

REPORT

TO

THE PRESIDENT

BY

EMERGENCY BOARD NO. 206

**APPOINTED BY EXECUTIVE ORDER 12492, DATED OCTOBER 25,
1984, PURSUANT TO SECTION 9A OF THE RAILWAY LABOR
ACT, AS AMENDED.**

**To investigate disputes between The Long Island Rail Road and the
Brotherhood of Railway, Airline, and Steamship Clerks, Freight
Handlers, Express and Station Employees, and the American Railway
Supervisors Association.**

(National Mediation Board Case Nos. A-11290 and A-11308)

WASHINGTON, D.C.

DECEMBER 24, 1984

LETTER OF TRANSMITTAL

WASHINGTON, D.C.,

December 24, 1984

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

DEAR MR. PRESIDENT:

On October 25, 1984, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12492, you created an Emergency Board to investigate the disputes between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the American Railway Supervisors Association.

Following its investigation of the issues in dispute, including informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the disputes.

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

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

Respectfully submitted,

(S) EVA ROBINS, *Chairman.*

(S) THOMAS F. CAREY, *Member.*

(S) THOMAS N. RINALDO, *Member.*

(III)

TABLE OF CONTENTS

I.	Creation of the Emergency Board	1
II.	Parties to the Disputes	1
	A. The Carrier	1
	B. The Organizations	2
III.	Activities of the Emergency Board	2
IV.	History of the Disputes	3
V.	Report and Recommendations	3
	A. Background	3
	B. Introduction	4
	C. Issues	6
	1. Wages	6
	2. Overtime	6
	3. Seniority	7
	4. Shift Differential	7
	5. Health & Welfare	8
	6. Stabilization of Forces	8
	7. Rules	8
	D. Discussion	9
	1. Wages	9
	2. Overtime	10
	3. Seniority	10
	4. Shift Differential	11
	5. Health & Welfare	11
	6. Stabilization of Forces	12
	7. Rules	13
VI.	Conclusion	13
	Appendix: Executive Order 12492	14

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 206 was created by President Reagan on October 25, 1984, by Executive Order No. 12492 issued pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a. Governor Mario Cuomo of the State of New York had requested the creation of such a board on October 18, 1984.

The President appointed Eva Robins, an arbitrator from New York, New York, as Chairman of the Board. Professor Thomas F. Carey, an arbitrator from Jericho, New York, and Thomas N. Rinaldo of Williamsville, New York, an attorney and arbitrator, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTES

A. *The Carrier*

The Long Island Rail Road (LIRR) is a public benefit corporation owned and operated by the Metropolitan Transportation Authority, an agency of the State of New York. The LIRR is the only mode of public transportation that provides through service from the eastern end of Long Island to Manhattan, and is a vital link in the mass transportation system of the New York City metropolitan area. Its freight and passenger service operates over a system covering approximately 325 miles of track. The LIRR employs approximately 7,300 persons, 6,700 of whom are covered by collective bargaining agreements.

The primary business of the LIRR is its commuter traffic. Every weekday the LIRR carries approximately 280,000 passengers. Its revenue from passenger operations was approximately \$200 million in 1982 (the last year for which data are available), an increase of 11 percent over the 1981 level. (A fare increase averaging 25 percent went into effect on July 1, 1982, and accounts for much of the growth in passenger revenue.) The population of Suffolk and Nassau Counties rely heavily on LIRR service; more than 60 percent of the people who work in Manhattan, and more than 20 percent of those who work in Brooklyn, use the LIRR service.

The freight operating revenues were only \$13 million in 1982 (the last year for which figures are available). The LIRR interchanges traffic with the Consolidated Rail Corporation (Conrail) and the Boston & Maine, and in 1982 handled slightly more than 22,000 freight cars, a drop of 41% from 1981 levels.

The LIRR operation has a large annual operating deficit, and receives substantial subsidies from the Metropolitan Transportation Authority and the Federal government. In 1981, government transfer payments to the LIRR amounted to \$190 million, or 48 percent of the Carrier's total railway operating revenues.

The last round of labor negotiations between the LIRR and its employees was in 1983. Issues were resolved without a work stoppage, through Presidential Emergency Board Nos. 199 and 201. These were the first boards appointed pursuant to Section 9A of the Railway Labor Act (RLA), an amendment to the RLA, added by the Northeast Rail Service Act of 1981 and applicable to labor disputes between publicly funded and operated commuter railroads and their employees.

B. The Organizations

There are two organizations involved in these disputes. The Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) represents the Clerical, Office, Station and Storehouse Employees. The ARSA Division of BRAC represents the Technical Engineers, Architects, Draftsmen and Allied Workers; the Supervisors and/or Foremen in the Maintenance Departments; and the Train Dispatchers. Two hundred and thirty five employees represented by BRAC are involved in these disputes. Thirty five employees represented by ARSA are involved.

III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting on November 12, 1984, in New York, New York. On November 13, 1984, and on November 17, 1984, the Board met with the parties at the carrier's offices in Jamaica, New York. The Board met in Executive Session in New York on November 19, 1984, and held a meeting with the parties on November 20, 1984, in Jamaica, New York. The parties submitted their final offers to the Board on November 24, 1984. The Board met in additional Executive Sessions on November 30, 1984, and December 1, 1984. On December 6, 1984, the Board met with the parties in an attempt to further narrow the issues in dispute. The Board met in Executive Sessions on December 14 and 15, 1984, in New York city and again on December 18 and 19, 1984.

The Board's selections are made against the background of all the meetings with the parties and all the materials submitted, including modifications of the parties' final offers, authorized to be filed with the Board up to December 15, 1984. Withdrawal and/or settlement of

items was authorized to be made up to December 20, 1984. None was received.

IV. HISTORY OF THE DISPUTES

BRAC served its Section 6 Notices on the carrier on June 1, 1981. A joint application for the National Mediation Board's mediation services was filed July 1, 1983. This case was docketed as NMB Case No. A-11290 on July 6, 1983.

ARSA served its Section 6 Notice on the carrier on May 22, 1981. ARSA and The Long Island Rail Road filed a joint application for mediation on July 20, 1983. This case was docketed as NMB Case No. A-11308 on August 11, 1983.

Mediator Francis J. Dooley commenced mediation on August 11, 1983. Mediation continued until May, 1984. On May 15, 1984, the NMB determined that the parties were deadlocked and proffered arbitration in accordance with Section 5, First, of the Railway Labor Act. The organizations rejected the Board's proffer on May 18, 1984. On May 21, 1984, the Board released the parties from mediation and the statutory 30 day "status quo" period began.

NMB Chairman Walter C. Wallace and Mediator Thomas B. Ingles conducted public interest mediation on June 14, 1984. On June 18, 1984, BRAC requested that President Reagan create an emergency board pursuant to Section 9A of the Railway Labor Act, which governs publicly funded commuter authorities. Emergency Board No. 203 was created by Executive Order No. 12481 on June 20, 1984. The Board submitted its Report to the President on July 20, 1984. Following the release of the Report, the parties continued their attempts to resolve their differences. The 60 day statutory time period for this process expired at midnight, October 18, 1984.

Emergency Board No. 206 was created by Executive Order on October 25, 1984. Section 9A provides that the parties must submit their "final offers for settlement of the dispute" to the Board within 30 days of the creation of the Board. The Board then must choose "the most reasonable offer" within the next 30 days. During this 60 day period, and for 60 days after the submission of the report, the parties must maintain the status quo.

V. REPORT

A. Background

Between 1976 and 1979, ARSA, BRAC, the Brotherhood of Railway Carmen, and the Office and Professional Employees Interna-

tional Union filed applications with the National Mediation Board to represent certain "supervisory" and "professional" employees on the LIRR. The NMB conducted hearings in 1980 to determine if any of the involved employees were subordinate to officials under the Railway Labor Act, *The Long Island Rail Road*, 7 NMB No. 164 (1980). The LIRR stipulated at the outset of the hearings that certain job titles were subordinate officials. The Board ordered an election. BRAC was certified as the duly designated representative of employees described as "Transportation; Internal Audits; Administration and Finance; Personnel; Public Affairs; Law; Customer Services; and Office Service an accretion to the craft or class of Clerical, Office, Station and Storehouse Employees" in 8 NMB No. 126 (1981). ARSA was certified as the representative of certain supervisory employees in 8 NMB No. 115 (1981). The LIRR filed a legal action in the Federal District court for the Eastern District of New York and subsequently in the United States Court of Appeals for the Second Circuit challenging the validity of the certifications. Both courts upheld the NMB's certifications. The Court of Appeals decision issued on March 25, 1983, *Long Island Rail Road Co. v. National Mediation Board*, 703 F. 2d 680 (2nd Cir. 1983).

Below is a representative listing of some of the job titles in the BRAC dispute:

Manager-Community Relations	Systems Analyst
Manager-Customer Communications	Auditor
Project Leader	Accountant Analyst
Supervisor of Materials	Computer Programmer
Supervisor-Payroll	Contract Administrator
Claims Agent	Assistant Trainmaster

The ARSA represented employees involved in this dispute are:

Supervisor of Equipment	Supervisor Budgets and Expenditures
Assistant Supervisor of Equipment	Supervisor Cost Control
Material Coordinator	Assistant Supervisor Cost Control

This is the first contract for these employees.

B. Introduction

The parties to this dispute have been in the process of negotiating a first contract for a considerable period of time. The National Mediation Board commenced mediation in August, 1983, and continued its attempts to help the parties resolve their differences through June of 1984.

Emergency Board No. 203 was established on June 20, 1984, and functioned through July 20, 1984, releasing its Recommendations for settlement of the dispute on that date.

That Board viewed the issue of seniority as "the significant obstacle to agreement."

This Board is persuaded that as of the time Board No. 203 wrote its Report, there was indeed a sense that the major item in dispute was the seniority issue. Board No. 203 recommended that "a modified system of seniority should be applied...."

The Recommendations made by Board No. 203 were not used as a basis for settlement. In later negotiations the carrier did offer a seniority program for the purposes of vacation selection and holiday assignment.

In the period from the date of the issuance of Board No. 203's Report to the date of the establishment of Board No. 206 the parties engaged in some bargaining. In presenting their positions to Board No. 206 it became clear that the items in dispute were not limited to seniority and indeed covered a multitude of issues dealing with basic conditions of employment, including work rules.

It should be noted here that the statutory scheme provides for very different functions of the two Boards established under Section 9A. The function of the first Board (Board No. 203) is to "investigate and report." The function of the second Board (Board No. 206), is to "submit a report...setting forth its selection of the most reasonable offer."

The Board concentrated in the initial stages on helping the parties to narrow the issues between them through encouraging the give and take of collective bargaining and through the mediation efforts of the Board Members. It is apparent that the parties have been able to resolve some of their problems but that they are still apart on the major issues. No useful purpose is served by an attempt to measure the distance between them, but, it is the Board's conviction that final offer selection works best when the parties have bargained to closer positions than they have here. Substantial differences continue to exist on the issues of Wages, Overtime, Seniority, Health and Welfare, Shift Differential, and Stabilization of Forces, and it is those issues which this Board has considered.

The Board has considered whether to treat the problem before it as a final offer selection of "the most reasonable offer" based on a total of the identified items in dispute or on an item-by-item basis. In certain situations it would be necessary to treat the package as a whole and in others to treat items on an individual basis. As the language of the statute provides no direction on this, the Board is persuaded that it has the option to select either.

The Board has decided that it is in the interest of the parties and the public, and consistent with its interpretation of the statute, to make its final offer selections not on the total package but rather on a item-by-item basis.

C. Issues

1. Wages

In the period since this Board was named, the parties' positions have changed in a variety of ways, but this Board is concerned only with the offers finally submitted to the Board as the positions of the carrier, BRAC, and ARSA.

The LIRR proposes to establish a base rate for each job at the midpoint of the existing salary range (100%), and to abolish the salary ranges (the Hay System), effective December 31, 1984. Additionally, the carrier would grant each employee either a 7% pay increase, or the amount necessary to raise the employee to the new base rate, whichever is greater. The carrier would further grant each employee a retroactive payment of \$100.00 for each month that the employee has been a member of the group from March 25, 1983 to December 31, 1984 up to a maximum of \$2,100.

For 1985 and thereafter the LIRR proposes to grant the same pattern of wage increases to these employees as to the other employees represented by BRAC and ARSA. However, employees whose salaries exceed the base rate would be "red-circled", receiving only half the general increase until the base rate equals or exceeds their salaries.

BRAC and ARSA agree with the carrier's position on the base rate, i.e., midpoint of the existing salary range (100%) and the abolishment of the Hay System. However, the unions propose an 11½% increase and \$175.00 per month retroactive pay for 24 months for employees in the craft or class prior to March 25, 1983, to a maximum of \$4,200. Employees in the craft or class after March 25, 1983 would also be granted back pay at the rate of \$175.00 for each month of service. Employees in the craft or class after March 25, 1983 whose jobs were subsequently abolished or who were promoted would receive retroactive pay for months worked between March 25, 1983 and the date they left the craft or class. Finally, the unions propose that all employees receive full pattern increases, even if they are earning more than the established base rate of pay for the job.

2. Overtime

The carrier proposes a five day week and eight hour day with two consecutive relief days. The LIRR proposes compensatory time off for overtime under the following conditions:

- a) on a regular work day, employees would receive compensatory time after the ninth hour on duty, for each half hour.
- b) on relief days and holidays, employees would receive compensatory time for each half hour on duty (except as noted below).

The carrier makes the following proposal to insure that employees

will be able to use accrued compensatory time by the end of the next calendar quarter. In a situation where an employee has scheduled compensatory time off and the carrier cancels that time off, the carrier would pay cash at straight time rates. The carrier would pay cash overtime at time and a half for work performed on Thanksgiving, Christmas and New Year's Day. All other holidays would be paid by compensatory time.

BRAC and ARSA propose that compensatory time start after eight hours and be accrued on a minute basis. The unions also propose that employees may use compensatory time with the supervisors' approval by the end of the calendar month following the accrual. An employee would be obligated to use accrued time and the carrier would be obligated to permit the use of the time. The employee may re-schedule compensatory time off, but if the employee's supervisor cancels the time off, the employee may either re-schedule the time or be paid at straight time rate.

3. Seniority

The LIRR's position on the issue of seniority is that it has no application to the hiring, promotion and assignment of "these managerial and supervisory employees". The carrier has offered to use seniority in the areas of vacation selection and holiday assignments.

BRAC and ARSA propose that seniority be used to select assignments and locations for those jobs which involve seven-day, twenty-four hour coverage. The four BRAC and ARSA represented job titles which are on a twenty-four hour schedule are Assistant Trainmaster, Stationmaster, Supervisor of Equipment, and Assistant Supervisor of Equipment.

The carrier maintains that it must be free to assign these employees on the basis of its operational needs, and that to assign on the basis of seniority would have an adverse effect on operations. For example, the Assistant Trainmaster on the midnight shift at Penn Station, the carrier's major terminal, is usually the ranking supervisor over engine and train service employees. The carrier does not want its least experienced employees assigned to this shift, arguing the necessity to rotate these assignments which it proposes to do on a semi-annual basis.

4. Shift Differential

BRAC proposes a 10% shift differential for all work between 6 p.m. and 6 a.m. and all work on weekends. ARSA proposes a 10% shift differential for all work between 6 p.m. and 6 a.m. and "all hours relief days and holidays." This shift differential would apply to employees

in the four job titles which involve seven days a week, twenty four hours a day coverage.

The carrier proposes no shift differential. It is the carrier's position that differentials were built into these jobs under the Hay System. However, the carrier would consider some form of shift differential, less than 10%, if BRAC and ARSA withdraw their demands on the seniority issue. BRAC and ARSA dispute the carrier's contention that there are shift differentials built into the pay for certain jobs.

5. Health and Welfare

The carrier proposes that all BRAC and ARSA represented employees be covered under the standard health and welfare package currently applicable to over 4,000 represented employees on the LIRR. Additionally, the carrier would "allow certain special benefits" to be discussed further between the parties.

BRAC proposes that these employees remain under the current management benefit plan in light of the carrier's proposals on the issues of overtime, shift differential, and seniority. ARSA proposes that its members be covered by the ARSA plan of benefits, including the sick leave provisions.

6. Stabilization of Forces

The LIRR proposes that the current BRAC Rules on Stabilization of Forces be amended to reduce the notification period for abolishment of positions from 90 days to 30 days. The carrier also seeks a provision that transfer of a function to the MTA or a constituent agency would be exempt from these rules. The carrier would keep the current provision, which states that employees hired prior to January 1, 1979, who become subject to furlough, be given alternative employment with the carrier.

BRAC and ARSA agree only with the first part of the carrier's proposal. The organizations propose that the January 1, 1979, date be changed to the date of the signing of the agreement. The organizations are "vehemently opposed to any provision that would allow transfer of any function...to the MTA or any constituent agency...."

7. Rules

Full and total agreement on the rules has not been reached. There are indications that for the most part, the parties, have or could reach agreement on rules. While the Board has not been asked to make a final offer selection on specific rules which are still open, the parties have referred to rules problems, and the Board will comment in its discussion on this subject.

D. Discussion

The parties have been able in their direct negotiations to resolve many items which were in dispute between them. These are first agreements covering a very large number of issues. For the purpose of the discussion below the Board is referring to the six major areas of dispute separating the parties. There may be other items which continue to be open because the parties are continuing to work on the development of language and the Board will not refer to them in this discussion. The Board refers to the basic issues in dispute between the parties which are described above and on which the parties have fundamental differences.

This Board does not have the luxury of making suggestions as to the contract terms which the parties should find acceptable. Our function is to select from the final offers made by the parties and served on the Board the one which, in the language of the statute, is "the most reasonable offer."

1. Wages

The Board, in making its selection, envisions all of the wage items as interdependent and inseparable; thus, the Board must choose between the two wage packages contained in the final offers. The Board is persuaded that there is such a relationship among wages, future increases, retroactive pay, and "red-circling" as to require that a judgment on reasonableness be made on the whole rather than on its constituent parts.

The organizations have requested an 11½% increase and future wage provisions payable to all employees regardless of where they fall in the rate range. They also seek retroactive pay going to a maximum of \$4,200 and they object to the "red-circling" of any employee's rate. In attempting to justify the 11½% increase which is higher than the 1984 increase granted to other LIRR employees, the organizations rely on increases made to pay ranges for other "management" employees,

The wage increase offered by the LIRR follows the general pattern on the LIRR and in addition a substantial number of employees will receive in excess of 7% to bring them up to the new base rate. Also, the carrier's wage proposal includes a reasonable adjustment in retroactive pay going back to March 25, 1983. As to the "red-circling" of employees who would fall above the base rate, this is not an unusual practice aimed at bringing consistency to a wage structure.

For all of these reasons, the Board considers the carrier's final offer to be more reasonable and therefore selects that offer.

2. Overtime

It is the carrier's position that these employees, having formerly been in a "managerial" capacity, have had included in their salary levels (without identification) recognition that their hours frequently would be uncertain and variable. This now has become an issue between the parties since the organizations sought to have the employees paid for overtime. The organizations now accept the principle of compensatory time rather than pay for overtime hours. The organizations request payment at time and a half rate for relief days and holidays.

The carrier, as described above, has offered a proposed compensatory time plan. The carrier is not suggesting in its final proposal that the Hay System differential for overtime hours included in the pay structure of supervisors be deducted from their pay. The compensatory time proposed by the carrier would be in addition to the differential contained in these employees' salaries.

The other differences in the parties' positions, e.g., the minute-by-minute overtime as distinguished from half-hour increments are not described here in detail, but it is the Board's view that with positions at the level of these positions there is probably not a reasonable basis for the minute time-keeping that would be implicit in acceptance of the organizations' proposals.

The Board notes that the carrier's proposal includes provisions for employees to receive compensatory time for time accrued and also provides for time and one half cash payment for Thanksgiving, Christmas, and New Years Day.

The Board selects the carrier's offer as the more reasonable.

3. Seniority

Emergency Board No. 203 made a recommendation to the parties regarding seniority in which it expressed its view that a modified system of seniority be developed by the parties. That Board, based upon what was before it, judged seniority to be a major obstacle to the settlement of these disputes. Since the issuance of the Report of Board 203, the unions have withdrawn their seniority demands as to some matters but BRAC retained its seniority demand for the right to pick assignments and locations for "other than day shift...jobs." BRAC and ARSA no longer seek seniority for hiring and promotion.

The Board is not persuaded that there is justification for the use of seniority in the areas proposed by BRAC and ARSA. With the importance and training obligations implicit in the filling of these jobs, it would appear that the carrier's hesitancy to allow seniority to become either the sole or major factor in filling the assignments is well-founded.

Accordingly, the Board believes the carrier's position to be more reasonable and will make that selection.

4. *Shift Differential*

The Board recognizes that the carrier has indicated in its offers that a less stringent union position on seniority would cause it to consider an offer on shift differentials. That indication has not produced any visible improvement in the positions of the parties on the shift differential or any items offered by the carrier. The Board is left with the carrier's position that there be no shift differential and BRAC and ARSA's position that there be a 10% shift differential for the hours between 6:00 p.m. and 6:00 a.m. and weekends. Here, as in the case of overtime, it is the carrier's position that the formula of the Hay System included within the pay structure a differential for hours variations. Although the Board is aware that there is no disagreement in principle between the parties on the utilization of shift differential for employees in these categories, no amount has been offered by the carrier and the unions have maintained their demands for a 10% shift differential.

The LIRR claims that these employees have been receiving a shift differential of some kind in a percentage of salary under the Hay System. Whether that is measurable is for our purposes unimportant.

The selection the Board has made as to seniority produces the kind of pre-condition that the carrier sought from the organizations in order to produce a proposal for a shift differential. If the organizations accept the final offer selection made by the Board with regard to seniority, it is this Board's conviction that this is precisely the pre-condition the carrier sought "in exchange for [the unions'] agreement to allow management to retain its existing right to make assignments."

Whether that should be 10% under the conditions sought by BRAC and ARSA or, as the LIRR stated in an earlier position, something less than 10%, it appears to the Board that if the seniority provision selected by the Board is accepted, the parties must reach a conclusion for "some form of compensation for shift work."

The Board therefore does not make a final offer selection on the shift differential demand because if it did, it would be predicated upon the acceptance of the seniority demand and, further, this Board does not have enough evidence before it to make an informed judgment on the precise conditions which should apply.

5. *Health and Welfare*

In its Report, Emergency Board No. 203 stated that the LIRR had offered BRAC and ARSA the same Health and Welfare packages cur-

rently in effect for the larger groups represented by these organizations. BRAC and ARSA proposed that the certified employees receive the management benefit package. In addressing the subject of fringe benefits, Board No. 203 recommended "that the personnel represented by BRAC and ARSA in these disputes receive the same level of benefits as those received by the other BRAC and ARSA represented employees on the LIRR."

At the time of the functioning of Board No. 203 the ARSA position as well as the BRAC position had been that these employees should receive the "management fringe benefit package". That is not the position taken by ARSA in its final offer here. It now seeks "full ARSA benefits" so that there will be consistency with other employees "within the same bargaining unit." The ARSA group to which the organization refers to is another craft or class with a separate certification. BRAC's proposal that these employees receive the management plan of benefits remains unchanged,

In its offer, the employer has stated that it believes that BRAC and ARSA should accept the same benefits as are applicable to the majority of represented employees on the LIRR. The carrier, in describing its Health and Welfare package, states that it is applicable to 4400 represented employees on the LIRR and also states that it "would allow certain special benefits" to be discussed further between the parties. Those benefits have not been described to the Board.

The Board, in making its decision here, considers that the LIRR's proposal is for the "BRAC pattern" but that implicit in that offer is the agreement to discuss certain "special benefits."

The Board considers that the carrier's proposal is the more reasonable.

6. Stabilization of Forces

The LIRR proposes that the BRAC rules applicable to the employees covered by the current BRAC agreement on Stabilization of Forces (Rules 60 and 61) be amended to provide: for a reduced notification period for the abolishment of positions from 90 days to 30 days; that transfer of functions to the MTA or a constituent agency be exempt from these rules; and that the current provisions of Rule 60 apply only to employees hired prior to January 1, 1979. While BRAC and ARSA accept the reduction in the notification period (Rule 61) they are "vehemently opposed" to a provision which they see as authorizing a reduction in forces through transfer of functions or other mechanisms.

This Board will not make a final offer selection on this item.

It appears to this Board that on an issue which has the potential of

such significant import to all parties it would be improper to make a final offer selection. The evidence before the Board is insufficient to assess the reasonableness of either offer. What is of greater importance, however, is the fact that there is nothing presented to indicate how any such provision would be protected against abuse by either party.

There is no evidence that the parties have ever seriously negotiated on this provision or on the various proposals of all the parties. The Board thinks it is vital that Rule 60 have the benefit of analysis and the give and take of negotiations. And the Board remands this to the parties.

7. Rules

As to the rules on which there remains disagreement, some are tied to the overtime provisions and the Board believes that with its selection on the overtime issue the parties should work out those rules or their continuation or discontinuance through direct bargaining without the Board's intervention.

Other of the rules have been agreed upon in principle, and there appears to be no doubt that the parties can work out their own language without the assistance of the Board. A third category of rules on which apparently no agreement has been reached, includes rules upon which there is no evidence before the Board and on which the Board has simply the bare positions of the parties. It would be mischievous for the Board to comment on these.

VI. CONCLUSION

Based on the rationale as stated above, the Board selects as "the most reasonable" offers the following:

1. *Pay Package*, including wages, future wage increases, retroactive pay, and "red-circling."—The Board selects the carrier's final offer.

2. *Overtime*—The Board selects the carrier's final offer.

3. *Seniority*—The Board selects the carrier's final offer.

4. *Shift Differential*—The Board does not make a final offer selection on shift differential but refers it back to the parties so that if the parties accept the Board's selection on the seniority issue, the parties will bargain on the shift differential for the employees covered by these contracts.

5. *Health and Welfare*—The Board selects the carrier's final offer.

6. *Stabilization of Forces*—The Board does not make a final offer selection on this item but remands it to the parties for negotiation and resolution.

7. *Rules*—The Board has commented in the discussion on its understanding of the status of the open rules. No selection is made or required.

Respectfully submitted,

(s) EVA ROBINS, *Chairman*

(s) THOMAS F. CAREY, *Member*

(s) THOMAS N. RINALDO, *Member*

EXECUTIVE ORDER 12492

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN THE LONG ISLAND RAIL ROAD AND THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

A dispute exists between The Long Island Rail Road and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, representing employees of The Long Island Rail Road.

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(e) 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. 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is hereby established 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.

Section 2. *Report.* (a) Within 30 days from the creation of the board, the parties to the dispute shall submit a report to the President setting forth its selection of the most reasonable offer.

(b) Within 30 days after submission of final offers for settlement of the dispute, 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 board shall terminate upon the submission of the report provided for in Section 2 of this Order.

RONALD REAGAN

THE WHITE HOUSE,

October 25, 1984.