

REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
No. 201

**APPOINTED BY EXECUTIVE ORDER 12414,
DATED APRIL 4, 1983, PURSUANT TO SECTION 9A
OF THE RAILWAY LABOR ACT, AS AMENDED.**

To investigate disputes between The Long Island Rail Road and certain labor organizations.

**(National Mediation Board Case Nos. A-11051, A-11055,
A-11056, A-11062, A-11063, A-11064, A-11066,
A-11067, and A-11072)**

**WASHINGTON, D.C.
JUNE 3, 1983**

LETTER OF TRANSMITTAL

NEW YORK, NEW YORK,
June 3, 1983.

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

DEAR MR. PRESIDENT:

On April 4, 1983, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12414, you created an Emergency Board to investigate the disputes between The Long Island Rail Road and twelve Organizations representing its employees.

The Board now has the honor to submit its Report to you, with its selections of the most reasonable final offers for settlement of these disputes.

It is our hope that this Report will provide a basis for settlement.

The Board acknowledges the assistance of Mary L. Johnson of the National Mediation Board's staff, who rendered valuable aid to the Board throughout the proceedings.

Respectfully submitted,

FREDERICK R. LIVINGSTON, *Chairman.*

THOMAS G. S. CHRISTENSEN, *Member.*

ARTHUR STARK, *Member.*

TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTION	1
FINAL OFFER SELECTION	2
FINAL PROPOSALS	3
MAJOR OPEN ISSUES	3
Incidental Work	3
Subcontracting	4
Arbitration Alternative	4
Grievance Procedure	4
SELECTION	4
OBSERVATIONS ON FINAL OFFER PROCEDURE	5
Appendix A: List of Labor Organizatons	7
Appendix B: Executive Order 12414	8

INTRODUCTION

President Reagan on April 4, 1983, by Executive Order No. 12414, created Emergency Board No. 201 pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Sec. 159a.

The President appointed Frederick R. Livingston, an attorney and arbitrator, as Chairman of the Board, and Professor Thomas G. S. Christensen of the New York University School of Law, and Arbitrator Arthur Stark, as Members. All three are from New York City.

The Long Island Rail Road, which carries approximately 283,000 passengers daily is the largest commuter railroad in the United States. It is a Class I railroad subject to the jurisdiction of the Interstate Commerce Commission and the provisions and procedures of the Railway Labor Act. It has contracts with seventeen Unions (Appendix A).

The Long Island Rail Road is a public benefit corporation owned and operated by the Metropolitan Transportation Authority, an agency of the State of New York. The four labor organizations with whom there are still outstanding labor disputes are:

1. Brotherhood Railway Carmen of the U.S. and Canada (BRC), representing Carmen and Coach Cleaners.
2. International Association of Machinists and Aerospace Workers (IAM & AW), representing Mechanics.
3. International Brotherhood of Electrical Workers (IBEW), representing Electricians.
4. Sheet Metal Workers International Association (SMWIA), representing Sheet Metal Workers.

This is the first case under Section 9A of the Railway Labor Act which was enacted in 1981 to provide a special procedure for resolving commuter service labor disputes. The Section calls for appointment of a traditional emergency board (Emergency Board No. 199) which considers a dispute on an issue-by-issue basis and requires the parties to maintain the status quo for a period of 120 days. If no settlement is reached at the end of that period, the President may extend the status quo for an additional 120 days and establish another board to select the most reasonable offers. A detailed background of this dispute is set forth in the Report of Emergency Board No. 199, dated January 4, 1983.

Prior to the appointment of this Board (Board No. 201), five Unions had reached settlements: Brotherhood of Railway, Airline and Steamship Clerks (BRAC); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers and Blacksmiths (IBBB); International Brotherhood of Firemen and Oilers (IBFO); and International Brotherhood of Teamsters (IBT).

Twelve disputes remained unresolved.

At the request of the parties, the Chairman conducted intensive mediation efforts commencing May 12. These culminated in agreement on May 23 between the Carrier and the largest Union, United Transportation Union, (UTU) representing approximately 1,400 employees. During the ensuing four days, seven more Unions reached agreement with the Carrier: American Railway and Airway Supervisors Association (ARASA), Lodges 851, 851-A, 853, and 857; Brotherhood of Locomotive Engineers (BLE); Police Benevolent Association (PBA); and Railway Yardmasters of America (RYA). The wage agreements covering each of these Unions are the same as the wage pattern for the five Unions that settled prior to appointment of this Board:

6% retroactive to January 1, 1982

7% retroactive to January 1, 1983

7% effective January 1, 1984.

The agreements vary in other respects to meet the specific operating aspects of the various crafts covered by the respective agreements.

Thus, the only Unions that continue to have unresolved issues are the four shop crafts: BRC; IAM; IBEW; and SMWIA.

At the direction of the Board, written submissions of the final offers were submitted to it, copies of which have been deposited with the National Mediation board and are part of the record herein.

The Board held meetings on June 1, to hear statements in support of the respective final offers of those four Unions and the final offer of the Carrier.

FINAL OFFER SELECTION

While Board No. 199 made its recommendations for settlement of the disputes on an issue-by-issue basis, this Board, after a careful review of the statute, has concluded that it is required to select a single "package" offer in each dispute. Therefore a determination of whether one "final offer" covering a multitude of unrelated economic and noneconomic issues is more or less reasonable than another "final offer" does not necessarily reflect a determination as to the reasonableness of offers on specific issues.

It is with these observations in mind that the findings set forth below should be evaluated.

FINAL PROPOSALS

After a thorough analysis of all of the proposals, it appears that the Carrier and three of the shop crafts, IBEW, IAM, and SMWIA are in substantial accord except as to three major issues proposed by the Carrier, which are discussed below. In essence, those three Unions would accept all major aspects of Board No. 199's recommendations, except that the IAM proposes a variation on the new hire program. The BRC proposes substantially higher wage and fringe benefits than those agreed upon in the settlements or proposed by the other shop crafts.

Other than the BRC's wage and fringe benefit proposals, the three major issues separating the shop crafts and the Carrier relate to the Carrier's proposals for incidental work rules, subcontracting, and a grievance arbitration procedure.

The Unions contend that these issues should not be considered because they were neither part of the Section 6 Notices nor discussed by the parties in negotiation. However, Board No. 199 found that:

“Despite the legal objections raised to our consideration of the above proposals, we are not persuaded that the Board lacks jurisdiction over the subjects of incidental work and subcontracting since the record establishes that these issues were noted or addressed by the Carrier and a number of the organizations, including some of the shop crafts.”

The IBEW and the SMWIA also contend that they had reached complete agreement with the Carrier prior to the appointment of Board No. 199 on November 16, 1982. The Carrier asserts on the other hand that the agreement was negotiated subject to approval of the MTA Board which rejected it.

After review of the entire record, including the report of Board No. 199, we conclude that these issues are properly before us and must be considered in determining which offer is more reasonable.

MAJOR OPEN ISSUES

The Carrier proposals on the three major open issues are:

INCIDENTAL WORK

The Carrier proposes that when a mechanic performing a work assignment is required to perform “incidental work”, such mechanic shall be required to perform such “incidental work” which shall not comprise a preponderant part of the assignment or exceed two hours, whichever is the lesser.

SUBCONTRACTING

The Carrier proposes to give favorable consideration to having certain repair work performed by its employees instead of being contracted out, provided the work is performed within existing facilities without adding employees and the cost is competitive. The Carrier proposal states that it is not designed to reduce the work force and calls for establishing joint Carrier-Union committees to consider the issues and make recommendations concerning contracting out. It also provides procedures for submitting all information to the Unions simultaneously with copies of information submitted to prospective bidders, and it provides, finally, that the decision with respect to contracting out shall remain solely that of the Carrier.

ARBITRATION ALTERNATIVE

The Carrier proposes as an alternative to its incidental work and subcontracting proposals that in the event these two items cannot be successfully negotiated, it is prepared to submit both of those issues to binding arbitration.

GRIEVANCE PROCEDURE

The carrier proposal calls for appointment of a permanent arbitrator or board for the life of the Agreement to function pursuant to the National Mediation Board Rules at no cost to the parties. If NMB funds are not available, the parties shall discuss other means to continue the procedure.

SELECTION

Under the existing contracts, craft or class restrictions preclude the most efficient utilization of manpower. Those contracts also provide for joint discussion prior to subcontracting, but some of the Unions retain the power to veto the Carrier's decision.

With respect to both subcontracting and incidental work rules, the Carrer contends, without effective rebuttal, that important costs savings could be obtained. It seems clear to the Board that in the case of a service whose maintenance is critical to the public, and indeed, substantially subsidized by the public, such savings are most desirable and in the best interest of the Carrier, the Unions and the public. It is equally true, however, that such savings must not be at the cost of important employee interests, including job security.

On close and repeated review of the Carrier's proposals on these two subjects, we are convinced that they contain both opportunity for cost reductions and protection of job security. The subcontract-

ing provision proposed is not dissimilar to programs in place at other carriers which have not resulted in injury to employee interests. While the Unions have an historical and legitimate concern as to dilution of craft skills, we note that the Carrier has disclaimed any intent to create a "composite mechanic" position merging different crafts and that its proposal contains stated limits as to what shall constitute "incidental" tasks. Moreover, the Carrier's proposal contains an option to arbitrate which the parties could utilize in the event of a continuing impasse and which would provide a final resolution of these important issues.

The Board is firmly convinced of the value to all parties of the creation of a grievance arbitrator or board of arbitration. It is evident that the present procedure in this regard has resulted in extensive delays, to the detriment of employees, the Unions and the Carrier. As arbitrators with intimate experience with the type of system proposed herein, we must conclude in its favor. It is well established in labor relations that prompt resolution of grievances is particularly in the best interests of the employees. While concern as to costs has been raised by some of the Unions, we note that the Carrier has assured the Unions and this Board that it is open to a fair resolution of that problem in implementing the proposed system.

AFTER REVIEW OF ALL OF THE TOTAL PACKAGES AND FOR THE REASONS STATED ABOVE, THE BOARD SELECTS THE FINAL PROPOSAL OF THE CARRIER IN EACH OF THE FOUR CASES AS BEING THE MOST REASONABLE.

OBSERVATIONS ON FINAL OFFER PROCEDURE

Since this is the first case under the final offer procedure of Section 9A, some brief observations may be in order. Twelve Unions and the Carrier were far apart at the outset. They quickly opted for mediation, however. During the ensuing intensive negotiations conducted by the Chairman, the parties were urged to be realistic, lest the Board select the final offer of the other side. The uncertainty as to which offer the Board might choose served as an important catalytic agent in achieving eight agreements. Another important contribution to successful bargaining was the adherence of all parties to the Board's request that they refrain from making their proposals public. There was no public posturing and the climate for bargaining was thereby enhanced. The first public statements were settlement announcements. Most important of all, however, was the fact that the parties engaged in constructive bargaining by fashioning agreements designed to meet their mutual needs.

The Board sincerely hopes that this progress will continue after this report has been received.

Respectfully submitted,

FREDERICK R. LIVINGSTON, *Chairman.*

THOMAS G. S. CHRISTENSEN, *Member.*

ARTHUR STARK, *Member.*

APPENDIX A

The Organizations

Seventeen labor organizations represent employees on The Long Island Rail Road:

1. ARASA Division—Brotherhood of Railway and Airline Clerks (ARASA), representing Technical Engineers, Architects, Draftsmen and Allied Workers; Supervisors and/or Foreman in the Maintenance Departments; and Train Dispatchers, Lodge 851.
2. ARASA—Lodge 851-A
3. ARASA—Lodge 853
4. ARASA—Lodge 857
5. Brotherhood of Locomotive Engineers (BLE), representing Locomotive Engineers.
6. Brotherhood of Railroad Signalmen (BRS), representing Signalmen.
7. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), representing Clerical, Office, Station and Storehouse Employees.
8. Brotherhood Railway Carmen of the U.S. and Canada (BRC), representing Carmen and Coach Cleaners.
9. International Association of Machinists and Aerospace Workers (IAM & AW), representing Mechanics.
10. International Brotherhood of Boilermakers and Blacksmiths (IBBB), representing Boilermakers.
11. International Brotherhood of Electrical Workers (IBEW), representing Electricians.
12. International Brotherhood of Firemen and Oilers, (IBFO), representing Laborers and Stationary Engineers.
13. International Brotherhood of Teamsters (IBT), representing Maintenance of Way Employees.
14. Police Benevolent Association (PBA), representing Police Officers Below the Rank of Captain.
15. Railroad Yardmasters of America (RYA), representing Yardmasters.
16. Sheet Metal Workers International Association (SMWIA), representing Sheet Metal Workers.
17. United Transportation Union (UTU), representing Conductors, Trainmen, Special Service Attendants, and Maintenance of Way Supervisors.

APPENDIX B

EXECUTIVE ORDER 12414

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE LONG ISLAND RAIL ROAD AND CERTAIN LABOR ORGANIZATIONS

A dispute exists between The Long Island Rail Road and certain labor organizations, designated on the list attached hereto and made a part hereof, representing employees of The Long Island Rail Road.

The dispute had not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

The New York Metropolitan Transportation Authority, the parent body of The Long Island Rail Road, has requested that the President establish an emergency board pursuant to Section 9A of the Act.

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

NOW THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. § 159a), it is hereby ordered as follows:

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

Section 2. *Report.* Within 30 days after creation of the board the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after the submission of final offers the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Section 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, as amended, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Section 4. *Expiration.* The Emergency Board shall terminate upon submission of the report provided for in Section 2 of this Order.

RONALD REAGAN.

THE WHITE HOUSE,
April 4, 1983.