

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 229

***SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13003
DATED MAY 16, 1996
AND SECTION 10 OF
THE RAILWAY LABOR ACT, AS AMENDED***

Investigation of disputes between certain railroads, represented by the National Carriers' Conference Committee of the National Railway Labor Conference including Consolidated Rail Corporation (including the Clearfield Cluster), Burlington Northern Railroad Co., CSX Transportation Co., Norfolk Southern Railway Co., Atchison, Topeka & Santa Fe Railway Co., Union Pacific Railroad, Chicago & North Western Railway Co., Kansas City Southern Railway Co. and their employees represented by the Brotherhood of Maintenance of Way Employees.

(National Mediation Board Case Nos. A-12718, Sub. 1, including Sub. 1A, Sub. 2, Sub. 3, Sub. 4, Sub. 5, Sub. 6, Sub. 7, Sub. 8)

**WASHINGTON, D.C.
JUNE 23, 1996**

Washington, D.C.
June 23, 1996

The President
The White House
Washington, D.C.

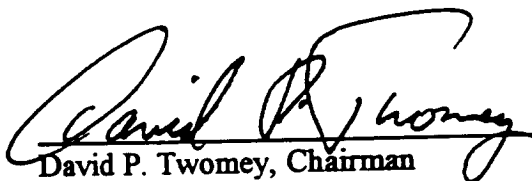
Dear Mr. President:

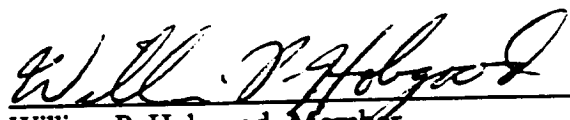
On May 16, 1996, you established this Emergency Board, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 13003 we were authorized to investigate disputes between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the Brotherhood of Maintenance of Way Employees.

The Board now has the honor to submit its Report and Recommendations to you concerning an appropriate resolution of the dispute between the above named parties.

The Board acknowledges the assistance of Joyce M. Klein of the National Mediation Board's staff who rendered valuable support and counsel to the Board during the proceedings and in preparation of this Report.

Respectfully,


David P. Twomey, Chairman


William P. Hobgood, Member

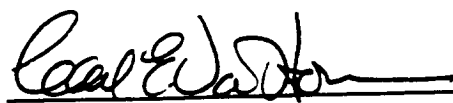

Carl E. Van Horn, Member

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 229 (the Board) was established by the President pursuant to Section 10 of the Railway Labor Act, as amended, 45 U.S.C. § 160, and by Executive Order No. 13003. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between the railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the Brotherhood of Maintenance of Way Employees. A copy of the Executive Order is attached as Appendix "A".

On May 16, 1996, the President appointed Professor David P. Twomey of the Boston College, Carroll School of Management, Chestnut Hill, Massachusetts, as Chairman of the Board, and William P. Hobgood, a mediator and arbitrator from Naples, Florida and Whitefish, Montana, and Professor Carl E. Van Horn of the Eagleton Institute of Politics, Rutgers University, New Brunswick, New Jersey as members. The National Mediation Board appointed Joyce M. Klein as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. The Carriers' Conference

The Carriers involved in these disputes include most of the Nation's Class I line haul railroads and terminal and switching companies. They are named in the attachment to Appendix "A". The Carriers are represented in these disputes through powers of attorney provided to the National Railway Labor Conference (NRLC) and its negotiating committee known as the National Carriers' Conference Committee (Carriers).

B. The Brotherhood of Maintenance of Way Employees

The Brotherhood of Maintenance of Way Employees (BMWE) represents approximately 29,000 employees who principally perform track laying and surfacing work, roadway maintenance, and bridge, building and structural work.

III. ACTIVITIES OF THE EMERGENCY BOARD

Representatives of the Carriers and BMWE met with the Emergency Board in Washington, D.C. on May 20, 1996 to discuss procedural matters.

On May 28-30, and June 4-8, 1996, the Board conducted hearings in Washington, D.C., at which the issues were addressed. The parties were given full and adequate opportunity to present oral testimony, documentary evidence and argument in support of their respective positions. Each party provided testimony from over twenty witnesses. A formal record was made of the proceedings.

The parties agreed to and the President approved an extension of time until June 23, 1996 for the Emergency Board to report its recommendations to the President.

Pursuant to a request of the Board, the parties presented summaries of their contentions regarding the issues before the Board on June 10, 1996.

After the close of the formal hearings, the Board met extensively with representatives of the parties to assist them in narrowing the issues. The Board then met in executive session to prepare its Report and Recommendations. The entire record considered by the Board consists of over 1500 pages of transcripts and 129 exhibits.

IV. HISTORY OF THE DISPUTE

On or about October 27, 1994, BMWWE notified the Carriers that it would bargain locally on behalf of maintenance of way employees employed by the Carriers. On or about November 1, 1994, the BMWWE, in accordance with Section 6 of the Railway Labor Act, served notices on each of the Carriers represented by the NCCC, of their demands for changes in the provisions of the existing collective bargaining agreements. On November 1, 1994, the Carriers filed a lawsuit in U.S. District Court seeking to compel the BMWWE to bargain nationally. The BMWWE, and its individual General Chairmen, representing each of its local committees, filed a counterclaim alleging that the Carriers, by refusing to meet with the individual chairmen, were violating the Railway Labor Act (RLA).

By letter dated March 21, 1995, BMWWE General Chairmen Jed Dodd, Perry Geller and John Davison notified Conrail that they were terminating conferences on the November 1, 1994 Section 6 notices. On March 30, 1995, the Carriers filed an application for the National Mediation Board's (NMB's) mediation services covering disputes between the approximately 58 railroads and railways represented by the Carriers and the BMWWE. On March 31, 1995, the NMB found that a labor emergency within the meaning of Section 5, First of the Railway Labor Act existed on Conrail and proffered its mediation services. The Board's invocation of mediation was meant to preserve the status quo under the Railway Labor Act rather than to determine whether national or local handling was appropriate. The NMB's invocation of mediation as to Conrail and the BMWWE was docketed as NMB Case No. A-12718 sub 1. The NMB's invocation of mediation did not constitute a determination of whether the issues properly were to be negotiated on a "national" or "local" basis. On October 11, 1995, "without prejudice to the parties' positions in litigation," the NMB assigned sub-numbers 2 through 8 to the Class I railroads represented by the NCCC as follows:
A-12718:

- Sub 1 Consolidated Rail Corp.
- Sub 2 Burlington Northern RR
- Sub 3 CSX Transportation
- Sub 4 Norfolk Southern Ry.
- Sub 5 Atchison Topeka & Santa Fe Ry.
- Sub 6 Union Pacific RR
- Sub 7 Chicago & Northwestern Ry.
- Sub 8 Kansas City Southern Ry.

Mediation was undertaken by Chairwoman Magdalena G. Jacobsen and Mediator Fay Marie Landers-Crawford. These efforts were unsuccessful.

On April 29, 1996, the NMB, in accordance with Section 5, First, of the Railway Labor Act, offered the BMWWE and the Carriers the opportunity to submit their controversies to arbitration. The NMB's proffer of arbitration was without prejudice to the parties' legal position on the issue of whether bargaining should be on a national or local basis. On May 13, 1996, the BMWWE declined the proffer of arbitration. Accordingly, on that same date, the NMB notified the parties that it was terminating its mediatory services.

On May 13, 1996, pursuant to Section 10 of the Railway Labor Act, the NMB advised the President of the United States that, in its judgment, the disputes threatened to substantially interrupt interstate commerce to a degree such as to deprive various sections of the country of essential transportation service.

The President, in his discretion, issued Executive Order No. 13003 on May 16, 1996, to create this Board to investigate and report concerning these disputes. On May 28, 1996, the Board's first day of hearing, the U.S. District Court for the District of Columbia issued its decision holding that bargaining should proceed on a national basis.

V. THE PARTIES' CONTENTIONS

A. In General

1. The BMWWE

BMWWE's proposals are based upon the premise that the Carriers' financial health is strong and that rail labor should share in that prosperity. BMWWE also seeks to preserve jobs and to roll back or to modify many of the rules changes made as a result of the last round of bargaining.

According to BMWWE, cash flow, profits and productivity are soaring while unit labor costs are decreasing. BMWWE points out that total unit costs continue to decline while traffic is rising slowly and steadily. Pointing to steadily increasing freight volume, defensible markets characterized by long hauls and heavy volume, and seamless transit enabled by intermodal operations, BMWWE asserts that the railroads are winning the war with trucks. According to BMWWE, rail productivity has increased far more rapidly than trucking, while unit labor and total unit costs for railroads have declined relative to trucks.

BMWWE contends that the maintenance of way craft can be distinguished from other rail.crafts by the greater occupational health risks and the seasonal unemployment suffered by maintenance of way employees. Additionally, BMWWE notes that increased use of regional and system gangs has led to excessive travel which has adverse psychological effects on workers. BMWWE also claims that, due to these hardships and the increasing skill levels of its members, maintenance of way workers are

underpaid when compared to other rail workers or to workers in the construction industry. BMW points out that the shop crafts and the signalmen have negotiated skill adjustments above general wage and cost of living increases and BMW members have had no such increase. BMW believes that the equity adjustment it has proposed will compensate for some of the disparity between its payments and the skill differentials received by the shop crafts and the signalmen. BMW also contents that real wages have dropped when compared with outside industry norms.

According to the BMW the reduction in unit labor costs coupled with the increase in productivity demonstrates that BMW has contributed to the financial health of the railroads. Since the railroads have the ability to pay the increases sought by BMW and since rail labor has not received its "fair share" of the industry's wealth, BMW urges adoption of its proposals.

BMW rejects the notion that the settlement reached through arbitration with the United Transportation Union (UTU) has established a pattern for the remainder of the industry. According to the BMW, the UTU deal covers only 22 percent of the industry. BMW asserts that contracts remain open for 63 percent of the industry and settled for another 15 percent under wholly different terms from the UTU agreement. BMW argues that even if the Board accepts the pattern argument on the "core" items defined by the Carriers, extra wage adjustments, such as the equity adjustment, and benefits increases are permissible deviations consistent with historical applications of patterns.

BMW seeks to amend and adopt rules addressing excessive subcontracting and the spinning off of lines to short lines. BMW proposals address the increasing lack of job protection for its members resulting from increased use of contractors and shortlines as well as changes in the law providing protection. BMW seeks modifications to the current rules which result in excessive travel with few opportunities to return home and inadequate mileage, lodging and meal expenses.

2. The Carriers

The Carriers' presentation to the Board centers around the pattern which, they assert, has been established by the settlements with the UTU, the Brotherhood of Locomotive Engineers (BLE) and the Brotherhood of Railroad Signalmen (BRS). The settlements cover approximately 45 percent of operating and non-operating employees who are paid hourly rates and on a mileage basis. The Carriers consider their pattern settlement a good settlement which compares favorably to other agreements in other industries entered into in 1995.

The substance of the pattern agreements includes general wage increases and guaranteed cost of living payments that average approximately 3.0 percent per year and lump sums equal to about 7.5 percent of total annual compensation over the life of the agreement. The settlements establish a new vision plan and improve dental benefits. According to the Carriers, the parties to the pattern have also agreed to defer any proposals for major changes in work rules in order to provide a further period of peace following substantial rules changes that were made in the last round of bargaining. Finally, the settlements include a complete moratorium until January 1, 2000.

The pattern began with a 1995 tentative agreement with UTU. After ratification of that agreement failed, the UTU and the Carriers agreed to binding arbitration. The UTU agreement was subsequently adopted by Arbitration Board No. 559 which found the settlement, "fair and reasonable." Arbitration Board 559, cognizant that the UTU settlement would be looked to as a precedent in settling other disputes, considered whether the UTU settlement would provide a precedent that would be fair to railroad employees and found "there is no other answer."

Soon after the tentative agreement with UTU, the Carriers entered into a tentative agreement with BLE following the same pattern. The BLE agreement is being ratified on a carrier-by-carrier basis following resolution in local negotiations of issues that the parties decided to treat as local within the national framework. Shortly after Arbitration Board 559 issued its award, BRS also agreed to the pattern settlement. That agreement is pending ratification.

The Carriers argue that it is essential to treat employees represented by different organizations uniformly. Failure to do so increases the risk of strikes because it destabilizes the industry's labor relations by: (1) discouraging early settlements, since an early-settling organization would have no assurance that the gains it achieved would not be bettered by other organizations who treat the early settlement as a floor for future bargaining; (2) fostering "leap frogging" where the disfavored organization tries to out do the other organizations in the next round; and (3) adversely affecting employee morale.

The Carrier asserts that patterns can and do accommodate special local circumstances (such as the profit sharing provision on Norfolk-Southern) that do not upset the overall economic balance of the pattern. The Carriers contend that mechanical application of the same terms to different circumstances would destroy the pattern. However, the Carriers would permit deviation from the pattern only if the organization proves unique and compelling circumstances. Under this standard, the Carriers assert the BMW's contention that it is underpaid does not warrant deviation from a pattern which applies to operating and non-operating employees.

B. Specific Proposals

The Board requested the parties to provide a numbered matrix summarizing their proposals. In this Report, the proposals are identified by the same numbers as are contained in the matrix.

1. Wages

a. The BMW:

The BMW proposes general wage increases as follows:

January 1, 1995	6%
January 1, 1996	6%
January 1, 1997	6%

The BMW also seeks a cost of living adjustment of one cent for each 0.1 increase in the U.S. CPI-W (in 1984 dollars) paid quarterly with the first adjustment on January 1, 1995.

b. The Carriers

The Carriers propose wage increases as follows:

November 30, 1995	Roll in a 9 cent cost of living increase
December 1, 1995	3.5 % general wage increase
Date of Agreement	1% lump sum (Less 7 cent cost of living increase paid in 1996 or UTU dollar equivalent)
July 1, 1996	3% lump sum
July 1, 1997	3.5% general wage increase
July 1, 1998	3.5% lump sum
July 1, 1999	3.5% general wage increase
December 31, 1999	Cost of living adjustment rolled into basic rate

A semi-annual cost of living adjustment will continue after the moratorium expires, similar to the one provided in the BMW national agreement.

2. Equity Wage Adjustment

a. The BMW

BMW proposes aggregate adjustments for the maintenance of way craft of \$1.07 per hour in weighted average wage rate. BMW compares the proposed equity adjustment to the skill adjustments negotiated by the shop crafts and the BRS. A job evaluation study commissioned by the BMW found key BMW positions "grossly underpaid" compared with comparable jobs on the railroad. The equity adjustment is designed to correct the disparity.

b. The Carriers

The Carriers oppose an equity adjustment. According to the Carriers, the existing wage structure has fully responded to the increased mechanization and skill required of maintenance of way employees and their working conditions have improved.

3. Entry Rates:

a. The BMWWE:

BMWWE proposes to eliminate current entry rates. According to BMWWE, employees starting at 75 percent of the applicable rate are precariously close to the poverty level.

b. The Carriers

The Carriers oppose the elimination of entry rates and rate progression.

4. Subcontracting

a. The BMWWE

(1) The BMWWE seeks to prohibit subcontracting of the historical work of the craft. BMWWE's proposal is designed to reserve all work of the craft under control of the carriers, whether performed on or off the property, to prevent deals such as "purchased in place, sold in place, leasing of trackage, leasing of equipment with operators, preconstructed components, etc." BMWWE particularly seeks to avoid situations such as that on Conrail where contractor employees are interspersed throughout the system on an almost permanent basis. According to BMWWE, the contractor employees function in a capacity similar to BMWWE-represented employees, but work under substandard wages and working conditions.

(2) The BMWWE on Conrail seeks to require the Carrier to amend its agreement with Corman to bulletin to Conrail employees all Bulk Material Yard positions for the purpose of sorting, handling or delivering maintenance of way materials. The BMWWE also seeks to prohibit Conrail from entering into agreements which prohibit subcontractors from performing the work of storing, sorting, handling or delivering maintenance of way materials.

b. The Carriers

(1) The Carriers seek to eliminate all restrictions on contracting out and to provide that Carriers, at their discretion, may contract work. The Carriers contend that contracting out is essential in certain circumstances. For example, sporadic work requiring specialized skills, equipment or training can only be done efficiently if contracted out to a specialist that can spread its costs among multiple customers. The Carriers oppose the restrictions BMWWE seeks to place on contracting out

because they would impose staggering capital costs on the Carriers for little return. The Carriers note that further limits on contracting out would reduce the Carriers' ability to compete and cause a loss of market share. Finally, the Carriers note that the level of contracting out has remained stable at under 10 percent.

(2) Conrail's response to the "Bulk Material Yard" proposal is that Corman and other subcontractor issues are incorporated in the Carriers' subcontracting proposals and should be incorporated into any subcontracting recommendation.

5. Shortlines/Successorship

a. The BMWWE

The Carriers' sales of lines to shortline operators have caused real job losses of maintenance of way positions since 1980. Interstate Commerce Commission (ICC) determinations and the ICC Termination Act of 1995 have severely limited employees rights to "follow" their jobs and to receive severance benefits or protective conditions. BMWWE has been unable to stop line sales during the pendency of bargaining over the effects of the line transfer on employees.

To address this situation, BMWWE proposes that the selling carrier must give at least six months written notice of its intent to sell, abandon or otherwise divest itself of any rail line. BMWWE proposes further that before the selling carrier reaches agreement with the third party in any sale or other transaction, the selling carrier must: (a) require the third party to make offers of employment, in seniority order, to employees affected by the change in operations; (b) require the third party to recognize BMWWE as the representative of the craft into which the employees who accept employment with the third party are hired; (c) require the third party to assume all obligations of employer/carrier toward the employees hired, including existing rates of pay, rules and working conditions; (d) enter into an arrangement providing New York Dock benefits to affected employees. Under BMWWE's proposal, a carrier's failure to comply with the contractual provisions would require payment of liquidated damages of \$100,000 to each affected employee. Finally, BMWWE proposes that application of New York Dock benefits should be applied retroactively to employees affected since January 1, 1995.

b. The Carriers

The Carriers oppose the BMWWE's proposal to provide employees adversely affected by sales and transfers of rail lines with New York Dock protection, agreed to by the Organization, and that purchasers and transferees of lines hire the transferring carriers' employees and succeed to their collective bargaining agreements and union representation obligations. Those proposals are not proper subjects of collective bargaining under the Railway Labor Act. When Congress replaced the ICC with the Surface Transportation Board (STB), it specifically excluded employee protection conditions from those the STB is empowered to impose on line transfers to non-carriers. At the same time, Congress limited employee protection to one year's severance pay in line transfers to existing

Class II railroads, and eliminated all employee protection obligations in transfers to existing Class III railroads. According to the Carriers, the Railway Labor Act does not compel Carriers to bargain over demands for conditions that Congress has determined are contrary to the public interest, and it would be imprudent for this Board to override Congress' determination.

Moreover, the Carriers contend that BMW's proposal to require the railroads to obtain the Organization's agreement to protection before line sales can be consummated would give the Organization a veto over such transactions simply by withholding agreement. The Carrier argues that for a carrier to compel a new carrier to recognize the unions might violate the Railway Labor Act and is not a subject for bargaining.

The Carriers ask this Board to respect the limits established by Congress on what is and is not bargainable and to recommend the Enhanced Work Opportunities program agreed to by the Carriers in the UTU and BLE agreements.

6. Health Benefits

a. The BMW

The BMW proposes the elimination of cost sharing and an increase in benefits including: (1) a decrease in managed care co-payments; (2) an increase in lifetime benefits from \$1 million to \$1.5 million; (3) an increase in coordination of benefits; (4) extension of immunizations and (5) provision of "well physical" benefits.

The BMW proposes an enhanced package of dental benefits and a new vision benefit program as contained in the UTU arbitrated agreement effective the date of the agreement.

BMW proposes that the parties return to the requirement of one day of service in the previous month to maintain eligibility. BMW asserts that its members would be severely disadvantaged under anything other than the current eligibility requirement of one compensated day in a month because they are seasonal employees.

BMW proposes that the hospital association dues offset formula be restored to cover the approximate cost per employee per month as was its original intent.

b. The Carriers

The Carriers propose that the employee contribution share be cumulative and object to an increase in benefits. The Carriers reject the BMW's proposal because there is no justification for deviating from the national pattern and any proposal to amend the national health and welfare plan should involve all participants. The Carriers contend that the proposed benefit increases are too costly.

The Carriers propose the same enhanced package of dental benefits and new vision benefit as of program as BMW E but effective January of 1999.

The Carriers propose that the minimum service requirement be increased from one to seven days of service in the previous month. The Carriers contend that a one day of service per month requirement would impose inappropriate and unwarranted additional costs.

The Carriers propose no change to the hospital association dues offset. The Carriers contend BMW E's proposal would change a uniform practice as well as a collectively bargained formula for calculating the hospital association dues offset.

7. Expenses Away From Home

a. The BMW E

According to the BMW E, meal and lodging allowances for maintenance of way employees are based upon Arbitration Board No. 298. However, since the award of Arbitration Board No. 298, expenses have become, without justification, widely disparate from carrier to carrier, within different maintenance of way groups on a single carrier, and between the maintenance of way craft and other crafts. BMW E contends that current meals and lodging allowances are wholly inadequate to meet the real costs of expenses away from home. Additionally, maintenance of way employees subsidize the Carriers' regional and system gangs with staggering amounts of unpaid travel time and unreimbursed automobile expense for travel between their homes and distant work locations. According to the BMW E, employees need their personal vehicles with them throughout the work season, but the Carriers offer bus transportation between work locations to avoid reimbursing employees for mileage expenses.

For these reasons, BMW E seeks to eliminate the current reimbursement/compensation system and replace it with reimbursement for actual expenses for meals and lodging. When employees work away from home they should be provided with: (1) single occupancy lodging and meals or reimbursement for the actual cost thereof; and (2) travel time and automobile mileage reimbursement for all travel between home and work stations. Additionally, BMW E seeks mileage reimbursement and travel time allowances for employees "commuting" between their homes and their assigned away from home lodging.

b. The Carriers

The Carriers propose to increase per diem payments consistent with practices under the previous contracts and Arbitration Board No. 298. The Carrier's assert that BMW E's specific proposals regarding expenses away from home are prohibitively expensive, unworkable, and ultimately harmful to both the Carriers and their employees. According to the Carriers, BMW E's proposal to be paid "actual expenses" for both meals and single hotel rooms would greatly increase both the expense and the administrative burden associated with away from home meals and lodging.

In addition, single hotel rooms for large maintenance of way gangs of 50 to 150 people simply cannot be found within a reasonable distance of many segments of railroad track.

8. Work Site Reporting

a. The BMWWE

As a result of the last round of bargaining, Conrail production crews are paid for travel time in excess of 30 minutes in each direction and production crews on other carriers are not paid for travel time. BMWWE proposes that employees' pay starts at the designated lodging site. BMWWE asserts that maintenance of way employees currently spend 1-3 hours per day commuting between the lodging site and the worksite.

b. The Carriers

The Carriers propose that the current rule for production crews, that paid time generally starts and ends at the work site, be extended to any maintenance of way employees without a fixed headquarters.

9. Workforce Stabilization

a. The BMWWE

BMWWE seeks to update the February 7, 1965 Job Stabilization Agreement to cover employees with two more years of employment relationship as of October 1, 1994. In BMWWE's view the original February 7, 1965 Agreement was meant to provide broad job and income protection for all employees subject to it. Arbitral and court precedent have limited the applicability of the 1965 agreement. BMWWE's workforce stabilization proposal and proposed changes to Conrail's "SUB Plan" coincide with its proposals regarding contracting out, shortlining and successorship. BMWWE seeks to update the February 7, 1965 agreement "lace curtain" allowance which helps to defray the incidental expenses associated with a change in residence covered by the agreement. In support of its proposal, BMWWE asserts that other non-operating unions, including the Transportation Communications International Union (TCU) and BRS, have secured updates. BMWWE notes that attrition protection does no more than preserve present income, including general wage increases and do not expand seasonal employees' guarantees into the equivalent of full time earnings.

BMWWE also seeks to reform the SUB Plan on Conrail to cover all maintenance of way employees. Specifically, BMWWE seeks to restore the value of the SUB plan from \$42.00 to \$75.00 and to eliminate the 125 day eligibility period and 20 day waiting period. BMWWE also seeks to eliminate the \$25,000 caps on life time benefits under the SUB Plan and to continue health and welfare benefits to employees collecting SUB benefits.

b. The Carriers

The Carriers propose no change to the February 7, 1965 Job Stabilization agreement. The Carriers note that the agreement covers only 2.3 percent of the present workforce and revival of that agreement would require the Carriers to pay maintenance of way employees full compensation -- wages and benefits, adjusted for all future increases -- until they reach retirement age, if they are furloughed or displaced to lower paying jobs for any reason, apart from narrowly defined declines in business.

10. Regional and System-Wide Production Gangs

a. The BMWE

BMWE proposes to define production gangs as "out of face rail gangs and tie gangs with a minimum employee complement of 20 employees." BMWE also seeks to eliminate all "no-bid, no-bump" rules as they apply to regional and system-wide gangs and to confine the operational territory of these pre-programmed gangs to trackage falling within a circle of 400 miles in diameter. BMWE also seeks a savings clause permitting BMWE to opt to retain an existing rule regarding regional and system-wide gangs or to accept the new rule for application to a particular property.

b. The Carriers

The Carriers seek to define a "production gang" as "any crew that performs repetitive functions on a day-to-day basis, regardless of the size of the gang or the specific type of work being performed." According to the Carriers, many gangs of fewer than 20 positions could be operated much more efficiently if used on a regional or system basis, so gangs could build on their experience. Moreover, the Carriers assert that BMWE's position has deprived maintenance of way employees of the further work stabilization and expanded work seasons that would result from greater use of regional or system gangs. The Carriers also seek to form new regional and system gangs while retaining existing gangs under local agreements.

11. Sickness Benefits and Supplemental Sickness

a. The BMWE

BMWE seeks fully paid sick leave by accruing 80 hours of sick leave per year with no maximum. BMWE also seeks to integrate sickness benefits with the Railroad Unemployment Insurance Act (RUIA) and Supplemental Sickness benefits to provide eight hours pay per sick day with no waiting period.

BMWE seeks to amend the supplemental sickness benefit to provide that RUIA and the benefit covers 90 percent of average monthly earnings. BMWE proposes the elimination of all

restrictions on benefit eligibility. BMWWE also proposes a fully insured supplemental sickness program with the Carriers paying 100 percent of the premium and BMWWE as the sole policy holder.

b. The Carriers

The Carriers propose no change in sickness benefits and seek to apply the pattern changes which increase benefits. The Carriers note that no organization has both sickness benefits and supplemental sick benefits. To provide other than the pattern supplemental sickness benefits to BMWWE employees would create disparity and inequity.

12. Off-Track Vehicle Benefits

a. The BMWWE

The BMWWE seeks enhanced off-track vehicle benefits which would extend coverage to employees operating vehicles commuting to and from their home or lodging. BMWWE also seeks an upgrade to 100 percent loss of full time weekly compensation, subject to a maximum payment of \$1500 per week. BMWWE also seeks increases in monetary amounts from \$150,00 to \$500,000 and from \$75,000 to \$150,000. The maximum allowable payment should be raised from \$1,000,000 to \$10,000,000. BMWWE notes that the maximum allowable payment has not been raised since 1978.

b. The Carriers

The Carriers propose that the off-track vehicle benefit remain unchanged. The Carriers assert that expanding coverage of the benefit to commuters would change its fundamental nature and purpose. At present, the coverage is available only to those whose jobs require them to ride in off-track vehicles at Carrier direction from time to time as an incident of their employment. The Carriers also note that the employees also have remedies under the Federal Employees Liability Act (FELA).

13. Alternative Work Week and Rest Days

a. The BMWWE

The BMWWE proposes the elimination of alternative work weeks recommended by PEB No. 219. Those recommendations removed BMWWE from the coverage of the national 40 hour work week rules applicable to all other non-operating employees, especially those in the signal department working alongside maintenance of way forces. A return to the rule before PEB No. 219 will, in BMWWE's view, permit the Carriers to retain legitimate operational flexibility while ensuring that maintenance of way employees have the opportunity to build and maintain strong ties to their families and their communities by having the expectation of conventional weekend rest days. The BMWWE proposes a work week of five days of eight hour duration with Saturday and Sunday rest days. The BMWWE proposes that other work weeks and work days be permitted by local agreement. The

BMWE additionally proposes that work weeks shall be established by bulletin and may not be changed except by local agreement.

b. The Carriers

The Carriers seek greater flexibility to establish and adjust work days for all employees, including designation of any five eight-hour work days with two rest days; four 10-hour work days with three rest days or other compressed schedules. The Carriers also propose extension of the work week up to a maximum of eight 10-hour days with a correspondingly increased number of rest days. The Carriers seek to clarify that the establishment and adjustment of work weeks and rest days is not subject to local bulletin rules.

14. Starting Times

a. The BMWE

The BMWE seeks a repeal of the starting time recommendations of PEB No. 219 under which maintenance of way employees currently work. At present the starting time window for production gangs and locally based support crews is from 4:00 a.m. to 11:00 a.m. However, according to BMWE, the starting time may be changed within those parameters with 36 hours notice and, for changes of over four hours, 48 hours notice is required. Starting times may be agreed upon by the parties "for any and all crews as long as those starting times are not between midnight and 4:00 a.m." The BMWE's proposal specifically seeks starting times between 6 a.m. and 8 a.m. unless otherwise agreed to locally. According to BMWE, a broad range of permissible starting times, coupled with the license to change starting times on 36 to 48 hours' notice, forms the basis for health and safety hazards.

b. The Carriers

The Carriers seek to establish and adjust starting times for all employees as appropriate in light of operational, customer service and other considerations. The Carriers seek to clarify that adjustments in starting times are not subject to local bulletin rules. The Carriers claim that they need the flexibility to schedule work to allow it to be completed during windows without trains on the tracks. Those windows often occur at night, including between midnight and 4:00 a.m..

15. Meal Periods

a. The BMWE

The BMWE proposes that a paid meal period of 20 continuous minutes be afforded to each employee during the 5th or 6th hour following commencement of work. In the event that an employee is not afforded 20 continuous minutes in which to eat prior to the end of the 6th hour or on overtime, he shall be paid double the rate of pay then being earned until such time as he is afforded

his meal period or released from duty. Under the BMW proposal, when overtime is worked, subsequent meal periods will be afforded at 5 hour intervals beginning 5 hours after the last meal period and in no case, more than eleven hours after the start of work. Meals during the subsequent meal period will be paid for by the company. Meals will be hot and substantial. Employees will be given necessary time to wash up, travel to a restaurant facility and return to the job site without a reduction in pay. BMW believes its proposal is a workable compromise as it provides a two-hour period for scheduling meals and provides adequate meals to the employees at work.

b. The Carriers

The Carriers seek to clarify that meal periods are not subject to local bulletin rules. The Carriers oppose BMW's proposal because it narrows the window for meal periods from three hours to two hours and seeks to impose restrictions which are inconsistent with the Carriers' needs, such as Carrier paid restaurant meals during overtime work. Additionally, the Carriers oppose the increase in penalty pay for brief delays in meal periods due to operational needs.

16. Paid Leave

a. The BMW

BMW proposes to revise vacation rules to provide:

- 120 hours of vacation after five years of service
- 160 hours of vacation after eight years of service
- 200 hours of vacation after fifteen years of service
- 240 hours of vacation after twenty years of service

BMW also seeks pro rata vacation eligibility and credit for union business and the ability to schedule in increments of less than 40 hours. BMW seeks to have vacation paid at the greater of two rates: Either the prior year's total earning divided by 2000 or the hourly rate on the position prior to the vacation.

BMW seeks to add Martin Luther King Jr.'s birthday as an additional holiday. BMW proposes that employees who earned compensation in the current or prior month would be eligible for holidays. Employees in ten hour positions would receive ten hours of holiday pay. BMW seeks to add days to available bereavement leave and personal days with fewer qualifications.

b. The Carriers

The Carriers seek no change in any paid leave benefit including vacation, holidays, bereavement leave or personal days.

17. Combining and Realigning Seniority Districts

a. The BMW

BMW proposes to eliminate the notice, negotiation and arbitration provisions of the imposed agreement and to revert to the standard Railway Labor Act bargaining process.

b. The Carriers

The Carriers seek to limit arbitration to the seniority rights of affected employees and to permit a carrier to provisionally implement its proposal if not acted upon within 90 days after service of notice. Specifically, the Carriers propose the following clarification to the test applied by arbitrators in balancing between the Carriers' operational need and the interest of employees: (1) that arbitrators take as a given that a proposal to realign seniority districts with operating units meets an operational need, since PEB No. 219 has already made this determination; and (2) that in determining the interest of employees, the arbitrator must include the interest of employees in obtaining longer working seasons. The Carriers have found that the existing procedure for local arbitration and negotiation of proposals to adjust seniority districts has been a useful approach. This approach has helped to ameliorate the problems caused by small and misaligned seniority districts.

18. Protective Clothing and Equipment

a. The BMW

The BMW proposes that the Carriers be required to provide protective clothing and equipment deemed necessary for the protection of employees' safety and health.

b. The Carriers

The Carriers seek no change in the current rules covering protective clothing.

19. Intra-craft Jurisdiction

a. The BMW

The BMW seeks no change in the current rules covering intra-craft jurisdiction.

b. The Carriers

The Carriers propose that they be allowed to require employees to perform any work covered by the BMW agreement that the employee is capable of performing, regardless of any classification or other rule or practice, such as the incidental work rule, that otherwise would reserve such work

to particular maintenance of way employees. The Carriers assert that they should be able to assign work to whoever can do the work quickly and efficiently.

20. Savings Clauses

a. The BMW

The BMW seeks a savings clause indicating that any committee may elect to accept new rights granted to any other committee. According to BMW's proposal, the committees would have the right to save, in whole or in part, any existing rule in lieu of new rights granted to a committee.

b. The Carriers

The Carriers propose that a savings clause should be included indicating that provisions designed to confer new rights on a party are not intended to abridge existing rights.

21. Moratorium

a. The BMW

BMW proposes a moratorium on changes in the agreement until January 1, 1998.

b. The Carriers

The Carriers seek a moratorium provision stating that no notices or proposals to change existing agreements or to make a new agreement can be served under the Railway Labor Act before November 1, 1999 to become effective before January 1, 2000.

22. Temporary Transfers

a. The BMW

BMW proposes no change in transfer rules.

b. The Carriers

The Carriers propose that maintenance of way employees may be transferred to another seniority district for up to 60 days to perform temporary service.

C. BMW Committee Proposals

The following issues were raised by one or more of BMW's local committees. The Committees include those on the Atchison Topeka & Santa Fe Railway Co., Burlington Northern

Railroad Co., Consolidated Rail Corporation (Conrail), CSX Transportation Co., Norfolk Southern Railway Co., Chicago & North Western Railway Co. and the Union Pacific Railroad, including the Kansas City & Southern Railway. The railroads covered by the proposal are identified in each instance.

23. Retention of Seniority

a. The BMW

The BMW seeks to eliminate the requirement for an employee to file his or her name and address with the carrier when furloughed to eliminate loss of seniority. This proposal covers all railroads except the Union Pacific, including the Kansas City & Southern.

b. The Carriers

The Carriers agree to eliminate that rule with the following provisions: (1) the employee has the obligation to keep the Carrier current with his address and telephone number; and (2) if the Carrier relies on that address or telephone number in recall, there would be a self-executing provision of forfeiture of seniority.

24. Monthly Rated Positions

a. The BMW

The BMW seeks to convert monthly rates to hourly rates. This proposal covers the all major carriers.

b. The Carriers

The Carriers have no objection to this proposal so long as it is achieved on a cost neutral basis.

25. Agreements

a. The BMW

The BMW proposes that the Carriers will provide reprinted copies within 60 days of the contract. Certain penalty provisions are proposed in the event that the reprinting is not completed within 60 days. This proposal covers all major carriers.

b. The Carriers

The Carriers propose that they work with the BMWWE to update the collective bargaining agreements. All costs would be shared equally by the parties and the time limit and penalty provisions would be eliminated.

26. Location of Meetings and Claims Conferences

a. The BMWWE

The BMWWE proposes that meetings, claims and conferences, including public law boards, claims conferences, disciplinary hearings and meetings with management should be conducted at a mutually agreeable location. This proposal covers Burlington Northern, Conrail, CSX and Chicago & North Western.

b. The Carriers

The Carriers propose the establishment of a national committee to develop a uniform discipline rule for the entire craft.

27. Currency (for Canadian Employees)

a. The BMWWE

The BMWWE proposes that all CSX and Conrail employees should be paid in the equivalent of United States currency.

b. The Carriers

The Carriers believe that the type of currency is a wage issue which should be considered in the context of the entire wage package.

28. Camper Allowance

a. The BMWWE

The BMWWE proposes that Atchison Topeka & Santa Fe employees who desire to use campers in lieu of company lodging shall be paid an allowance of \$45.00 per day.

b. The Carriers

The Atchison Topeka & Santa Fe proposes no change to the current camper allowance. The affected employees may elect the \$25.00 per day camper allowance or the per diem. The Atchison Topeka & Santa Fe asserts that \$25.00 per day continues to provide an adequate allowance.

29. Commercial Drivers License and FHWA Issues

a. The BMW

As the result of an arbitrated agreement, BMW employees on Conrail currently receive a \$.30/hour rate differential for positions requiring a Commercial Drivers License (CDL). BMW seeks an increase to \$.50/hour effective January 1, 1995 and then an increase of \$.05/hour for each year of the agreement. BMW also seeks to apply the terms of the arbitrated agreement to Federal Highway Administration (FHWA) issues. BMW seeks to extend this proposal to cover all major carriers.

b. The Carriers

Conrail opposes any increase in the differential for holding a position requiring a CDL. Conrail notes that Public Law Board No. 5542 issued its award requiring a differential for positions requiring a CDL on March 29, 1996. Since the Public Law Board did not choose to make its award retroactive to January 1, 1995, Conrail opposes any request to change that award. Conrail also opposes any extension of the CDL differential to FHWA certification. The remaining Carriers view BMW's CDL proposal as a request for an increase in wages which should be considered as part of the total package.

30. Safety

a. The BMW

BMW proposes that each of the major carriers, except Norfolk Southern, adopt a safety agreement similar to the one in effect between BMW and the National Rail Passenger Corp. (Amtrak). For example, BMW's safety proposals on Conrail would provide:

(1) The establishment of BMW safety committees of rank-and-file employees in all job areas selected by the BMW to meet regularly with local management on issues of safety and the implementation of company safety rules;

(2) The establishment of full-time BMW safety officers selected by the BMW for each of Conrail's six operating divisions and one full-time officer for the regional East-West units -- the duties of the full-time officer would be to meet regularly with Management, police job sites for compliance with safety and health rules and regulations, initiate health and safety campaigns to

educate members and reform work practices, organize training for members on safe work practices and regulations and coordinate the activities of the safety committees;

(3) The establishment of a rule where an employee has the right to refuse to start work, return to work or continue to work when any condition exists which in their opinion would endanger their health and safety; establish that employees may exercise this judgment without fear of discipline;

(4) The investigation of all accidents by a joint committee of management and BMW;

(5) That safety incentive programs could only be implemented after agreement between the BMW and Conrail;

(6) The establishment of an oversight committee consisting of senior Conrail Management and the BMW General Chairmen to administer the agreement and monitor the work of the safety committees and/or the full-time officers.

b. The Carriers

Conrail urges the Board to reject BMW's proposal as unnecessary because safety on Conrail is good and has improved steadily and because the Federal Railroad Administration proposed Roadway Worker Protection Regulations in March 1996 cover many of the same issues. Both Conrail and BMW participated in the negotiated rule-making that led to the proposed rule. Conrail has already adopted an "On Track Safety Program."

Additionally, since Amtrak's safety statistics for roadway workers are less favorable than Conrail's, the Amtrak/BMW Safety Agreement should not be considered a model. The safety program sought by the BMW is the same program it sought and did not achieve before PEB No. 221. Since Conrail's safety program remains essentially the same as in 1992 with improvements demanded by events and by the proposed Roadway Worker Protection Regulations, the Carriers see no need to adopt BMW's proposal. The other effected carriers agree with Conrail's position on BMW's safety proposals.

31. Due Process Improvement Proposals

a. The BMW

BMW seeks to require Conrail to present to it, in advance, all documents and the names of all witnesses that will be used at a disciplinary hearing. BMW proposes that any disciplinary charge must be presented to the employee within twenty days of the date of occurrence which gave rise to the charge. BMW's proposal would also change the time frames for the processing of claims. BMW also seeks a rule providing that all witnesses to a disciplinary hearing are paid. BMW also seeks a rule that allows it discovery of company records to research the validity of pending claims. Additionally, BMW seeks a rule that requires Conrail to pay interest on claims when payment is

unduly delayed after the claim has been sustained. BMW advances this proposal for all major carriers.

b. The Carriers

Conrail opposes the changes to grievance handling proposed by BMW. According to Conrail, the current procedures work well. Conrail claims that the changes proposed by BMW would create costly inefficiencies including increased travel expenses, and shut down of production during hearings. According to Conrail, BMW's proposal would cost Conrail more than \$122 million in the first year alone. Conrail contends that BMW's proposal would nullify work rule flexibility and add to the work force and pay employees for not working. The other major Carriers concur with Conrail's position on BMW's Due Process Improvement proposals.

32. Zone, Regional and Divisional Units

a. The BMW

The BMW on Conrail seeks to define divisional units as including, but not limited to, surfacing, tie rehabilitation, welding, retirement, crossing, bridge rehabilitation and other B&B construction thereby guaranteeing meals and lodging for employees who work in these gangs. BMW seeks to guarantee employees assigned to support divisional units expenses, meals and lodging.

The BMW seeks to define zone gangs as surfacing, tie rehabilitation and undercutting when done in a highly mechanized manner with 25 or more employees. BMW proposes limit travel to only those gangs that need to use the equipment over large territories and to eliminate B&B zone gangs. B&B zone gangs are not large enough nor mechanized to the extent necessary to require employees to travel long distances to remain in them. BMW proposes to guarantee employees assigned to work with zone gangs expenses, meals and lodging.

The BMW seeks to permit employees an exercise of seniority when a regional gang moves out of their work zone. BMW seeks to guarantee employees assigned to work with regional gangs expenses, meals and lodging.

b. The Carriers

Conrail opposes the BMW's proposed definitions of regional, zone and divisional gangs. According to Conrail, BMW's proposal would erode the flexibilities negotiated in 1992. According to Conrail, there are currently two types of divisional gangs. Both types of divisional gangs work on an individual seniority district and perform any and all types of maintenance of way work. However, members of one type of gang have an assigned headquarters and return to their residence daily and are not provided meals and lodging. Members of divisional gangs with an assigned headquarters are transported under pay between the headquarters and the work site. The other type of divisional gang

travels throughout the division and its members are provided meals and lodging. According to Conrail, the BMW's proposal would provide meals and lodging to all divisional gangs whether or not assigned to headquarters and would increase weekend travel allowance by 400 percent.

Conrail opposes BMW's proposal with respect to zone gangs because it would eliminate the flexibilities negotiated in 1992 and would limit what a zone gang could do. The proposal would also increase expenses for zone gangs.

Conrail opposes BMW's proposal to allow exercise of seniority for regional gangs because it would eviscerate the core rational of the gang, keeping the gang together as a unit. There is currently no "bid and hold" rule for Conrail's regional gangs. Conrail also opposes the proposal that any employee providing support for a gang receive expenses, meals and lodging. The proposal would pay these costs even if the employee did not travel. According to Conrail, the annual cost of BMW's proposal would be \$19.22 million a year.

33. Selection of Positions - Rankings and Qualifications

a. The BMW

BMW proposes that the Board adopt the tentative agreement reached between the BMW and Conrail to rank employees in the selection of positions.

b. The Carriers

Conrail opposes any change in the rule.

34. Qualifications for Positions

a. The BMW

The BMW proposes a change in the Conrail rule to require assignment of an employee to a position regardless of qualification, subject to a reasonable opportunity for the employee to become qualified. The BMW's proposal for qualifications for positions also covers all major carriers in addition to Conrail.

b. The Carriers

Conrail opposes any change in the rule which would award positions without qualification. The proposed change would require Conrail to pay two employees (one qualified, one not) to fill one position and would decrease productivity. Conrail seeks to maintain the current rule regarding qualifications in order to assure the safety and continuity of operations. The other major Carriers agree with Conrail's position on qualifications for positions.

35. Accepting Positions Under Other Agreements

a. The BMW

The BMW proposes that Conrail and BMW adopt an agreement similar to the one in effect between the TCU and Conrail for all positions outside of the BMW. That provision would protect the seniority of BMW employees who elect to transfer to other craft for the duration of their probationary period in that craft plus 30 additional days.

b. The Carriers

Conrail does not object to the principle of BMW's proposal. However, the TCU agreement is an interim experiment which was adopted on a trial basis, as part of a larger package, and was limited to transfer to train service positions. Conrail is willing to pursue a similar approach with BMW.

36. Working Less Than a Full Day When Weather Conditions Prevent Work From Being Performed

a. The BMW

The BMW's proposal would permit employees to determine when weather conditions prevent work by a majority vote of the employees on the job. BMW proposes that this rule apply on Conrail, CSX and Chicago & North Western Railroads.

b. The Carriers

Conrail opposes BMW's proposal as an effort to secure pay for time not worked. The proposal would create ambiguity which would generate additional disputes. On Conrail, the current rule guarantees at least four hours' pay when production is curtailed due to adverse weather conditions. The other effected Carriers agree with Conrail's position on this proposal.

37. Meal Allowance

a. The BMW

BMW proposes that Conrail's practice of using a commissary company be discontinued. The BMW further seeks to require Conrail to have minimum staffing requirements for cooks and attendants on divisional, zone and regional gangs. Additionally, the BMW seeks to provide cooks and attendants a severance payment if Conrail elects to provide meals in a restaurant and lodging in a motel.

b. The Carriers

Conrail opposes this proposal as costly and seeks to maintain its right to furnish meals in a camp car, restaurant or through a commissary company.

38. Absent Without Permission - Rule 28(b)

a. The BMW

BMW seeks to eliminate Rule 28(b) of its agreement with Conrail. Rule 28(b) provides that an employee forfeits seniority when he or she is absent without permission in excess of 14 consecutive days. According to BMW, the rule is being misused to terminate seniority of sick or disabled employees.

b. The Carriers

Conrail seeks to maintain the rule because it puts the burden of maintaining contact with the carrier on the employee. Conrail maintains that the rule has been upheld by many arbitrators and provides explicit exceptions for sickness, disability or circumstances beyond the employee's control.

39. Headquarters and Camp Cars

a. The BMW

The BMW seeks to eliminate the top bunk from Conrail's camp cars for divisional, zone or regional gangs and to limit camp car occupancy to four individuals. According to BMW, Conrail's camp cars provide less effective square footage for their occupants than is suggested for incarcerated federal prisoners. BMW also proposes that the camp cars be cleaned regularly and have linen service.

b. The Carriers

Conrail opposes BMW's proposal, noting that its camp cars are in full compliance with FRA camp car regulations. Conrail maintains that its camp cars are cleaned regularly and that its practice with respect to sheets and towels is a matter of employee preference.

40. Piloting Track Equipment

a. The BMW

The BMW proposes that the work of piloting track equipment should be reserved exclusively to the track foreman classification. This proposal covers all major carriers except the Chicago & North Western.

b. The Carriers

Conrail opposes this proposal as costly and seeks to maintain its right to furnish meals in a camp car, restaurant or through a commissary company.

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40. Piloting Track Equipment

a. The BMW

The BMW proposes that the work of piloting track equipment should be reserved exclusively to the track foreman classification. This proposal covers all major carriers except the Chicago & North Western.

b. The Carriers

Conrail asserts that this proposal is not a mandatory subject of bargaining because BMW has never had the exclusive right to pilot track equipment. According to Conrail, this work has been performed by non-agreement employees and employees in other crafts. Additionally, Conrail maintains that moving track equipment can be done by one person. The effected Carriers agree with Conrail's position on this proposal.

41. Protection of the Railroad

a. The BMW

The BMW proposes that Conrail reserve the work of protecting the railroad when outsiders, such as contractors, are on or near the railroad exclusively to BMW track foremen.

b. The Carriers

Conrail opposes the exclusivity sought by BMW, noting that trainmen represented by the UTU have provided flagging protection for years. Conrail notes that historically it has not been BMW work to protect non-railroad employees and that the FRA has regulated in this area and that BMW did not prevail on exclusivity.

42. Expedited Arbitration Procedure for Discipline Cases

a. The BMW

The BMW seeks to amend the existing rule to create an expedited 60 day board to handle discipline cases. The BMW's proposal covers all major carriers.

b. The Carriers

The Carriers propose the establishment of a national committee to develop a uniform discipline rule for the entire craft.

43. Bidding and Displacement of Positions

a. The BMW

The BMW seeks a rule to permit unrestricted use of seniority. Such a rule would keep employees closer to home and is less disruptive to employees holding seniority in many classes. The BMW's proposal covers Burlington Northern, CSX, Norfolk Southern and Union Pacific.

b. The Carriers

- The Carriers oppose any change in the current rule. The current rule allows the carriers to use the experience that follows seniority in the most efficient and economical way.

44. Bulletin Procedure

a. The BMWE

The BMWE seeks to provide a uniform bulletin process on the Burlington Northern. BMWE seeks a bulletin process that requires the carrier to post advertisements every 15 days. That bulletin rule currently exists on three of the four BMWE territories comprising Burlington Northern.

b. The Carriers

Burlington Northern opposes any change to the rule. BMWE's proposal would effect about half of the work force. According to Burlington Northern, there is already too much turnover in employee positions and that should not be accelerated.

45. Rate Conversion Equalization

a. The BMWE

The BMWE seeks to establish a single rate of pay for comparable positions at the highest established rate of pay currently in effect on the property. Currently 82 -84 percent of the Carriers' employees already receive the highest available rate in the classification. The BMWE's proposal covers all major carriers.

b. The Carriers

The Carriers would be willing to establish a single rate of pay across the property on a cost neutral basis.

46. Basic Day (Inclement Weather Rule)

a. The BMWE

The BMWE proposes that, on Burlington Northern, crews of ten employees or more would receive a minimum of four hours pay when weather conditions prevent work from being performed and shelter is not available. Crews of fewer than ten employees would not be reduced. Three of five Burlington Northern/BMWE agreements already include this rule. BMWE contends that Burlington Northern sends employees home one minute before starting time to avoid inclement weather pay.

b. The Carriers

Burlington Northern believes that the current rules are adequate to protect employees from inclement weather.

47. Force Reduction

a. The BMW

The BMW's proposal would provide that an employee who is effected by force reduction or displacement will be provided necessary information to all exercise of seniority without loss of earnings. The BMW's proposal covers all major carriers.

b. The Carriers

The Carriers contend that they already provide this information to employees and no change in the rule is necessary.

48. Overtime Rates

a. The BMW

The BMW's proposal would require payment of double time rates when on duty in excess of 16 hours. If an employee is released during a regular shift, the remainder of the shift would be paid at double time. The BMW's proposal covers all major carriers except Chicago & North Western.

b. The Carriers

The Carrier's response to this proposal is that overtime rates are incorporated in the wage proposals and should be incorporated into the wage issue recommendations.

49. Overtime

a. The BMW

The BMW on Norfolk Southern seeks to include examples for calculation of overtime such as are contained in the Burlington Northern agreement. Norfolk Southern employees do not receive double time after 16 hours unless the 16 hours includes their regular shift.

b. The Carriers

Norfolk Southern's response to this proposal is that the issue is scheduled to be arbitrated in August, 1996. BMW has handled the issue as a minor dispute and it should remain one.

50. Rate Conversion Equalization

a. The BMWWE

The BMWWE seeks to eliminate all services rendered for monthly rated employees on Union Pacific and Atchison Topeka & Santa Fe.

b. The Carriers

In their response to BMWWE's proposal on monthly rated positions, the Carriers had no objection to this proposal so long as it is achieved on a cost neutral basis.

VI. RECOMMENDATIONS

In assessing the parties' respective positions and in reaching its recommendations, the Board has been guided by the following principles:

1. The parties have been given every opportunity to state their case and provide the Board with a complete understanding of the issues.
2. Each issue would be considered on its own merits as well as its relative position within a total contract.
3. The competitive and economic conditions so necessary for the carriers' survival are balanced with employment and institutional security so critical to the unions' survival.
4. Our recommendations would provide a framework for a stable, self-reliant and durable collective bargaining relationship.

A. General Wage Recommendations

1. Wages

We recommend the following wage package:

- (1) A lump sum payment of 1 percent of wages upon signing an agreement.
- (2) A 9 cent cost of living adjustment effective November 30, 1995 and rolled into the basic wage rate.
- (3) A 3.5 percent general wage increase, effective December 1, 1995.

- (4) A 3.0% lump sum payment, payable July 1, 1996.
- (5) A 3.5% general wage increase, effective July 1, 1997.
- (6) A 3.5% lump sum payment, payable July 1, 1998.
- (7) A 3.5% general wage increase, effective July 1, 1999.
- (8) A guaranteed COLA due on December 31, 1999, to be rolled into the basic rate. The COLA will be based on two measurement periods (March 1995 to March 1996 and March 1997 to March 1998), and will be calculated based on 0.3 cents for every point increase in the CPI-W, with a guaranteed floor and cap (i.e., the COLA formula will be applied to no less than a 4% increase and no more than a 6% increase in the CPI-W).
- (9) Semi-annual COLA will continue after the moratorium expires.

2. Equity Wage Adjustment

(a) The Organization believes that over time certain BMW work has been changed from laboring and simpler technology jobs to a total transformation of the craft, in particular over the past twenty years, so that presently nearly seventy percent of the Brotherhood's membership on Class I Railroads are working in high-skilled positions. Before the Board, the BMW relied in part on a job evaluation study it commissioned to assert that key BMW positions were underpaid compared with comparable jobs on the railroad. In discussions with BMW representatives after the close of the formal hearing, the Board pointed out that the BMW study did not establish its asserted purpose. We are convinced however from the total record before us that indeed seventy percent of the craft do presently work in skilled positions and that this 70 percent group is entitled to a \$.50 per hour skill differential.

The Board is convinced that the parties can meet and identify those skilled positions and the individuals working in skilled positions capped at precisely 70 percent of those working in the BMW craft as of the date the agreement is signed, with payment to the identified individuals retroactive to the effective date of the agreement.

(b) Should the parties be unable to identify the positions and the individuals entitled to the \$.50 per hour skill differential we recommend that a Job Study Committee be established to resolve any conflict between the parties on this matter. The Committee shall be made up of two Carrier representatives and two Organization representatives, who shall select a neutral member with industrial engineering expertise. This selection shall be from a list of individuals provided by the American Arbitration Association, with the parties being responsible to share equally the neutral's charges for services and expenses.

(c) The Board has identified two examples of intercraft rate inequities where individuals perform the same work as members of another craft on a Carrier and the other craft is compensated at a higher rate. The Sheet Metal Workers' International Association (SMWIA) Water Service Mechanic rate is higher than the BMW Water Service Mechanic positions and the International Association of Machinists (IAM) Traveling Mechanic's rate is higher than the BMW Equipment Maintainer, even though they do the same work. These positions are obviously skilled positions which should be part of the seventy percent group entitled to a \$.50 differential. These positions, and any other intercraft inequities that the parties can agree on should be corrected at the actual rate differential, if higher than the \$.50 per hour differential.

(d) Effective January 1, 2000 the skill differential set forth in paragraph (a) shall be increased by \$.20 per hour for all hours working in designated skilled positions as determined under either paragraph (a), (b) or (c). Also on this date individuals in trackman and all of the other classifications not covered by the seventy percent group identified in paragraph (a) shall receive a \$.25 per hour structural adjustment.

3. Entry Rates

Effective with the signing of the Agreement, we recommend that BMW employees be granted a two year rate progression commencing at 90 percent and advancing to 95 percent at the end of the first year and to full rate at the end of the second year of employment.

B. Health & Welfare and Rules Recommendations

4. Subcontracting/Outsourcing

We recommend the following rule apply on each Carrier:

The amount of subcontracting on a Carrier, measured by the ratio of adjusted engineering department purchased services (such services reduced by costs not related to contracting) to the total engineering department budget for the five-year period 1992-1996, will not be increased without employee protective consequences. In the event that subcontracting increases beyond that level, any BMW employee who is furloughed as a direct result of such increased subcontracting shall be provided New York Dock level protection for a dismissed employee (subject to the responsibilities associated with such protection).

The Board recommends that other proposals advanced by the Organization on subcontracting, including the Corman Material yard issue on Conrail, be withdrawn. All existing subcontracting agreements will remain in full effect.

5. Short Lines/ Successorship

The railroads should provide at least a 60-day notice of intent to sell or lease a line of railroad to a purchaser under 49 U.S.C. §10902. During the 60-day period, the parties shall meet upon the request of the Organization to discuss the planned transfer. The transaction agreement between the Carrier and the purchaser should obligate the purchaser to give priority hiring consideration to employees of the selling carrier who work on the line. Further, the agreement between the carrier and purchaser should obligate the purchaser to assume a neutral stance in any union organizing effort undertaken by the organization. Should any recommendation in this paragraph be deemed contrary to the Railway Labor Act, the remaining recommendations shall continue in full force and effect.

The selling carrier shall provide affected employees priority employment rights for other positions on the seller, both within craft and in other crafts where qualified. For access to positions within craft, the parties shall, at the request of the Organization, develop a system seniority roster for use in such transactions in the same manner as that provided in the UTU and BLE national settlements. In addition, employees securing positions on the selling carrier which require a change in residence shall be eligible for up to \$5,000 in relocation allowance, again in the same manner as provided in the UTU and BLE settlements.

Employees who secure a position with the buyer should be provided with an opportunity to return to the seller during the first 12-month period. During this 12-month period, employees shall be responsible for payment of dues or other appropriate assessments due the Organization and the selling carrier shall cooperate in withholding such sums under the appropriate Union Shop arrangement.

Employees displaced by the sale shall have recall rights on the seller's property, as a minimum, for a period equal to their company seniority.

6. Health Benefits

the Carriers' proposed enhanced Dental Benefit Plan and new Vision Care Plan are recommended effective January of 1999.

Benefit Eligibility: We recommend that the Railroad Employees National Health and Welfare Plan (the Plan) be amended, effective July 1, 1996, as provided in this section. In order to be covered by the Plan during any calendar month by virtue of rendering compensated service or receiving vacation pay in the immediately preceding calendar month (the "qualifying month") an employee must have rendered compensated service on or received vacation pay for, an aggregate of at least seven calendar days during the applicable qualifying month. Existing Plan provisions pertaining to eligibility for and termination of coverage not specifically amended by this section will continue in effect. The Board recommends that the parties resolve their differences concerning the eligibility requirement in a manner similar to that adopted by BRS in a side letter to its agreement with the Carriers.

The Board recommends that the request of the BMW regarding hospital association dues offset be withdrawn.

7. Expenses for Meals and Lodging and Travel Allowance

We recommend that the award of Arbitration Board No. 298 be amended to provide for a travel allowance for employees who are employed in the maintenance of way crafts who regularly are required throughout the work week to live away from home. We also recommend that on Carriers where expenses away from home are not determined by Arbitration Board No. 298, that the appropriate general chairman or chairmen be given the option of electing the below set forth travel allowance or retaining the travel allowance options that may be provided under their local agreements.

(a) Expenses Away From Home

The maximum reimbursement for actual reasonable lodging expenses provided for in Article I, Section A(3), should be increased from \$20.25 to \$23.50 per day.

The meal allowance provided for in Article I, Section B(1), B(2) and B(3), should be increased from \$4.75, \$9.50 and \$14.50 per day to \$6.25, \$12.75 and \$19.00.

The maximum reimbursement for actual meals and lodging provided for in Article II, Section B should be increased from \$34.75 per day to \$42.50 per day.

On July 1, 1998 we recommend the following changes be made:

The maximum reimbursement for actual reasonable lodging expenses provided for in Article I, Section A(3) should be increased for \$23.50 to \$26.75 per day.

The meal allowance provided in Article I, Sections B(1), B(2) and B(3) should be increased from \$6.25, \$12.75 and \$19.00 per day to \$7.00, \$14.25 and \$21.25.

The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B should be increased from \$42.50 per day to \$48.00.

On carriers where expenses away from home are not determined by the allowances made pursuant to the award of Arbitration Board No. 298, such allowances should be not less than those recommended herein.

We recommend that all other Organization proposals be withdrawn.

(b) Travel Allowance

At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the Carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the Carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

0 to 100 miles	\$ 0.00
101 to 200 miles	\$ 25.00
201 to 300 miles	\$ 50.00
301 to 400 miles	\$ 75.00
401 to 500 miles	\$ 100.00
Additional \$25.00 payments for each 100 mile increments.	

At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of \$12.50 for the mileage between 51 and 100 miles.

Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

For employees required to work over 400 miles from their residences the Carrier shall provide, and these employees shall have the option of electing, an air travel transportation package to enable these employees to return to their families once every three weeks. Ground transportation from the work site to the away from home airport shall be provided by each Carrier, and on the return trip the Carrier shall provide ground transportation from the away from home airport to the lodging site. In dealing with programmed work, the employees and Carrier may know how long the employees will be required to work beyond the 400 mile range, and the employer can require the employees to give advanced notice of their intention to elect the air transportation option so that the Carrier may take advantage of discounted air fares. Employees must make themselves available for work on at least ninety percent of the regularly scheduled work days during the three week period. And, they will not qualify for the previously set forth travel allowance during the three week period. They shall however be entitled to meals and lodging during the two away-from-home weekends in the three-week cycle.

We recommend that the Organization's proposals dealing with travel from one work point to another be withdrawn.

8. Work Site Reporting

We recommend that employees on production gangs pay starts thirty (30) minutes after leaving their lodging site for job sites and ends thirty (30) minutes after leaving the job site for the lodging site.

9. Workforce Stabilization

(a) The February 7, 1965 Agreement

The Board recommends that entitlement to certain elements of job security, currently available under the February 7, 1965 agreement, should be upgraded, so that employees who have at least ten continuous years of service will be entitled to the protection.

We recommend that the present transfer allowance of \$400 should be upgraded to \$800 upon the signing of a new agreement or addition thereto. Effective with the signing of a new agreement, the Organization and the Carriers shall amend the February 7, 1965 Agreement, as follows:

Article I, Section 1 of the February 7, 1965 Agreement shall be amended on the effective date of this Agreement to read as follows:

Section 1 - All employees, other than seasonal employees, who are in active service and who have or attain ten (10) or more years' of employment relationship will be retained in service subject to compensation as herein provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. For the purpose of this Agreement, the term "active service" is defined to include all employees working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not the date on which such ten or more years of employment relationship is acquired was a work day). An employee who is not regularly assigned on the date the employee is otherwise eligible to achieve protected status under this Section will be deemed to be protected on the first day assigned to a regular position in accordance with existing rules of the BMW Agreement."

Article I, Section 2, of the February 7, 1965 Agreement shall be amended to read as follows:

Section 2 - Seasonal employees, who had compensated service during each of the years 1995, 1996, and 1997 who otherwise meet the definition of "protected" employees under Section I will be offered employment in future years at least equivalent to what they performed in 1997, unless or until retired, discharged for cause, or otherwise removed by natural attrition."

Article IV, Section 1, of the February 7, 1965 Agreement shall be amended to read as follows:

"Section 1 - Subject to the provisions of Section 3 of this Article IV, protected employees who hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position as of the date they become protected; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage increases."

(b) Conrail Supplemental Unemployment Plan

We recommend that Conrail adopt any modifications made to the Conrail Supplemental Unemployment Plan in Conrail's tentative agreement with the BRS. Other than any such modifications, we recommend that the Organization's proposals be withdrawn.

(c) Work Force Stabilization

The Board recommends that the Work Force Stabilization (WFS) Program effective on January 18, 1994, and applied retroactively back to July 29, 1991 shall continue in effect for the new agreement, and shall entitle an employee initially assigned to an WFS gang when it starts its work during the production season for the calendar year, six months of WFS work benefits or WFS unemployment benefits, subject to the terms of the agreement.

10. Regional and System-Wide Production Gangs

(a) In a dispute between the BMWE and the Burlington Northern, Arbitrator Joseph A. Sickles, on June 15, 1992, concluded that a production gang was "heavily mechanized and mobile, continuously performing specific, programmed, major repair and replacement work utilizing a substantial number of employees." He defined "substantial number of employees" as "no fewer than 20 employees." The Board believes that this is an appropriate definition of production gangs, which we recommend.

(b) A Carrier shall give at least 60 days' written notice to the General Chairman or the General Chairmen of its intention to establish a regional or system-wide gang for the purpose of working over specified territory of the Carrier or throughout its territory. The notice will include the number and staffing of the gang the Carrier intends to operate during the work season, as well as identification of the location, beginning and ending mile post location of the work, starting and ending date of the project and the seniority districts involved.

If the parties are unable to reach agreement concerning the changes proposed by the Carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the

matters set forth above to the final and binding arbitration procedures previously created for the resolution of this type of dispute.

(c) An individual who bids and is subsequently assigned to work on a regional and system-wide production gang may be held to that gang for a period of no more than 30 days. After such time, the employee will be entitled to bid for other jobs with the carrier, subject to the limitation that no more than ten percent of a gang may bid off during a one week period.

(d) Each employee assigned to a regional or system production gang who does not leave the gang voluntarily for a period of at least 6 months shall be entitled to a lump sum payment annually equal to five percent of his or her compensation earned during the calendar year on that gang. Such compensation shall not exceed \$1,000 and, it shall be paid within 30 days of the completion of the employee's service on the gang. If the Carrier disbands the gang in less than six months, the Carrier will be responsible for payment of the production incentive earned as of that date.

(e) Existing property-specific agreements, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each carrier or sub-section of Carrier property.

(f) This recommendation is intended to continue the use of regional and system gangs on Carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to Carriers which opted to operate under other local provisions.

11. Sickness Benefits and Supplemental Sickness

The Board recommends increases in supplemental sickness benefits as detailed in Article VII of the BRS Agreement. The Board further recommends that the Organization's sickness benefits and supplemental sickness proposals be withdrawn.

12. Off-Track Vehicle Benefits

Effective upon signing the new agreement, we recommend that Article V of the Mediation Agreement of February 10, 1971, as amended, be revised as follows:

(a) That the following language be substituted for existing paragraph (a) of Article V:

This Article is intended to cover accidents involving employees covered by this agreement while such employees are operating, riding in, boarding, or alighting from off-track vehicles authorized by the carrier and any accident which occurs while an employee is under pay.

(b) That the monetary amounts referred to in paragraph (b) (1) of Article V be revised to reflect an amount of \$300,000.00, where there is presently reference to \$150,000.00 and \$150,000.00 where there is presently reference to \$75,000.00.

(c) That the following language be substituted for existing paragraph (b) (3) of Article V:

“That the carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee’s basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of \$1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act.”

(d) That where there is reference to the figure \$1,000,000.00 in paragraph (b) (4) of Article V that said figure be increased to reflect an amount of \$10,000,000.00.

13. Alternative Work Week and Rest Days

The Board recommends that the Organization’s position be withdrawn.

14. Starting Times

The Board recommends that the Organization’s position be withdrawn.

15. Meal Periods

The Board recommends that the Organization’s position be withdrawn.

16. Paid Leave

We recommend that employees be permitted to take one week of their vacation allowance per year in less than 40 hour increments. We recommend that other proposals by the Organization concerning vacation, holidays and other leave be withdrawn.

17. Combining and Realigning Seniority Districts

The Board recommends that the Organization’s position be withdrawn.

18. Protective Clothing and Equipment

We recommend that BMW's proposal on protective clothing and equipment be accepted, with the exception of shoes, with the limitation that the Carriers shall make the determination on what protective clothing and equipment is necessary. This subject may be addressed in a more comprehensive manner under the process designed to deal with safety as set forth in Issue 30.

19. Intra-Craft Jurisdiction

The Board recommends that the Carriers' proposal be withdrawn.

20. Savings Clause

The savings clause issue is addressed where the Board deems it specifically necessary.

21. Moratorium

The Board recommends a moratorium period for all matters on which notices might properly have been served when the last moratorium ended on January 1, 1995 to be in effect through December 31, 1999. Notices for changes under Section 6 of the Railway Labor Act, accordingly, may be served by any of the parties on another party no earlier than November 1, 1999.

C. BMW Committee Proposals

Issues were raised by one or more of BMW's local committees. Some local committees joined in with other local committees seeking a rule or benefit where they had not filed a Section 6 Notice or their Section 6 Notice was withdrawn. The Board's recommendation, if any, on the following proposals are only intended to have effect on those properties where the local union committee had actually served a Section 6 Notice on the particular subject in question and such notice has not been withdrawn.

22. Temporary Transfers

The Board recommends that the Carriers' position be withdrawn.

23. Retention of Seniority

The Board recommends the elimination of the requirement for employees to file their names and addresses with carriers when furloughed to protect seniority. However, employees have the obligation to keep Carriers current as to their current address and telephone numbers. The parties themselves should resolve what role, if any, the local committees may take in contacting furloughed employees who cannot be reached at their last address and the consequences of an employee's failure to provide a current address and telephone number.

24. Monthly Rated Positions

The Board recommends that monthly rated positions be converted to hourly rates on a cost neutral basis.

25. Printing Agreements

The Board recommends that each Carrier print and distribute copies of their comprehensive agreement to all affected employees within 90 days after the parties have agreed and signed off on the agreement's contents.

26. Location of Meetings and Claims Conferences; 31. Due Process Improvement Proposals; 42. Expedited Arbitration Procedure for Discipline Case

This Board is of the view that a joint, cooperative effort to review all aspects of existing discipline rules being applied on Class I railroads should be pursued. We recommend that a National Discipline Study Committee be formed to undertake this study and develop a uniform discipline rule for the entire craft. The committee shall consist of a representative from each Class I railroad involved in these proceedings before this Emergency Board and a corresponding Organization representative from each of these railroad properties. The parties shall select a third party facilitator to chair the committees, with the parties sharing equally the cost of the facilitator. If the parties are unable to agree on the choice of the facilitator they shall select a facilitator from a listing of arbitrators provided by the National Mediation Board. The committee shall form within ninety days after the signing of the new national agreement, and shall conclude its work within 90 days after its creation, or as mutually agreed to by the parties. The uniform discipline rule developed by the parties shall then be considered for adoption on each property within thirty days of the issuance of the rule.

We recommend all of the other Organization proposals not dealing with discipline be withdrawn.

27. Currency Conversion

We recommend that the employees covered by the Section 6 Notice should be paid in the equivalent of U.S. currency. The dollar rates set forth in the national agreements are U.S. dollars not Canadian dollars.

28. Camper Allowance

Some four hundred and fifty employees on the approved camper list are allowed to utilize campers on the Santa Fe. We believe that these employees should receive an increase in the camper allowance, but we are concerned over the economic impact resulting from the Carriers' assertion that the allowance extends for 60 days beyond the time they return to their home station and are no longer away from home. We recommend that the allowance be raised to \$32. As the Carrier asserts, these

individuals can elect to receive the per diem that is also available. The parties themselves, in the context of a more complete record, may wish to more fully discuss this matter and reach an accord on this issue.

29. Commercial Drivers License

In view of the recent award of the CDL differential, the Board does not recommend an increase in the differential at this time. However, the Board recommends limited cost of living adjustments, applying a formula similar to that applied to wage recommendations, to the existing CDL differential on January 1, 1997 and January 1, 1999. The only change from the formula applied to the wage recommendations is that the formula will use a single measurement period. The measurement period for the first adjustment will be from March 1995 to March 1996 and the second adjustment will be from March 1997 to March 1998. The Board recommends withdrawal of the Organization's proposal that the differential be extended to FHWA issues.

30. Safety

The Board is of the view that joint, cooperative efforts to improve safety in the workplace should be encouraged. We recommend that the parties develop a program, in conferences on each property, consistent with a number of guiding principles.

(a) Joint, cooperative efforts at improving safety in the workplace, including training in safe work practices.

(b) Both union and individual employee participation should be encouraged but not required. The parties will consult with each other concerning the selection of participants. However, each party will have the ultimate responsibility for determining their respective participants.

(c) Efforts should focus on prevention of accidents or injuries and any other topic which might contribute to a safe workplace.

(d) The program should supplement, but not substitute for preexisting employee and/or union safety committee efforts on individual properties.

(e) Third party facilitation should be considered if joint decision making appears impaired.

(f) If no agreement is reached within six months upon carrier receipt of the written request the parties shall establish a Board of Arbitration. The Board shall consist of three arbitrators. Each party shall select one arbitrator and those two selected arbitrators shall select a third arbitrator who shall be the Chair of the Board. If the two arbitrators cannot agree on the choice of the third member, they shall select that arbitrator by a process of alternate strike from a list of seven provided by the National Mediation Board. The Board's jurisdiction is limited to the establishment of a joint Labor-

Management cooperative safety program on safety and the issues of safety identified in the BMW November 1, 1994 Section 6 Notice.

(g) For a period of sixty (60) days after the establishment of the Board the parties shall negotiate with the mediatory assistance of the members of the Board.

(h) If no agreement is reached within the sixty day period of mediation, the Board shall fashion an agreement between the parties on the issues. The Board shall determine its rules of procedure and shall issue its award within 90 days of its creation.

(i) Each party will pay for the costs of their selected arbitrator and share the costs of the third arbitrator.

31. Due Process Improvements

See the Board's recommendation number 26.

32. Zone, Regional and Divisional Units

The Board recommends that the Organization's position be withdrawn.

33. Selection of Positions

The Board recommends Conrail's offer, dated February 1, 1996, on this topic.

34. Qualifications for Positions

The Board recommends that the Organization's position be withdrawn.

35. Accepting Other Positions under Other Agreements

The Board recommends that the Organization's position be withdrawn.

36. Working Less than a Full Day When Weather Conditions Prevent Work From Being Performed

The Board recommends that the Organization's position be withdrawn.

37. Meal Allowance

The Board recommends that the Organization's position be withdrawn.

38. Absent Without Permission

The Board recommends that the Organization's position be withdrawn.

39. Headquarters and Camp Cars

The Board recommends that the Organization's position be withdrawn.

40. Piloting Track Equipment

The Board recommends that the Organization's position be withdrawn.

41. Protection of the Railroad

The Board recommends that the Organization's position be withdrawn.

42. Expedited Arbitration Procedure

See the Board's recommendation number 26.

43. Bidding and Displacement of Positions

The Board recommend that the Organization's position be withdrawn.

44. Bulletin Procedure

The Board recommends that the Organization's position be withdrawn.

45. Rate Conversion Equalization

The Board recommends that the Organization's position be withdrawn.

46. Basic Day -- Inclement Weather

We recommend that Rule 25E be amended in part to include the following new language as underlined:

When hourly rated employees are required to report at usual starting time and place for the day's work, including when employees are bused from their lodging site to the work site, they will be allowed a minimum of three (3) hours at pro rata rate....

47. Force Reduction

The Board recommends that the Organization's position be withdrawn.

48. Overtime Rates

The Board recommends that the Organization's position be withdrawn.

49. Overtime

There is currently an arbitration pending to resolve this issue. The Board leaves this matter to the arbitration process and it recommends that the Organization's proposal be withdrawn.

50. Monthly Rated Positions

The Board recommends that monthly rated positions be converted to hourly rates on a cost neutral basis.

D. Issues Not Covered

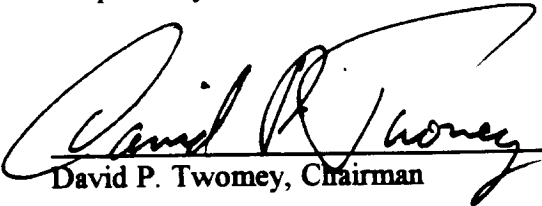
Any issues in dispute before the Board on which no recommendations were made, or which are not mentioned in the Report shall be deemed withdrawn.

VII. CONCLUSION

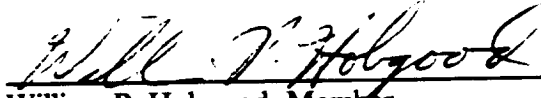
The authority of this Board is terminated on June 23, 1996. This concludes the Board's involvement in this process. The parties now have the benefit of our recommendation, which should form the basis for their collective bargaining agreement. This report is not intended to write the precise language of the collective bargaining agreement. The parties themselves must perform that function. They may see less complicated means of attaining certain goals set forth in the report and recommendations, and they may make other adjustments to the recommendations, as needed. They themselves must work through the ambiguities that inevitably appear in a document dealing with so many complex issues presented in such a short period of time. We are confident however that the parties can see the benefits for each side if an agreement is expeditiously reached, and they can see the loss of these benefits each and every day the agreement is deferred. We are very confident that our recommendations can form the basis for the resolution of the issues before this Board.

We would like to thank the parties for the professional manner in which they presented their cases, and thank them as well for their patience and cooperation during the extensive formal and informal proceedings of the Board. We are grateful to Joyce M. Klein, Esq., for the excellent professional assistance she provided the Board.

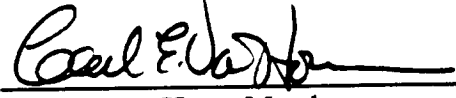
Respectfully,



David P. Twomey, Chairman



William P. Hobgood, Member



Carl E. Van Horn, Member

EXECUTIVE ORDER

. 13003 . . .

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES
BETWEEN CERTAIN RAILROADS REPRESENTED BY THE NATIONAL
CARRIERS' CONFERENCE COMMITTEE OF THE NATIONAL RAILWAY
LABOR CONFERENCE AND THEIR EMPLOYEES REPRESENTED
BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

Disputes exist between certain railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference, including Consolidated Rail Corporation (including the Clearfield Cluster), Burlington Northern Railroad Co., CSX Transportation Inc., Norfolk Southern Railway Co., Atchison, Topeka and Santa Fe Railway Co., Union Pacific Railroad, Chicago & North Western Railway Co., Kansas City Southern Railway Co., and their employees represented by the Brotherhood of Maintenance of Way Employees. The railroads 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").

In the judgment of the National Mediation Board, these disputes threaten substantially to interrupt interstate commerce to a degree that would deprive a section of the country of essential transportation service.

NOW, ~~THEREFORE~~, by the authority vested in me as President by the Constitution and the laws of the United States, including section 10 of the Act (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. Establishment of Emergency Board ("Board").

There is established effective May 15, 1996, a Board of three members to be appointed by the President to investigate any and all of the disputes raised in mediation. No member shall be pecuniarily or otherwise interested in any organization of

railroads or the employees in the conditions out of which the disputes arose.

Sec. 1. 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.

Sec. 2. Expiration. The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William D. Clinton

THE WHITE HOUSE,

May 17, 1996.

RAILROADS

Alton & Southern Railroad
Atchison, Topeka and Santa Fe Railway Company
Bangor and Arcectook Railroad Company
Belt Railway Company of Chicago
Burlington Northern Railroad Company
Camas Prairie Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation (including the Clearfield Cluster)
CSX Transportation, Inc.
 The Baltimore and Ohio Chicago Terminal Company
 The Baltimore and Ohio Railroad Company (former)
 The Chesapeake and Ohio Railway Company (former)
 (Northern and Southern Regions)
 Chicago and Eastern Illinois Railroad Company (former)
 Clinchfield Railroad (former)
 Louisville and Nashville Railroad Company (former)
 Monon Railroad (former)
 Richmond, Fredericksburg & Potomac Railway Company
 Seaboard Coast Line Railroad Company (former)
 Toledo Terminal Railroad Company (former)
 Western Maryland Railway Company (former)
 Western Railway of Alabama
Galveston, Houston and Henderson Railroad
Houston Belt and Terminal Railway
The Kansas City Southern Railway Company
 CP-Kansas City Southern Joint Agency
Lake Superior & Ishpeming Railroad Company
Longview, Portland & Northern Railway Company
Los Angeles Junction Railway
Manufacturers Railway Company
Meridian & Bigbee Railroad Company
Missouri-Kansas-Texas Railroad
 Oklahoma, Kansas & Texas Railroad
Missouri Pacific Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
 The Alabama Great Southern Railroad Company
 Atlantic & East Carolina Railway Company
 Central of Georgia Railroad Company
 The Cincinnati, New Orleans and Texas Pacific
 Railway Company
 Georgia Southern and Florida Railway Company
 Interstate Railroad Company
 Norfolk & Western Railway Company
 Tennessee, Alabama and Georgia Railway Company
 Tennessee Railway Company
Northeast Illinois Regional Commuter Railroad Corporation
Northern Indiana Commuter Transportation District
Peoria and Pekin Union Railway Company
The Pittsburgh, Chartiers & Youghiogheny Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Spokane International Railroad
Terminal Railroad Association of St. Louis
Union Pacific Railroad
Utah Railway Company
Western Pacific Railroad
Wichita Terminal Association