

**REPORT  
TO  
THE PRESIDENT  
BY  
EMERGENCY BOARD  
NO. 186**

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**APPOINTED BY EXECUTIVE ORDER 11852, DATED APRIL 16, 1975, PURSUANT  
TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED**

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**To investigate a dispute between certain carriers represented by the National Railway Labor  
Conference and certain of their employees represented by the Brotherhood of Railway,  
Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.**

**(National Mediation Board Case No. A-9696)**

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**WASHINGTON, D.C.**

**May 23, 1975**

LETTER OF TRANSMITTAL

Washington, D. C.  
May 23, 1975

The President  
The White House  
Washington, D. C.

Dear Mr. President:

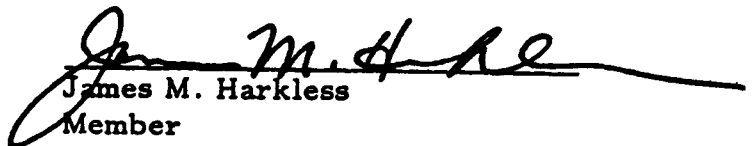
Emergency Board No. 186 created by you on April 16, 1975 by Executive Order 11852, pursuant to Section 10 of the Railway Labor Act, as amended, has the honor to submit its report herewith.

This Board, composed of the undersigned, was appointed to investigate a dispute between certain carriers represented by the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Railway and Airline Clerks. In fulfillment of its obligation the Board held hearings and considered the evidence and arguments presented by the parties. Our report and recommendations are based upon this investigation of the issues in dispute.

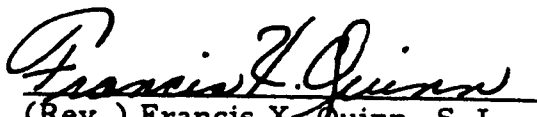
Respectfully,



Alexander B. Porter  
Chairman



James M. Harkless  
Member



(Rev.) Francis X. Quinn, S.J.  
Member

## **I. HISTORY OF THE EMERGENCY BOARD**

Emergency Board Number 186 was created by President Ford on April 16, 1975, by Executive Order 11852 pursuant to Section 10 of the Railway Labor Act, as amended. The Board was formed to investigate a dispute concerning proposed changes in existing agreements covering rates of pay, rules and other conditions of employment between certain rail carriers represented by the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Railway and Airline Clerks (BRAC). The President appointed as Chairman of the Board Alexander B. Porter, a Washington, D.C. attorney and labor arbitrator. Appointed as Members of the Board were James M. Harkless, an attorney and arbitrator also of Washington, D.C. and the Reverend Francis X. Quinn, S.J., an arbitrator and Special Assistant to the Dean, School of Business Administration, Temple University, Philadelphia, Pennsylvania.

The Board convened in Washington, D.C. on April 17, 1975, to conduct a procedural meeting with the parties. Ex parte hearings were held in Washington on April 19 with representatives of the Brotherhood and on April 24 with representatives of the Carriers. Transcripts of the hearings and exhibits submitted to the Board were exchanged by the parties at a later date and rebuttal statements were subsequently presented to the Board by both groups. During the course of their appearances before the Board, the parties agreed to an extension of the submittal date of the Board's report to on or before May 23, 1975, which was subsequently approved by the President.

The parties were given full and adequate opportunity to present evidence and argument before the Board, and the Board received the complete cooperation of both groups at all times. Following the formal hearings, the parties voluntarily made themselves available to the Board to informally explore the possibility of a mediated settlement. While these efforts were not successful in producing an agreement, the discussions elicited were useful in further clarifying the issues and provided additional analysis of the parties' positions beneficial to the Board in formulating its recommendations.

## **II. BACKGROUND TO THE DISPUTE**

The Carriers involved in this dispute comprise over 95 per cent of the Nation's Class I line-haul and terminal railroads and are represented for the purpose of national labor contract negotiations by the National Railway Labor Conference. The employees involved are represented by the Brotherhood of Railway and Airline Clerks and are engaged on the various railroad properties in the work of office employees, freight handlers, ticket agents, telegraphers, patrolmen, and other related classifications. This Brotherhood represents some 117,000 railroad employees or approximately 25 per cent of the 462,000 workers included in national railroad collective bargaining.

The dispute which led to the appointment of this Board originated on June 1, 1974, when the Brotherhood served the Carriers with a notice of its desire to change its vacation agreement, pursuant to Section 6 of the Railway Labor Act. Other Section 6 notices were served by the Brotherhood in July and August 1974 concerning wages, rules and health and welfare benefits. During the same period some twelve other Organizations which bargain nationally with the Carriers also served notices for changes in their existing agreements. Many of the issues presented in the various notices were common to all the Organizations involved, while others dealt with requests bearing on problems specific to one craft or class of employees.

Due to the involvement of the Carriers and the various railroad unions in the development of legislation to restructure the railroad retirement system, negotiations on the 1974 notices did not begin until November 6. Although negotiations were begun on a unified basis with all the Organizations participating, it soon became apparent to the Carriers that potentially costly side issues not common to all the Organizations would have to be settled before an agreement on the common issues, such as wages, health and welfare benefits, vacations, and holidays, could be reached. Negotiations thus turned to these side issues and were conducted on an individual union basis.

By early January 1975 side issues had been settled with three Organizations, the United Transportation Union, the Brotherhood of Maintenance of Way Employes and the Brotherhood of Railroad Signalmen. Shortly thereafter the Carriers began unified negotiations with these three Organizations on the issues common to all railroad brotherhoods. Tentative agreements between these three Organizations and the Carriers were reached on January 21, 1975. Similar agreements were subsequently reached with the Sheet Metal Workers, the Train Dispatchers, the Brotherhood of Locomotive Engineers, and the Machinists. These seven Organizations represent 59.4 per cent of those workers involved in national bargaining, and the Carriers have therefore viewed their settlements as establishing a pattern to be followed by the Brotherhood of Railway and Airline Clerks, as well as five other smaller Organizations which have yet to reach agreements.

The Brotherhood of Railway and Airline Clerks invoked the services of the National Mediation Board (NMB) on January 10, 1975. Their case was docketed as NMB Case No. A-9696, and joint mediation sessions were held with the parties on various dates in February and March. On March 14, the NMB proffered arbitration to the parties which was subsequently refused by the Brotherhood. The NMB formally terminated its services on March 18, and the Brotherhood issued a strike call for 12:01 A.M., April 18, 1975.

The National Mediation Board resumed mediation in the public interest on April 8. Little progress was made in the subsequent negotiations, however, and the NMB consequently notified the President that in its judgment the dispute threatened to substantially interrupt interstate commerce to a degree as to deprive the country of essential transportation service. The President, thereupon, created this Emergency Board on April 16, 1975, pursuant to Section 10 of the Railway Labor Act.

### III. COORDINATED BARGAINING AND THE PATTERN PRINCIPLE

As noted above, serious negotiations in this 1974-75 round did not begin until November 1974, less than two months before the December 31, 1974, end of the prior "contract term". The Carriers were not in a position to bargain realistically on wages and fringe benefits, until Congress acted upon the revision of the Railroad Retirement Act. At stake in that legislation was a cost item of \$300,000,000 to be assumed either by the Carriers or by the federal government. Because of the obvious impact which Congress' decision in this matter would have upon the Carriers' bargaining posture, the Carriers were unwilling to start negotiating in earnest until they knew what Congress was going to do. Accordingly, both the Carriers and the Organizations concentrated their efforts during the spring, summer and early fall of 1974 upon the railroad retirement matter. Congress enacted a new railroad retirement system into law on October 16, 1974.

When serious negotiations began in November, 1974, the parties were faced with a time problem. In addition to the so-called "common issues" affecting all of the thirteen unions, there were a number of "non-common" or side issues affecting only certain individual Organizations which had to be negotiated as part of any overall package agreement. Given the tight time constraints, the task of conducting concurrent negotiations on the side issues with thirteen individual Organizations and joint negotiations on the common issues was a formidable one and provided a severe test of the hopeful new trend toward unified, coordinated bargaining which had begun in the prior round.

The significance of the prior round's experiment with coordinated bargaining was noted and aptly commented upon in the report of Emergency Board No. 185 as follows:

... For the first time in the history of railroad bargaining, the Carriers and all of the major railroad unions, except the Sheet Metal Workers, engaged during the 1973-74 round of negotiations in coordinated bargaining through a Joint Negotiating Committee. . . .

Early in the deliberations of the Joint Negotiating Committee . . . the Carriers suggested and the union members agreed that their negotiations should be expanded to include the parties' respective wage and work rule proposals for the 1973 round together with their

respective railroad retirement proposals toward the end of arriving at a package agreement covering all outstanding issues. The end result of the ensuing negotiations was the pattern agreement set forth above. The settlement thus reached embraces the approximately 99 per cent of all railroad employees who are represented by the unions who are parties to it. . . .

Nor is the foregoing unified bargaining the only historical "first" in the present round of negotiations. For the first time also, all the union contracts had common termination dates; and negotiations concerning the railroad retirement system and the national health and welfare contract are now conducted simultaneously with negotiations concerning wages and other benefits, instead of separately as in the past. These developments portend an end to the ceaseless rounds of bargaining with individual unions or groups of unions which have characterized the industry for so many years.

Against this background, the parties to the present round agreed to try the coordinated bargaining approach again but with this significant difference: whereas all but one or two of the Organizations in the 1973 round had agreed in advance to accept the settlement reached by the Joint Negotiating Committee, it was expressly understood in the present round that any Organization could withdraw and negotiate on its own at any time. Unfortunately but perhaps predictably in view of the limited time available, the success achieved by coordinated bargaining during the prior round has not been matched in this round.

The parties began the present round by agreeing to put off efforts to negotiate jointly on the common issues, principally wages, cost-of-living, and health and welfare benefits, in order to concentrate first on the side issues. Both the Carriers and the Organizations appear to have recognized that the common issues of wages and cost-of-living adjustments were the overriding issues, in view of the unprecedented inflation affecting the economy. However, the Carriers insisted that they could not and would not commit themselves to the high costs involved in the kind of substantial wage settlement which appeared to be dictated by the economic climate, unless they could be assured that they would not be confronted, also, by high-cost demands from individual unions in order to settle the side issues. For this reason, the parties moved first to discussion of the side issues. The Organizations did so reluctantly, because they were, in general, concerned by the urgent need for wage increases for their members and wanted, accordingly, to move ahead on the common issues. The picture was

complicated further by the fact that some Organizations were almost exclusively concerned with the wage package, whereas others, such as BRAC, had served wide-ranging Section 6 notices covering a variety of side issues.

Meetings to discuss the side issues with individual Organizations consumed most of the month of November, 1974. The effort to dispose of the side issues, first, met with only limited success. By the end of November, however, the Carriers believed they had made enough progress on side issues with a sufficient number of Organizations so as to permit them to make their first offer on the common issues of wages, cost-of-living and health and welfare benefits.

The Organizations rejected the Carriers' opening offer. Nevertheless, the Carriers' wage, cost-of-living and health and welfare package was sufficiently substantial to open the way during the ensuing month for certain Organizations to modify or drop their demands on the side issues and to focus upon negotiating a settlement on these common issues. At the same time, the pressure to reach a settlement before the end of the 1974 calendar year increased; and the Organizations began insisting upon a deadline, after which they could invoke the services of the National Mediation Board and "start the clock running" on the procedures of the Railway Labor Act.

The Carriers, anxious to reach an early agreement also, sought again to concentrate upon the unresolved side issues before going forward with joint negotiations on the common issues. This was attempted during the Christmas holidays. Before recessing for the holidays, the Organizations set a deadline of January 8, 1975, for the resumption of negotiations on the common issues.

On January 8, joint negotiations resumed. At that point there were no side issues remaining between the Carriers and three of the Organizations; to wit, the United Transportation Union, the Brotherhood of Maintenance of Way Employees, and the Brotherhood of Railroad Signalmen. Given the deadline, it was determined that the Carriers and the three Organizations

would proceed to negotiations on the common wage and health and welfare issues, with the other Organizations remaining free to join the negotiations as and when they resolved their individual side issues with the Carriers. On January 21, 1975, the Carriers and the three Organizations reached agreement on a three-year contract providing a two-step wage increase in 1975 totalling 15.5% at year's end and, with further wage increases plus cost-of-living adjustments in the second and third years, providing a potential three-year increase of 36.4% (assuming inflation at a level of 8.0% or more). The settlement also provides for continuing the present health and welfare plans and adding a new dental plan. The combined cost of these two items is estimated to be 4.1% higher than under the previous plan. The total cost of the package, which also includes a new paid holiday (Christmas Eve), is said to be 40.7% - again assuming the 8.0% inflation rate.

Shortly after January 21, four other Organizations - the Sheet Metal Workers, the Brotherhood of Locomotive Engineers, the Train Dispatchers Association, and the Machinists agreed to similar contract terms. Thus, seven Organizations representing approximately 60% of the railroad employees have settled with the Carriers. Six Organizations, representing 40.6% of the employees have not settled. BRAC, is the largest union still unsigned and represents 25.3% of the railroad employees.

The Carriers, of course, contend that the package agreed upon by the seven Organizations has established the "pattern" which must guide its negotiations with the six unsigned Organizations and should be endorsed by this Board, also. BRAC naturally disagrees. Both parties have advanced the classic arguments concerning the pattern principle, arguments which have been presented to numerous Emergency Boards over the years and which need not again be set forth in detail here. Briefly, the Carriers argue that future negotiations will be hopeless, if individual Organizations know they can hold out and subsequently obtain a better settlement than the unions which have signed up; and BRAC maintains that the right of each

individual union to bargain for its own members is fundamental and cannot be compromised by resort to the pattern principle.

This Board is not persuaded by the record before it that the reasons so frequently advanced by prior Boards for adhering to the pattern principle should here be abandoned. Those reasons were stated succinctly in Emergency Board No. 181's Report to the President, were reiterated in the report of Emergency Board No. 185, and are endorsed by the present Board:

The Board has concluded that where a pattern is clearly established and ascertainable, as here, and where the union involved cannot clearly demonstrate an inequity or a rational and convincing basis for a changed wage structure, the pattern should be followed . . . the Association has not convinced the Board by a preponderance of substantial evidence that a wholly new basis for setting the wages of its members is appropriate.

Here, as in the disputes before the other two Boards, the Organization (BRAC) has not been able to establish either an inequity affecting its members or convincing proof for establishing a completely changed wage structure so as to persuade the Board to depart from the pattern established by the Carriers' agreements with Organizations representing 60 per cent of railroad employees. The Board is not unmindful of the fact that 60 per cent is not an overwhelming pattern figure. Nor is its endorsement of the pattern to be taken as a full endorsement of the manner in which the coordinated bargaining process was conducted in this round. The Board does believe that maintenance of coordinated bargaining in this industry not only is in the public interest but is essential to the welfare of employees and Carriers alike. To revert back to the days of continual crisis bargaining between the Carriers and thirteen or more unions, each seeking to piggy-back and improve upon the gains made by the others, is unthinkable.

At the same time, it is clear to the Board that the coordinated bargaining procedure followed during the compressed bargaining period of this round did not permit a full exploration of the side issues troubling BRAC and the other five Organizations which have

not yet reached agreement with the Carriers. It is apparent, for example, that BRAC's demands on job stabilization were deemed unacceptable by the Carriers both as a matter of principle and because of the potentially high costs involved. Whether or not the matter might have been resolved with more time for give-and-take cannot be known. But once the Carriers had committed themselves to a 40 per cent package on wages and other common issues, they were plainly not willing to undertake further high costs under job stabilization or any of the other side issues; and BRAC was and is not willing to accept less than the wage "pattern" in exchange for more on job stabilization.

The Board notes that in the next round there will not be a recurrence of the last-minute bargaining which so constricted the negotiations of side issues in this round. Under the agreements signed by the Carriers and the seven Organizations, there will be a full year for discussion and negotiation on side issues. Given that time span and a suitable structure of subcommittees to deal with such issues with each of the organizations, the Board believes the unfledged coordinated bargaining approach should be able to fly successfully the next time around. If it does not, reversion to the old days of splintered bargaining may not be unthinkable.

## IV. WAGES AND COST-OF-LIVING

The contrast between the "pattern" wage and cost-of-living settlement and BRAC's proposals is set forth in the following table:

<u>Effective Date</u>	<u>"Pattern" Settlement (Three-year Agreement) Wage Increase</u>	<u>BRAC Proposals (Two-year Agreement) Wage Increase</u>
1/1/75	10%	10%
7/1/75		31c <sup>1/</sup>
10/1/75	5%	
1/1/76		4%
4/1/76	3%	
7/1/77	4%	

<u>Effective Date</u>	<u>Cost-of-living Increases in C.P.I.<sup>2/</sup></u>	<u>Cost-of-living Increases in C.P.I.<sup>3/</sup></u>
1/1/76 <sup>4/</sup>	0.4 = 1c (Max. 12c)	0.3 = 1c (No Max.)
7/1/76	0.4 = 1c (Max. 16c)	0.3 = 1c (No Max.)
12/31/76 <sup>5/</sup>		
1/1/77	0.4 = 1c (Max. 17c)	0.3 = 1c (No Max.)
7/1/77	0.3 = 1c (Max. 23c)	

- 1/ Using BRAC's estimate of a 1974 average hourly rate of \$5.66 for all Clerks, the 31c per hour increase is a conversion of the "pattern" settlement's second general wage increase of 5%, applied to an average hourly rate for all Clerks of \$6.23, as of the first general wage increase of 10% on January 1, 1975. If one uses the Carriers' estimate of a 1974 average hourly rate for all Clerks of \$5.49, the result is a comparable "flat increase" of 30c per hour. The Board will use BRAC's 31c per hour figure hereafter.
- 2/ Measurement periods under the "pattern": The first measurement period is the September 1975 C.P.I. over the March 1975 C.P.I.; the ensuing measurement periods are the successive six-month periods following the first one.
- 3/ Measurement periods under BRAC proposal: The first measurement period is the August 1975 C.P.I. over the September 1974 C.P.I.; the ensuing measurement periods are the successive six-month periods following the first one.
- 4/ Roll-in under BRAC proposal: One hundred per cent of each cost-of-living allowance is to be rolled in to the basic wage rate on the date each allowance becomes effective.
- 5/ Roll-in under the "pattern": Effective December 31, 1976, 75% of all existing cost-of-living allowances are to be rolled in to the basic wage rate; the remainder of the 1976 cost-of-living increase, if any, is to be rolled in on June 30, 1977; effective December 31, 1977, 50% of the 1977 cost-of-living increase is to be rolled in.

The Board has already foreshadowed its view of BRAC's overall wage and cost-of-living proposals in its discussion of the pattern principle above. In light of the views there expressed, the Board cannot accept the substantial increases over the "pattern" which BRAC proposes for its members.

It does not follow, however, that the precise pattern formula must be slavishly adhered to in order to safeguard the pattern principle. What matters is not the precise formula but the maintenance of the principle that the members of one Organization, viewed as a whole, shall not be treated more advantageously than the members of the other Organizations, viewed as a whole, who have established the pattern. Thus, if BRAC prefers to break down the 5% across-the-board increase of October 1, 1975, into a flat 31c per hour increase for all of its members, instead of asking, say, for a 35c per hour increase for some higher-rated members and a 25c per hour increase for other lower-rated members, as would be the case with a straight percentage increase, it may do so without breaking the pattern, provided the cost is the same.

On the evidence here presented, the cost of the flat 31c per hour increase appears to be the same as the 5% increase contained in the pattern, save that BRAC seeks to advance the effective date of the increase from October 1, 1975 to July 1, 1975. The Board sees no warrant for accelerating the effective date of the increase, but it recommends that the Carriers accept BRAC's proposal to substitute a flat 31c per hour increase for the 5% increase which will become effective on October 1, 1975 under the pattern.

#### **Entry rates**

The present record reveals a further distinction between the manner in which BRAC wishes to divide the benefits accruing to its members under the wage increases offered by the Carriers and the manner in which the Organizations who have accepted the pattern settlement wish to divide the same benefits. Specifically, BRAC is willing to offer entry rates, pegged for the first year of a new hire's employment at 85% of the hourly wage rate of the entry

job to which he or she is assigned, in exchange for improvements in the wage package applicable to BRAC employees with more than one year's service.

Again, the Board sees no deviation from the pattern principle in permitting BRAC or any other individual Organization to determine the method by which the benefits accruing to its members under the pattern shall be distributed. The difficulty in implementing BRAC's proposal in this instance is twofold: first, evidence in the present record does not permit a very exact estimate as to the cost savings which will result from adoption of an 85% entry rate nationally, and second, a few Carriers already have entry rates for the Clerks, rates which have been "bought" by concessions on other local issues.

Taking the estimated cost savings first, it is difficult to arrive at precise savings estimates because the data concerning new entrants is very rough. The Carriers state they could produce more exact data through a survey of their members, but the survey would take more time than the Board has available. The Board believes it would be useful, however, to conduct such a survey for the parties' own subsequent use in evaluating the Board's recommendations on this subject.

The main datum available concerning new entrants is a figure drawn from the Railroad Retirement Board's (RRB) record of the yearly average of new entrants into clerical positions in the railroad industry. The RRB statistics for the years 1968-72 show that an annual average of 9.4% of all railroad clerical employees were new entrants, with a spread between 11.6% in 1968 and 5.7% in 1972. Applying the 9.4% average to the 1974 total of 114,475 clerical employees, the number which the Carriers consider to be the relevant total clerical force, yields a figure of 10,786 new entrants for 1974.<sup>1/</sup>

<sup>1/</sup> The Carriers' total is based upon 28 clerical classes or reporting divisions. BRAC computes its total clerical employment figure (and its average hourly wage rate figure) on the basis of 42 reporting divisions, the additional 14 being divisions which encompass jobs ranging from Laborers to Station Masters, many of whom are not represented by BRAC. As of June, 1974, there was a total of 16,455 employees in these 14 reporting divisions. Thus, if one adds all of the employees in these 14 reporting divisions to the Carriers' total work force figure, the total becomes 131,200 clerical employees.

As the Carriers point out, however, this figure is inflated in several respects: 1) it does not disclose the amount of time actually worked by the new entrants in their first year (it could be one day or 260 days); 2) it does not show the number of first-year "quits" included in the total; 3) it does not reveal the number of positions to which each new entrant may have been assigned; and 4) it is based on data for 1968-72 and does not provide a true basis for comparison with the present year, 1975, in which there are likely to be fewer new hires because of the number of furloughed employees who must first be recalled.

For its part, BRAC observes that there is also a factor which may tend to increase the number of new entrants; to wit, the fact that employees with 30 years' service may now retire with full pension at age 60. Railroad Retirement Board figures show more than 12 per cent of the employees have more than 30 years' service but do not show how many of these are over 60 years of age.

At the Board's request, both parties have provided estimates of the gross savings to be realized in 1975, 1976 and 1977 as a result of the application of the 1-year, 85% entry rate. Their figures are surprisingly close to one another. BRAC shows a 1975 saving of \$7 million (apparently based on the fact that savings can be realized only during the remaining six or seven months of 1975), a 1976 saving of \$13 million and a 1977 saving of \$14 million. The Carriers show savings of \$9.5 million in 1975 (based upon the entire year, although five months are now gone), \$10.1 million in 1976 and \$10.4 million in 1977. If one adjusts the Carriers' 1975 figure to reflect the fact, apparently already reflected in BRAC's 1975 figure, that there are only seven months remaining in calendar year 1975, its \$9.5 million figure is reduced to approximately \$5.5 million. As thus revised, the Carriers' figures show a total savings between now and the end of 1977 of \$26 million, while BRAC shows a total of \$34 million.

In view of the variables discussed above, it will be obvious that no mathematically exact savings figure can be arrived at on the basis of the information now available. The parties are, of course, free to attempt a more accurate computation based upon a fuller study of the actual facts concerning new entrants. For present purposes, however, the Board believes that a figure of \$30 million, the mean between the parties' respective estimates, is close enough to be used in framing the Board's recommendations. Since we are going to recommend that this saving be paid back to the BRAC employees by advancing the effective date of the pattern agreement's 4% increase of July 1, 1977, the parties will have ample time to compute the actual entry rate savings for 1975 and 1976 before the 4% increase falls due. Thus, they may, if they wish, agree in principle to accelerate the date of the 4% wage increase on the basis of the actual experience in 1975 and 1976 (as projected through 1977) rather than accept the accelerated date to be recommended by the Board on the basis of the non-actual "\$30 million" cost saving.

If the parties do not wish to follow the latter approach, the Board recommends that they agree to make the 4% general wage increase of 1977 effective for the BRAC employees on February 1, 1977, instead of on July 1, 1977, as contemplated by the pattern. The cost of advancing the July 1 increase of 4% is estimated by the Carriers to be \$5.8 million per month, if one takes into account only the 28 classes of employees which it considers to be most truly representative of BRAC's membership; and \$6.6 million per month, if one includes the additional 14 classes which BRAC considers appropriate to include but which include many employees not actually represented by BRAC. Allowing a substantial discount for employees in the latter group not represented by BRAC, a figure of \$6 million per month appears to be an appropriate measure of the cost of advancing the July 1 increase. The five-month advancement to February 1, 1977, is based on this reasoning and appears to the Board to reflect the savings to be realized by the Carriers as a result of the entry rates granted by BRAC.

To repeat, this is not a departure from the pattern. Rather, it is an adjustment of the pattern to the special circumstances brought about by BRAC's offer of substantial cost savings in the rates paid to new entrants in return for improvements in the wage package applicable to BRAC employees with more than one year's service.

Turning briefly to the other problem area posed by entry rates, namely, that of a few Carriers which already have negotiated entry rates with BRAC, the Board finds the present record is not complete enough to permit a firm recommendation concerning the manner in which this matter should be handled. We do feel that BRAC should make some allowance for the fact that these Carriers have already "paid for" entry rates at their respective properties. Such an allowance might take the form of extending the duration of the entry rates or otherwise improving the cost-savings realized by these Carriers from entry rates.

## **V. HEALTH AND WELFARE BENEFITS**

The health and welfare portion of the pattern settlement consists of two elements: one is a continuation of the present level of existing benefits with the employers assuming the cost associated with such an agreement; the other is the establishment of a comprehensive dental program effective March 1, 1976, with the cost assumed by the Railroads.

BRAC contends that the allotted expenditures do not provide adequate benefits. They ask to provide benefit provisions for retirees between age 60 and age 65, at which time the retiree would become eligible for Medicare. They seek to correct apparent inequities in coordination-of-benefit provisions applicable to covered employees and dependents. There seems to be some inequity in benefits when a husband and wife are both employed by the railroad industry. BRAC claims that women employees, wives, are especially disadvantaged, treated inequitably because they do not receive the full coverage they pay for. Finally, the dental plan sought for by BRAC would remove any \$50 deductible.

The Carriers contend that the additional cost of health and welfare benefits over the three-year period is equivalent to a 4.1% wage increase. They further contend that the BRAC dental plan would cost 75% more than that agreed to by other Organizations.

The envisioned dental plan is patterned in its coverage principles after the dental care plans effective in such major industries as the automobile industry. The plan will provide benefits, based on the prevailing level of dentists' fees. The basic services include twice-a-year routine examinations, emergency treatments, X-rays, fillings and extractions and prosthetic services including orthodontic benefits for children.

Carriers argue for a \$50-per-person per year deductible because the real purpose of the plan is to help pay for dental care when it imposes heavy expenses. The cost of the dental plan is seen as the equivalent of a 1% wage increase.

In the negotiations with the other Organizations, there seemed to be recognition that in providing a dental care plan the Carriers were making a trade-off of dental benefits for wages and that if more costly dental benefits were to be provided the wage increase would necessarily have to be less.

Our review of the pattern settlement persuades us to recommend that benefits now provided under Group Policy Contract GA 23000 be continued for a three-year period commencing January 1, 1975. However, any inequities, especially those affecting women employees in coordination-of-benefits provisions applicable to covered employees and dependents should be corrected. The evidence indicates that this inequity affects BRAC more than any of the other Organizations, inasmuch as there are more husband-wife teams within the clerical group than within any of the other Organizations.

We recommend that the Insurer furnish the same financial data and claim experience information to the Organization in the same detail and at the same time it furnishes such data to the Carriers.

We also recommend acceptance of the pattern national dental plan to be effective March 1, 1976.

Finally, the parties are in basic agreement that in the event national legislation is enacted, benefits and payments will be integrated so as to avoid duplication, and any savings resulting from such integration will be credited to the special account maintained in connection with the health and welfare plan.

## **VI. JOB STABILIZATION AND RETRAINING**

A major stumbling block to an agreement has been job stabilization. BRAC is interested in a guarantee of employment for employees after such employees have attained one year's seniority. The Carriers have dismissed this proposal because of cost consequences. The precise cost of the BRAC proposal is difficult to determine because of the assumptions that must be made in projecting such items as levels of unemployment and economic activity.

The BRAC income protection plan consists of a number of components; i.e., compensation for those for whom there is no work, make-up pay for those who must take lesser paying jobs and special allowances and benefits for employees transferred from one location to another. Based on present unemployment within the Clerks' craft, the Carriers estimate the monthly cost of restoring BRAC-represented employees with one or more years of service to be \$4.6 million. The Carriers are quick to point out that they are not unwilling to recognize the propriety of job protection in certain circumstances as well as their obligation to fund unemployment benefits for those who have an attachment to the railroad industry and find themselves unemployed. The Carriers affirm that job protection should exist where special considerations develop that justify it, e.g., agreements that are entered into when railroads merge. When a merger occurs, employees with a significant attachment to the railroads involved deserve and are customarily granted job protection. The savings that a merger brings

are not realized at the price of furloughing loyal and valuable employees. Thus, a special circumstance exists that calls for job protection.

BRAC is the beneficiary of many job protection provisions resulting from mergers and technological changes. One example is the February 7, 1965 national agreement. Under that agreement employees with an employment relationship as of October 1, 1962, were, in effect, guaranteed permanent employment. That agreement was negotiated in the context of a great upheaval in railroad customs and tradition. The less-than-carload freight business was being lost to trucks, passenger business began its decline as airlines became the dominant mode of passenger transportation. The combination of technological, operational and organizational changes compelled the railroads to seek the ability to realign and rearrange their forces. These changes threatened not only jobs but the manner in which traditional clerical operations were carried out. In return for receiving the right to transfer employees across pre-existing seniority lines and setting up new work processes, the railroads in the February 7, 1965 agreement promised job security to many of their employees.

BRAC now wishes to update that agreement and provide similar job protection for all employees once they have one year of seniority.

We believe that a workable job stabilization plan must be linked to a developed retraining policy. The Carriers have given too little time and attention to the Organization's plaintful call for a retraining program. An active stabilization and training policy committee is the key to the developing problem of economic security in the railroad industry. A committee, consisting of BRAC representatives and members appointed by the National Carriers' Conference might begin by assisting BRAC employees to become fully employed in productive work. Such an active stabilization and retraining Policy Committee would be engaged in a process of retraining, not a static set of goals or regulations. Stabilization and retraining policy must be flexible and responsive to BRAC's needs now, with antennae always out to win support from Federal manpower training programs.

Since it is always more costly, personally, socially and economically to maintain people in idleness, an active affirmative job stabilization and retraining policy committee should meet regularly with specific action objectives. Within six months the parties should establish a bank of information on current and projected needs and requirements for retraining. Within ten months a detailed cooperative program for training and retraining should be developed. Within one year a Stabilization and Retraining Program could be working. The Carriers' interest in the idea must be translated into action. Clear standards for anti-discrimination should be a part of the active affirmative stabilization and retraining policy.

If after one year the active process that we envisage is but a static standing committee, then we suggest that the parties enlist the services of a neutral public member to help meet reasonable standards of stabilization and of full development and use of BRAC's human resources.

Finally, a word should be added regarding BRAC's basic demand of job protection for all employees with one or more year's service. The Board finds two main objections to granting this demand at this time. First, aside from the apparent need for retraining, the special circumstances which existed and formed the basis for previous job protection measures do not appear to be present here. Second, job protection on the scale proposed entails significant costs to the Carrier which cannot be granted without breaking the pattern wide open.

## **VII. VACATIONS WITH PAY**

The Clerks' proposal, as revised, would make these principal changes:

- a) Increase the maximum length of vacation from five to six weeks, which would be available after 30 years of service.
- b) Change the length-of-vacation pattern to provide:

After one year: two weeks of vacation (now granted after two years)

After five years: three weeks (now granted after ten years)

After 15 years: four weeks (now granted after 20 years)

After 20 years: five weeks (now granted after 25 years)

After 30 years: six weeks (present maximum is five weeks)

The BRAC proposal would provide at least one additional week of vacation for most employees with five or more years of service. BRAC's request is based on the vacation benefits now received by its Canadian members, who, it notes, have historically lagged behind its American members with regard to vacations.

The Carriers reply that Canadian railroad settlements have never been considered a yardstick for measuring the adequacy of American railroad settlements. If they are to be treated as such, then the Board should examine the Canadian agreements in their entirety rather than look solely at a single, isolated Canadian benefit which happens at the moment to be more favorable than its American counterpart.

The Board agrees that one cannot examine a single contract benefit in another industry or company, much less another country, without considering also the other wage and benefit provisions of the contract in question. Furthermore, our analysis of current American practices within and outside the railroad industry shows that on the basis of maximum length of vacation, length of vacation available after specified period of service, and qualifying service requisite for vacation of one, two, three, four or five weeks, BRAC employees already occupy an enviable position. We find no need to recommend the changes which BRAC proposes. This is further attested to by the settlements which have been reached with the majority of railroad employees, both operating and non-operating, in which no vacation benefit changes were made.

## VIII. HOLIDAYS

In their holiday request the Brotherhood listed three holidays in order of preference which they wish added to their existing paid holiday schedule. These were Columbus Day,

the day after Thanksgiving and Christmas Eve. In their settlement with the seven other railroad Organizations the Carriers granted the request for the Christmas Eve holiday, but not the other two holidays, effective in 1976. They have also made the same offer to BRAC.

BRAC maintains that Christmas Eve is their least favored choice, because their members on many properties already enjoy a part holiday on this day by custom and practice. They have, however, indicated a willingness to settle for their second choice, the day after Thanksgiving. The Carriers, on the other hand, point to the settlement with the seven other Organizations as establishing Christmas Eve as the tenth paid holiday to be granted employees in the industry. They maintain that to award BRAC a different holiday would disrupt the pattern of uniformity which has existed in the industry with respect to holidays and be disruptive and costly from an operating standpoint.

The Board cannot agree with BRAC that because some of its members now informally enjoy a part day off on Christmas Eve, the establishment of this day as a full paid holiday would be of no benefit. Also, we recognize the value of maintaining a uniform holiday schedule in the industry and view the previous settlement with the seven Organizations as establishing a definite precedent for the Christmas Eve holiday. The Board therefore recommends that BRAC accept the Carriers' holiday offer.

## **IX. THE SCOPE RULE**

The Organization proposes to include a uniform Scope Rule in each of the collective bargaining agreements with the Carriers covering the crafts or classes of employees which it represents. Briefly stated, the main thrust of such a rule is twofold. It would provide that all employees engaged in the work of the crafts or classes of Clerical, Office, Station, Tower and Telegraph Service, and Storehouse employees, including Patrolmen, as such crafts and classes are, or may be, defined by the National Mediation Board, shall be governed by the rules in each collective bargaining agreement concerning the hours of service and working

conditions. In addition, the proposed uniform Scope Rule provides that all work of said crafts or classes at any place it occurs shall be performed exclusively by employees subject to the scope of the particular agreement, save for specifically mentioned exceptions. The rule would also apply, regardless of the time devoted to performance of such work.

The Organization points out that in 1920, when it was first designated to represent the class or craft of "Clerical, Office, Station, and Storehouse Employees" in an agreement with the U.S. Director General of Railroads who at that time operated all of the nation's railroads, certain exceptions were written into the Scope Rule which provided that the agreement would not apply to certain jobs. The Organization says that after the 1934 Amendments to the Railway Labor Act, it became the representative under that statute of most of the railroad employees within the craft or class of Clerical, Office, Station and Storehouse Employees. From time to time BRAC has continued to negotiate agreements periodically with each of the carriers which generally have had exception provisions either wholly or partly excluding specific positions within the clerical craft or class from the coverage of such agreements.

The Organization advances several reasons in support of its proposal. First, BRAC urges that elimination of excepted employees and positions from the Scope Rules is mandated by Title VII of the Civil Rights Act of 1964. BRAC states that it has been named as respondent, along with some carriers, in several hundred charges of discrimination by minorities or females before the Equal Employment Opportunity Commission. According to BRAC, more than 30 of these charges have resulted in lawsuits under Title VII. Apparently, these charges are, for the most part, allegations of Title VII violations on the basis that the seniority provisions in the collective bargaining agreements are discriminatory. BRAC complains that its potential liability in connection with these matters is substantial and possibly could drain its treasury. To avoid this, BRAC asserts that it has restructured its local lodges to eliminate those which were made up predominately of one race and has revised the seniority provisions

in its collective bargaining agreements to wipe out group classifications. Presently, BRAC, the other Organizations, and the Carriers are considering other revisions in the seniority system to deal with problems of discrimination by race or sex.

Furthermore, BRAC maintains that having positions in its collective bargaining agreements which are wholly or partially excepted from the provisions of the agreements also subjects it to charges under Title VII by minority group and female employees who claim discrimination because of inability to be promoted into these positions. With respect to the excepted positions, BRAC says that a carrier has "unfettered authority" under the agreement as to the hiring, discharge and promotion of such employees. As for the partially excepted jobs, they usually are exempt from the promotion, assignment and displacement rules, so that management has complete control over such moves without regard to the seniority and qualification standards set out in the collective bargaining agreement.

BRAC asserts that employees alleging discrimination by a carrier nevertheless have charged that BRAC has caused such discrimination or acquiesced therein by negotiating a collective bargaining agreement with exceptions which allows or authorizes such discrimination. BRAC urges that it cannot afford to run the risk inherent in refusal to eliminate the exceptions from the Scope Rules. In its view, there is no excuse for continuation of provisions which might be found in violation of the statute. BRAC emphasizes that it is not asking to remove official positions which are not covered by the Railway Labor Act, but only those jobs that are defined as falling within the craft or class which BRAC represents. Finally, BRAC denies that placement of these excepted positions within the full coverage of the collective bargaining agreement would prevent the Carrier from filling them with minority or female employees.

Secondly, BRAC supports its position for a uniform Scope Rule on the basis that its duty of fair representation under the Railway Labor Act requires it to seek to eliminate

exception provisions in the Scope Rules which could be found to be discriminatory. BRAC says the excepted employees not only are exempt from the assignment, promotion and discharge provisions of the collective bargaining agreements, but are not subject in whole or in part to many contract benefits with regard to compensation, hours, protection from arbitrary discipline, health and welfare benefits, vacation benefits, paid holidays, etc. BRAC maintains that it must insist that all the employees whom it has the duty to represent shall be governed by the rules of the collective bargaining agreement.

The Carriers argue that there is no uniformity in the number or identity of excepted positions under the existing Scope Rules in BRAC's agreements with the various railroads. The Carriers urge that determination of those positions which should be excepted from the Scope Rule has in the past been handled on a local, rather than a national, basis and must continue to be, for both legal and practical reasons. According to the Carriers, the question of whether each particular position is properly excepted can only be given adequate consideration on a local basis. Therefore, the Carriers urge this course, with the understanding that the Scope Rule issue will not be covered by the moratorium provisions of the national agreement.

The Carriers claim that a position may be excepted because it is that of an "official" rather than that of an "employee" as defined in the Railway Labor Act. The Carriers point out that, under the rulings of the NMB and the Interstate Commerce Commission (ICC), the line of demarcation between an official not subject to representation by a Union under the Railway Labor Act and an employee or subordinate official is not always clear-cut. The Carriers state that it may be - indeed, has been - possible for BRAC and individual carriers to agree as to the appropriate line of demarcation. However, the Carriers say that, absent such agreement, the dispute should be determined by the ICC or NMB. To the Carriers, blanket elimination of all exceptions without any individual consideration locally would

be improper. In addition, the Carriers assert that excepted positions may include jobs which are excluded from the craft or class represented by BRAC because they are confidential.

The Carriers suggest that the determinations of whether a position is properly included within the BRAC crafts or classes must be made on an individual basis at each carrier in order to permit a carrier voluntarily to recognize the Union as the representative of such employees without resorting to a representation proceeding under the Railway Labor Act before the NMB. Otherwise, the Carriers contend that each carrier could be subject to criminal penalties of the Railway Labor Act by agreeing to bring additional employees within the jurisdiction of BRAC without being assured that it is the choice of the majority of the craft on each carrier.

The Carriers deny that a civil rights issue is involved in BRAC's uniform Scope Rule proposal. They claim that if a particular carrier should discriminate against females or a minority group in exercising its discretion to fill excepted positions, this would be the responsibility of the carrier not BRAC.

The Carriers emphasize that the civil rights problem would not be solved by eliminating the excepted positions from the Scope Rule because these positions would then be covered by the seniority rules in various collective agreements which are also under attack. The Carriers state that this is a problem about which there is serious concern and which they, together with the unions, are attempting to solve through development of an affirmative program. This matter apparently is awaiting agreement by all the unions to a comprehensive proposal dealing with seniority problems.

Obviously, this Board cannot, nor should it attempt to, determine on the basis of the evidence and arguments presented to it whether the exceptions in the various collective bargaining agreements do present a real problem of discrimination. There appear to be no actual decisions holding that such exceptions violate Title VII or that the Organization has

not lived up to its duty of fair representation in negotiating them. Clearly, the seniority rules present the more serious problem in the industry in this regard. Therefore, to the extent that excepted employees and positions are brought under the coverage of the seniority rules which might be found to operate discriminatorily, the civil rights problem would still exist.

Even so, the Board is persuaded that the Organization arguments for a uniform Scope Rule have merit insofar as the Organization wishes to include those employees whom it must represent under the Railway Labor Act within the coverage of its collective bargaining agreements. Although the Carriers contend that there may be sound reasons for a particular exception, neither party has presented any specific justification for them other than on the basis that they may be official or confidential. Nor is there any real dispute that there are some positions outside these categories which should be covered by the rules in the collective bargaining agreements.

A recent survey of the 20 largest Class I railroads indicates that about 93,204 positions are covered by BRAC agreements in all the Class I carriers. In these agreements, about 10,556 positions are partially excepted and 4,712 are fully excepted. Since 1968, the parties through local negotiations have agreed to change 484 positions from fully excepted to fully covered and 1,598 from fully excepted to partially excepted.

The Board believes faster progress should be made toward eliminating fully excepted or partially excepted positions in the Scope Rules which properly come within the coverage of the crafts and classes which BRAC represents. The Board concludes it is a problem which cannot adequately be handled by adopting a sweeping or uniform Scope Rule on a national basis. The positions which are excepted appear to vary from carrier to carrier. Moreover, it is not always easy to draw a line between certain border-line jobs. Nevertheless, in order to give impetus to the local negotiations in this matter, we recommend that a national goal be established to convert 10% of fully excepted or partially excepted positions to "covered"

status within 90 days after signing of an agreement. The Board believes the initiative for identifying these positions in the first instance should rest with the Carrier at each property.

Thereafter, the Board urges the parties to move toward the conversion of all excepted positions which truly should be covered within the various collective bargaining agreements by January 1, 1978, the end of the recommended period for a new agreement.

In implementing these recommendations, the moratorium in a new national agreement should not apply to bar local handling of this issue. However, existing local moratoria should be respected.

The Board also recommends that BRAC's other requests concerning a uniform Scope Rule, particularly that on work jurisdiction, be withdrawn.

## **X. MILEAGE RATES AND EXPENSES**

The award of Arbitration Board No. 298, September 30, 1967, required that employees not furnished free transportation or reimbursed for the cost of rail fare or other transportation, who use their personal automobiles, be paid an allowance of nine cents per mile and that employees unable to return to their headquarters on any day be reimbursed for the actual reasonable costs of meals and lodging away from headquarters not to exceed \$7 per day. The award provided that the Organizations should have the option of accepting any or all of the respective benefits provided in the award or of continuing in effect any or all of the provisions of existing agreements on individual railroads in lieu thereof, although there should be no duplications of benefits.

During the seven and a half years since Award 298 was issued, some of its provisions have been modified on some of the individual railroads in response to local conditions. BRAC maintains the rates are not even reasonably in line with current inflated costs. The Carriers maintain that the issue is an economic one on which meaningful concessions cannot be given consideration at the same time as wage increases of the magnitude which some of the

Organizations have requested and are receiving. They note that other Organizations, with an even greater interest in mileage rates and expenses than BRAC, have withdrawn their Section 6 notices on this point in return for higher wages.

We feel that the matter can best be resolved by remanding it for further handling on a local basis on individual railroads during the terms of the agreements within, but not beyond, the peaceful procedures for resolving disputes which are provided for in the Railway Labor Act.

## **XI. GRIEVANCE HANDLING**

The Brotherhood has requested several changes in the existing grievance handling procedures to ensure the prompt and orderly settlement of disputes before the National Railroad Adjustment Board and other tribunals established under Section 3 of the Railway Labor Act. This is a subject in which both parties have a substantial interest, and they have indicated that an agreement in this area can be reached through further negotiation. The Board, therefore, will make no recommendation on this subject, but does urge the parties to give early consideration to mutual problem solving in this area.

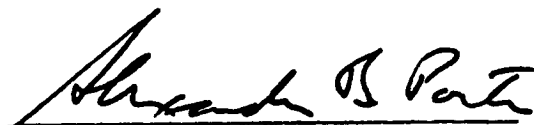
## **XII. OTHER PROPOSALS**

The Board believes that the Carriers are entitled to a period of labor stability in return for their contract settlement. It therefore recommends that the Brotherhood accept the Carriers' moratorium proposal. Under this proposal the moratorium would run until January 1, 1977, although notices served during 1977 could not be implemented prior to January 1, 1978.

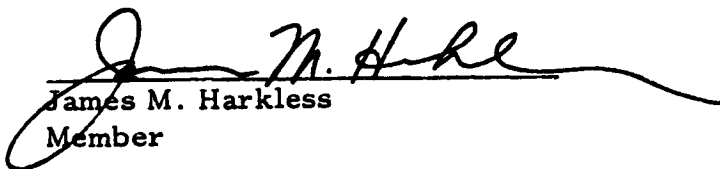
Other proposals were contained in the original Section 6 notices of the Brotherhood and the Carriers. These proposals were not the subject of lengthy discussion before the Board, however, and will not receive separate treatment here. The parties have indicated that a settlement of this dispute is dependent upon the resolution of the issues which were discussed

above. The Board believes that accommodation between the parties can be reached on these issues and urges them to negotiate a settlement based on the conclusions and recommendations which are included in this report.

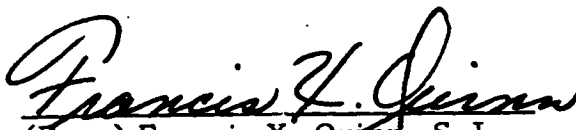
Respectfully submitted,



Alexander B. Porter  
Chairman



James M. Harkless  
Member



(Rev.) Francis X. Quinn, S.J.  
Member

Washington, D.C.

May 23, 1975