

REPORT
to
THE PRESIDENT
by
EMERGENCY BOARD
NO. 249

SUBMITTED PURSUANT TO

EXECUTIVE ORDER DATED NOVEMBER 12, 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.
January 11, 2016

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

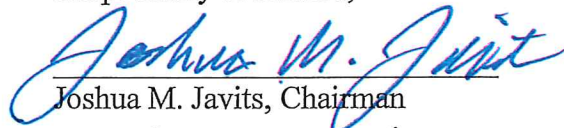
Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order dated November 12, 2015, you established an Emergency Board, effective 12:01 a.m., Eastern Standard Time, November 13, 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 (collectively, the Organizations).

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 and selection of final offer for settlement of the dispute.

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.

Respectfully submitted,


Joshua M. Javits, Chairman


Elizabeth Neumeier, Member

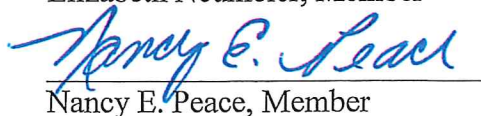

Nancy E. Peace, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 249 (“PEB” or “Board”) was established by the President pursuant to Section 9a of the Railway Labor Act (“RLA” or “Act”), as amended, 45 U.S.C. §151 *et seq.* including §159a, and by Executive Order dated November 12, 2015. The Board was created to investigate and report its findings and recommendations regarding a dispute between New Jersey Transit Rail (“NJTRO” or “Carrier”) and certain of its employees represented by certain unions. A copy of the Executive Order is attached as Appendix A.

The President appointed Joshua M. Javits, of Washington, District of Columbia, and Elizabeth Neumeier, of Gloucester, Massachusetts, and Nancy E. Peace, of Newburyport, Massachusetts, 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

NJTRO

The New Jersey Transit Corporation (“NJT”) is the nation’s largest statewide public transportation provider. NJT operates four subsidiary organizations: (1) NJTRO; (2) NJT Bus Operations, Inc. (“NJTBO”); (3) NJT Mercer, Inc.; and (4) NJT Morris. NJT 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. NJT’s operating expenses exceeded \$2.6 billion in 2014, which includes expenses relating to Superstorm Sandy recovery. NJT’s operating revenue was \$986.8 million in 2014, consisting of fare box revenue, other reimbursements, other commercial revenue, and State operating assistance.

NJTRO is the third largest commuter rail system in the country. The rail transit system now operated by NJTRO was formerly operated by Conrail until January 1, 1983. NJTRO's routes overlap with Amtrak, 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 of 223 million passenger trips in 2014, NJTRO 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. NJTRO 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. NJTRO connects major points in New Jersey, New York, and Philadelphia.

The Labor Organizations

The New Jersey Transit Rail Labor Coalition ("the Coalition") represents all 4,220 unionized rail employees at NJTRO. 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 crafts or classes commenced negotiations with NJTRO on an individual basis, they subsequently joined together as a Coalition to bargain collectively with NJTRO.

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, NJTRO 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 NJTRO 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, NJTRO 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 it had terminated its services 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, requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute.¹ On July 9, 2015, NJTRO 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.

On August 14, 2015, PEB 248 issued its Report and Recommendations to the President. When the recommendations of PEB 248 did not result in a prompt resolution of the disputes, the NMB conducted a public hearing on September 9, 2015, at which the Coalition stated its

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

willingness to accept the recommendations of PEB 248 and NJTRO discussed its reasons for not accepting the recommendations of PEB 248.

On November 6, 2015, NJTRO requested that the President create a second Emergency Board pursuant to Section 9a(e) of the RLA regarding its disputes with the Coalition. The President created this Board, effective November 13, 2015, to make final offer selections in accordance with the RLA.

IV. ACTIVITIES OF THE EMERGENCY BOARD

Following an organizational meeting by conference call, the Board issued an organizational letter on November 13, 2015, in which the ground rules for the Board's procedures were set forth. This letter also incorporated the record before PEB 248 into the record in this matter. The ground rules set a deadline of November 18, 2015 for the parties to submit briefs to the Board. Pursuant to the schedule set in the organizational letter, the Board met informally with the parties, both jointly and individually, on December 7, 2015, in Washington, D.C.

As directed by the Board, and in accordance with Section 9a of the Act, the parties filed final offers for settlement on December 12, 2015. Hearings on the final offers were held on December 15, 16, and 17, 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 oral closing arguments.

On December 17, 2015, following the close of the hearing, the Board met informally with the parties, in Newark, New Jersey, in an attempt to facilitate a settlement of the disputes. The Board met in a series of telephonic Executive Sessions and in person in Washington, D.C. to reach consensus regarding our Recommendations and to finalize this Report.

V. FINAL OFFERS

A. Final Offer of the Coalition

In accordance with Section 9a(f) of the Railway Labor Act, 45 U.S.C. § 159a(f), the above-captioned Unions submit the following final offer for settlement of the dispute, which is identical to the recommendations for settlement contained in the Report of Presidential Emergency Board 248. *See* PEB 248 Report, at 41-42 (Aug. 14, 2015).

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
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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.

B. Final Offer of the Carrier

PROPOSAL NO. 1

A. Term of Contract – Seven and one-half (7.5) years.

New Jersey Transit proposes a term of contract of seven and one-half (7.5) years covering the period of 7/1/2011 to 12/31/2018.

PROPOSAL NO. 2

A. Wages

July 1, 2012 \$1,000 lump sum payment.

July 1, 2013	1.5% general wage increase based upon the base wage in effect on June 30, 2013.
January 1, 2014	1.9% general wage increase based upon the base wage in effect on December 31, 2013.
January 1, 2015	1% general wage increase based upon the base wage in effect on December 31, 2014.
July 1, 2015	1% general wage increase based upon the base wage in effect on June 30, 2015.
January 1, 2016	1.5% general wage increase based upon the base wage in effect on December 31, 2015.
January 1, 2017	1.0% general wage increase based upon the base wage in effect on December 31, 2016.
July 1, 2017	1.5% general wage increase based upon the base wage in effect on June 30, 2017.
January 1, 2018	1.0% general wage increase based upon the base wage in effect on December 31, 2017.

B. Retroactivity

All current employees shall be entitled to the lump sum and retroactive pay, due on the dates set forth above, following ratification of the Agreement by the Organization and the NJ Transit Board of Directors, provided however that any retroactive payments shall be evenly divided into two payments, the first of which shall be paid as soon as practical after full and final ratification. The final payment shall be paid one year after the first payment.

PROPOSAL NO. 3

A. Health & Welfare

1. Effective on full and final ratification, the Carrier will implement a new health insurance plan (Horizon Direct Access 10). Employees in the PPO or Traditional Plans shall pay 20%, pre-tax, of the premium cost of medical and prescription insurance. Alternatively, current employees in the PPO or Traditional Plans may opt into the Direct Access 10 or HMO plan. Current employees who elect the Direct Access 10 or HMO plan will contribute, pre-tax, 10% of the premium cost of medical and prescription insurance. Current employees in the PPO Plan who elect to switch to the Direct Access 10 may switch back to the PPO at appropriate times. Current employees who elect to switch from the Traditional Plan to Direct Access 10 may switch to the PPO Plan but not back to the Traditional Plan.

2. Employees who are hired after full and final ratification, and who elect to receive health insurance coverage from NJTRO, shall only be eligible to participate in the Direct Access 10 Plan or the HMO. New employees shall contribute 20% of the premium cost of medical and prescription insurance.

3. Effective the first day of the month following the date of ratification the copay for in network doctors' office visits including specialists, shall be twenty (\$20.00) dollars per visit. The copay for Emergency Room visits shall be seventy-five (\$75.00) dollars per visit.

4. The maximum copay for prescription drugs will be thirty-five (\$35.00) dollars in accordance with the current formula in use to determine copay. Mandatory mail order for maintenance drugs will also be implemented. Express Scripts prescription plan applies to all covered employees regardless of health plan selected, inclusive of three (3) utilization

management techniques: Fraud and Waste Abuse Program, Compound Drug Management Program, and Hepatitis C Cure Value Program.

5. Effective 2018, employees in the PPO plan shall be required to pay, by way of payroll deduction, 50% of the ACA excise tax that becomes due and payable, in addition to the contribution to premium.

PROPOSAL NO. 4

A. Pension

For employees hired on or after the date of ratification, NJTRO shall contribute 1% of straight time earnings to the employee's 401(a) account during their first year of employment, with an additional contribution of 1% straight time earnings each year up to a maximum of 5% of straight time earnings.

B. Certification Pay

For UTU conductors only, effective following ratification and Board approval, \$10 per work day certification allowance shall be paid to employees certified as conductors when performing service as conductors.

C. Ridership Passes

Delete Rules on "Ridership Passes" in their entirety.

VI. DISCUSSION

A. PEB 248 Report

The parties differ on the degree to which the "first Board," PEB 248, should influence the findings of the "second Board," PEB 249. PEB 248 was formed effective July 16, 2015 after the Coalition and NJTRO both submitted requests to the President invoking the RLA 9a procedures (45 U.S.C. § 159a(c)(1)). PEB 248 held four days of hearings and both parties submitted lengthy

submissions and testimony in support of their respective positions dealing with wage rates, healthcare and pension benefits, duration, conductor certification pay, ridership passes and work rules. The parties also submitted extensive information and data on economics, finances, patterns, comparators, cost of living, negotiating history, historical background, etc. PEB 248 issued its report on August 14, 2015. The full and complete record of PEB 248 was submitted by the parties and constitutes part of the record before this Board.

PEB 248 recommended wage increases totaling 18.38 percent, compounded, over a six-and-a-half year period or 2.6 percent per year. The Coalition had sought 18.4 percent, compounded, over 6 years or 2.9 percent. The Carrier had sought 10.9 percent, compounded, over a seven-and-a-half year period or 1.4 percent. In order to accommodate the Carrier's concern for its lack of budgeting for retroactive pay, PEB 248 back loaded the pay increases and directed the parties to negotiate regarding retroactive payments.

In addition, PEB 248 recommended an increase in the share of healthcare costs paid by employees from a fixed rate of \$81.95 (equivalent to an average of 1.8 percent of straight time earnings) to 2.5 percent of straight time pay as of January 1, 2017. The Coalition had sought to increase the healthcare contribution from 1.8 percent of straight time wages to 2 percent. The Carrier had proposed an increase starting at 10 percent of premium costs on January 1, 2015 escalating to 20 percent of monthly premium costs by January 1, 2018. Under PEB 248's recommendation, net of the increased healthcare contribution, the employee wage increases were effectively 16.3 percent or 2.5 percent annually, un compounded. According to the Coalition, the Carrier's proposal would have left employees with overall net earnings over the proposed seven-and-a-half year terms at less than 1 percent annually.

PEB 248's central conclusions were based on the following:

(1) That four other large commuter carriers (LIRR, Metro North, MBTA and SEPTA) all settled for an average of 2.6 percent in the same approximate period of time;

(2) That the Carrier ranked in the middle of the five northeast commuter railroads in their top step base hourly wage rates and the Board recommendation maintains that comparative ranking and status; and

(3) That other New Jersey State employee wage rates are not an appropriate comparator because the comparable job content – including skill, qualifications and working conditions, are the same as other commuter railroad employees rather than teachers, police and other state workers, which the Carrier asserted was the proper comparator.

PEB 248 also provided design changes to the healthcare plan sought by the Carrier but rejected the Carrier's proposals for a new healthcare plan and that employees pay half of any excise tax that might be triggered under the Affordable Care Act (ACA). PEB 248's central conclusion was that the Carrier's 10/20 percent premium contribution proposal was "regressive, in that it places a disproportionately higher greater burden on lower-wage employees." (PEB 248 Report, p. 30). PEB 248 also found that "linking employee contributions to premium costs with no proposed caps raises the specter of potentially open-ended increases in employee costs...." (PEB 248 Report, p. 31). Under the Carrier's proposal, "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 to \$459.54 (or even more, if premiums rose more rapidly than anticipated)." (PEB 248 Report, p. 31).

PEB 248 also recommended that certification pay be provided to conductors in the amount of 20 minutes pay at straight time rate for all shifts worked. If more than one conductor works on a shift, PEB 248 recommended a pro rata payment to each conductor. The

Organization had proposed 20 minutes certification pay. The Carrier had proposed a \$10.00 per shift certification allowance and that only one conductor in a position be eligible for the certification pay. PEB 248's rationale was that it would be equitable for each conductor to receive certification pay for the shift time he/she actually worked.

PEB 248 also recommended a 5-year phase-in for 401(a) contributions based on gross pay for new employees, who are hired after Agreement ratification. The Carrier had proposed this 5-year phase-in but at a rate of 1 percent of straight time earnings rather than gross earnings (including overtime and other forms of pay). The Coalition opposed any changes in 401(a) contributions. The central rationale of PEB 248 was that using gross wages, rather than straight time pay, would treat new employees in all crafts the same as UTU new employees hired after January 1, 2009, who had, by agreement, been phased in over 5 years based on gross earnings. Further, it would create a two-tier system for incumbents and new hires.

PEB 248 declined to make any changes in employee ridership passes. The Carrier had proposed the elimination of ridership passes, which the Coalition had opposed. PEB 248's central rationale was that there had been insufficient negotiations on the subject and that it was only a \$750,000.00 savings item.

The Coalition contends that the first Board's findings should be treated with a presumption of favorability since that Board, composed of three Presidentially-appointed neutrals versed in the industry, heard, analyzed and made findings on evidence and arguments in the same dispute, involving the same parties and issues, that is before the second Board, and occurring only a few months earlier. The Coalition further argues that the statutory framework of RLA Section 9a, involving two sequential Boards, whose mandate is to address the same dispute, is designed to encourage the parties to "narrow the gap" between them, using the first

Board as a template for a settlement. The Coalition is endorsing the findings of the first Board and presenting them as its final offer to the second Board.

From the Coalition's vantage point, having two Boards affirm findings that the Coalition favors provides political and bargaining leverage in the parties' voluntary negotiations subsequent to the second Board's Report.

The Carrier, on the other hand, argues that the first Board reached erroneous conclusions, and that this Board is independent and responsible for making findings that can form the basis for a settlement, which the Carrier believes PEB 248's recommendations cannot. Since the first Board's recommendations were almost totally rejected by the Carrier, it is incumbent upon the second Board to make findings that are different than the first Board, the Carrier contends. The Carrier bases its opposition to PEB 248's recommendations on the Carrier's inability to pay for the wage rates recommended, the insufficient offset of wages through increased employee health insurance premium contributions and the lack of an incentive for employees to migrate to a more cost efficient and better health insurance plan.

The Carrier's argument is informed by its goal of obtaining a Report from the second Board that is more favorable to its position in order to then use the Report as leverage in negotiations and in the court of public opinion.

Section 9a of the RLA is an elongated process (270 days from release from mediation through the final status quo period) involving two separate PEBs, designed to bring the parties to voluntary settlement. Section 9a is a unique feature of the RLA that applies only to commuter railroads. It shows Congress' even greater concern for avoiding shutdowns in commuter railroads beyond the already strong procedures and governmental intervention applicable to the airlines and freight railroads covered by the traditional RLA process, including a single

Section 10, 90-day Presidential Emergency Board process. Moreover the creation of a Section 10 Board is the prerogative of the President alone, unlike the Section 9a process, which allows the Governor of any State through which the Carrier operates, or either party, to mandate that a PEB be created. The additional locks and channels through which Section 9a puts the commuter railroads are intended to guide them to voluntary agreement.

Clearly the two Section 9a Boards have a relationship to each other. That may be why every second Board, with the exception of one, has followed the first Board's findings. Nonetheless, the explicit mandate of the second Board is to choose the "most reasonable" final offer. The second Board's inquiry into which offer is the more reasonable may be informed by the record, analysis and findings of the first Board, but the first Board's determination is not statutorily dispositive.

Moreover, there are other aspects of the process that distinguish the two Boards: (1) the second Board brings a fresh set of eyes to look at the issues; (2) the second Board is able to identify the reasons why the first Board's Report did not lead to an agreement, based in part on the NMB's hearing following the first Board report; (3) the second Board can be made cognizant of the negotiations between the parties following the first Board Report; (4) there may have been intervening events that bear on the dispute; and (5) the second Board is charged with finding which final offer is the "most reasonable," a different inquiry than that of the first Board, which is charged with investigating and reporting on the dispute.

Thus, while the second Board may be informed by the first Board's report, it is not obliged to follow it and conducts an independent analysis of the issues and their potential resolution. That is what this Board has done here.

B. Final Offer: Total Package Versus Item by Item

The Section 9a procedures of the Railway Labor Act call for a second PEB to be established if, 120 days after the creation of the first PEB, the dispute remains unresolved and either party or the Governor of an affected state so requests. 45 U.S.C. § 159a(e). The parties are then required to submit “final offers for settlement of the dispute.” 45 U.S.C. § 159a(f). Within 30 days after submission of those final offers, the second PEB is required to submit a report “setting forth its selection of the most reasonable offer.” 45 U.S.C. § 159a(f).

Here, the parties disagree as to the approach PEB 249 should take with respect to selecting the “most reasonable offer.” The Coalition advocates that this Board follow the approach generally taken by second PEBs in selecting one offer as a total package, because selecting on an item-by-item basis is untenable as a legal matter, a practical matter, and in terms of advancing the policy goals of the RLA. The Carrier, on the other hand, argues that it would most assist the parties in reaching an agreement for this Board to select “the most reasonable offer” on an item-by-item basis.

The Coalition notes that the RLA process is designed to be long and drawn out in order to ultimately make the parties more open to compromise. A key purpose of Section 9a is to use the final offer selection process to narrow the issues in dispute. Section 9a injects an additional element of risk by making it difficult for a party to explain why a position should prevail in subsequent bargaining that has already been rejected by two Emergency Boards. To encourage each side to put forth its best offer, the final offer process is intended to subject each party to the risk of total loss. The penalty provisions of the Act further increase the risk of not having a final offer selected.

The Coalition contends that the Section 9a process is not intended for mere delay or for the second Board to act as an appellate body with respect to the first Board. The second Board is a final offer panel without discretion to craft compromise solutions in the manner of the first Board. To do so could result in the two Boards issuing conflicting reports, leading to chaos and not resolution. Outside stakeholders would be left without clear guidance as to the proper basis for supporting a resolution of the dispute.

The Coalition's legal position is that the statute does not permit selection on an item-by-item basis because doing so could effectively void, or at least render uncertain, the penalty provisions found in Sections 9a(i) and 9a(j). It is unclear who would decide such issues. Further, practical difficulties would arise from following the Carrier's suggestion to select on an item-by-item basis, including deciding what constitutes an item. Each Organization is governed by its own Constitution and Bylaws. Some Organizations have already taken strike votes. Others will not do so until after receiving this Board's decision. All members deserve to know where they stand in terms of the penalty provisions contained in Section 9a(i), which could bar their receipt of railroad unemployment benefits in the event of a work stoppage.

The Carrier's position is that this Board should not adopt the PEB 248 report while ignoring the Carrier's final offer, or pieces of it. Rather, to assist the parties in reaching voluntary resolution of their contract, and in order to move the parties closer to agreement, this Board may have to disagree with some aspects of the PEB 248 Report, the Carrier contends. The PEB 248 recommendations simply do not work because the term is too short, the wage increases are unaffordable, and the healthcare contributions are too meager, according to the Carrier. Therefore, the Carrier contends that the PEB 248 Report does not assist the parties in reaching resolution and will not form the basis of an agreement. PEB 249 does not have to recommend or

rubberstamp PEB 248 simply because it was issued by the prior Board in this dispute.

Arbitrators commonly fashion awards to provide something for each side, and offer suggestions taking bits and pieces from each side. Nothing in the statute prescribes that the second Board recommendation has to be all or nothing, the Carrier contends. This Board can consider separately each of the final items in dispute and determine which position is most reasonable, bearing in mind the charge to assist the parties in reaching voluntary resolution, the Carrier argues.

The Board notes that the parties have had discussions since issuance of the PEB 248 Report, particularly about the Carrier's health insurance proposal. There have also been other developments that bear on the parties' bargaining relationship, including passage of the Fixing America's Surface Transportation ("FAST") Act, with attendant Federal funding possibilities, delay of the "Cadillac" tax on health insurance plans, and restoration of ridership passes to non-contract NJT employees. Thus, there is potential for shifts in the negotiating positions of the parties and some changes, albeit minor, in economic circumstances. Neither those factors nor the arguments put forth by the Carrier persuade us, however, that, in this case, deviation from the traditional approach of second Boards of selecting the most reasonable offer on the basis of the total package is warranted. That said, the Board will provide its general evaluation of the issues, which is intended to assist the parties in their negotiations subsequent to the issuance of this Report.

C. Ability to Pay

The Carrier asserts that the recommendations of PEB 248 (and the Coalition's final offer to the second Board, which adopts PEB 248's recommendations) are "not affordable." The Carrier contends that implementation of PEB 248's recommendations would require it to increase

fares in the face of recent fare increases including a 9 percent fare increase imposed in October 2005 and a 22 percent increase implemented in 2010. An additional fare increase to pay for the Coalition's final offer, the Carrier says, even aside from its political unacceptability, would divert riders away from the Carrier. Moreover, the Carrier contends that neither NJTRO nor the State of New Jersey are in a financial position to fund the increased cost of the Coalition's final offer which amounts to \$183 million, according to the Carrier.

With regard to federal subsidies, Managing Director Veronique Hakim testified that those funds are directed to capital costs rather than operating costs (which include salaries, healthcare, etc.) and that NJT's ability to "flex" funds from capital to operating expenditures under federal rules is "capped out." Hakim noted that New Jersey's recovery from the great recession has been slow compared with other states.

It should be noted that NJT's sources of operating funds in the 2010 to 2014 period fluctuated as follows:

- Fares: between 44.5 percent and 40 percent;
- Federal government: between 18 percent and 27 percent;
- State government: between 34 percent and 17 percent;
- Local: between 1 percent and 8 percent.

The Carrier further notes that unlike Metro-North and LIRR, it has no dedicated sources of tax revenue to support its cost structure. Rather, any state subsidies are derived from state taxes and must go through the legislative process and the Governor. Obtaining funds at the state level is virtually impossible especially in light of how rich the PEB 248 package is compared with the earnings of other state employees in the recent bargaining round, according to the Carrier.

The Coalition contends, on the other hand, that its final offer on wages and benefits is "modest" in that it is not appreciably in excess of the projected rate of inflation. The Coalition notes that fares account for about half of the Carrier's expenses and that the remainder has fluctuated over the years between federal, state and local sources of funding.

The Coalition points to, in particular, the recently enacted transportation legislation, called the FAST Act, signed into law on December 4, 2015. The legislation authorizes federal surface transportation programs through 2020, thus providing multi-year funding stability and predictability. The FAST Act provides for a total of \$305 billion, a 17 percent increase from the current funding levels. For New Jersey, it provides for \$5.3 billion in highway funding, a \$469 million increase. It also provides \$3.1 billion for transit, an increase of \$238 million above current levels. This federal money will provide for an infusion into New Jersey's transportation trust fund, which goes to both highways and transit. New Jersey is the third largest state recipient of these federal funds, behind only California and New York. Moreover, the Carrier is eligible for \$200 million, in addition to help with implementation of Positive Train Control (PTC). Also, the increased capital funding for Amtrak, which overlaps with the Carrier, may redound to the Carrier's benefit.

Aside from the impact of any additional infusion of federal funds, this Board finds that the fact that the state government's process for transit funding is political and policy-driven should not be a reason for finding that the Coalition's proposal is unreasonable. The State provides only about 25 percent of the Carrier's funding; it fluctuates and is unpredictable and indeterminate. While there are competing uses for New Jersey tax dollars, on this record and in the absence of specific budgetary data which may support such a case, this Board is in no position to declare state funding for the Carrier affordable or not affordable.

D. Comparisons and Patterns

The Coalition argues here, as it did before PEB 248, that the proper universe of comparables is commuter railroads: Long Island Railroad, Metro-North, SEPTA, and MBTA. The Coalition cites a long history of bargaining during which the Carrier's employees have lagged behind their closest counterparts, despite living in the same high-cost region. The Carrier's employees share facilities at New York's Penn station and operate two rail lines owned by Metro-North. Prior to the Carrier and Metro-North being spun off from Conrail in 1982, the workers of both were covered under the same agreements providing identical terms and conditions of employment. Thus, the Coalition argues that there is no justification to compensate differently employees performing identical work in the same geographic area for carriers with this shared history.

The Carrier acknowledges that there has been some slippage vis-à-vis LIRR and Metro-North. However, the Carrier contends that the appropriate "marker" in this case includes the pattern established for New Jersey state employees. The relative pace of change for New Jersey state office workers between 2010 and 2014 (7.1 percent) is significantly less than that of Massachusetts (15.5 percent), New York (12.6 percent), Pennsylvania (9.9 percent), and Connecticut (8.1 percent). This is a reflection of the economic position of New Jersey, which has not yet recovered from the recession. The New Jersey teachers are ranked fourth in annual average increases among those states. And, with the recently-arbitrated wage rates, the NJT Bus Operators lag even further behind New York, Boston and Philadelphia.

The shift proposed by the Carrier is not a minor one. As PEB 248 noted, PEBs have not accorded significant weight to state employee agreements because points of comparison show that differences outweigh similarities, and the skills, qualifications and working conditions are

simply not comparable. Further, in New Jersey, State employee unions negotiate wages and other benefits, but not pensions and health care, which are statutory.

We find that the Carrier's push to link the wages, benefits and working conditions of its employees to those of State employees is not moving the parties toward a voluntary agreement. It is, in some respects, reminiscent of the approach to collective bargaining taken by Carrier before PEB 197. That Board stated, in conclusion:²

We think that it is critical to the strength of a hopefully long-term relationship between these parties that NJTRO recognize and affirmatively state during these negotiations that certain elements of compensation, specific work rules, and working conditions that these employees have historically enjoyed, which were obtained through the diligence and dedication of their labor organization representatives, should be preserved. Constructive collective bargaining agreement negotiations during the next several weeks cannot be optimistically projected if there is no recognition that the employees come to this new employer with certain rights and privileges firmly in place.

This is not to say that the collective bargaining agreements of the Coalition's Organizations are frozen in time. Rather, the parties need to negotiate changes to their agreements to provide for both an efficient and productive commuter rail system in the twenty-first century and for the employees who operate that system.

E. Health Insurance Contributions Levels and Plan Design

Under the most recent Coalition contracts with NJTRO, the employee contribution to health insurance premiums is a fixed rate of \$81.95 a month. From the commencement of negotiations for successor agreements, the Carrier has sought to have the employees take on a larger share of rising health insurance premiums and to alter other design elements such as

² PEB 197 issued its Report on November 1, 1982, shortly after NJT exercised its option to take over operation of commuter service when Conrail would cease operating it on January 1, 1983. NJT created the Carrier as a wholly-owned subsidiary to serve as its rail operating entity. The Rail Passenger Service Act providing for the transfer of rail properties to commuter authorities also provided for the transfer of employees and established procedures for negotiation of new collective bargaining agreements.

co-pays for office and emergency room visits, to help control costs. In its initial proposal of April 1, 2011 to NJTRO Organizations, the Carrier sought to move away from the fixed-rate premium to a percentage of premium cost for each insurance option—traditional, PPO and HMO. The premium rate proposed was 30 percent. The Organizations objected, citing the dramatic increase in costs to employees. Between 2011 and early 2014, NJTRO and the Organizations were not able to negotiate any settlements and the Organizations sought mediation through the NMB.

In mid-2014, while still in mediation, the NJTRO presented revised proposals to the Organizations (the Coalition had not formed at this point), including proposals on health insurance premiums and other health care items. In each case, the Carrier reduced its proposed health insurance premium from the earlier 30 percent to 20 percent. The Organizations rejected this proposal, as well.

On December 10, 2014, NJTRO was advised that the BRS, IAM, FCFO, SMART-Mechanical and TCU were now bargaining as a coalition. The Coalition presented its own health insurance proposal based on contracts reached at LIRR and Metro-North. This proposal accepted the Carrier's notion of a percentage premium, but based on the employees' straight-time pay up to 40 hours per week, not a percentage of monthly premium as the Carrier had proposed. The Carrier rejected this proposal.

On January 23, 2015 the Carrier proposed moving to a 4-tier system (family, husband/wife, parent/child and single) effective January 1, 2015. It also revised its premium proposal, calling for a phase-in over three years, with employees paying 10 percent of the monthly premium cost as of January 1, 2015 and 20 percent as of July 1, 2017. In addition, the Carrier proposed that effective the first day of the month following the date of ratification, the

co-pay for in-network Doctors Office Visits, including Specialists, would be twenty (\$20.00) dollars per visit. The co-pay for Emergency Room visits would be seventy-five (\$75.00) dollars per visit. The proposed employee co-pay for prescription drugs was to be thirty-five (\$35.00) dollars. Also proposed were a mandatory mail order program for maintenance drugs and a share of the excise tax under the ACA. The Coalition rejected this proposal.

In its presentation to PEB 248, the Carrier proposed a new health plan called, Direct Access Design 3. This plan maintained a 2-tier system but called for employee premiums of 20 percent of the monthly premium cost, with maximum out-of-pocket costs of \$6,350 per year for the Individual Plan and \$12,700 for Family Plan. The Coalition maintained its proposal of 2 percent of straight-time wages up to 40 hours per week on a pre-tax basis.

In its Report, PEB 248 endorsed the concept of employee contributions to health care premiums as a percentage of straight-time hourly wage rates, but recommended phasing in the new rates, starting at of 1.8 percent on January 1, 2011 and rising to 2.5percent in the final years of the contract. PEB 248 also endorsed the Carrier's concepts of increasing employee co-pays for in-network doctor's office visits and emergency room visits, albeit at somewhat lower rates, and requiring mandatory mail order prescription services for maintenance drugs. It did not endorse the Carrier's proposal regarding employee payment of a share of the excise tax possibly attaching to so called "Cadillac" health care plans under the Affordable Care Act, noting that if this tax is implemented, it will not happen during the life of agreement the parties were negotiating. Neither did PEB 248 recommend implementation of the Carrier's proposed Direct Access 3 health plan. Asserting that there was insufficient evidence in the record for it to make a recommendation, PEB 248 encouraged the parties to enter into negotiations after an adequate exchange of information.

Between issuance of the PEB 248 Report on August 14, 2015 and its submission of its final offer to PEB 249 on December 12, 2015, the Carrier developed a new health insurance proposal that it shared with the Coalition. The Coalition had many questions about the new plan, which is called Direct Access 10 (“DA 10”). The Coalition submitted its questions to the Carrier and, according to both parties, the Carrier answered them. However, no direct negotiations occurred prior to the December 12 submissions of the parties’ final offers or the commencement of hearings before PEB 249 on December 15, 2015.

While this Board understands that controlling ever-escalating health care costs is a legitimate objective for the Carrier, it notes that the Coalition’s offer meets at least some of the Carrier’s objectives, in that it incorporates, for the first time, the idea of percentage assessments for health insurance premiums rather than a fixed-rate amount. We recognize that the Coalition’s proposal calls for a percent of straight-time earnings up to 40 hours rather than the percent of premium costs sought by the Carrier, but at least the expectation of a guaranteed fixed rate has been eliminated. In addition, the Coalition’s proposal does include increases in co-pays for office and emergency room visits and the mandatory mail order plan for maintenance drugs that the Carrier sought.

This Board recognizes that the Carrier has worked to develop a plan that meets its needs while also being acceptable to the Coalition. During the course of these negotiations, mediation and two PEBs, the Carrier has made four different proposals with respect to plan design, the latest of which—DA 10—was shared with the Coalition only six weeks prior to the commencement of the PEB 249 hearings. The Coalition representative testified that while this new plan was better than the previous one, the Coalition had not had sufficient time to discuss and fully understand it. According to the Coalition, six weeks is not enough time to fully

understand the plan and its impact on employees or work out differences on issues of concern in the plan's design.

Health insurance policies and programs are highly complex and affect participants in different ways, depending on their wage rate, family size, individual and family health and the availability of coverage through other household members. Which medical providers are in-network can be especially important. Changing providers while in the middle of treatment or having to travel a longer distance to receive treatment can adversely affect employees.

Health insurance is an issue that can often be more effectively addressed in a joint labor-management problem-solving process rather than the offer/counter offer methodology common to the traditional collective bargaining process. This is because there are potential benefits for both parties. We note that the freight carriers and their unions delegated this issue to a study committee. While study committees can often be a way to avoid dealing with a difficult issue, this does not need to be the case. With a clear charter and timelines and a broadly representative membership, a joint labor-management subcommittee can prove an effective vehicle for efficiently and effectively addressing a complex issue. This Board encourages the parties to explore this approach, including using subject matter experts, if their current process seems unlikely to result in an agreement within a reasonable amount of time following the issuance of this Report.

F. Pensions/401(a)

From the commencement of negotiations in April 2011, the Carrier has sought to change its 401(a) contribution for newly hired employees. Under the existing contract language, the Carrier contributes 5 percent of gross annual wages to employees' 401(a) pension for all employees except the UTU employees hired after January 1, 2009, for whom NJTRO paid 1

percent of gross wages in the first year of hire, increasing the contribution by 1 percent each year until it reaches the maximum of 5 percent of gross annual wages. The Carrier's final offer seeks not only to phase in the pension contribution percentage over five years for all new hires, but to reduce the amount contributed each year by limiting it to a percent of straight-time earning.

Data presented during the PEB 248 hearings demonstrated that Coalition employees earn 25 percent of their gross wages through working overtime, a finding not disputed during the PEB 249 hearings. Eliminating this overtime in the pension calculation would mean that the pension contribution would be based on only 75 percent of the new employees' gross wages. As a result, new hires who reached the 5percent contribution rate after five years with NJTRO would continue to receive only 103.75 percent of their gross wages (gross wages plus the smaller 401(a) contribution), while incumbent employees would continue to receive 105 percent of their gross wages (100 percent wages plus a 5 percent 401(a) contribution). PEB 248 also noted that the impact on new hires in their first four years of employment would be even more dramatic.

Noting that there was precedent on the NJTRO property for phasing in contributions to a pension system for new hires, while expressing concern for the potentially negative effect of a two-tier system over time, PEB 248 recommended adoption of the Carrier's proposal for a five-year phase in for the 401(a) contributions for employees hired after ratifications of the Agreements between the parties, but based upon gross annual wages, as is currently provided for incumbent employees. We note that if the Carrier's proposal were to be implemented, it would lead to a permanent 2-tier system in terms of pension contributions.

G. Ridership Passes

The Carrier has sought to eliminate the free Ridership Passes since bargaining first commenced in April 2011. The Carrier argues that free passes are an “inappropriate perk of public employees” and noted at the time it first made this proposal that it was the policy position of the State of New Jersey. New Jersey eliminated free passes for non-contract NJT employees in 2012.

During the most recent negotiations on the bus side of the NJT, the parties agreed to send the issue of free Ridership Passes to arbitration. The impasse panel, chaired by arbitrator Jack D. Tillem, concluded that there should be no change to the provision, thus maintaining free passes for NJTBO employees.

On November 16, 2015, NJT Executive Director Veronique Hakim announced that free passes would be restored to non-contract NJT employees. According to a NorthJersey.com article, in evidence, dated November 29, 2015, the decision was based on the positive value of having NJT employees monitor for terrorism on the system, as NJT employees have been trained in spotting such indicators. The Executive Director’s decision was issued following the terrorist attacks in Paris.

The Coalition argues that its members are particularly well qualified to monitor the system and spot unusual behavior. It also notes that free Ridership Passes have been available to Coalition employees for a very long time and that, while their elimination would produce only a modest saving of about \$78,000 for the Carrier, it would impose a significant economic burden on the employees. According to the Coalition, maintaining this benefit for its employees not only enhances security in the system, as was recognized by the Executive Director, but also enables the beneficial movement of system employees for a variety of work-related purposes. In

its rebuttal, the Carrier indicated that it appreciated the rationale for maintaining the Ridership Passes benefit for both union and non-contract employees of NJTRO, but stated that the Carrier would like the right to decide whether to provide it, based on security and other considerations.

Given that free Ridership Passes have been a benefit in Coalition contracts for many years and that the same benefit has now been restored to non-unit employees, it would seem that this is an issue that can be put to rest for this round of bargaining.

H. Certification Allowance

The Carrier's final offer calls for a \$10 per workday certification allowance. The Coalition's final offer calls for a certification allowance of 20 minutes per day for all shifts worked as a conductor; for partial shifts, certification pay would be allocated according to the number of hours worked as a conductor on any one shift.

PEB 248 found the 20 minutes pay per day conformed with the locomotive engineers' certification allowance at the Carrier and that this "internal parity" was "more significant than external parity" with LIRR and Metro-North, which pay \$10 per shift.

We note that since engineers and conductors work so closely together, the rationale of maintaining "internal parity" is supported by the importance of equal treatment. Furthermore the obligations and responsibilities imposed on conductors to qualify and maintain certification, and the risks of de-certification, are similar to those of the engineers.

The Carrier contends that payment of certification allowance for partial shifts is administratively complicated. There may be multiple conductors assuming positions on a variety of shifts for different lengths of time. The Board recognizes the difficulties of these arrangements, and urges the parties, in their negotiations subsequent to this Report, to work out a

system, which is straightforward and easy to administer, perhaps with a minimum hours requirement. Absent such a system, grievances are likely to arise over de minimis time disputes.

I. Term of Agreement

The Coalition's final offer calls for a duration of six and a half years, beginning July 1, 2011 and ending December 31, 2017. The Carrier calls for a duration of seven and a half years, beginning July 1, 2011 and ending December 31, 2018.

The Carrier contends that a longer contract period would add to labor relations stability and predictability, which is of value to employees as well as to the Carrier, particularly for a commuter railroad, which is a part of the State's sometimes turbulent political environment and its cyclical economic environment. The Carrier notes that a six-and-a-half year contract ends December 31, 2017, only two years away. The Coalition, on the other hand, argues that six-and-a-half years is already an extraordinary length of time for a labor contract and that the changes that will inevitably occur sooner than that should be addressed by negotiations between the parties. It notes that it proposed a six-year term to PEB 248, which recommended the six-and-a-half year term the Coalition here proposes.

This Board is concerned with the inordinate length of time the parties have been in negotiations, mediation and now this Section 9a process, which amounts to four and a half years and counting. Without the obligation to bargain sooner rather than later, many subjects of concern to both parties that have been set aside in this process would remain unaddressed. This would place an additional burden upon negotiators in the next round of bargaining.

Seven-and-a-half years is an extraordinary contract length and defers discussion of vital and potentially "win-win" arrangements that can be achieved in collective bargaining. We recognize that constructive negotiations are not necessarily dependent on the duration of

negotiations. Given the RLA's propensity for elongated collective bargaining periods, triggering discussions prior to seven-and-a-half years seems efficacious to both sides and to the process.

J. Affordability of Retroactive Pay

The Carrier's final offer proposes that any retroactive payments be based on its proposed wage rates and that they be made to employees in two payments, one "as soon as practical after full and final ratification..." and the other "shall be paid one year after the first payment." The Coalition's final offer proposes the same wage rates as PEB 248 and, also identical to PEB 248, proposes that "[t]he parties are to meet and agree upon appropriate procedures for the calculation and payment of back pay."

PEB 248 recommended a back-loaded series of wage increases, in response to the Carrier's concern that it had not budgeted for any wage increases in the past years since the 2011 amendable date and that thus retroactive pay would be difficult to secure. As a result, PEB 248 relieved the Carrier of the full weight of the back pay, which would be otherwise due under its wage rate recommendation. This reduced the amount of retroactive pay to the employees who had gone without a pay increase for four-and-a-half years.

The Carrier's recent agreement with the Amalgamated Transit Union, which the Carrier sought to use as a "marker," provides for back pay at a higher level than would the Coalition's final offer. Thus, bus operators, who make up 70 percent of the NJTBO bargaining unit, will receive back paychecks for \$13,441.00 at straight time and up to \$16,801.00 if they worked 25 percent overtime. By way of contrast, the average Carrier employee would receive \$13,101.00 under the Coalition's final offer. Thus, if the bus agreement is "affordable" then so should the Coalition's final offer here with respect to retroactivity. Nonetheless, we recommend that the

parties address the Carrier's concerns regarding the timing of retroactive pay, while recognizing that employees have gone without a pay increase for four-and-a-half years.

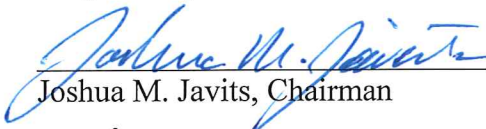
VII. SELECTION OF FINAL OFFER

Based on the above and the record as a whole, the Board selects the Coalition's final offer as the most reasonable.

VIII. 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.

Respectfully submitted,


Joshua M. Javits, Chairman


Elizabeth Neumeier, Member


Nancy E. Peace, Member

APPENDIX A

Presidential Documents

Title 3—

Executive Order 13711 of November 12, 2015

The President

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 the 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 first emergency board to investigate and report on these disputes was established on July 16, 2015, by Executive Order 13700 of July 15, 2015. The emergency board terminated upon issuance of its report. Subsequently, its recommendations were not accepted by the parties.

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

Section 9A(e) of the RLA provides that the President, upon such request, shall appoint a second 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:

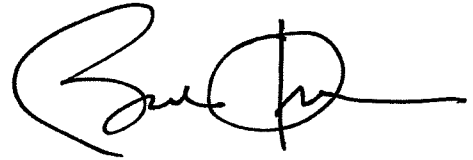
Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern standard time on November 13, 2015, a Board of three members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after the creation of the Board, the parties to the disputes shall submit to the Board final offers for settlement of the disputes. Within 30 days after the submission of final offers for settlement of the disputes, 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 second emergency board is made until 60 days after the Board submits its report to the President, the parties to the controversy shall make no change in the conditions out of which the disputes arose 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", with a large circular flourish and a horizontal line extending to the right.

THE WHITE HOUSE,
November 12, 2015.

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 Employees Division
International Brotherhood of Boilermakers
Transport Workers Union of America