

**REPORT**

to

**THE PRESIDENT**

by

**EMERGENCY BOARD**

**NO. 227**

**SUBMITTED PURSUANT TO EXECUTIVE  
ORDER NO. 12967  
DATED JULY 31, 1995  
AND SECTION 9a OF  
THE RAILWAY LABOR ACT, AS AMENDED**

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**Investigation of disputes between Metro-North Commuter Railroad and the Brotherhood of Locomotive Engineers, including the American Train Dispatchers Division; Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Brotherhood of Teamsters; Sheet Metal Workers International Association; Transportation Communications International Union-ARSA Division; Transport Workers Union of America; and the United Transportation Union.**

**(National Mediation Board Case Nos. A-12683, A-12684, A-12685, A-12686, A-12687, A-12688, A-12689, A-12690, A-12691, A-12692, A-12693, A-12694, A-12695, A-12696, A-12697, A-12698, and A-12700)**

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**WASHINGTON, D.C.  
SEPTEMBER 29, 1995**

## LETTER OF TRANSMITTAL

WASHINGTON, D.C.

September 29, 1995

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

DEAR MR. PRESIDENT:

On July 31, 1995, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order 12967, you created an emergency board to investigate disputes between Metro-North Commuter Railroad and its employees represented by the Brotherhood of Locomotive Engineers (including the American Train Dispatchers Division); Brotherhood of Railroad Signalmen; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Brotherhood of Teamsters; Sheet Metal Workers International Association; Transportation Communications International Union-ARSA Division; Transport Workers Union of America; and the United Transportation Union.

Following its investigation of the issues in contention, the Board has prepared its Report and selected final offers for settlement of the disputes.


The Board gratefully acknowledges the assistance of Joyce M. Klein, Esq. of the National Mediation Board staff, for her valuable work with this Board during the proceedings and in preparing this Report.

The Board now has the honor to submit to you, in accordance with the provisions of the Railway Labor Act, its selection of the most reasonable final offers for settlement of the disputes.

Respectfully,



ROBERT M. O'BRIEN, *Chairman*



GEORGE S. ROUKIS, *Member*



BARBARA ZAUSNER TENER, *Member*

# TABLE OF CONTENTS

	<i>Page</i>
I. CREATION OF THE EMERGENCY BOARD .....	1
II. PARTIES TO THE DISPUTE .....	1
A. THE CARRIER .....	1
B. THE ORGANIZATIONS .....	2
III. HISTORY OF THE DISPUTES .....	3
IV. ACTIVITIES OF THE EMERGENCY BOARD .....	4
V. THE FINAL OFFERS .....	5
A. FINAL OFFERS SUBMITTED BY METRO-	
NORTH .....	5
1. Term .....	5
2. Wages .....	5
3. Personal Holiday .....	5
4. Work Rules/IBT .....	5
a. Night Shifts .....	5
b. Weekend Shifts .....	5
c. Job Stabilization .....	6
d. Trackman Seniority Roster .....	6
e. B&B Mechanic Positions .....	6
f. Committee on Health & Welfare Benefits ...	6
g. Two Bid Rule .....	6
5. Work Rules/Shop Crafts .....	6
a. Workforce Scheduling .....	6
b. Shop Mechanic Committee .....	7
c. Bereavement Leave .....	7
d. Grievance Procedure Penalty Payments...	7
e. Committee on Health and Welfare	
Benefits .....	7
6. Additional Work Rules/TWU .....	7
a. Part-time Coach Cleaners .....	7
7. Additional Work Rules/IAM & IBEW .....	7
a. Night Work .....	7
b. Weekend Shifts .....	8
8. Work Rules/ARSA (M of E) .....	8
a. Workforce Scheduling .....	8
b. Shop Mechanic Committee .....	8
c. Committee on Health & Welfare Benefits...	8
9. Work Rules/TWU (Service Attendants) .....	8
a. Combined Work Assignment .....	8
b. Part-time Service Attendants .....	8
c. Holiday .....	8
d. Bereavement Leave .....	9
e. Grievance Procedure Penalty Payments ..	9
f. Committee on Health & Welfare Benefits ..	9

	<i>Page</i>
10. Work Rules/BRS .....	9
a. Night Work .....	9
b. Weekend Shifts .....	9
c. Workforce Scheduling .....	9
d. Absent Without Permission .....	9
e. Bereavement Leave .....	10
f. Grievance Procedure Penalty Payments ..	10
g. Advance Call Rule .....	10
h. BRS Training Agreement .....	10
i. Committee on Health & Welfare Benefits	10
j. Title/Rate Consolidation .....	10
11. Work Rules/ARSA (M of W) .....	10
a. Night Work .....	10
b. Weekend Shifts .....	10
c. Paid Lunch Away From Headquarters ...	11
d. Bereavement Leave .....	11
e. Committee on Health & Welfare Benefits	11
12. Work Rules/IBEW Supervisors .....	11
a. Workforce Scheduling .....	11
b. Night Work .....	11
c. Weekend Shifts .....	11
d. Bereavement Leave .....	11
e. Double Time .....	12
f. Grievance Procedure Penalty Payments	12
g. Committee on Health & Welfare Benefits	12
13. Work Rules/ATDA—Dispatchers and Power Supervisors .....	12
a. Consolidation of Dispatching Functions/ Grand Central Terminal .....	12
b. Bereavement Leave .....	12
c. Grievance Procedure Penalty Payments	12
d. Committee on Health & Welfare Benefits	12
14. Work Rules/UTU—Yardmasters .....	12
a. Double Time .....	12
b. Bereavement Leave .....	12
c. Grievance Procedure Penalty Payments	12
d. Committee on Health & Welfare Benefits	12
15. Work Rules/BLE .....	13
a. Extra Board Call Out .....	13
b. Deadheading at Straight Time .....	13
c. Meal Periods .....	13
d. Certification Allowance .....	13
e. Committee on Health & Welfare Benefits	13

	<i>Page</i>
16. Work Rules/UTU (Conductors, Trainmen and and Hostlers) .....	13
a. Extra Lists .....	13
b. Deadheading at Straight Time .....	13
c. Meal Periods .....	14
d. Passenger and Non-passenger Classifica- tions .....	14
e. Weekend Overtime .....	14
f. Committee on Health & Welfare Benefits .....	14
g. Part-time Assistant Conductors .....	14
B. FINAL OFFERS SUBMITTED BY THE LABOR ORGANIZATIONS .....	14
1. IBT .....	15
a. Term .....	15
b. Wages .....	15
c. Sick Days .....	15
d. Life Insurance .....	15
e. Vacation .....	15
f. Shoe Allowance .....	15
g. Meal Allowance .....	15
h. Personal Day .....	15
i. Pension Contribution .....	15
2. IBEW Supervisors .....	15
a. Term .....	15
b. Wages .....	16
c. Workforce Scheduling .....	16
d. Night Differential .....	16
e. Personal Holiday .....	16
f. Bereavement Leave .....	16
g. Life Insurance .....	16
h. Grievance Procedure .....	16
3. All Other Organizations .....	16
a. Term .....	16
b. Wages .....	17
c. Life Insurance .....	17
4. TWU .....	17
a. Committee on Health and Welfare Benefits .....	17
b. Workforce Scheduling .....	17
c. Grievance Procedure Penalty Payments .....	17
d. Personal Holiday .....	17
e. Bereavement Leave .....	17
f. Special Provisions Affecting Service Attendants .....	18

	<i>Page</i>
5. IAM .....	18
a. Night and Weekend Work .....	18
b. Joint Study Committee .....	18
6. SMWLA .....	18
a. Skill and Shift Differential .....	18
b. Workforce Scheduling .....	18
7. IBFO .....	19
8. IBB .....	19
a. Night and Weekend Work .....	19
b. Boilermaker-Blacksmith National Pension Trust .....	19
9. IBEW .....	19
a. Skill Differential .....	19
b. Workforce Scheduling .....	19
c. Night & Weekend Work .....	19
d. Cooperative Work Study Committee .....	20
e. Single Day Vacation Rule .....	20
f. Overtime Rule .....	20
10. BRS .....	20
a. Skill Differential .....	20
b. Health Care .....	20
11. ARSA (Maintenance of Equipment Supervisors) .....	20
a. Supervisory Differential .....	20
b. Time Worked Before and After Shift .....	20
c. Sick Leave .....	20
d. Workforce Scheduling .....	21
12. ARSA (Maintenance of Way Supervisors) .....	21
a. Night and Weekend Work .....	21
b. Skill Differential .....	21
c. Vacation .....	21
d. Life Insurance .....	21
13. ATDA (Rail Traffic Controllers and Power Supervisors) .....	21
a. Break Periods .....	21
b. Road Days .....	21
14. UTU (Yardmasters) .....	21
a. Supervisory Differential .....	21
b. Sick Leave .....	22
c. Vacation .....	22
d. Work Location .....	22
e. Presentation of Claims .....	22
15. BLE .....	22
a. Certification Allowance .....	22
b. Sick Leave .....	22

	<i>Page</i>
c. Swing Time .....	22
d. Vacations .....	22
e. Health & Welfare Benefits .....	22
16. UTU (Conductors, Trainmen and Hostlers)....	23
a. Revised Health Care Program .....	23
b. Sick Leave .....	23
c. Stabilization of Workforce .....	23
d. Swing Time and Meal Time .....	23
e. Vacations .....	23
f. Bi-weekly Pay .....	23
VI. INTRODUCTION .....	23
VII. WAGE AND WAGE-RELATED OFFERS .....	24
A. WAGES .....	24
B. DURATION OF AGREEMENT .....	25
C. SKILL DIFFERENTIALS .....	25
D. OTHER WAGE ADJUSTMENTS .....	26
E. FINAL OFFERS BY IBT AND IBEW SUPERVISORS .....	26
1. IBT Maintenance of Way Employees .....	27
2. IBEW Supervisors .....	28
VIII. BENEFITS .....	28
A. SICK LEAVE .....	28
B. LIFE INSURANCE .....	29
C. PERSONAL DAY/HOLIDAY .....	29
D. MUTUALLY AGREED UPON ISSUES .....	30
IX. WORK RULES .....	30
A. WORKFORCE SCHEDULING .....	30
B. PART-TIME EMPLOYEES .....	31
C. SWING TIME AND MEAL PERIODS .....	32
D. EXTRA LISTS .....	32
E. BREAK PERIODS AND ROAD DAY .....	32
X. CONCLUSION .....	33

## APPENDICES

A. Executive Order 12967 .....	A-1
B. Comparison of PEB 226 Recommendations and Last Best Offers—Economic Issues .....	B-1

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

Emergency Board No. 227 (the Board) was established by the President pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. § 159A, and by Executive Order 12967, dated July 31, 1995. The Board was ordered to investigate, report its findings and select final offers regarding unadjusted disputes between Metro-North Commuter Railroad (Metro-North or Carrier) and certain of its employees represented by the Brotherhood of Locomotive Engineers (BLE) including the American Train Dispatchers Division (ATDA); Brotherhood of Railroad Signalmen (BRS); International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (IBB); International Association of Machinists & Aerospace Workers (IAM); International Brotherhood of Electrical Workers (IBEW); International Brotherhood of Firemen & Oilers (IBFO); International Brotherhood of Teamsters (IBT); Sheet Metal Workers International Association (SMWIA); Transportation Communications International Union-ARSA Division (ARSA); Transport Workers Union of America (TWU); and the United Transportation Union (UTU). A copy of the Executive Order is attached as Appendix A.

On July 31, 1995, the President appointed Robert M. O'Brien, an arbitrator, of Milton, Massachusetts, as Chairman of the Board, and George S. Roukis, an arbitrator and professor at Hofstra University, Hempstead, New York and Barbara Zausner Tener, an arbitrator, of Bordentown, New Jersey as members. The National Mediation Board appointed Joyce M. Klein, Esq. as Assistant to the Board.

## **II. PARTIES TO THE DISPUTE**

### **A. THE CARRIER**

Metro-North was created in 1982 by the Metropolitan Transit Authority (MTA) to operate commuter rail lines previously operated by the Consolidated Rail Corporation (Conrail). Metro-North, which includes the Hudson, Harlem and New Haven Lines, began operations on January 1, 1983. Metro-North operates the New Haven Line through an agreement with the Connecticut Department of Transportation. In addition to Metro-North, the MTA operates the New York City Transit Authority; Triborough Bridge and Tunnel Authority; Metropolitan Suburban Bus Authority; Staten Island Rapid Transit Operating Authority and the Long Island Rail Road (LIRR).

Metro-North employs approximately 5,880 employees, more than 4,000 of whom are covered by collective bargaining agreements which are at issue in this proceeding. Metro-North's employees are

represented in 19 separate craft or classes (bargaining units) by 15 labor organizations. Twelve labor organizations covering 17 crafts or classes are participating in this proceeding.

Every weekday, Metro-North carries more than 107,000 passengers, most of them commuters. Its passenger service operates over a system covering approximately 737 miles of track. Metro-North uses its approximately 790 passenger cars and engines to carry passengers on an average of 575 weekday train trips. Metro-North receives approximately 56 percent of its operating revenue from passenger fares. Federal, state and local subsidies comprise its remaining operating revenue as well as revenue for capital improvements.

## B. THE ORGANIZATIONS

Twelve Labor Organizations are parties to these disputes:

1. The American Railway & Airway Supervisors Association, a division of the Transportation Communications International Union represents Maintenance of Way Supervisors and Maintenance of Equipment Supervisors.
2. The American Train Dispatchers Division of the Brotherhood of Locomotive Engineers represents Train Dispatchers (Rail Traffic Controllers) and Power Department Supervisors.
3. The Brotherhood of Locomotive Engineers represents Locomotive Engineers.
4. The Brotherhood of Railroad Signalmen represents Signalmen.
5. The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers represents Boilermakers.
6. The International Association of Machinists & Aerospace Workers represents Machinists.
7. The International Brotherhood of Electrical Workers represents Electrical Workers, Employees in the Electric Traction Department, and Electrical Supervisors including Assistant Engineers—Electric Traction, Supervisors, Assistant Supervisors and Foremen in the Electric Traction Department.
8. The International Brotherhood of Firemen and Oilers represents Firemen and Oilers.
9. The International Brotherhood of Teamsters represents Maintenance of Way Employees.
10. The Sheet Metal Workers International Association represents Sheet Metal Workers.
11. The Transport Workers Union of America represents Carmen and Service Attendants.<sup>1</sup>

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<sup>1</sup>The Service Attendants are also represented by the Hotel & Restaurant Employees Bartenders International Union (HERE). HERE is not a party to this proceeding.

12. The United Transportation Union represents Hostlers, Conductors, Trainmen and Yardmasters.

### III. HISTORY OF THE DISPUTES

In 1983 the dispute over the terms and conditions of the transfer of operations from Conrail to Metro-North led to a strike and to the creation of Presidential Emergency Board No. 198. Since that time, Metro-North and its labor organizations have resolved their disputes through negotiations and mediation without the assistance of an emergency board.

However, despite negotiations and mediation conducted by National Mediation Board then Chairman Ernest DuBester and Mediators Joseph Anderson and Paul Chorbajian, little progress at settling the 1992 round of negotiations had been made by the beginning of October 1994. After a period of intensive negotiations and mediation by Chairman DuBester, the parties entered into a novel agreement on October 25, 1994 to provide the means to resolve both the 1992 round of bargaining and the subsequent round covering a new term beginning on January 1, 1995. In that agreement, IBEW, IBT, TWU and UTU and Metro-North created a process for the parties to resolve their disputes for both the old and new contract terms and permitted Metro-North to shift its health care coverage to the New York State Government Employees Health Insurance Program (Empire Plan) effective January 1, 1995. The process structured by the parties required them to enter into expedited negotiations and mediation to resolve the 1992 round of bargaining as well as the "subsequent contract period". If intensive negotiations failed to result in agreement, the parties agreed that they would jointly request the National Mediation Board to proffer arbitration. Within a few weeks of the October 25, 1994 accord, the other Organizations participating in this proceeding joined in the agreement.

Over the course of the next few months, all of the Organizations, except the Maintenance of Way Employees (IBT), the Signalmen (BRS) and the Maintenance of Equipment Supervisors (ARSA) reached agreement with Metro-North for the period January 1, 1992 through December 31, 1994. These parties subsequently reached agreement for the period January 1, 1992 through December 31, 1994. However, no agreements concerning the subsequent round commencing January 1, 1995 were reached by January 12, 1995, the parties' self-imposed deadline for settlement.

Pursuant to the parties' agreement, each Organization and Metro-North requested a proffer of arbitration. Thereafter, on January 12, 1995, the National Mediation Board offered each of the Organizations and Metro-North the opportunity to arbitrate their disputes. Metro-North and the Organizations declined the proffer of arbitration. Accordingly, on January 23, 1995, the

National Mediation Board released the parties from mediation and the statutory "status quo" period began to run.

President Clinton created Emergency Board No. 226 on February 22, 1995, and, on April 21, 1995, PEB 226 issued its Report and Recommendations to the President. When the recommendations of PEB 226 did not result in a prompt resolution of the disputes, then NMB Chairman Ernest DuBester conducted a public hearing on May 19, 1995 at which hearing the parties discussed their reasons for not accepting the recommendations of PEB 226. The status quo period following the report and recommendations of PEB 226 ended on June 22, 1995, however, the parties agreed to extend the status quo until July 15, 1995 to permit the Special Olympics to take place in New Haven, Connecticut.

On July 13, 1995, NMB Member Ernest DuBester and NMB Mediator John J. Bavis entered into intensive mediation with the parties. The parties continued to engage in intensive mediation with the NMB and without resort to self-help beyond their self-imposed July 15 deadline. At 5:00 a.m. on July 20, 1995, after reaching tentative agreements with five Organizations,<sup>2</sup> and making significant progress towards resolving the remaining disputes, Metro-North requested that President Clinton create a second Emergency Board to select final offers. ATDA also requested an Emergency Board on July 15, 1995. On July 31, 1995, the President created this Board to make final offer selections.

#### IV. ACTIVITIES OF THE EMERGENCY BOARD

An organizational meeting was held with the parties on August 8, 1995, at which time procedural issues were discussed, ground rules were set and the schedule was determined. The ground rules include agreement that this Emergency Board shall select a final offer *in toto*, rather than on an issue-by-issue basis, for each craft or class of employees. The parties agreed to incorporate the record before PEB 226 into the record in this matter. The ground rules also set deadlines for the submission of additional evidence by any party. Pursuant to the schedule set at the organizational meeting, the Board met informally with each of the parties on August 16, 17 and 18, 1995. On August 30, 1995, the Board convened formal proceedings in New York, New York, at which it facilitated the simultaneous exchange of final offers for settlement and heard statements in support of the final offers. Under its ground rules, the Board permitted the amendment of final offers between August 30 and September 6, 1995 only by mutual consent of the parties. There were no such amendments. The Board held numerous conference

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<sup>2</sup> All of the tentative agreements failed ratification votes:

calls and met in executive sessions on September 5 and 19, 1995, in New York City, and on September 22, 1995 in Washington, DC to prepare its Report and Recommendations.

## **V. THE FINAL OFFERS**

### **A. FINAL OFFERS SUBMITTED BY METRO-NORTH**

#### **1. Term**

48 months (January 1, 1995 through December 31, 1998). The parties shall not serve notices before July 1, 1998 which shall not become effective before January 1, 1999.

#### **2. Wages**

July 1, 1995—3% increase in rates

May 1, 1996—3% increase in rates

July 1, 1997—4% increase in rates

#### **3. Personal Holiday**

One additional personal holiday effective January 1, 1998. Employees may accumulate up to three personal holidays. Unused personal holidays may be cashed out or used to pay for a day an employee is absent due to illness.

#### **4. Work Rules/IBT<sup>3</sup>**

##### **a. Night Shifts**

Metro-North shall establish night shifts from 9:00 pm to 5:30 am for surfacing, switch tamping, rail and tie gangs. Employees working night shifts shall receive a ten percent (10%) pay differential. Ten percent (10%) differential paid to employees assigned to night shift in Grand Central Terminal and Mott Haven.

##### **b. Weekend Shifts**

Metro-North will establish two special projects gangs (up to 20 employees each) to work weekend shifts of eight hours on Friday, 12 hours on Saturday and 12 hours on Sunday. Employees assigned to weekend shifts will receive a ten percent (10%) pay differential. Employees will be paid at straight time rates until 40 hours of work, except that time worked in excess of eight hours on Friday and/or Monday and 12 hours on Saturday or Sunday, will be paid at the overtime rate.

Five percent (5%) differential paid to employees assigned to the Tuesday through Saturday gang in Grand Central Terminal.

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<sup>3</sup> Metro-North and the IBT submitted a joint final offer on work rules.

*c. Job Stabilization*

Employees hired prior to January 1, 1990 who become subject to furlough shall be given alternative full-time employment with Metro-North.

*d. Trackman Seniority Roster*

Employees who transfer to the B&B Mechanic Seniority Roster may retain their positions on the Trackman Seniority Roster and *vice versa*.

*e. B&B Mechanic Positions*

Employees on the Trackman Seniority Roster may bid on vacant B&B Mechanic positions which "go no bid". Once an employee obtains a B&B Mechanic position the employee may not bid for a trackman position unless the only other option is furlough.

*f. Committee on Health & Welfare Benefits*

A committee of four representatives of the unions and four management representatives will examine the potential to increase the number of medical care providers available to employees outside of New York State. The committee will make non-binding recommendations.

*g. Two Bid Rule*

Modify two bid rule to allow for the start up of the production season.

**5. Work Rules/Shop Crafts<sup>4</sup>**

*a. Workforce Scheduling*

Metro-North shall have the right to establish a work week of four consecutive ten hour days on the day shift in the Harmon Shop Projects Gang. Employees shall be paid at the straight time rate until 40 hours are completed except that time worked in excess of ten hours in one day shall be paid at the overtime rate. Employees on these assignments shall be given three consecutive rest days to include Saturday and Sunday.

Metro-North will have the right to establish multiple start times and lapped shifts. Metro-North may exercise this right twice each calendar year at each location.

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<sup>4</sup>The shop crafts are TWU, IAM, SMWLA, IBFO, IBB and IBEW.

b. *Shop Mechanic Committee*

Establish a committee to make recommendations for performing the fleet maintenance, inspection, and repair in a cooperative inter-craft manner. The committee, which will include the General Chairman of each signatory craft, the Chief Mechanical Officer and the Director of Labor Relations, will meet on at least a monthly basis for six months. The committee will produce a report with agreed upon solutions and possible alternatives. Issues that cannot be resolved by the committee will be submitted to an arbitrator for non-binding recommendations. The cost of the proceeding will be divided equally among the parties.

c. *Bereavement Leave*

Amend agreements to provide three consecutive work days of bereavement leave.

d. *Grievance Procedure Penalty Payments*

Amend the grievance procedure to provide that if a company official to whom a grievance is submitted does not reply within the specified time limits, a penalty payment of two hours at straight time pay will be made. The grievance may be appealed on its merits.

e. *Committee on Health and Welfare Benefits*

A committee of four representatives of the unions and four management representatives will examine the potential to increase the number of medical care providers available to employees outside of New York State. The committee will make non-binding recommendations.

6. Additional Work Rules/TWU

a. *Part-time Coach Cleaners*

Provide Metro-North the right to create part-time coach cleaner positions up to a total of ten percent (10%) of all coach cleaner positions. Part-time positions may be established only by attrition. Part-time employees would not be entitled to health and welfare benefits or holiday pay, jury duty pay, bereavement leave, personal leave or vacation pay.

7. Additional Work Rules/IAM & IBEW

a. *Night Work*

If Metro-North and the IBT reach an agreement concerning night work for Maintenance of Way Employees, the IAM agreement

will be modified to permit scheduling of necessary support functions performed by IAM members. Employees performing the support functions would receive the same differential as the IBT employees. Other employees working night shifts are not eligible for the differential.

*b. Weekend Shifts*

Metro-North shall establish weekend shifts in the Maintenance of Way Department consisting of eight hours on Friday, 12 hours on Saturday and 12 hours on Sunday. Employees assigned to weekend shifts will receive a ten percent (10%) pay differential. Employees will be paid at the straight time rate until 40 hours of work, except that time worked in excess of eight hours on Friday and/or Monday and 12 hours on Saturday or Sunday, will be paid at the overtime rate.

**8. Work Rules/ARSA (M of E)**

*a. Workforce Scheduling*

Four 10 hour days may be established by mutual agreement. Metro-North will have the right to establish multiple start times and lapped shifts.

*b. Shop Mechanic Committee*

Same as shop crafts.

*c. Committee on Health & Welfare Benefits*

Same as shop crafts.

**9. Work Rules/TWU (Service Attendants)**

*a. Combined Work Assignment*

Assignments would not be restricted to one of the two seniority rosters.

*b. Part-time Service Attendants*

Provide Metro-North the right to create part-time Service Attendant positions up to a total of ten percent (10%) of all Service Attendants. Part-time Service Attendants would be paid the entry rate. Part-time positions may be established only by attrition. Part-time employees would not be entitled to health and welfare benefits, holiday pay, jury duty pay, bereavement leave, personal leave or vacation pay.

*c. Holiday*

Service Attendants will be entitled to the same eleven holidays each calendar year as provided by the Metro-North/TWU agreement.

d. *Bereavement Leave*

Same as shop crafts.

e. *Grievance Procedure Penalty Payments*

Same as shop crafts.

f. *Committee on Health & Welfare Benefits*

Same as shop crafts.

10. Work Rules/BRS

a. *Night Work*

If Metro-North and the IBT reach an agreement concerning night work for Maintenance of Way Employees, the BRS agreement will be modified to permit scheduling of necessary support functions performed by BRS members. Employees performing the support functions would receive the same differential as the IBT employees. Other employees working night shifts are not eligible for the differential.

b. *Weekend Shifts*

Metro-North shall have the right to establish two special project gangs on weekend shifts consisting of eight hours on Friday, 12 hours on Saturday and 12 hours on Sunday. Employees assigned to weekend shifts will receive a ten percent (10%) pay differential. Employees will be paid at the straight time rate until 40 hours of work, except that time worked in excess of eight hours on Friday and/or Monday and 12 hours on Saturday or Sunday, will be paid at the overtime rate.

c. *Workforce Scheduling*

Employees holding positions in certain signal gangs may be required to work a four consecutive ten hour day workweek. Other positions may be assigned to a four consecutive ten hour day workweek with the concurrence of the General Chairman. Employees working a four day workweek will receive three concurrent rest days and employees shall receive 1 and 1/4 vacation qualifying days for each ten hour day worked. Gang employees required to work four consecutive ten hour days will be paid overtime for all hours worked over ten in each work day.

d. *Absent Without Permission*

Employees on unexcused absence for 14 days or more shall be considered as having resigned and will be removed from the seniority roster unless they furnish the Carrier with evidence of circumstances beyond their control or physical incapacity.

e. *Bereavement Leave*

Same as shop crafts.

f. *Grievance Procedure Penalty Payments*

Same as shop crafts.

g. *Advance Call Rule*

Employees called at home for overtime not continuous with their tour of duty shall be paid from the time of report at their headquarters rather than from the time of the phone call.

h. *BRS Training Agreement*

Adopt proposed training agreement for all new signal employees. The proposed training agreement includes a six year wage progression from seventy percent (70%) to one hundred percent (100%) of a journeyman Signaller rate.

i. *Committee on Health & Welfare Benefits*

Same as shop crafts.

j. *Title/Rate Consolidation*

Establish a committee to study the implications of title and rate consolidation for craft employees and the feasibility of a skill differential for signal department employees above the class of Signaller.

11. Work Rules/ARSA (M of W)

a. *Night Work*

If Metro-North and the IBT reach an agreement concerning night work for Maintenance of Way Employees, the ARSA (M of W) agreement will be modified to permit scheduling of necessary support functions performed by ARSA members. Employees performing the support functions would receive the same differential as the IBT employees. Other employees working night shifts are not eligible for the differential.

b. *Weekend Shifts*

Metro-North shall have the right to establish two special project gangs on weekend shifts consisting of eight hours on Friday, 12 hours on Saturday and 12 hours on Sunday. Employees assigned to weekend shifts will receive a ten percent (10%) pay differential. Employees will be paid at the straight time rate until 40 hours of

work, except that time worked in excess of eight hours on Friday and/or Monday and 2 hours on Saturday or Sunday, will be paid at the overtime rate.

*c. Paid Lunch Away From Headquarters*

Employees will no longer be entitled to a paid meal when they eat lunch away from their headquarters.

*d. Bereavement Leave*

Same as shop crafts.

*e. Committee on Health & Welfare Benefits*

Same as shop crafts.

**12. Work Rules/IBEW Supervisors**

*a. Workforce Scheduling*

Shifts of four 10 hour days may be established by mutual agreement. Metro-North will have the right to establish multiple start times and lapped shifts. Metro-North may exercise the right twice each calendar year.

*b. Night Work*

If Metro-North and the IBT reach an agreement concerning night work for Maintenance of Way Employees, the IBEW Supervisors' agreement will be modified to permit scheduling of necessary support functions performed by IBEW members. Employees performing the support functions would receive the same differential as the IBT employees. Other employees working night shifts are not eligible for the differential.

*c. Weekend Shifts*

Metro-North shall have the right to establish two special project gangs on weekend shifts consisting of eight hours on Friday, 12 hours on Saturday and 12 hours on Sunday. Employees assigned to weekend shifts will receive a ten percent (10%) pay differential. Employees will be paid at the straight time rate until 40 hours of work, except that time worked in excess of eight hours on Friday and/or Monday and 12 hours on Saturday or Sunday, will be paid at the overtime rate.

*d. Bereavement Leave*

Same as shop crafts.

*e. Double Time*

Eliminate double time on a second rest day and provide for over-time compensation only after 40 hours have been worked.

*f. Grievance Procedure Penalty Payments*

Same as shop crafts.

*g. Committee on Health & Welfare Benefits*

Same as shop crafts.

**13. Work Rules/ATDA—Rail Traffic Controllers and Power Supervisors**

*a. Consolidation of Dispatching Functions / Grand Central Terminal*

Establish a committee to ensure the smooth, orderly transition of dispatching functions and the Power Supervisor's Office from 347 Madison Avenue to Grand Central Terminal.

*b. Bereavement Leave*

Same as shop crafts.

*c. Grievance Procedure Penalty Payments*

Same as shop crafts.

*d. Committee on Health & Welfare Benefits*

Same as shop crafts.

**14. Work Rules/UTU-Yardmasters**

*a. Double Time*

Eliminate double time on a second rest day and provide for over-time compensation only after 40 hours have been worked.

*b. Bereavement Leave*

Same as shop crafts.

*c. Grievance Procedure Penalty Payments*

Same as shop crafts.

*d. Committee on Health & Welfare Benefits*

Same as shop crafts.

15. Work Rules/BLE

a. *Extra Board Call Out*

Change extra board call out to go to the nearest extra board on the same line before going to the relief day list.

b. *Deadheading at Straight Time*

Employees deadheading from an extra list position's crew base to another crew base will be compensated at the straight time rate of pay.

c. *Meal Periods*

Amend agreement to provide that the meal period requirement is met when there is at least 45 minutes between scheduled train arrival and departure times. For yard train, work train and wire train service, a 30 minute meal period will be provided.

d. *Certification Allowance*

Effective January 1, 1996—\$500 per year to Engineers who maintain certification and work 120 days in the calendar year.

e. *Committee on Health & Welfare Benefits*

Same as shop crafts.

16. Work Rules/UTU (Conductors, Trainmen and Hostlers)

Metro-North's final offer to the UTU provides a choice between two work rule packages. Work Rule Package No. 1 consists of the following:

a. *Extra Lists*

The number of extra lists will be reduced from 28 to seven so that there is one extra list at each crew base. The extra lists will include Conductor and Assistant Conductor positions and will cover all classifications of service. When an extra list is exhausted, the assignment will be covered by the nearest extra list on the same line, before going to another line. When the availability of deadhead trains makes it impracticable to cover an assignment from the nearest extra board, it may be covered by the Relief Day List.

b. *Deadheading at Straight Time*

Employees deadheading from an Extra List positions's crew base to another crew base will be compensated at the straight time rate of pay.

### *c. Meal Periods*

Amend agreement to provide that the meal period requirement is met when there is at least 45 minutes between scheduled train arrival and departure times. For yard train, work train and wire train and flag assignments, a 30 minute meal period will be provided.

### *d. Passenger and Non-passenger Classifications*

Amend agreement to provide that employees performing passenger service may be assigned up to one hour of yard work without additional compensation. Work performed in excess of one hour will be paid premium pay on a minute basis. The same provision would apply to employees assigned to yard service who are performing passenger service.

### *e. Weekend Overtime*

The number of Conductor and Assistant Conductor positions permitted to work longer than eight hours on weekends would increase to thirty percent (30%).

### *f. Committee on Health & Welfare Benefits*

Same as shop crafts.

Metro-North's Work Rule Package No. 2 consists of the following:

### *g. Part-time Assistant Conductors*

Provide Metro-North the right to create part-time Assistant Conductor positions up to a total of ten percent (10%) of all Assistant Conductor positions. Part-time Assistant Conductors would be paid seventy percent (70%) of the Assistant Conductor's rate of pay. Part-time employees would not be entitled to health and welfare benefits or holiday pay, jury duty pay, bereavement leave, personal leave or vacation pay. Metro-North would not furlough existing full time employees on the property effective January 1, 1996 as a direct result of establishing part-time Assistant Conductor positions.

## **B. FINAL OFFERS SUBMITTED BY THE LABOR ORGANIZATIONS**

### **1. IBT**

In addition to the joint submission on work rules, the IBT's final offer consists of the following:

a. *Term*

36 months (January 1, 1995 through December 31, 1997)

b. *Wages*

1/1/95—3%

7/7/95—1%

1/1/96—3%

7/1/96—1%

1/1/97—4%

7/1/97—1%

c. *Sick Days*

1/1/95—4 days

1/1/96—8 days

1/1/97—12 days

d. *Life Insurance*

Increase benefit to \$28,000 effective January 1, 1996.

e. *Vacation*

1-4 years — 10 days

5-9 years — 15 days

10-14 years — 20 days

After 15 years — 25 days

f. *Shoe Allowance*

\$100.00

g. *Meal Allowance*

\$8.00 per day

h. *Personal Day*

Three days after one year—as per BLE agreement.

i. *Pension Contribution*

Two percent (2%) contribution to Supplemental Pension effective December 31, 1997.

2. IBEW Supervisors

a. *Term*

36 months (January 1, 1995 through December 31, 1997)

b. *Wages*

7/1/95—3%

1/1/96—3%

1/1/97—4%

1/1/95—1.5 percent lump sum signing bonus not rolled into the base rate.

c. *Workforce Scheduling*

A work week of four consecutive ten hour days may be established by mutual agreement. Employees shall be paid at the straight time rate until 40 hours are completed except that time worked in excess of ten hours in one day shall be paid at the over-time rate. Employees on these assignments shall be given three consecutive rest days to include Saturday and Sunday.

d. *Night Differential*

A ten percent (10%) increase in the rate of pay to all employees whose assignments start between 12 Noon and 6 a.m.

e. *Personal Holiday*

Effective January 1, 1997 an additional personal holiday which may be accumulated up to three days, and may be cashed out or used as a sick day.

f. *Bereavement Leave*

Amend agreements to provide three consecutive work days of bereavement leave.

g. *Life Insurance*

Increase benefit to \$28,000 effective January 1, 1996.

h. *Grievance Procedure*

Amend grievance procedure to provide that if a company official to whom a grievance is submitted does not reply within the specified time limits, a penalty payment of two hours at straight time pay will be made.

3. All Other Organizations

The final offers of all of the other Organizations contain the following:

a. *Term*

36 months (January 1, 1995 through December 31, 1997)

b. *Wages*

7/1/95—3%

1/1/96—3%

1/1/97—4%

c. *Life Insurance*

Increase benefit to \$28,000 effective January 1, 1996.<sup>5</sup>

In addition to the above common proposals, the Organizations' individual final offers are as follows:

4. TWU

a. *Committee on Health and Welfare Benefits*

Committee to review current sick leave benefit for the purpose of improving sick leave provisions gradually. Recommendations of the committee shall be implemented starting July 1, 1996 and the committee will examine increasing the number of health care providers available to employees outside New York State.

b. *Workforce Scheduling*

A work week of four consecutive ten hour days may be established by mutual agreement. Metro-North will have the right to establish multiple start times. Metro-North may exercise this right twice each calendar year at each location.

c. *Grievance Procedure Penalty Payments*

Amend grievance procedure to provide that if a company official to whom a grievance is submitted does not reply within the specified time limits, a penalty payment of two hours at straight time pay will be made. The grievance may be appealed on its merits, and if denied, a reason will be given.

d. *Personal Holiday*

Effective January 1, 1997 an additional personal holiday which may be accumulated up to three days, cashed out or used as a sick day.

e. *Bereavement Leave*

Amend agreements to provide three consecutive work days of bereavement leave.

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<sup>5</sup>The ARSA Maintenance of Way Supervisors propose increasing life insurance benefits for active employees to \$23,000 and increasing the total death benefit for retired employees from \$2,000 to \$5,000.

*f. Special Provisions Affecting Service Attendants*

Service Attendants shall be granted the same holidays, with the same provisions for use and payment, as Carmen, Helpers and Coach Cleaners.

Provisions for integration of Service Attendant seniority lists by agreement, and if that fails, by binding arbitration.

**5. IAM**

Same proposals as TWU for committee on health and welfare benefits, personal holiday, bereavement leave, and workforce scheduling.

*a. Night and Weekend Work*

If Metro-North and the IBT reach an agreement concerning night and weekend work for Maintenance of Way Employees, the IAM agreement will be modified to permit scheduling of necessary support functions performed by IAM members. Employees performing the support functions would receive the same differential as the IBT employees.

*b. Joint Study Committee*

Establish a joint study committee to examine the feasibility of the Machinists' craft performing maintenance work on the Carrier's truck and auto fleet.

**6. SMWLA**

Same proposals as TWU for committee on health and welfare benefits, personal holiday, bereavement leave, and grievance procedure penalty payments.

*a. Skill and Shift Differential*

Pay SMWLA employees skill and shift differential payments afforded all other employees performing work of a similar nature or working similar shifts.

*b. Workforce Scheduling*

Metro-North shall have the right to establish a work week of four consecutive ten hour days on the day shift in the Harmon Shop Projects Gang. Employees shall be paid at the straight time rate until 40 hours are completed except that time worked in excess of ten hours in one day shall be paid at the overtime rate. Employees on these assignments shall be given three consecutive rest days to include Saturday and Sunday.

Metro-North will have the right to establish multiple start times and lapped shifts. Metro-North may exercise this right twice each calendar year at each location.

## 7. IBFO

Same proposals as TWU for committee on health and welfare benefits, personal holiday, bereavement leave, and grievance procedure penalty payments.

## 8. IBB

Same proposals as TWU for committee on health and welfare benefits, personal holiday, bereavement leave and workforce scheduling.

### *a. Night and Weekend Work*

If Metro-North and the IBT reach an agreement concerning night and weekend work for Maintenance of Way Employees, the IBB agreement will be modified to permit scheduling of necessary support functions performed by IBB members. Employees performing the support functions would receive the same differential as the IBT employees.

### *b. Boilermaker-Blacksmith National Pension Trust*

Meet and discuss applying \$.30 per hour to Boilermaker-Blacksmith National Pension Trust of IBB.

## 9. IBEW

Same proposals as TWU for committee on health and welfare benefits, personal holiday, grievance procedure penalty payments and bereavement leave.

### *a. Skill Differential*

Seventeen cents (\$.17) per hour skill differential incorporated into hourly base rate for federally regulated cab signal inspections, repairs and maintenance, positions requiring federal licenses and those requiring EPA certifications.

### *b. Workforce Scheduling*

Establish a committee to review workforce scheduling rules.

### *c. Night & Weekend Work*

If Metro-North and the IBT reach an agreement concerning night and weekend work for Maintenance of Way Employees, the IBEW agreement will be modified to permit scheduling of necessary support functions performed by IBEW members. Employees performing the support functions would receive the same differential as the IBT employees.

d. *Cooperative Work Study Committee*

Establish a committee to make recommendations for performing the fleet maintenance, inspection, and repair in a cooperative inter-craft manner. The committee, which will include the General Chairman of each signatory craft, the Chief Mechanical Officer and the Director of Labor Relations, will meet on at least a monthly basis for six months. No change in any work rules may be made for any craft except by agreement of that craft. The parties may agree to increase the compensation of those members of a craft affected by any rules change.

e. *Single Day Vacation Rule*

Revise agreement to provide that such days may be taken consecutively and that a single day vacation may be used consecutively with a paid for but not worked day.

f. *Overtime Rule*

Revise to permit either the Carrier or the Organization to notify the other that it desires a local overtime rule whereupon it will be entered into within 60 days.

10. BRS

a. *Skill Differential*

Effective January 1, 1996, a \$.50 per hour skill adjustment wage increase in base pay for all Signalmen positions.

b. *Health Care*

Employees not covered by the Empire Plan should be enrolled in a plan with comparable coverage.

11. ARSA (Maintenance of Equipment Supervisors)

a. *Supervisory Differential*

Fifty cents (\$.50) per hour to base hourly rate of Lead Foremen.

b. *Time Worked Before and After Shift*

Two and one-half (2.5) hours per week straight time pay for hours worked before and after shifts.

c. *Sick Leave*

Adequate sick leave insurance to cover an employee's period of incapacitation.

*d. Workforce Scheduling*

Additional wage adjustments should be provided to accommodate the Carrier's scheduling needs.

**12. ARSA (Maintenance of Way Supervisors)**

*a. Night and Weekend Work*

If Metro-North and the IBT reach an agreement concerning night and weekend work for Maintenance of Way Employees, the ARSA Maintenance of Way Supervisors' agreement will be modified to permit scheduling of necessary supervisory functions performed by ARSA members. Employees performing the supervisory functions would receive the same differential as the IBT employees.

*b. Skill Differential*

If Metro-North and the BRS reach agreement concerning a skill differential for signal employees, the ARSA Maintenance of Way Supervisors agreement will be modified to provide the same differential to ARSA C&S supervisory personnel.

*c. Vacation*

Amend the vacation rule to provide that those employees hired after 1983 receive the same vacation as those hired before 1983.

*d. Life Insurance*

Increase benefit for active employees to \$23,000 and increase the total death benefit for retired employees from \$2,000 to \$5,000.

**13. ATDA (Rail Traffic Controllers and Power Supervisors)**

Same proposal as TWU for committee on health and welfare benefits.

*a. Break Periods*

Two 15 minute breaks per shift to be instituted on the day and afternoon shifts.

*b. Road Days*

Provide additional road days for reviewing the territory.

**14. UTU (Yardmasters)**

*a. Supervisory Differential*

Three dollars (\$3.00) per day higher than the highest paid employee directly supervised by the Yardmasters.

b. *Sick Leave*

Twelve days of sick leave per year payable on the first day.

c. *Vacation*

Same as IBT proposal.

d. *Work Location*

All regularly assigned Yardmasters shall have designated start locations. If a Yardmaster is assigned to a different location, the employee shall be compensated one hour of straight time pay.

e. *Presentation of Claims*

Amend agreement to require the Carrier to answer a claim within 20 days or the claim is automatically allowed.

15. BLE

a. *Certification Allowance*

Effective January 1, 1996, a certification allowance of twelve (\$12.00) dollars per day applied to base daily wage in effect.

b. *Sick Leave*

January 1, 1996—waiting period for payment of sick leave decreases to 3 days

January 1, 1997—waiting period for payment of sick leave decreases to 2 days

January 1, 1998—waiting period for payment of sick leave decreases to 1 day

January 1, 1999—no waiting period for payment of sick leave

Cash out of up to 50 days of accumulated sick leave at fifty percent (50%) applicable daily rate upon separation.

c. *Swing Time*

Amend agreement to provide swing time period between two and four hours depending upon length of work day with no limit on the Carrier's right to schedule meal periods within the swing time.

d. *Vacations*

Same as IBT proposal plus a floating birthday holiday.

e. *Health & Welfare Benefits*

Carrier should provide the same health care coverage to employees located outside of New York State.

16. UTU (Conductors, Trainmen and Hostlers)

a. *Revised Health Care Program*

Carrier should provide same health care coverage to employees located outside of New York State.

b. *Sick Leave*

Change exclusionary period to three days. Sick leave paid from first day of absence after nine consecutive days of sick leave. Employees with no more than two instances of sick leave shall be paid for days lost due to exclusionary period in the first pay period of the following year.

c. *Stabilization of Workforce*

Amend agreement to protect all employees employed by Metro-North on December 31, 1990 from furlough or lay-off.

d. *Swing Time and Meal Time*

Amend agreement to increase minimum swing time period to two hours. Carrier may schedule meal periods within the swing time. Swing time may be scheduled in 15 minute increments up to a four hour maximum.

e. *Vacations*

Same as IBT proposal.

f. *Bi-weekly Pay*

Change pay period from weekly to bi-weekly, if and when the Carrier implements a bi-weekly pay period system-wide.

## VI. INTRODUCTION

Under Section 9A of the Railway Labor Act, this Board is required to accept "the most reasonable offer." The ground rules we set require the selection of that offer on a total package basis including wages, hours, terms and conditions of employment. Each of the seventeen crafts or classes of employees has submitted its own final offer. The Carrier has submitted seventeen separate final offer packages in which the wage increases and length of agreement are the same for all Organizations. There are several issues where the parties' offers contain identical proposals. With the exception of the IBT (representing Maintenance of Way employees) and the IBEW-S (representing Electrical Supervisors), the Organizations' final offers mirror the recommendations of PEB 226.

## VII. WAGE AND WAGE-RELATED OFFERS

### A. WAGES

The Carrier maintained before PEB 226 that it could not fund a wage increase for 1995 and that it could not then commit to increases in 1996 or 1997. It expected reductions and delays in government subsidies. It agreed to negotiate second and third year wages commensurate with the then-prevailing economic climate. The Carrier argues its wage levels place it at the top when compared with such passenger railroads such as Amtrak, SEPTA, and New Jersey Transit.

In mid-July 1995, when the National Mediation Board conducted intensive around-the-clock negotiations to avoid a systemwide strike, the Carrier reached tentative agreements with five of the Organizations involved in this proceeding. The settlements, subject to membership ratification, provided for an aggregate ten percent (10%) wage increase over four years and a 1.5 percent one-time signing allowance. The allowance would not be rolled into the base hourly rate. This was a significant departure from the Carrier's earlier bargaining position. The tentative settlements were later rejected by each of the memberships.

In its final offer before PEB 227 on August 30, 1995, the Carrier offered the same salary terms over four years, excluding the 1.5 percent signing allowance. By contrast, fifteen (15) of the seventeen Organizations submitted final offer wage proposals which reflect a clear endorsement of PEB 226's recommendations; that is, an aggregate phased-in ten percent (10%) wage increase over three years. Consequently, in view of these final offers, the dispute over wages centers on contract duration and the timing of wage adjustments. The wide bargaining gap confronting PEB 226 has narrowed appreciably.

After PEB 226 issued its Report and Recommendations, the MTA approved fare increases of nine percent (9%) effective November 1, 1995. This amounts to an average fare increase of 37.5 cents per ride. When revenue from the fare increase and the projected organizational changes envisioned in the MTA's 1995-1999 financial plan are coupled with the anticipated savings of four and one half to five million dollars from the newly adopted health care plan (Empire Plan), and the savings from implementing the 1995 salary increases on July 1, 1995 rather than on January 1, 1995, we find the Carrier has the ability to fund a reasonable wage settlement. PEB 226 observed that the new health plan is one of the major factors to be considered in determining appropriate wage levels. This was before the Carrier offered increases of ten percent (10%) over four years and the 1.5 percent signing allowance. It was also before the announcement of prospective fare increases. Moreover, on-time

train performance is high (95.7%) and demonstrates that Metro-North is a productive operation.

We agree with the findings of PEB 226 that the agreement should include "moderate increases" consistent with "the trend." Specifically, we have accepted the offers which provide for an aggregate ten percent (10%) wage increase commencing July 1, 1995 through December 31, 1997. We find Metro-North's ability to fund a wage increase no more problematic than it was at the end of May, 1995. In fact, the picture looks better for the reasons expressed above. As we compare the Carrier's current offer with those of the Organizations (except the IBT and the IBEW Supervisors whose offers are discussed below), we must conclude that the offers closest to PEB 226's thoughtful recommendations are the more reasonable. The wage proposals of the IBT and the IBEW Supervisors exceed those of the other Organizations. The wage increase component of all of the packages is the most significant and is, therefore, pivotal in the selection of the most reasonable package(s). The packages approach does not permit us to make compromises nor can we eliminate selected items. Although the Carrier's final offer is not necessarily unreasonable compared to its position before PEB 226, it is less reasonable when the totality of circumstances is objectively considered.

#### B. DURATION OF AGREEMENT

We endorse the Organizations' three (3) year agreement proposal for the following reasons: The parties have a history of three year agreements; PEB 226 recommended a three year agreement and the Carrier's proposal to PEB 226 was for three years. This recommendation does not preclude the parties' agreeing to a long term.

#### C. SKILL DIFFERENTIALS

The BRS and the IBEW seek compensatory skill adjustments consistent with the asserted high level of skill and responsibility associated with their work. The Carrier is willing to submit the question of a skill differential for signal department employees above the class of Signaller to a study committee. The BRS's final offer includes a fifty cents (\$.50) per hour skill adjustment for all Signaller positions to be added to their base hourly rate of pay, effective before any January 1, 1996 wage increase.

The IBEW seeks a skill differential of seventeen cents (\$.17) per hour added to the pay rates of positions performing federally regulated cab signal inspections, repairs and maintenance. The IBEW seeks the same differential for positions requiring federal licenses and EPA certification. The Carrier's final offer to the IBEW does not contain a skill differential.

PEB 226 considered the crafts' skill adjustment proposals and recommended modifications. It had before it a very comprehensive record on which it recommended a fifty cent (\$.50) per hour skill differential increase for the BRS, effective January 1, 1996, prior to a second general wage increase. It expressed the same reasoning with respect to the IBEW; specifically, the differentials are in "harmony" with the increased skill and responsibility of this craft. It left details to follow-up negotiations. Upon agreement, modifications should be effective January 1, 1996.

We have found the Organizations' wage proposals for the Signalmen and Electrical Workers to be the most reasonable. Because wages are the key aspect of the packages, other proposals in the final offers are automatically recommended.

#### D. OTHER WAGE ADJUSTMENTS

The BLE proposed a certification allowance of twelve dollars (\$12) per day applied to the base daily wage and after any general wage increase effective January 1, 1996. This amounts to three dollars less than its position before PEB 226. The Carrier's final offer reads, "effective January 1, 1996 engineers who maintain their certification for the entire calendar year and who perform service for more than 120 work days shall receive an annual certification allowance of \$500.00."

Although we have accepted the BLE's final offer as the more reasonable one before us, we consider its \$12 per day certification allowance excessive. This allowance would add approximately \$3,000 per year added to the wages of Engineers after the January 1, 1996 wage increase. Thus, future increases in the wages of Engineers would be enhanced by this certification allowance. Were we addressing this issue independently, this Board would recommend that the parties negotiate a certification allowance consistent with similar allowances granted Locomotive Engineers throughout the rail industry. Inasmuch as we parallel PEB 226's recommendations on skill wage adjustments, except for the specific amounts enunciated by the BLE and the IBEW, we believe that an opportunity exists for the parties to resolve their differences.

The Yardmasters' final offer includes a proposal for a differential of \$3.00 per day higher than the highest paid employee whom the Yardmaster directly supervises. PEB 226 did not recommend a supervisors' differential for Yardmasters and we would not recommend one either were we addressing this issue independently.

#### E. FINAL OFFERS BY IBT AND IBEW SUPERVISORS

For the reasons discussed below, we find the Carrier's final offers to these Organizations to be the most reasonable.

## 1. IBT Maintenance of Way Employees

The IBT's final offer on wage exceeds those of the other Organizations by one percent (1%) per year. The additional increases would be effective on July 1, 1995, 1996 and 1997. The first year increase would be payable on January 1, 1995 rather than on July 1. The IBT also seeks four sick days effective January 1, 1995, eight days effective January 1, 1996, and twelve days effective January 1, 1997. It seeks a vacation package which is the same as the Long Island Rail Road; a shoe allowance of \$100.00; a meal allowance of \$8.00; three personal days after one year; and, an additional two percent (2%) pension contribution effective December 31, 1997. Like the other Organizations, it seeks an increase in life insurance to \$28,000.

The IBT and the Carrier reached agreement on work rules as set forth in their joint submission. The Organization argues that the "productivity savings that Metro-North will achieve as a result of these work rule changes are very substantial." It cites its concessions on work rules and notes that the "average disparity" between Metro-North and Long Island Railroad employees in this class is 27.7 percent. The IBT argues that while PEB 226 recognized the disparity issue, its wage recommendations "did not go far enough in 'ameliorating . . . the disparity problem'."

The IBT's work rules agreements are "substantial" as the Organization argues. The agreements also represent certain trade-offs. The night and weekend shift agreements provide for a ten percent (10%) pay differential, five percent (5%) for the "Saturday gang." As can be seen from the night and weekend shift differentials, the Carrier has paid for these changes. Language protecting the employment of those hired before January 1, 1990 is also a significant achievement for the Organization. Added compensation in the amount of one percent (1%) per year is unwarranted.

The IBT's vacation proposal reduces the years of eligibility and almost doubles the current allowance. Many of the other Metro-North employees have the same vacations as these employees.

PEB 226 noted "justification for some improvement" in both pensions and vacations. However, in light of the other "substantial cost items" it recommended, no changes were proposed for vacations and pensions. This Board agrees that while there are disparities in benefits and room for improvement, the more pressing need is to increase wages.

PEB 226 found that several related factors such as bargaining history, the availability of other leave, and statutory income protection plans account for variations in the Organizations' sick leave arrangements. The Board recommended "gradual improvement" over a number of years. The IBT's proposal would create

a sick leave entitlement of 12 days by the beginning of 1997. This benefit, like paid vacations can become a significant expense. We agree that improvements in vacation and sick leave should be accomplished gradually. We cannot justify accepting an offer from the IBT which is out of line with PEB 226's recommendations. We find no basis to distinguish this class of employees from the others. The wage disparity argument was treated at length by PEB 226.

## 2. IBEW Supervisors

In addition to the annual wage increases proposed by all of the Organizations, the IBEW Supervisors' final offer includes a 1.5 percent "signing bonus" which would not be applied to base wages. There are other differences between this offer and those of the other Organizations including a provision for a ten percent (10%) increase to "all employees whose assignments start between 12 Noon and 6:00 a.m." While this may not affect many employees under current scheduling conditions, the proposal would require that a differential be paid for eighteen hours of the work day. PEB 226 concluded that "additional compensation for night work" is reasonable but not as high a priority as general wage increases. Metro-North's final offer includes an agreement to provide the same differential received by its other employees when IBEW Supervisors are scheduled to supervise them. There is no justification for singling out the Supervisors in this craft.

## VIII. BENEFITS

### A. SICK LEAVE

Existing sick leave provisions vary among the crafts and/or classes of employees. There are several variations in the Organizations' final offers on sick leave ranging from modification of the current exclusionary period; sick leave payment from the first working day if a covered employee is absent due to illness or injury; lump sum payments for unused sick days; insurance coverage to provide sufficient income during an employee's period of incapacitation; and, the establishment of a committee within 30 days of a successor agreement to review the current sick leave benefits for the purpose of recommending gradual improvements. Some Organizations offered no sick leave proposals. The Carrier's final offers do not contain any sick leave proposals.

PEB 226 recognized that there should be a standardized sick leave policy for all crafts or classes of employees. It also recognized the desirability of standardized benefits and the difficulty of accom-

plishing that aim. PEB 226 was mindful that sick leave enhancements pose a significant expense and accordingly, recommended that improvements be reviewed by the parties for gradual implementation over a number of years. It did not endorse any specific sick leave modification. We believe, however, that the shop crafts' final offer for the establishment of a joint committee affords the most constructive basis for developing a negotiated sick leave policy. We recommend that the Carrier and all Organizations adopt this committee approach. This comports with the recommendation of PEB 226.

## **B. LIFE INSURANCE**

PEB 226 recommended that the life insurance benefit for represented employees be increased from the current \$10,000 to \$28,000, effective January 1, 1996. We concur in this recommendation. As PEB 226 noted, this benefit has remained unchanged for a considerable period of time. Moreover, Metro-North's non-represented employees receive death benefits up to three times their annual salaries. The cost of this improvement in life insurance is not substantial, in our judgment, and clearly lies within the Carrier's ability to pay. This recommendation should also apply to the ARSA Maintenance of Way Supervisors whose final offer includes a variant of this benefit.

## **C. PERSONAL DAY/HOLIDAY**

The Carrier's final offer to all the Organizations includes an additional personal day holiday to become effective July 1, 1998. Existing conditions for using personal holidays would continue with the following exceptions:

- 1) Employees may accumulate personal holidays up to a maximum of three (3) days.
- 2) Unused personal holidays may be paid in cash at the employee's request. The employee must submit a written request by January 5th of each year. The payment will be made during the first payroll period of February.
- 3) An employee may request that a personal holiday be paid for a day that the employee was absent due to illness. Any request denied by management will not be subject to the grievance process.

The shop craft Organizations' final offer proposes the same personal day enhancement. Their individual proposals contained virtually identical language except the implementation date is July 1, 1997. There is no dispute except for the implementation date.

## D. MUTUALLY AGREED UPON ISSUES

There are several issues affecting many of the crafts or classes of employees, where the parties are in agreement. These include bereavement leave, grievance procedure penalty payments, paid holidays for Service Attendants, and the establishment of a committee on health and welfare benefits to examine the potential to increase the number of medical providers available to employees outside of New York State.

## IX. WORK RULES

### A. WORKFORCE SCHEDULING

As a consequence of our decision that the economic component in the total packages submitted by fifteen crafts or classes of employees is the more reasonable, we must perforce accept their work rules *in toto*. In the two cases where we have found the Carrier's final offers to be more reasonable, we are required by the ground rules to recommend the Carrier's proposed rule changes.

The scheduling proposals are diverse although there is similarity among some crafts and classes of employees. The Organizations and the Carrier have moved closer in this area. For example, the Carrier and the IBT (representing Maintenance of Way Employees) reached agreement on work rules and jointly submitted identical proposals. Several Organizations' final offers include proposals similar to the Metro-North and IBT agreement, particularly as to night and weekend work. Those who work with or supervise these employees would be entitled to the same differential received by IBT represented employees.

Scheduling proposals, which apply primarily to the shop craft Organizations, and which permit establishing four day work weeks, ten hour shifts and multiple start times represent accommodation by both parties. There are differences which remain to be addressed by the parties whose proposals are not worded identically. The Sheet Metal Workers adopted the Carrier's proposal for the Harmon Shop Projects Gang. The IBEW's final offer establishes a committee to review scheduling rules on work week and starting times. These echo the recommendations of PEB 226.

We have reviewed the record developed before us and the extensive record submitted to PEB 226 to determine whether proposed work rule modifications address verifiable problems and whether, if the proposed changes were implemented, there would be measurable economic savings. The record contains very little support for many of the proposed changes. As PEB 226 observed, "there has been insufficient exchange of information between the parties on a

direct negotiations level." We note as examples of this problem, the Carrier's work rule proposals affecting the Signalman craft and the IBEW's proposals for the single day vacation and distribution of overtime rules.

The development of rules to enhance productivity must be based on bilateral talks which include identification of problems and efficiencies and a demonstration of how rule changes can result in improvements. This review should be done for the various crafts or classes of employees with input from affected employees. We urge the parties to follow the example set by the IBT and the Carrier. Real wage growth emerges from long-run productivity gains and depends on shared goals and cooperation to forge the link. Much progress has been made since PEB 226 issued its report on April 21, 1995 and we believe this augurs well for the settlement of the open scheduling issues.

## B. PART-TIME EMPLOYEES

Metro-North seeks to establish part-time Coach Cleaner positions up to ten percent (10%) of the total number of full time Coach Cleaner positions. These part-time positions would be established by attrition and would not result in the layoff of any full time employee. Part-time employees would not receive benefits under Metro-North's proposal.

Metro-North has also proposed establishing part-time Assistant Conductors in one of its alternative offers to the UTU. Metro-North would allow the UTU to accept either of its two offers. The rate of pay for part-time Assistant Conductors would be seventy percent (70%) of the Assistant Conductor rate of pay. Effective January 1, 1996 Metro-North agrees not to furlough existing full time employees on the property as a direct result of the establishment of part-time Assistant Conductor positions if the UTU accepts its offer.

Based on the record before us, Metro-North has not convinced this Board of the necessity for part-time Coach Cleaner or part-time Assistant Conductor positions. For instance, Metro-North has not shown how Assistant Conductors would be assigned. Because of swing time, Metro-North may now assign Assistant Conductors to peak commuting times. Also, Metro-North currently has the right to assign Coach Cleaners to split shifts. The existing prerogatives of Metro-North appear to obviate the need for part-time Coach Cleaners and part-time Assistant Conductor positions.

It is unclear from the Carrier's final offer if the proposed part-time Service Attendants would be assigned to peak commuting periods. If so, the proposal would have some merit. The parties should negotiate the terms and working conditions applicable to part-time Service Attendants provided that no full time employees are dis-

placed. This is consistent with the recommendations of PEB 226. The parties should also negotiate combining seniority rosters due to the size of this class of employees.

### C. SWING TIME AND MEAL PERIODS

PEB 226 recommended that the parties negotiate a swing time minimum longer than the present one hour and include the meal period within the swing time. This Board is also of the opinion that an employee's meal period should be included in his or her swing time provided that this is a reasonable time after the employee commences work. We find it patently unreasonable to require employees to take a meal period at the very beginning or end of their tour of duty. We urge the UTU, the BLE and Metro-North to negotiate needed revisions to the swing time and meal period provisions of the schedule agreement trusting that a compromise can be reached on these interrelated work rules.

### D. EXTRA LISTS

Metro-North proposes to reduce the present twenty-eight extra lists for Conductors and Assistant Conductors to seven with one extra list at each crew base. It also proposes that each extra list include both Conductors and Assistant Conductors and cover all classifications of service. The Carrier further proposes that employees who deadhead be compensated at straight time pay rather than overtime; that if there is 45 minutes between the scheduled arrival and departure of a train this be considered an employee's meal period; that employees assigned to passenger service be allowed to perform up to one hour of yard work without additional compensation; and, that the number of positions allowed to work longer than eight hours on weekends be increased to thirty percent (30%).

This Board agrees with Metro-North that 28 separate extra lists for a workforce of some 600 employees is unwieldy and should be reduced. There is also some merit to Metro-North's proposal for a combined extra list for Conductors and Assistant Conductors covering all classifications of service. However, in the light of the complexity of this issue we recommend that any changes in the present schedule rules governing extra lists be resolved through direct negotiations. This also applies to changes in the Engineers' extra lists.

### E. BREAK PERIODS AND ROAD DAY

The ATDA's final offers include a proposal for two 15-minute breaks per shift on the day and afternoon shifts for Rail Traffic Controllers and Power Supervisors. It also includes a provision for additional road days for these employees to review the territory for which they are responsible. The number of such road days is to be negotiated by the

parties. Both these proposals are meritorious and consistent with the recommendations of PEB 226. Accordingly, we would have recommended them even if the final offers of the Rail Traffic Controllers and Power Supervisors had not been accepted by us.

## X. CONCLUSION

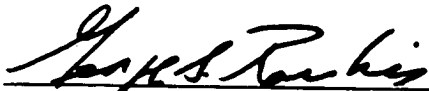
For all of the foregoing reasons, the Board accepts the final offers submitted by each of the Organizations except for the IBT, representing Maintenance of Way Employees, and the IBEW Electrical Supervisors, where the Board accepts the final offers submitted by the Carrier.

It was agreed that this Board would recommend what it considers to be the more reasonable of the final offers in their entirety. This procedure precludes our choosing proposals on individual issues which we otherwise would have accepted. These disputes have been the focus of careful study by two separate Presidential Boards and the parties have also benefitted from extensive assistance through the NMB. These recommendations should provide the basis for resolving the differences and permit the parties to reach an amicable settlement without disruption to the commuting public. We are confident that meaningful negotiations will take place following issuance of our Report and Recommendations.

Respectfully,



ROBERT M. O'BRIEN, *Chairman*



GEORGE S. ROUKIS, *Member*



BARBARA ZAISNER TENER, *Member*

APPENDIX "A"

EXECUTIVE ORDER 12967

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE  
BETWEEN METRO NORTH COMMUTER RAILROAD AND ITS  
EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between Metro North Commuter Railroad and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made a part of this order.

The disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151 et seq.) (the "Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

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

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 9A of the Act, it is hereby ordered as follows:

*Section 1. Establishment of the Board.* There is established effective July 31, 1995, a board of three members to be appointed by the President to investigate these disputes. 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.* The board shall report to the President with respect to the disputes within 30 days of its creation.

*Section 3. Maintaining Conditions.* As provided by section 9A(h) of the Act, from the date of the creation of the board and for 60 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 disputes arose.

*Section 4. Records Maintenance.* The records and files of the board are records of the Office of the President and upon the board's termination shall be maintained in the physical custody of the National Mediation Board.

*Section 5. Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.

*William J. Clinton*

WILLIAM J. CLINTON

THE WHITE HOUSE,  
July 31, 1995.

## **LABOR ORGANIZATIONS**

Brotherhood of Locomotive Engineers including American Train  
Dispatchers Department  
Brotherhood of Railroad Signalmen  
International Association of Machinists & Aerospace Workers  
International of Boilermakers, Iron Shipbuilders, Blacksmiths,  
Forgers and Helpers  
International Brotherhood of Electrical Workers  
International Brotherhood of Firemen and Oilers  
International Brotherhood of Teamsters  
Sheet Metal Workers International Union  
Transport Workers Union of America  
Transportation Communications International Union-ARASA  
Division  
United Transportation Union

## APPENDIX B

## COMPARISON OF PEB 226 RECOMMENDATIONS AND LAST BEST OFFERS—ECONOMIC ISSUES

Issues Before PEB 226	Term & Amendable Date	Wages	Personal Holiday	Sick Leave	Vacation	Life Insurance	Other
Recommendation of PEB 226	36 months 12/31/97	7/1/95—3% on base 1/1/96—3% on base 1/1/97—4% on base	N/A	Review by parties for gradual improvement in sick leave benefits.	No improvement recommended.	Increase benefit to \$28,000 1/1/96	
Metro-North	48 months 12/31/98	7/1/95—3% on base 5/1/96—3% on base 7/1/97—4% on base	1/1/98 one additional personal day which may be accumulated, cashed out or used as a sick day.	Status Quo	Status Quo	Status Quo	- 3 consecutive days bereavement leave
Engineers	36 months 12/31/97	PEB 226	Status Quo	1/1/96—waiting period for payment of sick leave decreases to 3 days 1/1/97—waiting period for payment of sick leave decreases to 2 days 1/1/98—waiting period for payment of sick leave decreases to 1 day 1/1/99—no waiting period for payment of sick leave.  Cash out of up to 50 days of accumulated sick leave at 50% applicable daily rate upon separation.	1-4 years—10 days 5-9 years—15 days 10-14 years—20 days 15 plus years—25 days and floating birthday holiday.	PEB 226	1/1/96—Certification Allowance of \$12 per day applied to base application of 1/1/96 wage adjustment.

# COMPARISON OF PEB 226 RECOMMENDATIONS AND LAST BEST OFFERS—ECONOMIC ISSUES—(Cont.)

Issues Before PEB 226	Term & Amendable Date	Wages	Personal Holiday	Sick Leave	Vacation	Life Insurance	Other
Conductors	36 months 12/31/97	PEB 226	Status Quo	Change exclusion period to 3 days. Sick leave paid from first day of absences after nine consecutive days of sick leave. Employees with no more than 2 instances of sick leave shall be paid for days lost due to exclusionary period in the first pay period of the following year.	1-4 years—10 days 5-9 years—15 days 10-14 years—20 days 15 plus years—25 days.	PEB 226	
Maintenance of Way Employees	36 months 12/31/97	1/1/95—3% 7/1/95—1% 1/1/96—3% 7/1/96—1 % 1/1/97—4% 7/1/97—1%	Three days after one year as per BLE agreement.	1/1/95—4 days 1/1/96—8 days 1/1/97—12 days	14 years —10 days 5-9 years-15 days 10-14 years-20 days After 15 years - 25 days.	PEB 226	-\$100 shoe allowance -\$8.00 meal allowance -2% contribution to Supp. Pension effective 12/31/97.
Yardmasters	36 months 12/31/97	PEB 226	Status Quo	12 days basic sick leave payable on the first day.	14 years —10 days 5-9 years—15 days 10-14 years—20 days After 15 years—25 days.	Status Quo	Supervisors differential \$3 per day higher than the highest paid employee that Yardmasters directly supervise.

# COMPARISON OF PEB 226 RECOMMENDATIONS AND LAST BEST OFFERS—ECONOMIC ISSUES—(Cont.)

Issues Before PEB 226	Term & Amendable Date	Wages	Personal Holiday	Sick Leave	Vacation	Life Insurance	Other
Electrical Supervisors	36 months 12/31/97	7/1/95—3% on base 1/1/96—3% on base 1/1/97-4 % on base  1/1/95—1.5% lump sum signing bonus not added to base.	7/1/97 one additional personal day which may be accumulated, cashed out or used as a sick day.	Status Quo	Status Quo	PEB 226	10% night differential
Maintenance of Way Supervisors	36 months 12/31/97	PEB 226	Status Quo	Status Quo	Amend the vacation rule to provide that those employees hired after 1983 receive the same vacation as those hired before 1983.	\$23,000 for active employees \$5,000 for retired employees.	Same skill and shift differential pay rates granted to other MN employees performing similar work or work ing a similar shift.
Maintenance of Equipment Supervisors	36 months 12/31/97	PEB 226	Status Quo	Adequate sick leave insurance to cover an employee's period of incapacitation.	Status Quo	PEB 226	2.5 hours/ aweek compensation at straight time for time worked before and after shift. -\$ 50/hr added to daily rate of lead foremen.
Dispatchers & Power Department Supervisors	36 months 12/31/97	PEB 226	Status Quo	Status Quo	Status Quo	PEB 226	Two 15 minute breaks per shift.

# COMPARISON OF PEB 226 RECOMMENDATIONS AND LAST BEST OFFERS—ECONOMIC ISSUES—(Cont.)

Issues Before PEB 226	Term & Amendable Date	Wages	Personal Holiday	Sick Leave	Vacation	Life Insurance	Other
Signalmen	36 months 12/31/97	PEB 226	Status Quo	Status Quo	Status Quo	PEB 226	\$ .50/hour skill differential effective 1/1/96
Electrical Workers	36 months 12/31/97	PEB 226	7/1/97 one additional personal day which may be accumulated, cashed out or used as sick day.	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226 (No effective date)	\$ .17/hour skill differentials for federally regulated cab signal inspections, repairs and maintenance; positions requiring federal licenses and those requiring EPA certification.
Machinists	36 months 12/31/97	PEB 226	7/1/97 one additional personal day which may be accumulated, cashed out or used as a sick day.	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226 (No effective date)	-3 consecutive work days bereavement leave
Sheet Metal Workers	36 months 12/31/97	PEB 226	7/1/97 one additional personal day which may be accumulated, cashed out or used as a sick day.	Status Quo	Status Quo	PEB 226 (No effective date)	Same skill and shift differential pay rates granted to other MN employees performing similar work or working a similar shift.  -3 consecutive work days bereavement leave

# COMPARISON OF PEB 226 RECOMMENDATIONS AND LAST BEST OFFERS—ECONOMIC ISSUES—(Cont.)

Issues Before PEB 226	Term & Amendable Date	Wages	Personal Holiday	Sick Leave	Vacation	Life Insurance	Other
Firemen & Oilers	36 months 12/31/97	PEB 226	Status Quo	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226 (No effective date)	-3 consecutive work days bereavement leave
Boilermakers	36 months 12/31/97	PEB 226	7/1/97 one additional person day which may be accumulated, cashed out or used as a sick day.	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226 (No effective date)	-3 consecutive work days bereavement leave
Carmen	36 months 12/31/97	PEB 226	7/1/97 one additional person day which may be accumulated, cashed out or used as a sick day.	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226	-3 consecutive work days bereavement leave
Service Attendants	36 months 12/31/97	PEB 226	7/1/97 one additional person day which may be accumulated, cashed out or used as a sick day.	Establish committee within 30 days to meet monthly for 6 months to review sick leave benefits and recommend gradual improvements which are to be implemented 7/1/96.	Status Quo	PEB 226	-3 consecutive work days bereavement leave  -Same holidays as Carmen

\* Status Quo = no change.

\*\* PEB 226 = the recommendations of PEB 226.