

Report
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 193

**APPOINTED BY EXECUTIVE ORDER 12207 DATED
APRIL 12, 1980, PURSUANT TO SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED**

To investigate the dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada.

(National Mediation Board Case No. A-10417)

WASHINGTON, D.C.
MAY 12, 1980

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *May 12, 1980.*

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT:

The Emergency Board created on April 12, 1980, by Executive Order 12207, pursuant to Section 10 of the Railway Labor Act, as amended, has the honor herein to submit its report and recommendations.

The Board was created to investigate a dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood Railway Carmen of the United States and Canada. Hearings have been held and the arguments and evidence of the parties have been considered.

The Board acknowledges with appreciation the able assistance of Gale L. Oppenberg and Roland Watkins of the National Mediation Board's staff who rendered valuable aid to the Board during the proceedings and in preparation of this report.

Respectfully,

ARTHUR STARK, *Chairman.*

THOMAS G. S. CHRISTENSEN, *Member.*

CLARA H. FREIDMAN, *Member.*

BACKGROUND

Local 1330 of the Brotherhood Railway Carmen of the United States and Canada (Organization) represents all of the approximately 177 employees of the Port Authority Trans-Hudson Corporation (PATH or Carrier) who are involved in this dispute. These employees are primarily engaged in the repair, maintenance, inspection and cleaning of rail car equipment.

PATH, a wholly-owned subsidiary of the Port Authority of New York and New Jersey, is a 13.9-mile rapid transit system within and between the states of New York and New Jersey. The 13-station system connects the cities of Newark, Jersey City and Hoboken with Manhattan. PATH is an interstate connector and transports over 75 percent of all rail passengers entering New York from New Jersey. Between 150,000 and 160,000 passengers are transported by PATH each weekday. Of these, two-thirds are carried during the two daily rush periods. PATH currently employs a total of 991 employees who help maintain and operate a fleet of 291 passenger rail cars.

PATH acquired the bankrupt Hudson and Manhattan Railroad in 1962 and initiated long-range rehabilitation. In 1963, the first year of operation of the system by PATH, its deficit was \$2.3 million. The operating deficit has been steadily increasing. The causes for this increasing deficit are not peculiar to PATH but are shared by virtually all other public transit operators in the nation. The Carrier's ability to halt its ever increasing deficit through higher fares is severely limited by pressures to maintain fare stability.

The 1979 operations of the Carrier, as it reports them, are summarized in the following table :

Total passengers carried.....	44, 273, 038
Total passenger miles.....	198, 073, 145
Typical weekday morning peak (7-10 a.m., fall 1979).....	60, 942
Employee compensation.....	\$24, 697, 800
Total expenses.....	\$43, 017, 000
Total revenues.....	\$14, 717, 000
Gross operating deficit.....	\$38, 448, 000
Cumulative gross operating deficit (Sept. 1962 to Dec. 1979).....	\$267, 384, 000
Cumulative capital investment (Sept. 1962 to Dec. 1979).....	\$272, 424, 000
Revenue per passenger.....	\$0. 30
Cost per passenger.....	\$1. 20
Operating loss per passenger.....	\$0. 90

CHRONOLOGY OF THE DISPUTE

By notice dated November 8, 1978, the Organization, in accordance with Section 6 of the Railway Labor Act, as amended, requested a substantial number of changes in its current agreements with PATH. Subsequently, PATH served a counter-notice dated February 2, 1979.

On March 15, 1979, the parties applied to the National Mediation Board (NMB) for mediation services in relation to the Section 6 Notices served by the respective parties. This application was docketed as NMB Case No. A-10417 on March 19, 1979. Mediation was later undertaken under the auspices of Mediator Francis J. Dooley and continued by Mediator E. B. Meredith. On January 29, 1980, NMB Member Robert J. Brown entered the negotiations. Intensive mediation sessions were held in New York City, Washington, D.C., and Boston, Massachusetts.

On February 29, 1980, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The Organization declined to proffer and on March 12, 1980, the parties were formally advised by the NMB that it was terminating its mediation services.

Unable to resolve their disputes, the parties on April 11, 1980, informed NMB Member Brown and Mediator Meredith that they were deadlocked and requested the appointment of a Presidential Emergency Board as a means of settling the dispute. The Organization subsequently announced that its members would engage in a strike commencing on April 14, 1980, at 7 a.m.

The National Mediation Board, pursuant to Section 10 of the Railway Labor Act, informed the President that in its judgment this dispute threatened substantially to interrupt interstate commerce so as to deprive a section of the country of essential transportation service.

Pursuant to Section 10 of the Railway Labor Act, as amended, the President in Executive Order 12207 created Emergency Board No. 193.¹ The President thereafter appointed the following as members of the Board: Arthur Stark, Arbitrator from New York City, Chairman; Dr. Clara H. Friedman, Arbitrator from New York City, member; and Thomas G. S. Christensen, Professor of Law, New York University, member. The Board was ordered to investigate the dispute and report its findings to the President within 30 days.

The Board convened *ex parte* with representatives of the Organization and PATH on April 17 and 18, 1980, respectively, in New York City. Exhibits submitted during these hearings and the transcripts of the proceedings were later exchanged. *Ex parte* hearings were resumed on April 23, 1980, at which time the parties submitted rebuttal testimony and evidence. During the hearings the parties were given

¹ The text of the Executive Order appears as Appendix A.

full and complete opportunity to present evidence and argument before the Board. The record of the proceedings consists of 261 pages of testimony and 10 numbered exhibits, 7 introduced by the Carrier, 2 introduced by the Organization, and one introduced by the Board.

WAGES

PRESENT AND PRIOR WAGE RATES

The parties made frequent reference throughout the proceedings to "Carmen" wages. For PATH they cited the hourly rates of Step 2 Car Repairmen, Electricians, Machinists, and Car Inspectors. These are presently \$9.1250, and in prior years were as follows:

Date of increase:	Hourly rate
Rate in effect at time of PATH takeover in 1962-----	\$2. 7143
May, 1965-----	3. 7125
August, 1967-----	3. 8750
February, 1968-----	3. 9500
November, 1968-----	4. 2250
April, 1970-----	4. 5250
December, 1970-----	4. 7975
March, 1971-----	4. 9900
August, 1971-----	5. 2400
February, 1972-----	5. 5850
February, 1973-----	6. 0250
January, 1974-----	6. 2500
May, 1974-----	6. 8750
May, 1975-----	7. 4250
November, 1975-----	7. 5050
May, 1976-----	7. 9450
May, 1977-----	8. 4225
January, 1978-----	8. 8425
May, 1978-----	9. 1050
January, 1979-----	9. 1250

Rates for Carmen at the Long Island Rail Road (LIRR) and ConRail, and for Car Maintainers at the New York City Transit Authority, were also referred to in various ways. The classifications, although similarly titled, are not identical in job duties and progressions. Rates are listed in Appendix B, updating a similar compilation for earlier years which was included in the 1973 Report of Emergency Board No. 183.

THE ORGANIZATION'S PROPOSAL

The Organization seeks the following general wage increases:

Effective date:	Percent increase
December 8, 1978-----	12. 1
December 8, 1979-----	12. 1
December 8, 1980-----	12. 1

According to its calculations, this would raise the average hourly rate from \$8 to \$11.69 over the course of three years. (PATH calculates the present average as \$8.52. The parties did not reconcile their different figures, although both were alleged to be weighted averages exclusive of overtime.)

THE CARRIER'S PROPOSAL

PATH offers the following general wage increases:

Effective date:	Percent increase
December 8, 1978.....	7.5
December 8, 1979.....	8.0
December 8, 1980.....	8.0

It calculates that this would raise the hourly rate for Car Repairmen from \$9.125 to \$11.4425 at the beginning of the third contract year.

THE ORGANIZATION'S CONTENTIONS

The Organization asserts that a 12.1-percent increase in each year of a three-year contract is necessary to bring PATH's wage rates ahead of rates on the LIRR for employees also represented by the Organization. This is justified, according to the Organization, by the more flexible work rules which reportedly govern PATH employees, an alleged tandem wage relationship between PATH and the LIRR, and productivity savings assertedly attributable to PATH employees.

In May, 1965, when it signed its first agreement with PATH, the Organization said it gave up certain work rules in exchange for substantial wage increases. These assertedly put PATH Carmen 30 percent ahead of LIRR's. (However, wage data reported by Emergency Board No. 183 indicate that the difference between the two rates became about 21 percent in 1965.)

One of the work rule changes permitted the existence of "composite mechanics" who could perform work previously performed exclusively by several different classifications. Allegedly, this resulted in increased management flexibility with significant cost savings for PATH. The LIRR, according to the Organization, does not enjoy similarly advantageous work rules.

The Organization claims the existence of a historical tandem wage relationship between PATH and the LIRR. The ostensible 30 percent differential between PATH and the LIRR should have been maintained, the Organization argues, but instead PATH employees are now allegedly 30 percent or more behind LIRR employees. (We do not find the wage data in Appendix B to support this figure.)

The alleged tandem relationship is also a basis for the Organiza-

tion's argument that its wage proposals are excepted from Wage and Price standards as revised by the Council on Wage and Price Stability on December 13, 1978. It cites Section 705 B-9, Tandem Pay Rate Changes:

Pay rate changes in one employee unit that have been regularly linked to pay rate changes in another employee unit in a leader-follower relationship can be expected either where pay-rate increases in the leader unit were agreed to prior to October 25, 1978, or where pay-rate increases agreed to for the leader unit after October 24, 1978, are in compliance with the pay standard. Employee units need not be in the same company. In order to establish such a linkage, the parties must demonstrate that the past pay-rate increases of the two employee units have been equal in value and directly related in timing.

Finally, the Organization argues that since 1965 it has continued to agree to productivity savings, claiming there has been a 20-percent reduction of the work force.

THE CARRIER'S CONTENTIONS

The Carrier denies that the benefits from the 1965 work rule changes were as substantial as the Organization claims. Its view essentially is that employees were recompensed by the substantial wage increases granted at the time.

It totally rejects the concept of a tandem relationship between PATH and the LIRR, pointing out that a review of past wage rates and increases clearly demonstrates no such relationship ever existed. The Carrier cites the definition of tandem pay rate changes in the Wage Standards issued by the Council on Wage and Price Stability, as revised March 13, 1980.² The Carrier concludes that any settlement it makes must satisfy the guidelines. The Organization's demands are clearly outside the guidelines, asserts the Carrier, while its own offer meets them.

Regarding the Organization's claim of productivity savings since 1965 based on an alleged 20-percent reduction in the workforce, the

² "705.18. Tandem Pay-Rate Changes. Pay-rate changes in an employee unit that have been linked regularly to pay-rate changes in another employee unit or groups of employee units will be excepted if the leader is in compliance with or exempt from the pay standard and the pay-rate change of the follower unit maintains the historical relationship. *This exception also may be applied when pay-rate changes in an employee unit have been linked regularly to a survey of pay-rate changes in an identified labor market.* In order to establish such linkage, the parties must be able to demonstrate that the past pay-rate changes in the follower unit have been substantially equivalent over a period of years to pay-rate changes in the leader unit, group of units, or identified labor market. Employee units need not be in the same company, industry, or geographical area to establish a relationship." [Italic added.] Carrier notes no such survey exists.

Carrier disputes the figures. While the Organization states that 225 employees were in the unit in 1965, the Carrier asserts there were in fact only 197. The reduction to the present work force of 177 can be related, the Carrier contends, to the introduction of a new automatic carwashing machine and a reduction in the number of cars. According to the Carrier, the number of employees bears more of a relation to the number of cars than to any other factor.

The Carrier points out that in 1979 it had an operating deficit of over \$38 million. Employee compensation alone was \$10 million higher than revenues, it reports. (These figures, of course, do not refer just to this bargaining unit.) Despite this fact, PATH asserts that wage changes have stayed ahead of the inflation rate.

The Carrier argues that it has a unique wage structure and working conditions, taking its operation as a whole. It concludes that it cannot therefore be rigidly compared to the LIRR or other local transportation systems. Nonetheless the Carrier feels its offer is a fair one, consistent with settlements on other local carriers, and falling within wage guidelines.

THE BOARD'S RECOMMENDATIONS

The Board has carefully considered the evidence presented by the parties. While it concludes that the Carrier's offer is not wholly adequate, it does not find justification for the large increases sought by the Organization. The Board recommends the following wage increases:

	<i>Percentage increase</i>
December 8, 1978.....	7.5
December 8, 1979.....	9.0
December 8, 1980.....	9.0

These recommendations are broadly consistent with wage-rate changes, during roughly similar time-frames, for carmen in other rail and transit operations in the metropolitan area. But comparability with this group has not been, to this Board, an over-riding criterion in determining at this time an equitable wage increase for PATH carmen.

Nor could it be, properly, since the timing and amount of wage increases have differed so much from carrier to carrier. The relationship between PATH and other rail and transit units in the metropolitan area has been very fluid and intricate, and not the sole determinant of wage changes at PATH.

Many factors affect wage comparability, including job differences, internal wage structures, working conditions and fringe benefits. The Board has not ignored these differences in making its recommendations.

Neither has it overlooked such matters as the development of PATH's overall wage structure, its bi-state character, and other special characteristics. The Board has considered the broad range of factors relevant here, cost of living and wage guidelines among them. It concludes that its wage recommendations come within the revised wage guidelines, as it understands them.

The effect of the increases recommended is to raise the hourly rate of Car Repairmen, Electricians, Machinists, and Car Inspectors at Step 2, from \$9.125 to \$9.809 in December, 1978, and to \$10.6918 in December, 1979; in December, 1980, the rate will be \$11.6541. These changes are broadly consistent with rate changes already negotiated for carmen on the other carriers listed in Appendix B. Some brief comments are in order on these wage relationships in past years, since the Organization stressed the history of wage-rate changes with respect to PATH and LIRR.

In considering the Organization's claim of a tandem relationship between PATH and LIRR, the Board reviewed not only Appendix B but also the earlier wage-history data in the 1973 Report of Emergency Board No. 183. The data show no consistent pattern between PATH and LIRR, or other carriers. The Council's definition, which the Organization cited, requires that "the past pay rate increases of the two employee units must have been equal in value and directly related in timing." Since this has not been the case for PATH and LIRR Carmen, the tandem claim has not been sustained.

The Organization's view is that the wage advantage it gained in 1965 vis-a-vis the LIRR should have been maintained at the same level thereafter and fully reflected in subsequent wage settlements. The wage data do not support the Organization's assertion that its wage position has deteriorated from a 30-percent advantage to a 30-percent disadvantage. In 1965 the substantial wage increase for PATH Carmen, coincident with the work-rule changes, put them some 21 percent ahead of the LIRR. That difference has not been maintained, but the fluctuations have been neither as constant or as large as the Organization suggests.

For example, in January of 1978 when the PATH Carmen rate was \$8.8425, the LIRR rate was \$8.632, and it was still that when PATH went to \$9.105 in May. In July the LIRR moved to \$9.285, some two percent ahead of PATH. In January of 1979 PATH was at \$9.125, and LIRR was at \$9.425, about three and one half percent ahead. The LIRR's new three-year contract has resulted in still higher rates. But PATH employees also will be receiving higher rates under its new agreement, not significantly more or less than the LIRR's, under the Board's recommendations.

The evidence does not establish that there was a commitment in 1965

to maintain a substantial differential in favor of PATH's Carmen. Nor did the parties themselves incorporate any such differential in the settlements they negotiated after 1965. Accordingly, the Board cannot find that the Organization has substantiated its claim for a constant and large advantage over LIRR rates, without regard to whatever changes affect the latter. Productivity and comparability remain considerations in determining equitable wage rates, but they cannot be linked merely to 1965 relationships.

FRINGE BENEFITS

A. PENSIONS

PATH employees are presently covered under the Railroad Retirement System. The Organization desires the adoption of an additional supplemental pension program which would provide for retirement at age 50 after 20 years of service or 60 consecutive months, whichever is greater. Under this proposal, an employee at age 65, depending on length of service, would receive a 25-, 50-, or 100-percent offset of whatever he would be entitled to from the Railroad Retirement System. Such a supplemental plan would become effective January 1, 1981.

The Carrier objects to a supplemental pension, claiming that such a plan is too costly and that the employees presently enjoy what the Carrier considers to be a very generous retirement plan under the Railroad Retirement System.

The subject of a supplemental pension plan is one which requires considerable study. Costs can only be ascertained through actuarial studies of the bargaining unit and will, plainly, vary widely according to levels of benefits and methods of financing and funding.

This Board is not in a position to express an opinion on the advisability or practicability of establishing a supplemental plan and we make no recommendation on that score. We do recommend, however, that in order to determine accurately the potential financial impact of such a plan upon the Carrier and the employees and develop other essential information, the parties undertake in the third year of the collective bargaining agreement (or earlier if they desire) a study of the subject. In order to accomplish this, the parties should establish a joint committee which, in turn, should retain the services of a reputable pension consultant. This study should be completed by November 8, 1981, so that the parties will have factual information available at their next negotiations.

B. LIFE INSURANCE

PATH presently provides the Organization's active employees with life insurance which would give to an employee's estate twice his or

her annual earnings in the event of the employee's death. For retired employees, the Carrier provides a \$3,000 life insurance policy. The Organization proposes that the coverage for active employees be increased from two to three times the annual earnings and that the coverage for retired employees be increased to \$9,000. PATH contends that such an increase for the active employees would result in a cost of about \$35,500 or a 1.1-percent increase in wages. The cost of providing for \$6,000 more coverage for the retired employees would amount to a cost of about \$81,700, or a 2.6-percent increase, according to the Carrier.

The Board is cognizant of the fact that as an employee's earnings now increase, so also does his insurance coverage. This alone presently results in an increase in costs to PATH. No adequate evidence has been presented by the Organization to justify the requested increase. Accordingly, the Board does not recommend the proposed increase in this Carrier-wide benefit and recommends that the Organization withdraw its proposal.

C. DENTAL INSURANCE

When the present Agreement was entered into, the Carrier agreed to pay the dental insurance premium which was then \$25 per month per employee. That premium has subsequently been increased by \$4.93 to \$29.93. In a letter dated February 21, 1978, however, the Carrier waived its right to collect any monies from the employees by virtue of the increase in premiums.

During the current negotiations the Organization proposed that the Carrier continue to pay the full dental insurance premium and PATH agreed to do so but only within the context of its wage offer. Since the expiration of the Agreement, PATH has not sought collection of the increase. Furthermore, when specifically asked whether it seeks collection of past increases, the Carrier responded in the negative.

In the light of the parties' essential agreement, we recommend that, for the life of the 1978-81 Agreement, the Carrier (1) continue to pay the entire premium for dental insurance, including future increases (if any), and (2) waive its right to collect any monies from employees for increased premiums which it has heretofore paid.

D. SICK LEAVE

The Organization proposes that sick leave be paid from the first day of illness for all employees in the bargaining unit.

The current sick leave agreement is a two-tier plan. For those employees hired before June 1, 1973, who are sick for more than five consecutive work days, sick leave is payable from the first day of the illness. For this group, sick leave payments from Railroad Unemploy-

ment Insurance³ are supplemented by PATH to provide a full day's pay for each day of sick leave. For the employees hired after June 1, 1973, paid sick leave is not available until after the fifth day of illness. These employees, however, are paid \$25 by Railroad Unemployment Insurance for the fifth day of their illness.

PATH strongly objects to changing this policy. The Carrier contends that removal of the two-tier system and payment from the first day of illness would result in an increase in absenteeism, loss of productivity, and additional overtime costs. The cost of the proposed changes, according to the Carrier, would be very substantial, especially since they would inevitably be sought by other bargaining units.

The present two-tier system, which tracks that of the other major bargaining units, was negotiated for this unit in 1973. The Organization was the last major union on PATH to accept that arrangement.

Compelling evidence was not presented for altering this essentially Carrier-wide policy. In light also of the very significant costs involved, we do not endorse the proposed change and recommend that the Organization withdraw its proposal.

E. HOLIDAYS

The employees presently have eleven and one-half holidays, a number comparable to that of the other workers on PATH and in the area as well.⁴

The Organization proposes the addition of one and one-half holidays, Christmas Eve (first four hours) and New Year's Eve. PATH estimates that the additional holidays would amount to a cost of \$31,400, or about 1 percent of payroll.

Absent evidence to justify an increase in the number of holidays, the Board recommends that the Organization withdraw this proposal.

F. PERSONAL DAYS

The Organization has proposed that the Carrier make certain alterations as to its policy of granting time off with pay to employees. The Carrier has, to the date of these negotiations, granted employees up to two days absence per year without loss of pay for absences caused by the illness of a spouse or preschool child which required the employee's presence at home. The Organization proposes that the classification of these absences be changed to that of "personal days" to allow absence for a broader range of reasons felt important by the employee.

³ PATH pays a certain percentage of its payroll every month to Railroad Unemployment Insurance, which provides it with \$25 per day for PATH employees beginning with the fifth day of the illness.

⁴ These holidays include New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Eve (last four hours of the workday) and Christmas Day.

It would seem plain that a number of legitimate reasons other than the illness of a spouse or child might well impel absence by an employee. The Board, however, has no evidence before it that these other justifications for absence have resulted in any specific hardship or, indeed, whether they are so prevalent a problem as to justify a broad and unlimited tender of two days pay without work without restriction as to reason.

The Carrier has estimated that the cost of this change would amount to \$17,000 or 0.5 percent of payroll. These figures are based on an assumption of one additional day's paid absence being used per year per employee. It is a reasonable assumption, we believe, that many employees so eligible would take the two personal days if available. The conversion of a policy specifically addressed to an individual problem not affecting all employees to a broad grant of benefits without specific basis of need and at such cost is not, in our judgment, justified at this time.

It is recommended that the Organization withdraw this proposal.

JOB SECURITY

A. MONTHLY INSPECTIONS

The Organization proposes that the Carrier renew, for the term of the Agreement under negotiation, a commitment that "Repair Shop and Monthly Inspections" not be placed on a seven day a week operational basis unless the same is agreed to by the Organization. The commitment was originally contained in a letter memorandum dated February 21, 1978.

As a part of its continuing concern for the job security of its members, the Organization contends that conversion of what has been a five day a week operation in these areas into one covering the full calendar week is not only unjustified by need but of harmful consequence to its members. The nature and dimensions of that possible harm—and the details involved in such an operational change—have not been fully explored in the record before the Board. The Carrier, however, has not indicated on this record or, we believe, in negotiations which preceded the establishment of the Board, that it deems the seven day a week operation to be either necessary or contemplated in the foreseeable future. Under these circumstances, we do not believe the matter should be left open as a cause of possible friction.

The Board recommends that the Carrier renew, for the life of the new Agreement, the commitment not to place Repair Shop and Monthly Inspections on a seven day operational basis as embodied in its February 21, 1978 letter.

B. FURLOUGHS AND CAR CLEANER CONTRACTING

Under a separate letter also dated February 21, 1978, the Carrier stated:

* * * it is our intent to not furlough any BRC employee during the period of the moratorium established pursuant to the agreement between us signed today, nor will PATH contract out any work performed by Car Cleaners during this period.

Neither such furloughing nor such contracting out of work has taken place since the date of the letter. The Organization proposes that the Carrier renew this letter for the remaining term of the new Agreement.

Although the Carrier, in the hearings before this Board, stated that it did not presently anticipate either furloughing or the contracting out dealt with in the prior letter, it strongly asserted that its right to do so should not be restricted for a substantial additional period of time in a future not completely foreseeable. In this regard, the Carrier stresses that the letter of February 21, 1978, was a temporary and limited (in time) restriction of a hard won right to subcontract work out contained in Article IV, Section 13 of the prior Agreement.

We find some merit in both parties' positions. Employees, to the extent possible, should be granted the assurance that their jobs are not presently in danger of being declared excess or given to another employer and other employees. Conversely, the assurances of the letter of February 21, 1978, were limited to a time period of less than one year during which contingencies were reasonably to be foreseen. A new Agreement will extend some year and one-half into an increasingly uncertain economic future. We consider that the Carrier's concerns are not without substance. On the other hand, in view of its position as stated to this Board that it does not presently contemplate either furloughing or Car Cleaner subcontracting, we see no reason for it not giving the Organization a written statement of that fact and of those conditions beyond its control which might lead to a change in that position. The precise language of such an assurance is, in our judgment, best left to the parties but should reflect the probabilities which are considered to be valid for the life of the new Agreement.

We recommend that the Carrier provide the Organization a letter consistent with the above.

MISCELLANEOUS

A. APPRENTICES

The Organization proposes the elimination of a rule which permits apprentices to cover mechanics' jobs during the third year of their

training program. The Organization argues that the third year of the apprentice program should be devoted solely to training, and that apprentices should not be performing work which properly belongs to fully qualified mechanics.

The Carrier asserts that the issue is principally one of overtime. When apprentices cover mechanics' jobs, the Carrier frequently need not resort to overtime to complete work. Thus the rule represents a cost savings to the Carrier. Obviously, from the Organization's perspective, the rule reduces the amount of overtime available to mechanics. The Carrier also resists changing the rule presently in effect, on the ground that it regards the experience of covering mechanics' jobs as excellent training for apprentices.

The parties agree that there currently is no apprentice program nor is one contemplated. Further, the rule concerns the third year of such a program, and the contract under discussion will expire in a year and a half. The Board considers this issue to be premature for discussion in this negotiation, particularly since an evaluation of economic impact would necessarily be highly speculative.

We therefore recommend that the Organization withdraw this proposal.

BACK PAY

The Organization proposes that back pay due under the terms of the Agreement be paid within thirty days of its signing. Previous contracts provided for 60 days for such payments. The Organization argues that, with the staff and computer technology available to the Carrier, 30 days is sufficient time to compute retroactive benefits. In past years, it contends, the Carrier has not made such payments until the last possible moment.

The Carrier insists that 30 days is inadequate for the accounting process involved (including individual recomputations which must be done by hand) and that the full 60 days will be needed to rework the time cards. It emphasizes that the retroactive period in this instance dates back to December, 1978, with two increase adjustments required. In addition to adjusting the standard 40-hour week payments, sick pay and overtime pay must be adjusted. This, the Carrier asserts, cannot be done by computer. As each individual time record must be examined by hand, even with staff working overtime, the Carrier states it would be impossible to provide retroactive benefits in 30 days.

The Board regards as completely understandable the desire of employees to receive prompt payment of back wages which may be for as much as a year and half of past work. The Board is also concerned, however, that the Carrier not be committed to meeting a deadline which it may well be mechanically impossible to meet. The Board,

therefore, recommends that the Carrier make every effort to have retroactive wages paid to employees within 45 days of the signing of the Agreement, but, that in any event, such payment should be made not later than 60 days from such signing.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

WAGES

The Carrier should increase the wages of bargaining unit employees, as follows:

Effective December 8, 1978: 7½ percent

Effective December 8, 1979: 9 percent

Effective December 8, 1980: 9 percent

The contract should be for a term of three years, covering the period from December 8, 1978, through December 7, 1981.

FRINGE BENEFITS

A. Pensions

The parties should establish a joint committee to study the potential cost of providing a supplemental pension program and develop other essential information. The Committee should retain the services of a reputable pension consultant to assist in this study, which should be completed by November 8, 1981, so that the parties will have factual information available at their next negotiation.

B. Life insurance

The Organization should withdraw its proposal.

C. Dental insurance

For the life of the 1978-81 Agreement the Carrier should continue to pay the entire premium for dental insurance including future increases, if any, and should waive its right to collect any monies from employees for increased premiums which it has heretofore paid.

D. Sick leave

The Organization should withdraw its proposal.

E. Holidays

The Organization should withdraw its proposal.

F. Personal days

The Organization should withdraw its proposal.

JOB SECURITY

A. Monthly inspections

The Carrier should renew for the life of the new Agreement, its prior commitment not to place Repair Shop and Monthly Inspections on a seven day operational basis.

B. Furloughs and car cleaner contracting

The Carrier should provide the Organization a letter consistent with the Board's findings as set forth in the text of this report.

MISCELLANEOUS

A. Apprentice program

The Organization should withdraw its proposal.

B. Back pay

The Carrier should make every effort to have retroactive wages paid to employees within 45 days of the signing of the Agreement, but, in any event, such payments should be made not later than 60 days from such signing.

* * * * *

The Board believes that the above recommendations constitute the essential elements of a fair agreement. The Board members appreciate the courtesy and consideration shown to them by the parties and hope that a speedy and amicable settlement can now be reached.

Respectfully submitted,

ARTHUR STARK, *Chairman.*

THOMAS G. S. CHRISTENSEN, *Member.*

CLARA H. FRIEDMAN, *Member.*

WASHINGTON, D.C.,

May 12, 1980.

APPENDIX A

EXECUTIVE ORDER 12207

CREATING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE PORT AUTHORITY TRANS-HUDSON CORPORATION AND CERTAIN OF ITS EMPLOYEES

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Railway Carmen of the United States and Canada.

This dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ; and

The dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service :

NOW, THEREFORE, by the authority vested in me by Section 10 of the Railway Labor Act, as amended (45 U.S.C. 160), it is hereby ordered as follows :

1-101. *Establishment of Board.* There is established a board of three members to be appointed by the President to investigate this dispute. No member of the Board shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier.

1-102. *Report.* The board shall report its finding to the President with respect to the dispute within 30 days from the date of this Order.

1-103. *Maintaining Conditions.* As provided by Section 10 of the Railway Labor Act, as amended, from this date and for 30 days after the board has made its report to the President, no change, except by agreement, shall be made by the Port Authority Trans-Hudson Corporation, or by its employees, in the conditions out of which the dispute arose.

JIMMY CARTER.

THE WHITE HOUSE,
April 12, 1980.

WAGE RATE CHRONOLOGY

	PATH Carman	Class I R.R. Con Rail passenger Carman	LIRR Carman	TA car maintainer
1972				
January			\$5. 618	\$5. 6175
February	\$5. 5850			
April		\$5. 00		
May				
June				
July				
October		5. 25		
November				
December				
1973				
January			6. 1798	5. 9550
February	6. 0250			
April		5. 50		
May				
November				
December				
1974				
January	6. 2500	5. 72	6. 7978	6. 3125
February				
May	6. 8750			
July			7. 2057	
September				
December				6. 8925
1975				
January		6. 30		
February				
March			7. 4219	
April				7. 2375
May	7. 4250			
July			7. 8330	7. 2775
October		6. 62		
November	7. 5050			
December				

WAGE RATE CHRONOLOGY—Continued

	PATH Carman	Class I R. R. Con Rail passenger Carman	LIRR Carman	TA car maintainer
1976				
January		6. 74	8. 0130	7. 4575
February				
May	7. 9450			
June				
July		7. 06	8. 2130	7. 5175
September				
December				
1977				
January		7. 19		7. 6175
February				
May	8. 4225			
June				
July		7. 65	8. 5420	7. 7575
December				
1978				
January	8. 8425	7. 87	8. 6320	7. 8575
February				
April		8. 10		
May	9. 1050			
June				
July		8. 29	9. 2850	8. 3300
October		8. 45		
December	(1)			
1979				
January	9. 1250	8. 70	{ 9. 425 10. 085 }	
May				
July		9. 29		8. 6200
1980				
January		9. 57	10. 892	
April				9. 3950
July		10. 31		
1981				
January		10. 60	11. 546	
April		(1)		10. 1475
June			11. 892	
October				10. 5075
1982				
January			(1)	
April				(1)

¹ New contract date.