REPORT

TO

THE PRESIDENT

BY

EMERGENCY BOARD

No. 204

APPOINTED BY EXECUTIVE ORDER 12486 DATED AUGUST 24, 1984, PURSUANT TO SECTION 9A 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 of Railroad Signalmen

(National Mediation Board Case No. A-11287)

WASHINGTON, DC
SEPTEMBER 24, 1984

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *September 24, 1984*

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On August 24, 1984, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12486, you created an Emergency Board to investigate the dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Railroad Signalmen.

Following its investigation of the issues in dispute, including both formal hearings on the record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute.

The Board now has the honor to submit its Report to you, in accordance with the provisions of the Railway Labor Act, and its Recommendations as to an appropriate resolution of the dispute by the parties.

The Board acknowledges the assistance of Roland Watkins of the National Mediation Board's staff, who rendered invaluable aid to the Board during the proceedings, and in the preparation of this Report.

Respectfully,

(S) ROBERT E. PETERSON, *Chairman*

(S) DANIEL G. COLLINS, *Member*

(S) HERBERT L. MARX, *Member*

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I. CREATION OF THE EMERGENCY BOARD

On August 13, 1984, the Brotherhood of Railroad Signalmen requested the creation of an emergency board. The Port Authority Trans-Hudson Corporation, by letter dated August 20, 1984, also requested the creation of such a board. Pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a, President Ronald Reagan created the Emergency Board by Executive Order 12486 on August 24, 1984. A copy of Executive Order 12486 is attached as Appendix "A".

The President appointed Robert E. Peterson, Arbitrator, as Chairman of the Board. Professor Daniel G. Collins of the New York University School of Law and Herbert L. Marx, Jr., Arbitrator, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

The Port Authority Trans-Hudson Corporation (PATH) is a wholly-owned subsidiary of the Port Authority of New York and New Jersey (Port Authority). It is a rail rapid transit system operating on 13.9 miles of track that connect the cities of Newark, Jersey City, and Hoboken with the borough of Manhattan in New York City. The system includes 13 stations, seven of which are in the State of New Jersey and six in the State of New York. Approximately 200,000 passengers are transported by PATH each weekday. Of these, two-thirds are carried during the daily rush periods. PATH maintains and operates a fleet of about 300 passenger rail cars.

The Port Authority acquired this rail line from the financially troubled Hudson and Manhattan Railroad in 1962. Historically, PATH has been a loss producing operation. In 1963, the first year of operation, PATH had a deficit of $2.3 million. The operating deficit has been steadily rising and by 1983 reached $56.3 million. The loss is expected to narrow for the first time because the fare increased from 30 cents to 50 cents on July 31, 1983 and to 75 cents on June 3, 1984.

The 1983 operations of the Carrier, as it reports them, are summarized in the following table:

Total passengers carried	54,933,580
Total passenger miles	267,526,535

Typical weekday morning peak	
(7-10:00 a.m., Fall 1983	72,982
Employee Compensation	$39,180,000
Total Expenses	$79,400,000
Total Revenues	$24,227,000
Gross Operating Deficit	$56,303,000
Cumulative Gross Operating Deficit	
(Sept. 1962 to Dec. 1983)	$465,371,000
Cumulative Capital Investment	$298,700,000
(Sept. 1962 to Dec. 1983)	
Revenue per passenger (Average)	$0.44
Cost per passenger	$1.78
Operating Loss per passenger (Average)	$1.34

A total of 937 employees on PATH are represented by nine separate labor organizations. The organizations are as follows:

1. American Railway and Airway Supervisors, a Division of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
2. American Train Dispatchers Association
3. Brotherhood of Railway Carmen of the United States and Canada
4. Brotherhood of Locomotive Engineers
5. Brotherhood of Railroad Signalmen
6. International Brotherhood of Electrical Workers
7. International Brotherhood of Teamsters
8. Transport Workers Union of America
9. United Transportation Union

B. The Organization

The Brotherhood of Railroad Signalmen (Organization) represents all of the approximately 54 employees (Signalmen) of PATH who are involved in this dispute. These employees are primarily engaged in signal maintenance.

III. HISTORY OF THE DISPUTE

By notice dated November 28, 1982, the Organization, in accordance with Section 6 of the Railway Labor Act, as amended, requested a number of changes in its collective bargaining agreement with PATH. The Organization amended its notice on April 21, 1983.

On June 27, 1983, the Organization applied to the National Mediation Board (NMB) for mediation services in relation to the Section 6 Notice. This application was docketed as NMB Case No. A-11287 on June 29, 1983. Mediation was conducted by NMB Mediator Joseph E.

Anderson. Later, NMB Member Walter C. Wallace joined Mr. Anderson in mediatory efforts.

On July 17, 1984, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The Carrier declined the proffer, and on July 26, 1984 the parties were formally advised by the NMB that it was terminating its mediation services.

By letters dated August 13, 1984 and August 20, 1984, the Organization and PATH, respectively, requested that the President establish an emergency board. Section 9A(c) of the Railway Labor Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

The President, in Executive Order 12486, dated August 24, 1984, created this Emergency Board. Under date of September 6, 1984, the President appointed the following as members of the Board: Robert E. Peterson, Arbitrator from Briarcliff Manor, New York, Chairman; Daniel G. Collins, Professor of Law, New York University, Member; and Herbert L. Marx, Jr., Arbitrator from New York City, Member. The Board was ordered to investigate the dispute and report its findings to the President within 30 days from the date of its creation.

IV. ACTIVITIES OF THE EMERGENCY BOARD

As requested by the Emergency Board, the parties, on September 6, 1984, submitted written statements regarding the collective bargaining issues in dispute.

On September 7, 1984, the Board conducted a hearing on the issues in dispute. The parties were given full and adequate opportunity to present evidence and arguments before the Board. A formal record was made of the proceedings. Testimony was presented by representatives of the Organization and PATH. The Carrier submitted a total of six formal exhibits. The Organization submitted three exhibits. Board Members questioned the parties with respect to the issues.

Thereafter, the Board met informally with representatives of the parties on various dates in an attempt to narrow the issues in dispute.

V. ISSUES IN DISPUTE

In its presentation, the Organization referred to a conglomeration of issues concerning rates of pay, rules, or working conditions. These proposed changes in the collective bargaining agreement were contained in a notice dated November 28, 1982, and had been served on

PATH in accordance with Section 6 of the Railway Labor Act. The notice was revised on April 21, 1983.

Notwithstanding the numerous changes proposed in its notice, the thrust of the Organization's concern emerges to involve but two major issues. One is the difference in base wage earnings on a calendar year basis between Signalmen and other employees of PATH, particularly, shop craft mechanics represented by the Brotherhood Railway Carmen of the United States and Canada (Carmen). The second issue is the economic utilization of money which PATH would earmark as contributions for a supplemental plan of pensions for Signalmen.

The above conclusion as to the issues here in dispute derives from varied statements expressed to this Board. Representatives of the Organization characterized these two matters as "priority issues." In this respect, they indicated that if these two priority issues could be "satisfied," other remaining issues could be withdrawn for consideration in future contract negotiations. Thus, no useful purpose would be served frqm this Board's review of all issues set forth in the Organization's notice, except, of course, as concerns these "priority issues."

A. PATH's Position

In regard to the wage issue, PATH asserts that any difference in base calendar year earnings between Signalmen and shop craft mechanics is attributed to the negotiating posture which the Organization has assumed over the past years. The Organization, PATH asserts, resisted several past opportunities to track wage increases in a manner which PATH negotiated in contracts with the shop craft mechanics. PATH states that the Organization had insisted upon timetables for implementation of wage increases substantially different from those contained in agreements with the Carmen and had also insisted upon a contract moratorium different from other labor organizations.

In terms of overall calendar year earnings, PATH states that compensation for Signalmen far exceeds that of shop craft mechanics when overtime compensation is taken into consideration since Signalmen average more than twice the overtime work available to shop craft mechanics.

On the pension contribution issue, PATH states it was agreeable during the last round of negotiations in 1978-79 to have a sum of money allocated toward the base rate of pay for Signalmen. However, PATH does not want to perpetuate such an arrangement. PATH also maintains that any further increase in the basic rate of pay for

Signalmen in lieu of participation in a joint plan of pensions with other employees will only serve to place PATH in a completely untenable situation.

Among its varied reasons for wanting to eliminate the current arrangement, PATH expresses concern that continuation will only lead to labor unrest in future years should the Signalmen be permitted to exceed other groups of employees with respect to basic rates of pay while the other employees outstrip Signalmen with a supplemental plan of pension benefits. PATH is fearful that in future years, all groups of employees will then contend that an inequity exists as concerns rates of pay and a pension benefit. It also submits that the current arrangement imposes an additional penalty on PATH for overtime work by Signalmen, making it more costly for PATH to have Signalmen work overtime as compared to shop craft mechanics.

It is PATH's position that settlement of the current impasse be resolved in keeping with the guidelines of "the pattern" already agreed to by the other eight labor organizations.

These patterned settlements provide as follows:

1. 36 month contract
2. Annual wage increase of 7.88 percent for the first year, 7.76 percent for the second year, 8.18 percent for the third year.
3. Inclusion in the National Dental Plan at no cost to employee.
4. $624 per employee annual contribution to a pension fund beginning in second year with cost to be offset by "givebacks."
5. Two paid personal excused days in exchange for certain specific excused days.
6. Improvement in paid sick leave for employees with 5 years service.
7. Medical insurance to cover dependent students at no cost to employee.
8. Increase in education refund benefits for employees.
9. Increase in retiree life insurance from $3,000 to $5,000.

B. Organization's Position

The Organization maintains that its local membership has had different reasons for seeking wage adjustment patterns separate from other PATH represented employees. It states its avowed purpose in past negotiations, although not always completely successful, was to have Signalmen attain basic rates of pay which would have them earn as much or more than shop craft mechanics on a calendar year basis. The Organization considers this a primary objective in current negotiations with PATH even though it recognizes the futility of arguments for wage rates which would have its members go beyond those now established by agreement for shop craft mechanics.

The Organization contends that PATH has "exploited" the "pattern principle." It is the Organization's position that Signalmen have not received favorable consideration of wage disparities which it maintains exist between Signalmen and shop craft mechanics. In this regard, it states, "if no one will hear our argument before a 'pattern' is established, how could we ever expect to regain even the same measure of equity we held with the Carmen in 1978?" At the same time, the Organization states it has not insisted that its members be made whole for what it terms "inequities retroactive to 1978." However, it wants the current contract to provide that the Signalmen attain the same annual base earnings as shop craft mechanics. The Organization desires this goal even if the result is continued deferral of PATH contributions initially intended for a supplemental plan of pensions.

VI. DISCUSSION

The Board has carefully examined charts comparing the rates of pay for Signalmen with those of shop craft mechanics. We note that when PATH assumed operating control and direction of the rail line in 1962, Signalmen were earning $2.9918 per hour, whereas Electricians were being paid $2.9678 per hour and Carmen, $2.7413 per hour.

These charts also show that there have been some extensive and some not so extensive deviations in wage relationships between these comparative groups of employees over the intervening years. In this respect, we can appreciate as the parties state that certain deviations have been the result of individual labor organizations finding reason at one time or another to place the economic betterment of a contract settlement into a term of agreement other than for increases in wage rates. We can also understand the impact different moratorium clauses have had on such comparisons at times over the years.

Nevertheless, the charts show there have been a number of time periods wherein this comparative group of employees has tended to be at the same rate of pay. Actually, just prior to the last round of negotiations in 1978-79, the three groups of employees were again at the same rate of pay, i.e., $9.1050, even though the Carmen had seven more months before termination of its contract and the Signalmen and Electricians had some 11 more months before expiration of a contract moratorium.

We believe from this wage comparability study and other considerations that there is substantial past precedent to conclude a direct relationship exists on PATH relative to rates of pay for Signalmen and those of shop craft mechanics, albeit over the years the parties have permitted such a relationship to at times deviate.

Now, as concerns the allocation of that sum of money which PATH had intended for a plan of pensions for employees represented by the Organization. We do not challenge the avowed purpose for which the Organization initially expressed its desire to have such money made a part of the basic rate of pay so as to attain a more equitable relationship with the rates of pay for shop craft mechanics. However, we believe it must be recognized that this past sum of money, as well as the current sum of money which PATH states it is willing to contribute additionally, is an intended obligation toward a supplemental plan of pensions and not as a continuing part of basic rates of pay. We think it follows, therefore, that it would be in the best long-term interests of the employees represented by the Organization that it be in agreement with PATH to provide that these sums of money be contributions to a supplemental plan of pensions. This would also eliminate what PATH fears would be extensive and perhaps injurious competition between the various labor organizations for the equalization of rates of pay and pension benefits in future collective bargaining sessions.

VII. RECOMMENDATIONS

The resolution of the two priority issues is essential to the well-being of the employees represented by the Organization, as well as to the future interests of labor peace on PATH. They should be resolved in a manner that will, on the basis of a pro rata application of the pattern principle, and taking into account the higher Signalmen's rate of pay under the last contract, bring Signalmen to a basic rate of pay of $15.47 per hour effective June 8, 1984; that is, the date on which shop craft mechanics will attain such rate of pay.

This inevitably means that the Organization will have to wait until 1984 instead of 1983 to accelerate its timing of wage increases to match those granted to the shop craft mechanics. In addition, this will require PATH to provide a rate of $15.47 per hour to Signalmen at an earlier time than would be the case in its proposed three-year agreement.

In making this recommendation the Board does not offer its opinion as to the specific manner in which movement toward this final wage equivalency be attained in each interim step from January 1983 to June 8, 1984. We believe this to be something best left to further negotiation between the parties within the guidelines of the established pattern. In doing so, we recommend that the parties keep in mind that this gap in straight time has existed for many years on PATH and it is in the interests of both parties that this condition be eliminated. In this same connection it must be recognized that it is not something which can be accomplished in one fell swoop, but requires gradual implementation over the term of the new contract. Under the Board's recommendations this will have been accomplished on a date already passed, namely, June 8, 1984.

It is the Board's further recommendation that PATH's agreement with the Organization includes a moratorium termination date the same as that which has already been agreed to with the Carmen's organization, namely, June 8, 1985. Such a result would be beneficial toward the future continuation of a more direct wage relationship between the Signalmen and the shop craft mechanics.

In making the above recommendation relative to resolution of the annual wage issue, we think it clear that it can be accomplished without resort to the further utilization of those sums of money which we hereinafter recommend be allocated more properly toward establishment and participation in the joint employee supplemental plan of pensions.

Thus, in resolution of the pension issue, we recommend a supplemental plan of pensions be established as of June 8, 1984, and that PATH, thereafter, contribute that sum of money which was to have been initially earmarked for such plan during the last round of negotiations in 1978-79 but was instead used for a wage increase. This amounts to $624 per individual per annum. This would be in addition to that sum of money which may be derived through adoption and application of the terms of PATH's current offer related to additional pension contributions in an amount of $624 per individual per annum. The cost of the initial contribution would, in our opinion, be offset by the Signalmen foregoing continued benefit of the 30 cents per hour wage differential which they attained during prior contract negotiations. The cost of the additional contribution would have to be offset, as proposed by PATH, through contract "givebacks."

These wage and pension recommendations are intended to resolve the perceived inequitable relationship between the Signalmen and the shop craft mechanics. It should be stated for emphasis, however, that we do not recommend the application of any portion of pension contribution to additional wages. To do so would be to destroy the wage and pension contribution equality which would be achieved through the Board's recommendations.

Finally, we recommend that all other issues in the Organization's notice be officially withdrawn and final settlement include those other items hereinbefore mentioned to be a part of the patterned settlement which PATH has reached with the other eight labor organizations.

Respectfully,

(S) ROBERT E. PETERSON, *Chairman*

(S) DANIEL G. COLLINS, *Member*

(S) HERBERT L. MARX, *Member*

APPENDIX A

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release *August 25, 1984*

EXECUTIVE ORDER
12486

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE
A DISPUTE BETWEEN PORT AUTHORITY TRANS-HUDSON CORPORATION
AND THE BROTHERHOOD OF RAILROAD SIGNALMEN

A dispute exists between the Port Authority Trans-Hudson Corporation and the Brotherhood of Railroad Signalmen representing employees of the Port Authority Trans-Hudson Corporation.

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

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(c) of the Act provides that the President, upon such a request, 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. section 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective August 25, 1984, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(c) of the Act, as amended, from the date of the creation of the board, and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees, in the conditions out of which the dispute arose.

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

RONALD REAGAN