contributions were also derived from State law, as described above, and the Authority removed toll-free commutation from all employees under the agreement as of January 1, 2014.

The Carrier suggests that another fair comparator is the current agreement between the State of New Jersey and the Communications Workers of America. In that agreement, employees received a 1% wage increase as of July 1, 2013 and a 1.75% wage increase on July 1, 2014. For this and all other State agreements, the employee health insurance contribution required by P.L. 2011 Chapter 78 is calculated as a percentage of premium or a percentage of salary, whichever is greater, and, according to the law, increases both with salary level and from the first to the fourth year of the contract.

C. Changes in the Cost of Living

The Parties' presentations addressed various cost of living measures. The Coalition urges that we look at the rise in the cost of living compared with negotiated wage increases since December 1982 when NJT was created after the breakup of Conrail. According to the Coalition, between December 1982 and June 2011, the BLS Employment Cost Index (ECI) rose 150.1% percent while Coalition wages rose 134.4%. By March 2015 (the last date for which data is available), the ECI had risen 169.5% since 1982 and, under the Coalition wage proposal, wages would have risen 161.4%. The Coalition also asks the Board to consider that its proposed GWIs do little more than maintain employees' real pay. The employees' real wages on the July 2011 amendable date were 94% of the level 29 years earlier in December 1982. Under the Coalition's proposal, the real wage would climb by May 2015 to a level that is .5% percent above the 1982 level, a modest request by any measure. Equally important, the Coalition asserts that its proposed wage increases are aligned with broader economic trends in which wage increases are averaging 3% per year throughout the U.S. economy. For example, the ECI reports that for the

12-month period ending March 2015, wages rose by 3% percent in the unionized sector of service-producing industries, including transportation.

The Carrier, on the other hand, maintains that its wage proposal allows the employees to suffer no loss in purchasing power. It focuses on the period between June 2001, just before a wage increase went into effect, and June 2011. Based on the ECI for that period, the Carrier concludes that NJT wages have increased by 33.8%, while wages private industry in the Northeast United States increased by 30.4%. Its proposed 10.4% nominal increase over 7½ years is equivalent to the change in CPI since these agreements became amendable, coupled with the consensus forecast for inflation over the remaining term, according to the Carrier.

The Carrier also argues that the Coalition members are fairly compensated. In 2013, the annual median cash compensation received by the employees represented by the Coalition was \$74,543. The median earnings for New Jersey residents age 25 and older, in contrast, were \$45,142. In addition, the NJT employees receive excellent health insurance benefits for which they contribute very little; NJT provides a 401(a) plan to which the Carrier contributes 5% of all earnings on their behalf, with no contribution coming from the employees, which supplements the already generous Railroad Retirement Act benefits; and they have generous paid leave time.

The Coalition, in response, argues that the mean earnings (contrasted with the median earnings) of all NJ residents were \$74,442 in 2013. The Coalition also claims that the appropriate comparison is to straight time earnings, not gross earnings, including overtime. Using this figure, average earnings of NJT employees are about \$57,000. Further, wage and earnings comparisons are meaningless in the absence of comparability in job content, including skill, qualifications and working conditions, the Coalition asserts. A railroad occupation has little in

common with most occupations in New Jersey and thus the appropriate comparison is to comparable railroad jobs in the Northeast.

D. Financial Condition of NJT

The Carrier insists that while the Coalition wage proposal is “understandable,” it is not affordable. Executive Director Hakim testified about the sources of NJT funding, which she described as a three-legged stool — fares, federal government dollars and State subsidies. Unlike LIRR and Metro-North, cited as comparators by the Coalition, NJT has no dedicated source of State funding. All such funding is discretionary and subject to an annual legislative and executive appropriations process. The Carrier notes that general State subsidies decreased from \$348.2 million in FY2009 to \$33.2 million in FY2016, a decrease of more than 95%.

According to NJT witnesses, the shortfall was “backfilled” by a number of “non-recurring” or “one-shot” sources of funds, particularly the Clean Energy Fund (\$33 million in FY2015; \$62 million in FY2016) and the NJ Turnpike Authority (\$295 million a year). According to NJT, there has been no replacement as yet identified for these non-recurring funds.

NJT concedes that the amount of State discretionary appropriations — the amount of money in the State subsidy bucket, including the Clean Energy Fund and NJ Turnpike Authority appropriations — has in fact increased by about \$48 million over the past three years. The Carrier’s position is that appropriations have not increased sufficiently to offset increases in health insurance costs, which have increased by \$93 million over the same period of time.

If the Coalition proposal were implemented, the Carrier argues, it would have no choice but to impose service cuts and/or another fare increase, which, overlaid on the recent 9% increase and an earlier 22% increase in 2010, would be intolerable to the riding public. This dire

situation would be exacerbated by any requirement to pay retroactive increases in a fiscal year for which the budget has already been set.

The Carrier also points to the significant harm to the State's economy caused by Superstorm Sandy and the Great Recession. The State was forced to freeze salaries of public employees, reduce services and mandate increases in premium sharing for health insurance benefits. Even with these austerity measures, and in large part because of substantial pension shortfalls, New Jersey's credit rating now ranks 49th out of the 50 states.

The Carrier asserts that past settlements have always been respectful of its financial ability to pay. The lack of dedicated funding has been stressed and recognized as an important distinction between NJT and all other commuter rail lines, including but not limited to LIRR.

E. The Board's Recommendations

In assessing the Parties' respective positions and in reaching its recommendations, the Board has sought constructive solutions rather than the mere restatement of the previously fixed positions of the Parties and has explored paths that may develop into avenues for settlement. Seeking to find possible grounds for adjustment of this dispute, we have been mindful of the current fiscal climate and the funding challenges faced by the Carrier and how those factors must appropriately be balanced with the reasonable expectations of the workers who occupy a major role in the successful operation of the rail transit system at NJT. We have given careful consideration to each issue on its own merits as well as in its relative position within a total contract. Our goal has been to provide recommendations that can provide a framework for a voluntary settlement between the Parties that will form a durable collective bargaining relationship going forward.

The Parties disagree on whether there is a pattern of wages that the Board should follow. We are inclined to agree with the Carrier when it argues that the wage agreements at NJT do not follow in lockstep with LIRR, Metro-North nor with any other commuter railroad. The wage patterns established at these other carriers do not dictate the wages negotiated at NJT. Nevertheless, it cannot be denied that over the years wage settlements at NJT have closely followed the general trend of wage changes at the other large commuter railroads in the region, including LIRR, Metro-North, SEPTA and MBTA. Comparisons are instructive, at the very least because they provide relevant evidence of industry standards and of what other carriers and organizations engaging in similar commuter rail service within NJT's proximate geographical area deem to be fair and equitable settlements.

These commuter railroad settlements provide guidance from two important standpoints. First, the most recently negotiated agreements suggest that the Board's wage recommendations are consistent with the average annual un compounded wage increases at the four other large commuter rail carriers. LIRR and Metro-North negotiated agreements with a 2.6% nominal annual wage increase over term. SEPTA's wage increases over two agreements from 2009 through 2017 averaged a nominal 2.2% over the 7.6-year period. The two MBTA agreements encompassing an eight-year period from 2008 to 2016 resulted in average wage increases of 3.1%. The average annual wage increases of all four of these commuter railroads is 2.6%, the same nominal wage rate increase recommended by the Board.

Second, it is undisputed that NJT has historically ranked in the middle of the five Northeast commuter rail carriers when top step base hourly rates are compared. The historical data shows that LIRR and Metro-North have ranked first and second, respectively, with regard to

wage rates for benchmark job titles that broadly reflect the range of commuter rail workers represented by the unions participating in the Coalition. Put a bit differently, employees at LIRR and Metro-North are paid wages that are higher than NJT, SEPTA and MBTA. Employees at SEPTA and MBTA are paid top step base hourly rates that are lower than the comparable hourly rates at NJT. Thus, in the ranking, NJT is third. The Board's recommended 2.6% nominal wage increase maintains NJT's relative wage standing among these comparable commuter railroads.

The Carrier is unpersuasive when it argues that wages should be patterned on agreements covering New Jersey State employees. Historically, PEBs have not accorded significant weight to state employee agreements, with good reason. The points of comparison between those contracts and commuter rail agreements typically show that differences far outweigh similarities. Indeed, PEB 245 stated, "State employees agreements have virtually never constituted valid comparator[s] or patterns for commuter railroads. The labor markets, skills, history, and operations are completely different."

This sound reasoning holds true in the State of New Jersey, where State employee unions negotiate wage increases and other benefits, but pensions and health care are statutory and beyond the scope of bargaining. Terms unilaterally set by the State cannot guide the Board in its effort to render recommendations that will lead to bilateral agreement. Our conclusion in this regard is bolstered by the historical evidence that shows that State wages and benefits have not corresponded to the wages and benefits negotiated by the Parties. As noted by the Coalition, historically State employee agreements have resulted in wage increases generally higher than those negotiated between NJT and its Organizations. There is no basis for the Board to give

weight to State worker agreements absent any evidence that those agreements have played comparator roles in the making of NJT agreements.

The Carrier's related argument is that 2% wage increases "resonate" in the State of New Jersey, where the impact of the Great Recession has restrained general wage growth. The Carrier asserts that growth in the cost of living has remained modest and is not predicted to exceed 2%. Consistent with that level of growth, recent wage increases in private industry, as well as in state and local government, have generally not exceeded that benchmark percentage. Moreover, in 2011, the State of New Jersey adopted a 2% annual cap on wage increases included in interest arbitration awards for public safety unions. NJT insists that it cannot agree to wage increases that would far exceed what the average worker utilizing its commuter rails has received.

Wage and earnings comparisons are difficult in the absence of comparability in job content – including skill, qualifications and working conditions. The aggregate data cited by the Carrier reflects all occupations in New Jersey, including union-represented and non-represented employees. Those wages may or may not have been the product of bargaining and therefore they carry little weight in determining fair and appropriate wages for the Coalition employees. More importantly, perhaps, the Carrier's proposal is far less than the 2% figure it relies upon as resonant and representative of the growth of the cost of living and wages in the State of New Jersey. The Carrier proposes a 1.4% nominal wage increase, which is further reduced by the employee health insurance contributions it seeks in this proceeding. When those contributions are factored in, the Carrier's proposed net increase in wages is 0.6%, far outside the realm of any comparative analysis.

Against the backdrop of the Carrier's argument for a 0.6% net increase, the Board is asked to consider the true "elephant in the room." From the Carrier's perspective, its fiscal uncertainty requires adoption of its wage proposal. We are mindful of the financial constraints in which NJT finds itself. We do not question its assertions that there are no dedicated sources of funding. We do not doubt that its budget is tight, its expenses high and rising and its sources of revenue uncertain. We accept NJT's representation that no clear replacement of assets diverted to NJT from the NJ Turnpike Authority and the State Clean Energy Fund has yet been identified, that it is unknown how long the shift from general fund State subsidies to the Clean Energy Fund can be sustained and that funding from the NJ Turnpike Authority may not be available in future years.

These circumstances are not new, however. There has always been a lack of dedicated funds, but NJT has always been able to secure funds adequate to pay industry standards. There has always been annual uncertainty. As Executive Director Hakim explained, "[The appropriations process] is a variable process without predictability. ...[T]he only thing predictable about it is that you are never appropriated all of your funding needs."

And even those funding needs are unpredictable. As NJT set forth in its Financial Outlook presentation in August, 2014, fuel volatility could cause prices to skyrocket, Northeast Corridor Commission findings could triple Amtrak-related costs, unanticipated storms could significantly increase costs, and, as a result, NJT may experience a funding shortfall.

We conclude, however, and representatives from NJT conceded, that some (albeit as yet unknown) amount of State subsidies will almost certainly continue to be available for NJT operations. There is no way NJT could continue to operate the commuter rail operations if the

only funds coming from the State were at or near the \$33 million appropriated in 2016. According to the evidence presented, for instance, by agreement, the NJ Turnpike Authority funds will continue through FY2016, covering at least five years of the current agreement. Further, NJT is in discussions with the NJ Turnpike Authority regarding future funding and it apparently “expect[s] that a new, revised agreement will be entered into well before the start of fiscal year 2017.”

Thus, in formulating its own proposal and in implementing a fare increase sufficient to cover its proposal (but not the Coalition’s), NJT assumed a certain level of State funding — whether from the general funds, the Turnpike Authority and/or the Clean Energy Fund. It further assumed the ability to transfer to its operating budget to cover preventative maintenance a certain portion of the New Jersey Transportation Trust Fund monies and federal grants allotted for capital expenses. There was no rationale offered by NJT for using the assumptions it did rather than different assumptions that would be sufficient to fund the Coalition proposal or some compromise proposal. Nor was there explanation forthcoming from the Carrier as to why it set aside monetary place holders for fiscal years 2015 and 2016, but not for fiscal years 2012, 2013 or 2014, to cover retroactive pay adjustments.

It is not within the authority nor the ability of this PEB to render certain what is now uncertain. As budgetary uncertainties are largely the product of public policy decisions both past and present, the level of funding in the future will be determined by the political process, as it has been in the past. As was stated by PEB 234,

Our obligation is to recommend a fair and equitable package of compensation for maintenance of way employees, and then leave to the funding authorities the issue of whether or not they wish to fund that package. We cannot, in good conscience,

shirk that responsibility to the parties and to the collective bargaining process by surrendering to what might be characterized as political expediency.

Thus, our recommendations are formulated on the need to craft a fair and equitable settlement, taking into account NJT's limited resources, but not making assumptions about what decisions either NJT or the New Jersey legislative and executive branches will make about how, or whether, to fund such a settlement. When viewed as a whole, the Board's recommended wage and benefit adjustments provide for sensible growth in real wages that is not significantly in excess of the projected rate of inflation and take into account the competing interests of the parties. While we fully understand the Carrier's funding challenges, it is our belief that the recommended wage agreement should provide a fair and appropriate basis for the parties to resume negotiations and reach agreement.

We believe our recommended package provides an opportunity for the Carrier to successfully approach and perhaps achieve its cost objectives. By contrast, the Carrier's wage proposals, if adopted, would almost certainly result in the decrease of real wages for Coalition employees. It is important to emphasize that the Parties have never agreed to such a circumstance in the history of their bargaining since 1983, over seven bargaining cycles. During this time period, voluntary settlements on NJT property have been reached and annual wages have increased an average of 3.2%, notwithstanding the ups and downs of the economy and the Carrier's ongoing budgetary constraints and uncertainties.

We have also considered the Carrier's back pay liability. The recommended wage increases have been structured to lessen the impact of retroactivity by reducing the percentage wage increases during the first years of the Agreement. In addition, the recommended increase in health insurance contributions will partially offset the Carrier's overall costs and retroactivity

obligations. However, NJT’s funding uncertainties and its decision not to set aside monetary place holders for fiscal years 2012, 2013 and 2014 do not relieve the Board of its responsibility to recommend wage increases otherwise shown to be appropriate.

General Wage Increases

After full consideration of all the evidence and arguments submitted by the parties, the Board recommends the following GWIs as a reasonable basis for the Parties’ Agreements:

<u>Effective Date</u>	<u>Wage Increase</u>	<u>Compounded Increase⁴</u>
07/01/11	0.0%	0.00%
01/01/12	0.5%	0.50%
07/01/12	1.0%	1.50%
01/01/13	1.0%	2.52%
07/01/13	1.5%	4.06%
01/01/14	1.5%	5.62%
07/01/14	1.5%	7.20%
01/01/15	1.5%	8.81%
07/01/15	1.5%	10.44%
01/01/16	1.5%	12.10%
07/01/16	2.0%	14.34%
01/01/17	1.5%	16.06%
07/01/17	2.0%	18.38%
01/01/18	Amendable	

Agreements based on this recommendation, which would become amendable on January 1, 2018, would increase gross wages over their terms by 17%, uncompounded. The average uncompounded annual wage increase would be 2.6%. The recommended settlement provides for a compounded increase of 18.38% (2.82% per year), before taking into account increased

⁴ All calculations have been rounded to the nearest hundredth of a percent.

contributions toward health insurance and adjusting for other economic matters in dispute, including certification pay and pension modifications.

Contract Duration

After giving due consideration to the Coalition's proposed contract duration of six years and the Carrier's 7½-year term proposal, we recommend the above-referenced wage changes take place over a 6½-year term. NJT's proposed term is substantially longer than the contract terms currently found in the industry. At the same time, the Coalition's reliance on the six-year term recommended by PEBs 244 and 245 must be viewed within the context of the agreements subsequently reached by the parties at LIRR and Metro-North, each of which included a term of 6½ years. The Board recognizes that the parties at LIRR and Metro-North may have accepted a particular pattern and duration of wage increases based on the bargaining that took place after the PEB recommendations were issued. Nevertheless, the fact that two comparators in the Northeast region of the United States accepted a settlement duration of 6½ years is a fact of which the Board must take cognizance. Here, too, a 6½-year term strikes an appropriate balance for NJT and the Coalition by providing a reasonable period of fiscal certainty and labor peace while at the same time allowing the parties to timely commence bargaining for successor agreements.

Health Insurance Contribution Levels and Plan Design

As the Carrier pointed out during its presentation, health care costs for hospital and physicians visits have continually outstripped the rate of inflation. Costs for prescription pharmaceuticals have risen even more rapidly than other health care costs. According to a Forbes study, since 2005, health care inflation has outpaced the Consumer Price Index in every

year except 2008.⁵ The Carrier contends that the Board should look to the other New Jersey State collective agreements to find a reasonable recommendation for the contributions to be made by the Coalition's membership. In particular the Carrier looks to New Jersey P.L. 2011 Chapter 78, which removed the right of State employees to negotiate over pension plans and health insurance contributions, while at the same time legislating mandatory health insurance premium contributions by those employees.

However, NJ Transit bus and rail employees are not included under Chapter 78 and, as discussed above, we do not find that the State agreements provide a valid comparator. In the Carrier's most recent negotiations with the NJ Transit bus employees, represented by the Amalgamated Transit Union ("ATU"), the parties' tentative agreement provided for employee payment of 15% of the cost of health insurance costs. The Board notes that that tentative agreement has yet to be ratified by the ATU membership.

Just prior to the hearing in PEB 248, the Carrier proposed migration to a "Direct Access" health insurance plan, to replace the current PPO plan. The Coalition protested that the issue of a proposed "new health insurance plan" had not been discussed, let alone properly bargained over, throughout the Parties' lengthy negotiations. The Board agrees with the Coalition on this point. The impact on employees of the Carrier's proposed "Direct Access" plan is sufficiently significant that it should form the basis for the Parties' continued negotiations and thus we make no recommendations regarding its adoption. Nor can we address the as-yet-uncertain excise tax possibly attaching to health care plans under the ACA. This, too, is most appropriately bargained between the parties after the exchange of additional information. We note that under

⁵ <http://www.forbes.com/sites/mikepatton/2015/06/29/u-s-health-care-costs-rise-faster-than-inflation/>

our recommendation, the Agreements would become amendable before any excise tax would attach.

We do address, however, the more actively bargained questions of employee contributions to health insurance premiums and increasing co-pays. There can be no doubt that the cost of health insurance continues to rise. The Coalition members should share some of this increasing burden. As noted above, the Carrier has proposed a change to employees' contributions to health insurance benefits as an ascending percentage of premium costs, while the Coalition proposes that contributions be set at 2% of an employee's straight time earnings up to 40 hours per week.

For several reasons, the Board recommends that the employee contributions be set as a percentage of straight time pay, rather than as a percentage of health insurance premiums irrespective of employee wage levels. Under the Carrier proposal, employees earning lower base wages would pay a greater percentage of their income toward health benefits than would employees earning higher base wages. The effect is regressive, in that it places a disproportionately higher burden on lower-wage employees.

For example, a contribution of \$300 per month for an employee earning \$3000 straight time per month constitutes an outlay of 10% of his or her salary. That same dollar contribution for an employee earning \$6000 per month constitutes only 5% of his or her salary. With a rough calculation, the employee earning \$3000 per month (or \$36,000 per year) has \$32,400 to spend on housing, food and other expenses, after deducting the health insurance contribution. The employee earning \$6000 per month (\$72,000) per year has \$68,400 to spend. Thus, the employee originally earning exactly twice as much as the lower earning employee has more than

twice as much remaining income as the lower earning employee after paying his or her health insurance contribution. The Board does not view this as an equitable result.

Moreover, as the Coalition correctly pointed out, linking employee contributions to premium costs, with no proposed cap, raises the specter of potentially open-ended increases in employee costs over which the Organizations would have no control. If the Carrier's proposal regarding both wage increases and contributions to health insurance were implemented, the average health insurance contribution on January 1, 2019, the date the proposed Agreements would become amendable, would have risen from \$81.95 per employee per month to \$459.54 (or even more, if premiums rose more rapidly than anticipated). The result of such an increase would be that, on average, employees' gross wages would increase 10.9% over the term of the Agreement (1.4% per year) and their wages net of their health insurance contributions would have increased only 4.3% over the term of the Agreement (0.6% annually). Thus, over the term of the Agreement, absent any other contributions the employees might make out of wages, their overall net earnings over the proposed 7½-year term would increase less than 1% annually.

Again, this increase in health insurance benefits would fall far more heavily upon lower wage employees and on employees with family coverage. For example, a Station Attendant, participating in a family PPO plan, would suffer a *decrease* in wages, net of health insurance contributions, of 1.2% over the life of the Agreement, under the Carrier's proposal. The Board cannot condone such a clearly regressive result.

Finally, the Carrier's proposal falls outside the current health insurance contribution trends in the industry. To illustrate, the 2015 health insurance contribution levels for the comparator commuter railroad carriers are as follows:

LIRR	2.0% of straight time rate times 40 hours per week
Metro-North	2.0% of straight time rate times 40 hours per week
SEPTA	1.0% of straight time rate times 40 hours per week
MBTA	\$100 per month offset by \$10 per day allowance.

The Board concludes that contributions to health insurance are more appropriately assessed based on a percentage of straight time pay. Currently, at the level of \$81.95 per month, employees contribute an average of 1.8% of their base salary to the cost of health insurance. In the interest of fairness and sharing the burden of increasing health care costs, the Board recommends that the employee contributions to health insurance be increased to 2.0% of base wages commencing January 1, 2012, which will serve as a partial offset to back pay. Commencing January 1, 2017, health insurance contributions will increase to 2.5% of base pay.

The 2.0% contribution represents a 0.2% increase in the average monthly contribution currently made by employees. We believe most employees reasonably expect some increase in the cost of their health insurance contribution given the exponential rise of health care costs. Moreover, these recommendations are consistent with commuter rail industry trends and reflect the fact that cost sharing in the railroad industry has been increasing with each bargaining round as costs continue to escalate.

Therefore, we recommend increases to employee health insurance contributions as follows:

<u>Effective Date</u>	<u>Health Ins. Contribution</u>
07/01/11	1.80%
01/01/12	2.00%
07/01/12	2.00%
01/01/13	2.00%
07/01/13	2.00%
01/01/14	2.00%
07/01/14	2.00%
01/01/15	2.00%
07/01/15	2.00%
01/01/16	2.00%
07/01/16	2.00%
01/01/17	2.50%
07/01/17	2.50%
01/01/18	Amendable

Contributions should continue to be on a pre-tax basis. While the Coalition may argue that this constitutes a more than 25% increase in contributions, we note that the agreements between LIRR and its constituent organizations included an increase from a previous contribution of 0% to a contribution of 2% of straight time wages. Our recommendation would move the employees' contributions from 1.8% to 2.5%, which we do not consider an unwarranted increase. Moreover, it impacts all employees' wages proportionately, rather than regressively. Monthly health insurance contributions would rise gradually along with wage rate increases during the 6½-year term of the Agreements. As of the January 1, 2018 amendable date, the average monthly health insurance contribution would have increased from \$81.95 to approximately \$134.00.

The increased contributions for health insurance recommended by the Board would result in a net un compounded wage increase of 16.3% over 6½ years, with an average un compounded

annual rate of 2.5%. The net increases on a compounded basis would be 17.54%, for an average annual compound increase of 2.69%.

<u>Effective Date</u>	<u>GWI Net of Contribution</u>	<u>Compounded GWI Net of Contribution⁶</u>
07/01/11	0.0%	0.00%
01/01/12	0.3%	0.30%
07/01/12	1.0%	1.30%
01/01/13	1.0%	2.31%
07/01/13	1.5%	3.84%
01/01/14	1.5%	5.40%
07/01/14	1.5%	6.98%
01/01/15	1.5%	8.58%
07/01/15	1.5%	10.21%
01/01/16	1.5%	11.86%
07/01/16	2.0%	14.10%
01/01/17	1.0%	15.24%
07/01/17	2.0%	17.54%
01/01/18	Amendable	

In order further to defray the Carrier's costs for health insurance, the Board recommends that co-pays for in-network doctors' visits should increase, as should co-pays for use of emergency room services. Currently, employee co-pays for doctors' visits are \$5. The national average co-pay for doctors' visits is estimated at approximately \$22 for employees working for

⁶ All calculations have been rounded to the nearest hundredth of a percent.

employers with 1000 or more employees.⁷ These national trends are reflected at the other commuter rail systems in the region, where co-pays have increased and are generally higher than at NJT.

Carrier	Primary Care Office Visit Co-Pay	Specialist Visit Co-Pay	Emergency Room Visit Co-Pay	Generic	Rx Drug Co-Pays Preferred	Non-Preferred
NJT	\$5	\$5	10% coinsurance after \$50 co-pay	10% coinsurance (\$25 max)	20% coinsurance (\$25 max)	30% coinsurance (\$25 max)
LIRR	\$20	\$20	\$70	\$5	\$25	\$45
Metro-North	\$20	\$20	\$70	\$5	\$25	\$45
SEPTA	\$5	\$5	\$35	\$5	\$10	\$20
MBTA	\$25	\$35	\$100	\$10	\$20	\$40

A gradual increase in employee co-pays is reasonable and appropriate. We recommend that co-pays for in-network doctors' visits, both primary care and specialists, increase to \$10 on January 1, 2016 and to \$15 on January 1, 2017. In addition we recommend, effective January 1, 2016, an increase in employee co-pays for emergency room visits to \$70. Based on the Carrier's projections, these recommended changes would result in significant savings to the Carrier, over \$1 million per year. We do not have sufficient information to make a

⁷ http://meps.ahrq.gov/mepsweb/data_files/publications/st427/stat427.pdf

recommendation regarding the proposed change from a co-insurance model to a co-pay model for prescription drugs.

We recommend that, effective January 1, 2016, employees should be required to make use of a designated mail order prescription provider for maintenance pharmaceuticals. The Carrier has argued persuasively that such a requirement would reduce costs both to the employees and to the employer and the Coalition did not present persuasive reasons for why such a change would adversely impact its members. According to the benefit contribution analysis provided by the Carrier, this change alone is projected to result in savings of \$727,000 to NJT per year.

Conductor Certification Pay

As noted above, the Parties are in agreement that any employee who is required to obtain and maintain FRA Conductor Certification is entitled to per shift certification pay for a shift when s/he in fact works as a Conductor. The disagreement between the Parties lies in whether the pay should be a flat \$10 per shift, as the Carrier proposes, or should vary with the wage rate and be set at 20 minutes per shift, as the Coalition proposes, which equates to \$9.75 at the current top wage rate for Conductors and \$11.04 based on the Coalition's wage proposals. The Coalition's proposal would cost approximately \$1,323,000 a year, while the Carrier's proposal would cost approximately \$1,226,000, a difference of \$97,000.

In addition, there is a question of how to allocate the certification payment if more than one person works in the particular Conductor position during the same shift. The Carrier's proposal is not clear. At one point, it was stated that a Conductor would have to work his or her entire tour of duty to get certification pay. It was also stated, however, that if a Conductor could not finish his or her tour of duty and the Carrier stepped up an Assistant Conductor for the rest of

the assignment, that employee would get the Conductor certification pay, even though s/he had not worked an entire shift. The Coalition proposes that any employee who works all or part of a shift as a Conductor would be entitled to the 20 minutes of certification pay.

In making our recommendation, we are cognizant of the fact that Locomotive Engineers and Assistant Engineers at NJT are paid 20 minutes per shift. Perhaps for that reason, the NJT proposal of September, 2014 included a proposal for 20 minutes per shift. (The Carrier explains that that proposal was part of a package that included other reductions in reporting pay. When that reporting pay proposal was dropped, the Carrier reduced its certification pay proposal to the \$10 per shift.) We also note, on the other hand, that the settlements at LIRR and Metro-North provide for \$10 per shift.

On balance, we conclude that on this issue internal parity is more significant than external parity with LIRR and Metro-North. It would be disruptive for one class of employees to be working alongside another class, both of whom are getting certification pay but at different levels. Wage differentials that historically exist between these two crafts would eventually become misaligned. Thus, we recommend that effective on the date of ratification, all employees who have their FRA Conductor Certification receive 20 minutes pay, at the straight time rate, for all full shifts worked as Conductors.

As to the second question about how to allocate the certification pay if more than one employee works in the same Conductor position on the same shift, we find merit in the Carrier's position that it should not be required to pay more than one certification pay for any one Conductor position on any one shift. We also find merit in the Coalition's concern that if a Conductor works for the bulk of a shift before being required to leave his/her post, s/he should

not be deprived of the entire certification pay. We believe it would be equitable for the certification pay to be allocated according to the number of hours worked as a Conductor on any one shift. Thus, if a Conductor works for four hours of an eight-hour shift and then falls ill and has to leave his/her post, s/he should receive 10 minutes of certification pay. An Assistant Conductor, with FRA Conductor Certification, who steps up to fill the position for the remaining four hours should also get 10 minutes of certification pay.

New Hire 401(a) Contributions

As of the end of the previous Agreements between the Coalition members and the Carrier, the Carrier contributed 5% of gross annual wages to employees' 401(a) pension, for all employees except for UTU employees hired after January 1, 2009, for whom NJT paid 1% of gross salary in the first year of hire, increasing 1% per year up to the employees' fifth year, at which point the Carrier contributed 5% of gross wages. The Carrier now proposes that it contribute to all new hires' 401(a) plans at the rate of 1% of straight time earnings, rather than gross earnings, for the first year, increasing by 1% yearly up to the fifth year. As the Coalition pointed out, under the Carrier's proposal, once the newly-hired employees reach the 5% contribution, they would still be at a disadvantage with respect to incumbent employees. One Coalition witness stated, "...not only would it take five years for new hires to get there, but when they got there, the "there" would be different.... That would become a permanent two tier in terms of defined [pension] contribution."

Data presented to the Board at various times throughout the four days of hearings suggests that NJT Coalition employees on average earn 25% of their gross wages through working overtime. The Carrier's proposal would reduce its contribution to new employees'

401(a) pension funds to 1% of straight time earnings in the first year, progressing at the rate of 1% per year until the employees' fifth year, at which point the contribution would be 5% of straight time. If the Carrier reduced its contribution to new employees' 401(a) funds to 5% of straight time earnings after the fifth year, employees hired after ratification of the Agreements and in their fifth year would receive a 5% 401(a) contribution based upon 75% of their actual earnings.

Thus, in rough terms, incumbent employees receive 105% of their gross wages (100% wages plus a 5% 401(a) contribution). By contributing 5% of only straight time wages to the 401(a) plans of new hires, the Carrier contributes 5% of 75% of their gross income, or 3.75% of their gross income. They will be receiving 103.75% of their gross wages (gross wages plus the smaller 401(a) contribution). This does, in fact, become a permanent two-tiered system. New hires will then earn at least 1% less per year over their work life at NJT than identically paid employees hired prior to the ratification of the agreement ($103.75\% \div 105\% = 99\%$). If, in addition, the Carrier contributes to the new hires' 401(a) plan at the rate of 1% the first year, 2% the second year, etc., the resulting two-tier system is even more dramatic.

There is precedent on this property for phasing in contributions to a pension system for new hires. That request by the Carrier is not unreasonable and seems not to meet strong opposition from the Coalition. The Board is concerned, however, about the potentially negative effect of a two-tier pension system over time. Accordingly, the Board recommends adoption of the Carrier's proposal of a five-year phase-in for the 401(a) contributions for employees hired after ratification of Agreements between the parties, but based upon gross pay, as for incumbent employees.

Ridership Passes

We conclude that there has been insufficient negotiation on the question of the elimination of ridership passes. The Coalition asserts, and the Carrier concedes, that one of the Organizations requested information on the usage of ridership passes and the cost savings attendant to their elimination, but never received the information from the Carrier. At the hearings in Newark, the Executive Director of NJT testified that the Carrier's proposal would save \$750,000. This was the first time the Coalition or any of the constituent Organizations had received this costing data and there was no information provided as to the calculation methodology used in reaching the figure. For instance, does this figure assume that every employee who now uses a ridership pass to commute to work would instead pay full fare, rather than using other forms of transportation? Therefore, we make no recommendation about the elimination of ridership passes. We encourage the Carrier to provide sufficiently detailed information to the Coalition to permit it to formulate a counter-proposal, as appropriate.

Work Rules

Similarly, we conclude that there has been insufficient negotiation on the questions of mandatory direct deposit and of the Carrier-proposed EEO language. There was almost no detail provided by the Carrier at the hearings about the exact nature of those proposals or their cost implications. Therefore we make no recommendation about these work rules.

VI. SUMMARY OF RECOMMENDATIONS

General Wage Increases

<u>Effective Date</u>	<u>Wage Increase</u>
07/01/11	0.0%
01/01/12	0.5%
07/01/12	1.0%
01/01/13	1.0%
07/01/13	1.5%
01/01/14	1.5%
07/01/14	1.5%
01/01/15	1.5%
07/01/15	1.5%
01/01/16	1.5%
07/01/16	2.0%
01/01/17	1.5%
07/01/17	2.0%
01/01/18	Amendable

The Parties are to meet and agree upon appropriate procedures for the calculation and payment of back pay.

Contract Duration

July 1, 2011 - December 31, 2017, with an Amendable Date of January 1, 2018

Health Insurance Contributions Levels and Plan Design

<u>Effective Date</u>	<u>Health Care Contribution</u>
07/01/11	1.80%
01/01/12	2.00%
07/01/12	2.00%
01/01/13	2.00%
07/01/13	2.00%
01/01/14	2.00%
07/01/14	2.00%
01/01/15	2.00%
07/01/15	2.00%
01/01/16	2.00%

07/01/16	2.00%
01/01/17	2.50%
07/01/17	2.50%
01/01/18	Amendable

Co-pays

January 1, 2016	\$10 for in-network doctors' office visits
January 1, 2017	\$15 for in-network doctors' office visits
January 1, 2016	\$70 for emergency room visits
January 1, 2016	Mandatory mail order prescription service for maintenance drugs

The Parties are to negotiate concerning any implementation of a new health insurance plan.

Conductor Certification Pay

Effective on the date of ratification, all employees who have their FRA Conductor Certification receive 20 minutes pay, at the straight time rate, for all full shifts worked as Conductors. For partial shifts, certification pay is to be allocated according to the number of hours worked as a Conductor on any one shift.

New Hire 401(a) Contributions

Carrier contributions for employees hired after ratification: 1% of gross wages for first year of employment, 2% for second year, 3% for third year, 4% for fourth year and 5% for fifth year and thereafter.

Ridership Passes

No recommendation.

Work Rules

No recommendation.


VII. CONCLUSION

In closing, the Board gratefully acknowledges the counsel and professional assistance rendered by Norman L. Graber, Esq. and Andres Yoder, Esq. of the National Mediation Board throughout this process. The Board also thanks Connor M. Parker for his technical assistance.

Respectfully submitted,


Elizabeth C. Wesman, Chairman


Barbara C. Deinhardt, Member


Ann S. Kenis, Member

APPENDIX A

Presidential Documents

Executive Order 13700 of July 15, 2015

Establishing an Emergency Board To Investigate Disputes Between New Jersey Transit Rail and Certain of Its Employees Represented by Certain Labor Organizations

Disputes exist between New Jersey Transit Rail and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (RLA).

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

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

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

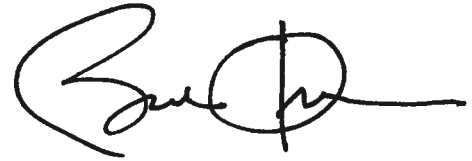
Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on July 16, 2015, a Board of three members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the RLA, for 120 days from the date of the creation of the Board, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

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

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

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

THE WHITE HOUSE,
July 15, 2015.

Billing code 3295-F5-P

LABOR ORGANIZATIONS

International Brotherhood of Electrical Workers
Transportation Communications International Union/IAM
Brotherhood of Locomotive Engineers and Trainmen
International Association of Sheet Metal, Air, Rail and
Transportation Workers - Transportation Division (UTU)
International Association of Machinists & Aerospace Workers
Brotherhood of Railroad Signalmen
National Conference of Firemen & Oilers, SEIU
International Association of Sheet Metal, Air, Rail and
Transportation Workers
American Train Dispatchers Association
Brotherhood of Maintenance of Way Employes Division
International Brotherhood of Boilermakers
Transport Workers Union of America