# REPORT

to

# THE PRESIDENT

by

# EMERGENCY BOARD

# NO. 230

Submitted pursuant to Executive Order No. 13004
Dated May 17, 1996, and
Section 10 of
The Railway Labor Act, as amended

---

Investigation of dispute between the railroads represented by the National Carriers' Conference Committee of the National Railway Labor Conference and their employees represented by the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers and the Sheet Metal Workers' International Association.

(National Mediation Board Case Nos. A-12769, A-12771 and A-12772)

---

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 17, 1996, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order No. 13004, you established 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 International Association of Machinists and Aerospace Workers, International Brotherhood of Electrical Workers, and Sheet Metal Workers' International Association.

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

Respectfully,

Richard Mittenthal, Chairman

Robert M. O'Brien, Member

M. David Vaughn, Member

# TABLE OF CONTENTS



## Appendices

# I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 230 (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 13004. The Board was ordered to investigate and report its finding and recommendations regarding unadjusted disputes between the National Carriers' Conference Committee of the National Railway Labor Conference (NRLC) and their employees represented by the International Association of Machinists & Aerospace Workers, the International Brotherhood of Electrical Workers, the Sheet Metal Workers' International Association, and the Brotherhood of Railroad Signalmen. A copy of the Executive Order is attached as Appendix "A".

On May 17, 1996, the President appointed Richard Mittenthal of Bingham Farms, Michigan, as Chairman of the Board, and Robert M. O'Brien of Milton, Massachusetts, and M. David Vaughn, of Gaithersburg, Maryland, as Members. The National Mediation Board appointed Roland Watkins, Esq., as Special Counsel to the Board.

# II. PARTIES TO THE DISPUTE

## A. THE CARRIERS' CONFERENCE

The carriers involved in this dispute 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 this

dispute through powers of attorney provided to the NRLC and its negotiating committee.

B. THE LABOR ORGANIZATIONS

Although the Executive Order listed four labor organizations (unions), the disputes before the Board involve only three. They are:

> the International Association of Machinists & Aerospace Workers (IAM);
>
> the International Brotherhood of Electrical Workers (IBEW); and
>
> the Sheet Metal Workers' International Association (SMWIA).

On May 21, 1996, the Board received the following notice signed by W.D. Pickett, President of the Brotherhood of Railroad Signalmen, and Robert F. Allen, Chairman of the NRLC:

> Based upon the tentative agreement reached between the Brotherhood of Railroad Signalmen and the National Carriers Conference Committee, you are advised that the above named organization will not participate in the proceedings with the Shopcrafts scheduled to begin May 23rd, 1996.

## III. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting with representatives of the parties on May 20, 1996.

The Board conducted hearings on the issues in Washington, D.C., on May 23, 24 and 25, 1996. The parties were given full and adequate opportunity to present oral testimony, documentary evidence, and argument in support of their respective positions. Their closing-and-rebuttal briefs were filed on June 4, 1996. The parties agreed to and the President approved an extension of the time that the Board had to report its recommendations until June 24, 1996. The approval letter is attached as Appendix "B".

The unions presented their positions through written statements and oral testimony by William L. Scheri, Vice President, Transportation, IAM; Norman D. Schwitalla, International Vice President, IBEW; Donald C. Buchanan, Director of Railroad and Shipyard Workers, SMWIA; Thomas R. Roth, President, The Labor Bureau, Inc.; James J. Kilgallon, President, Ruttenberg, Kilgallon & Associates, Inc.; Thomas Harter, consultant on employee benefits programs; and Robert L. Reynolds, President-Directing General Chairman, IAM District Lodge 19.

The IAM was represented by Joseph Guerrieri, Jr., Esq., of Guerrieri, Edmond & Clayman, P.C. The IBEW and SMWIA were represented by Michael S. Wolly, Esq., of Zwerdling, Paul, Leibig, Kahn, Thompson & Wolly, P.C.

The carriers presented their positions through written statements and oral testimony by Robert F. Allen, Chairman of the NRLC; Robert W. Anestis, President, Anestis and Company; Tom Finkbinder, Vice President, Intermodal, Norfolk Southern Corporation; Dan Mazur, Assistant Vice President of Asset

Utilization and Development, Unit Train Service Group, Consolidated Rail Corporation (Conrail); Michael F. Corbett, Co-founder and Director of Research and Member Programs, The Outsourcing Institute; Dr. Leland S. Case, economics consultant; David Miller, Assistant Vice President of Maintenance, Planning, Scheduling, Engineering and Mechanical Work, CSX Transportation; Jack Jolley, Director of Systems Locomotive Shops, Union Pacific Railroad; Craig Rockey, Senior Assistant Vice President, Association of American Railroads; Don Tutko, Managing Director, Conrail; Don Graab, Conrail; Anthony J. Licate, Director of Labor Relations, Conrail; Warren Comiskey, Director of Labor Relations, CSX Transportation; Dennis Arouca, Vice President of Labor Relations, Conrail; and David S. Evans, Senior Vice President of National Economic Research Associates, Inc.

## IV. HISTORY OF THE DISPUTE

On or about November 1, 1994, the NRLC, in accordance with Section 6 of the Railway Labor Act, served notice on the IAM of its demands for changes in the provisions of numerous existing collective bargaining agreements. The IAM, on or about November 3, 1994, served its notice on individual railroads. The parties commenced direct bargaining on November 20, 1994. Direct bargaining did not result in an agreement. The IAM, on August 22, 1995, applied to the NMB for its mediatory service in resolving the disputes. The application was docketed as NMB Case No. A-12769.

On or about November 1, 1994, the IBEW served notice on the individual railroads. The NRLC served its notice on the IBEW during this period. Because direct bargaining did not result in an agreement, the IBEW applied to the NMB on August 24, 1995. The application was docketed as NMB Case No. A-12771.

The NRLC served its notice on the SMWIA on or about November 1, 1994. The SMWIA served its notice on the individual railroads on or about November 11, 1994. The SMWIA notified the NRLC, on August 23, 1995, that direct bargaining had failed to produce an agreement. On August 23, 1995, SMWIA applied to the NMB for its mediatory service. The application was docketed as NMB Case No. A-12772.

Mediation concerning the three applications was handled concurrently. The NMB assigned Mediator Richard A. Hanusz to conduct the mediation. Chairwoman Magdalena G. Jacobsen subsequently assumed the mediation role. Mediation was not successful in resolving the disputes.

On April 15, 1996, the NMB in accordance with Section 5, First, of the Railway Labor Act, urged the unions to enter into an agreement to submit their respective disputes to arbitration. On April 17, 1996, each union declined this proffer. Consequently, the NMB served notice that it was terminating its mediatory efforts.

Pursuant to Section 10 of the Railway Labor Act, the NMB then advised the President 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, thereupon issued Executive Order No. 13004 on May 17, 1996, to create this Presidential Emergency Board (PEB) to investigate and report concerning these disputes.

## V. INTRODUCTION

The initial question before this Board concerns the significance of what has been accomplished so far in this round of collective bargaining.

We take note of the May 1996 award by Arbitration Board No. 559 that resolved a dispute between the carriers and the United Transportation Union (UTU) over wages and other conditions of employment. That award covers conductors, brakemen, yardmen, engineers and yardmasters, about 22 percent of the organized work force employed by the carriers. We take note also of the collective bargaining agreements (CBAs) recently negotiated between the carriers and the Brotherhood of Railway Signalmen (BRS) and between the carriers and the Brotherhood of Locomotive Engineers (BLE). The first of such CBAs covers signalmen, some 3.3 percent of the organized work force, and has not yet been ratified by the union membership. The second covers engineers, roughly 12 percent of the work force. This CBA, however, was subject to further negotiations at each rail property and ratification by the engineers at each property. Separate ratifications have occurred at many of the properties.

This award and the CBAs dealt with wages, health benefits, moratoria, skill differentials, rules changes, and so on. Most of these matters are in dispute between the carriers and the shopcraft unions (IAM, IBEW, and SMWIA) in the present case.

The carriers' position is that "a pattern has been firmly established in this round of negotiations by the settlements with three of the national labor organizations, covering both operating and nonoperating employees and consisting of some 45 percent of the carriers' unionized work force." They urge that this pattern should be followed in the present case. They maintain that a pattern can be created through an arbitration award or through CBAs with unions representing less than a majority of the work force and that PEBs have in the past been careful to honor a pattern. They believe that the industry must treat employees of different unions on a "uniform, nondiscriminatory basis" and that a failure to do so would not only disturb employee morale but would also threaten the "stability of. . . labor

relations." In this connection, they stress, any departure from the pattern would have the effect of discouraging unions from making early settlements and encouraging unions to try "leapfrogging", that is, attempting to outdo one another. They contend that such behavior would necessarily destabilize the parity arrangements and historic relationships between the various crafts and their CBAs.

The carriers' view thus is that this Board should grant the shopcraft employees no more than the three other unions have already gained through arbitration or negotiation. They ask that the pattern be recognized and respected.

The shopcraft unions challenge most of the carriers' claims. They insist, for the following reasons, that there is no pattern. First, the UTU agreement imposed by the arbitration award was twice rejected by the employees. Such an agreement has never been relied upon by a PEB to establish a pattern. Second, the BRS agreement has not been ratified but in any event provides significant additional value to signalmen beyond what is provided by the UTU agreement. Moreover, because the BRS is one of the smaller rail unions, its agreement should not be allowed to serve as a pattern for other non-operating crafts. Third, the BLE agreements vary widely from property to property and also provide significant additional value beyond what is provided by the UTU agreement. Fourth, unions representing more than 90 percent of the non-operating employees have rejected the UTU agreement as a basis for settlement. And the vast majority of the UTU, BLE and BRS people are not shopcraft employees.

In other words, the shopcraft unions insist that a pattern cannot be said to have emerged under the circumstances confronting this Board. They contend they are entitled to have their claims judged on their own merits without regard to any alleged pattern. They state that given the "variety of settlements" mentioned above,

there can be no pattern and there would be no destabilization of existing wage and contractual relationships if the Board granted the unions' demands.

We agree with the principles stated in PEB 220, namely, ". . . it [is] critical to the public interest that labor relations and collective bargaining on the nation's railroads be fair, stable, and reasonably consistent" and "political competition between and among unions for supremacy of benefits, with its ineluctably destabilizing consequences, is damaging to the public interest." PEB 220 hence treated the PEB 219 recommendations, affecting some 95 percent of the industry's employees, as "presumptively applicable" to the IAM-represented employees before PEB 220 and ruled that this "presumption" was a "rebuttable one."

The situation in this case is different in several respects. True, settlements have been negotiated by responsible union officials for the UTU, BRS and BLE. True, those settlements do suggest an emerging pattern with regard to wages (that is, general wage increases and other benefits). However, these agreements together cover less than 40 percent of the unionized work force and do not cover the traditional shopcraft employees.

More important, the BLE agreements appear to generate significant money benefits (for example, a trip payment subject to future wage increases, profit sharing, personal leave days without restriction, and the very real possibility of a certification differential) beyond what is found in the UTU agreement. And the BRS agreement similarly appears to produce significant benefits of value (for example, a large percentage increase in differentials at the end of the agreement and lifetime pay protection for signalmen with ten or more years of service) beyond what is found in the UTU agreement. Indeed, the UTU agreement itself gives the covered employees a substantial money benefit by maintaining the base day at 130 miles and applying wage increases to overmiles. Money benefits similar to those in the above

settlements cannot be found in the wage package offered the shopcraft unions – IAM, IBEW, and SMWIA.

We believe, given these circumstances, that the pattern upon which the carriers rely is not as clear or compelling as the carriers would have us believe. We find that the wage level and other benefits set forth in the UTU, BLE and BRS agreements ought to be a large influence on our decision but cannot be treated as presumptively correct or controlling.

## VI. ISSUES, POSITIONS OF PARTIES AND RECOMMENDATIONS

### A. WAGES

The carriers propose that shopcraft employees receive the same wage package as has been awarded through arbitration to the UTU and negotiated with the BLE and BRS. That package consists of the following:

| | |
|---|---|
| November 30, 1995 | nine cent COLA rolled into basic rates |
| December 1, 1995 | 3.5 percent general wage increase |
| Effective date of agreement | 1 percent lump sum bonus (less seven cent COLA paid in 1996) or UTU dollar equivalent |
| July 1, 1996 | 3.0 percent lump sum |
| July 1, 1997 | 3.5 percent general wage increase |

| | |
|---|---|
| July 1, 1998 | 3.5 percent lump sum |
| July 1, 1999 | 3.5 percent general wage increase |
| December 31, 1999 | Guaranteed COLA rolled into base rates; floor, cap and formula same as in UTU/BLE/BRS agreements |
| July 1, 2000 | Post-agreement semi-annual COLA beginning July 1, 2000, similar to post-agreement COLA in last round of negotiations |

The shopcraft unions propose the following wage package over a period of three years rather than five:

| | |
|---|---|
| January 1, 1995 | 5 percent general wage increase |
| January 1, 1996 | 5 percent general wage increase |
| January 1, 1997 | 5 percent general wage increase. Each of such increases to be fully retroactive as applicable |
| July 1, 1995, 1996 and 1997 | Annual COLA to be effective on July 1 of each year, calculated on the basis of the present escalator formula |

Shopcraft Unions' Position

The unions rely heavily upon the industry's large success in recent years. They stress that since 1990, net profits of the class I carriers have increased 78 percent, CEO compensation adjusted for inflation has risen 50 percent, and common stock value has grown by 99 percent. They argue that notwithstanding these remarkable gains, real wages of shopcraft employees adjusted for inflation have declined more than 12.6 percent during this period even though their productivity has increased more than 200 percent. They allege that between 1985 and 1995, shopcraft employee wage increases totaled 17.2 percent while the consumer price index (CPI-W) rose 40.2 percent. Or, since 1990, their wages rose 10.5 percent while the CPI-W rose over 20 percent. They insist that only through adoption of their wage proposal will this "downward spiral" be reversed.

The unions contend that this inferior wage performance was largely the result of PEB 219's recommendations which were based on incorrect predictions of the industry's prospects. They urge that the industry today is extremely healthy, whether measured from the standpoint of profitability, labor cost, capital structure, liquidity, operating ratio or traffic trends. They assert that employees in other industries (or in other segments of the rail industry) with comparable skills have done much better. They conclude that a fair and equitable agreement requires no less than the wage package they have proposed.

Carriers' Position

The carriers do not raise an "inability to pay" defense. They nevertheless assert that a realistic appraisal of industry economics requires railroads to

"continue to find ways to reduce their costs, not increase them, [in order] to compete in the deregulated transportation marketplace." They stress that freight revenues have grown very slowly and that industry profits are attributable to large improvements in productivity which have in turn stemmed from new technologies, a much smaller work force, and carefully rationalized rail operations. They note that the market share of railroads with respect to freight transportation has fallen, that yields (namely, freight revenue per ton mile) have eroded, that unit prices have therefore fallen, that capital needs remain high, that return on investment while rising still does not compare favorably with most industries, and that a cash shortfall (that is, an inability of rail operations alone to cover taxes and fixed charges) still plagues the industry. They claim, in short, that the condition of the class I railroads is not at all as sanguine as the shopcraft unions would have this Board believe.

Quite apart from railway economics, the carriers insist that shopcraft employees are extremely well paid. They have compared their shopcraft employees with others outside the rail industry who perform electrician, machinist and sheet metal work. They allege that these analyses reveal that rail shopcraft employees receive higher hourly wages, greater fringe benefits, and larger annual compensation than the comparables. They point to the rate of wage increases as well and assert that shopcraft employee wages have risen as rapidly or more rapidly than the rate of increase for others. And they contend too that shopcraft wages have risen faster than the cost-of-living. They conclude that to recommend anything more than the wage package they have offered would not be fair and reasonable.

Recommendations

As we have already explained, the pattern emerging from the UTU award and imposed agreement and the subsequent BLE and BRS agreements should have a "large influence" on this Board but cannot be controlling. It is difficult to quantify the money value of these agreements beyond what is contained in the general wage increases and lump sums. But we believe from our study of the record that the UTU, BLE, and BRS have obtained significant value beyond that which is found in the carriers' offer to the shopcraft unions. We find too that we are unable to recommend comparable value to the shopcraft employees through such means as skill differentials or shift premiums. We note further that shopcraft employees are a unique group whose unique skills and responsibilities are typically developed through a lengthy apprenticeship program. That uniqueness, coupled with our view of the existing agreements in relation to the carriers' present offer, warrants special consideration of the shopcraft employees' situation.

Real wages of shopcraft employees have not kept pace with inflation, that is, the consumer price index. That has been particularly true under the past two agreements, 1984-88 and 1988-94. The cause of this slow but steady wage erosion is no doubt attributable to wage restraint in the 1980s resulting from the difficult financial and competitive pressures confronting the rail industry. But those circumstances have dramatically changed for the better and the class I railroads have become extremely profitable in recent years. A case can no longer be made for the wage restraint of the 1980s.

Moreover, wages in recent years have risen slower for shopcraft employees than for comparable employees in other industries. That would be true as well of total compensation. Indeed, although shopcraft employees on class I

railroads have had lower wage rates than shopcraft employees on commuter railroads, the rate of increase for the former has been considerably less than the rate of increase for the latter. This has been particularly true in the years since 1988. None of these observations are meant to suggest that shopcraft employees on class I railroads are not well paid. They are. The point is that their relative position, vis-a-vis others in the rail industry or other industries, has suffered.

The principle reason for this subpar wage performance was the use of lump sum payments in the 1988-94 agreement. Lump sum payments usually appear in collective bargaining relationships when employers are confronted by financial difficulties and concessions seem appropriate. They are a means of moderating wage growth in such an environment. The rail industry problems which justified lump sums in 1988 simply do not exist today. The UTU award nowhere explained why lump sums should still be included in the wage package. Accordingly, we do not believe there is a sound basis for lump sums in the next agreement. We recommend that the lump sums be replaced by a general wage increase.

However, notwithstanding the current prosperity in the industry, there is reason for caution. The economic statistics do not convince us that the industry has solved all of its problems. For instance, the industry as a whole has experienced only slow revenue growth. And the yield figures have been falling for many years. Moreover, it should be emphasized that the carriers have offered a substantial wage package even though, as the shopcraft unions note, the package is "backloaded."

We recommend that the parties accept the general wage increases, the lump sum bonus due on the effective date of the new agreement, and the cost-of-

living arrangements set forth in the carriers' proposal for the full five-year period. We also recommend a 1.75 percent general wage increase on July 1, 1996 (in lieu of a 3.0 percent lump sum) and a 1.75 percent general wage increase on July 1, 1998 (in lieu of a 3.5 percent lump sum). We believe these adjustments will go a long way toward improving the relative position of shopcraft employees during the term of the agreement.

The substitution in our recommendations of general wage increases for the lump sum payments proposed by the carriers requires adjustment in the manner in which employee contributions are to be made toward increases in the cost of health insurance premiums. In place of the reductions in lump sum payments due under the carriers' wage proposal on July 1, 1996 and July 1, 1998, we recommend that the parties substitute reductions in the applicable hourly wage rates for the 12-month period beginning each such July 1st of a number of cents per hour necessary to generate during each such period an amount equal to what would have been the reduction in lump sum payments.

## B. ENTRY RATES

### IAM & SMWIA Position

Since 1986, newly hired shopcraft employees are paid an entry rate equivalent to 75 percent of the maximum rate for the classification in question. This entry rate increases by 5 percent each year over a five-year period. For the SMWIA, entry rates apply to all classifications. The entry rate does not apply to IAM-represented journeymen.

The IAM and SMWIA wish to eliminate all new-hire progression for all classifications. The IAM and SMWIA contend that the wage progression governing their newly hired members, particularly those in apprenticeship programs, reduces wage levels to intolerably low levels for the very group of employees who can least afford it. Therefore, they request that entry rates be abolished.

Carriers' Position

The carriers are opposed to any change in entry rates currently in effect for shopcraft employees.

Recommendation

Entry rates on the class I railroads have been in effect since the 1981 agreement. The unions asked PEB 219 to eliminate entry rates and their request was denied. The parties have, in other words, lived with entry rates for some fifteen years. Entry rates are simply a recognition of the fact that people who are not fully trained in the craft are of less value to the employer. We decline to recommend any changes in entry rates and its request is denied.

## C. SKILL DIFFERENTIALS

Shopcraft Unions' Position

The shopcrafts propose a thirty cents per hour wage premium for all shopcraft members who are required to obtain and maintain a Commercial Driver's License (CDL).

IAM Position

The IAM proposes eliminating Side Letter #16 to the July 31, 1992 agreement which provides that machinists who are entitled to a skill differential must either be qualified for the differential work or become qualified on their own time.

It also proposes that employees who receive a skill differential receive it for all purposes, including holiday pay, personal days and so forth.

IBEW Position

The IBEW proposes to increase the existing fifty cents per hour differential which electricians currently receive for working on high voltage electric lines and electronic communications equipment to sixty-five cents per hour effective immediately and to eighty cents per hour at the end of the contract. It further proposes that this differential apply to electricians and communications electronic technicians who are assigned to gang-type work. It also requests that this differential apply to signalmen whom it represents on the former Norfolk & Southern portion of the Norfolk Southern rail system.

The IBEW is also seeking a new twenty-five cents per hour differential for electricians who are required to obtain licenses from state and local authorities and for electricians who are required to obtain Environmental Protection Agency (EPA) certification before being allowed to recover ozone-depleting chemicals, such as freon, from air conditioning systems.

Carriers' Position

The carriers are opposed to all but one of these proposed changes. They are willing to increase the differential currently received by electricians working with high voltage lines and communications electronic equipment by twenty cents per hour as of January 1, 2000. But they are not willing to increase this differential from fifty to sixty-five cents at the present time.

Recommendation

This Board is not persuaded that the shopcraft employees are entitled to a wage premium for obtaining and maintaining a CDL. Machinists, electricians and sheetmetal workers are highly skilled crafts. Obtaining a CDL clearly does not add to the knowledge and skills these shopcraft employees must possess to perform their core duties.

The duties and responsibilities required of such employees are distinguishable from those required of maintenance of way employees on Conrail who receive a thirty cents per hour differential for obtaining and maintaining a CDL. The rationale for granting the latter a wage premium is inapplicable to the highly skilled machinist, electrician and sheetmetal crafts before this Board. It is also noteworthy that the BRS sought a similar

differential for the signalmen they represent but were not granted one in their recently negotiated agreement.

We also find no compelling reason to eliminate Side Letter #16 that was appended to the July 31, 1992 IAM agreement. The underlying rationale for Side Letter #16 has not changed in the four years since the IAM agreed to it as a *quid pro quo* for greater skill differential work for its members. We see no reason to alter the compromise reached by the parties during the last round of bargaining.

We recognize that the skill differential accorded machinists is included in their vacation pay. Nevertheless, we are not persuaded that it should also be included in their holiday pay, personal leave and other non-working time for which they receive remuneration. We embrace the principle that journeymen machinists should receive a skill differential for the time they are actually performing the work for which the differential is granted. This would not apply to non-working time such as holidays or personal days when the skilled work is not being performed.

As noted, the carriers are willing to increase the fifty cents per hour differential currently granted electricians who work with high voltage lines and electronic communications equipment by twenty cents per hour effective January 1, 2000. This is the same increase granted signalmen in the recently negotiated agreement with the BRS.

However, the carriers are opposed to increasing the existing fifty cents per hour differential allowed these employees to sixty-five cents per hour as proposed by the IBEW. The carriers stress that the sixty-five cents per hour differential for signalmen was established in November 1992 more than a

year before the IBEW agreed to the fifty cents per hour differential for employees whom it claim perform duties comparable to those performed by signalmen. The carriers maintain that the IBEW knew then that the fifty cents per hour differential for high voltage and communications electronic work was less than the sixty-five cents per hour differential allowed signalmen who may perform similar work. The carriers argue that there is no reason to establish a pay relationship between certain electricians and signalmen that was not of particular concern to the IBEW a mere 18 months ago.

Regardless of the agreement reached with the IBEW in December 1993, we are of the opinion that electricians who have duties and responsibilities comparable to those of signalmen should receive the same differential accorded signalmen for performing this analogous work. Fundamental fairness dictates this result. Accordingly, we conclude that electricians working with high voltage electric lines and electronic communications equipment are entitled to the same sixty-five cents per hour differential granted signalmen who perform comparable duties. This differential shall be increased by twenty cents per hour effective January 1, 2000. This differential shall also apply to signalmen represented by the IBEW on the former Norfolk & Southern portion of the Norfolk Southern rail system.

Based on the record before us, we must reject the proposal submitted by the IBEW that the differential also apply to electricians who perform gang-type work. It is unclear to us whether electricians who perform gang-type work are similar to construction signalmen who, for the first time, receive a differential under the recently negotiated agreement with the BRS. The relationship between these two classifications of skilled employees is too

complex for this Board to address in the limited time available to us. Accordingly, we recommend that the IBEW withdraw this proposal.

We are not persuaded that electricians who are required to be licensed by state and/or local authorities are entitled to a differential for obtaining such licenses. That electricians are required to obtain a license does not affect their skills and training.

However, the foregoing rationale does not apply to electricians who must be certified by the EPA before they are allowed to work on air conditioning units containing ozone-depleting chemicals. This EPA certification adds to the electricians skills and responsibility. We recommend that electricians who must obtain EPA certification before being allowed to remove ozone-depleting chemicals from air conditioning systems should receive the twenty-five cents per hour proposed by the IBEW.

D. PAID LEAVE

Shopcraft Unions' Position

Vacations

The unions propose changes to several of the benefits accorded members they represent. For instance, they propose that employees receive 15 days of vacation after 5 years of service rather than the current 8 years; 20 vacation days after 8 years of service rather than the current 17 years; and 25 days of vacation after 15 years of service rather than the present 25 years. They also propose that employees receive 30 vacation days after 20 years of service.

Shopcraft employees now receive a maximum of 25 days of vacation in a calendar year.

They further propose that the vacation qualifying rules be amended to provide that time spent on an authorized leave of absence involving railroad-related activities, including time spent as a duly authorized representative of a rail labor organization, be considered qualifying time for vacation purposes.

They also request that an employee receive a pro-rata share of vacation time based on the number of days that the employee worked in the qualifying year.

Holidays

The unions propose to add Martin Luther King Day to the eleven holidays received by their members.

Bereavement

Currently, shopcraft employees are entitled to three days of paid leave in the event of the death of their brother, sister, parent, child, spouse or spouse's parent. The unions seek to expand the categories of family members for whom bereavement leave is provided to include a stepchild, stepparent, stepparent-in-law, grandparent and grandchild.

Presently, employees are entitled to three consecutive calendar days of bereavement leave. The unions propose that employees be allowed to take bereavement leave anytime up to seven days after the funeral of the deceased.

Jury Duty

The unions note that employees are currently paid for only a fixed number of days for time spent on jury duty. Employees must apparently call into work to be eligible for jury pay. The unions request that this provision be amended to permit payment for whatever number of days an employee is required to be on jury duty and to free the employee in these circumstance from having to call into work.

Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) allows eligible employees up to twelve weeks of unpaid leave each year for specified family and medical reasons. The Act grants parties to a collective bargaining agreement the right to negotiate family or medical leave rights greater than those provided by the Act.

The unions propose improvements to the FMLA. Under the FMLA, employees are eligible for medical or family leave if they work at a location where at least fifty employees are employed within a seventy-five-mile radius. The unions request that this restriction be eliminated. They further propose that the calendar year be the designated twelve-month period in which eligible employees may take unpaid leave. Additionally, the unions propose that each eligible employee be entitled to leave regardless of whether the employee's spouse is also an employee of the same carrier. They also want parents-in-law and grandparents included in the class of family members for whom unpaid leave may be taken. And lastly, the unions request that insurance benefits be continued without any cost to the employee during any period in which an employee is taking FMLA leave.

Carriers' Position

The carriers are opposed to any change in the paid leave currently allowed shopcraft employees. The carriers insist that the present level of paid leave enjoyed by shopcraft employees is consistent with comparable benefits granted by other large and medium sized employers. Moreover, the recently negotiated UTU, BLE and BRS agreements contain no changes in paid leave.

The carriers are also opposed to any modifications to the FMLA. They stress that all class I railroads have fully complied with the Act. Also, the carriers are unaware of any employer who is subject to the Act that has modified the FMLA leave provisions through collective bargaining.

Recommendation

The principal reason advanced by the unions for their proposed change in vacations, holidays and bereavement leave is that these benefits have not changed since 1981, a period of fifteen years. However, the passage of time by itself is not a compelling reason to enhance fringe benefits. The vacation benefits to which shopcraft employees are currently entitled (between 5 and 25 days) are comparable to vacation benefits received by employees in other large and medium sized industries. Moreover, the BLE, UTU and BRS agreements did not include any changes in vacation entitlement.

Similarly, the eleven paid holidays granted shopcraft employees are consistent with the paid holidays granted by other large employers. They are also comparable to the paid holidays received by non-shopcraft employees employed by the class I railroads. Furthermore, the BLE, UTU and BRS

agreements did not increase the eleven paid holidays granted employees represented by those unions.

We recognize that a few railroads have bereavement leave provisions similar to those proposed by the unions. Nevertheless, we recommend during this round of bargaining no change in the bereavement leave. The other settlements reached so far with the UTU, BLE and BRS made no changes to the bereavement leave provisions.

We also recommend that the IAM withdraw the change it proposed to its jury duty rule. Were the IAM's proposal adopted, machinists would receive jury duty benefits greater than similar benefits allowed all other class I railroad employees, including other shopcraft employees. In our opinion, there is no compelling reason to recommend the IAM's proposal.

Nor can we discern any cogent reason to alter the family and medical leave provided by the FMLA. There is no claim by the unions that the unpaid leave provided by the Act fails to meet the needs of their members. To our knowledge, the class I railroads have fully complied with the Act. No other class I railroad employees receive FMLA rights similar to those proposed by the unions. Accordingly, we recommend that the unions withdraw this proposal.

## E. SHIFT PREMIUMS

### IAM and SMWIA Position

Shopcraft employees on the nation's railroads do not receive any shift differential compensation. The IAM and SMWIA propose a 3 percent

premium for hours worked on second shift and a 5 percent premium for hours worked on third shift.

Carriers' Position

The carriers are opposed to shift premiums.

Recommendation

In most industries, a premium for employees who work second (afternoon) shifts is common and premiums for employees who work a third (midnight) shift are almost universal. These industries recognize that employees who are required to work other than traditional day shifts are entitled to additional compensation for the inconvenience and hardship associated with working less than desirable hours.

The Board lacks sufficient information to make a confident recommendation on this issue. We do not know how many employees would be eligible for the proposed shift premiums. We do not know the attitudes of shopcraft employees to night work. We do not know the history of second and third shift work in the industry. We simply lack the necessary background facts to weight the cost of the proposal to the carriers against the equities involved and the long-standing custom of no shift premiums in the industry. Therefore, we recommend that the matter be submitted to a study committee to review the many questions presented and to seek a consensus as to the propriety of shift premiums in the future.

## F. HEALTH AND WELFARE

Unions' Position

The unions urge that the requirements that employees contribute to the cost of their health benefits through participation in premium payments and co-pays for doctor visits are burdensome and will become more so if the terms of the UTU agreement cumulating such contributions were to be adopted. They argue that premium participation should be terminated, rather than increased, and that co-payments should be reduced from $15 to $10. They assert that the cost increases in health insurance have been brought under control and that continued cost stability can better be achieved through labor-management cooperation than through mandated financial participation.

The unions assert that the improvements to the dental care plan and the establishment of the optical plan should take place "now", rather than at the end of the term of the agreement. They point out that there have been no increases in benefit levels for an extended period of time. They also seek increases in life insurance, accidental death and disability benefits and retiree life insurance, as well as improvements in the coordination of benefits and wellness provisions of the existing health plans and reduction in retiree eligibility from present age 61 with 30 years of service to age 60 with 30 years.

The unions argue that the eligibility requirement for health insurance in any month should not be tightened from the present one day of work in the qualifying month to seven days. They assert that the provision in the UTU agreement which tightens eligibility is a response to situations unique to the

operating crafts which are not applicable to the shopcrafts. The unions deny any abuse justifying a change.

The unions also contend that they should be allowed to withdraw from hospital associations on a craft-by-craft basis.

Finally, the unions argue that supplemental sickness benefits should be increased to restore the ratio of such benefits to wages as existed in 1982. They contend that the benefits have not been adjusted for an extended period of time and have fallen behind wages.

Carriers' Position

The carriers argue that the health and welfare benefits established by the pattern should be recommended and that the unions' proposals should be withdrawn. Thus, the carriers propose to improve certain dental benefits and to establish a vision care plan to become effective at the end of the term of the agreement, to continue employee financial contribution toward health insurance premiums at a rate higher than under prior agreements and to cumulate such obligations under a formula. The carriers propose to raise the eligibility requirement for health and welfare benefits from one workday per qualifying month to seven days per qualifying month.

The carriers argue that the failure to maintain the integrity of the pattern in health and welfare benefits would be disruptive and destabilizing to labor relations within the industry. They assert that the unions have failed to present compelling evidence to deviate from the pattern. The carriers argue that, in any event, the unions' proposals to increase benefits should be rejected and its proposals recommended because the industry's health and

welfare benefits are generous relative to those provided in other industries and that the improvements proposed would be unjustifiably costly.

The carriers do not oppose the unions' position providing for withdrawal from hospital associations on a craft-by-craft basis, provided that stated safeguards are met.

Recommendation

Requiring railroad employees to pay a portion of their health insurance premiums and to make co-payments for doctor visits has shifted part of the cost of health care to employees, reducing the carriers' costs to provide those benefits. Employee financial participation in their health and welfare benefits may well have contributed to slowing the rapid increases in the cost of such benefits, as has the shift of railroad employees to managed care. While labor-management cooperation is necessary to continue the moderation of health benefit cost increases, the Board is not persuaded that such cooperation would be sufficient. Neither are we persuaded that the employees' present financial participation is out of line with what is occurring in other industries.

The Board notes that the carriers' proposals track those agreed to between the carriers and other organizations. As has been recognized by other PEBs, significant differences between health and welfare benefits available to participants represented by different unions which are not justified by compelling evidence may be disruptive and destabilizing to the industry. Accordingly, we recommend that the carriers' proposals with respect to percentage increases in and cumulation of employee obligations for premium

increases be adopted and that premium contributions and co-pays remain otherwise unchanged.

The health and welfare benefits available to covered employees are generous. The increases proposed would be costly. Except to the extent reflected in the improved dental benefits and the new optical plan as provided in the carrier-UTU agreement and the unions' proposals for increases in benefit levels to provide for increased immunization and wellness benefits, all of which we recommend, the increases proposed by the unions are not in our view justified either in comparison to other railroad employees or to employees in other industries. For similar reasons, we are not persuaded that the effective dates for the additional benefits should differ from those in the other agreements.

We are not persuaded that benefit eligibility requirements for shopcraft employees should be increased. The evidence is that the carriers' special concerns relate to operating craft scheduling and not to shopcraft scheduling. The carriers' proposals in this regard should be withdrawn.

The parties appear at or close to agreement on the issue of withdrawal from hospital associations. We recommend that such withdrawals be allowed on a craft-by-craft basis, in the manner described in the carriers' post-hearing submission.

## G. CONTRACTING OUT

### Unions' Position

The unions argue that carrier misuse of contracting out threatens the security of their members. They point out that shopcraft employment has steadily declined, that there are a significant number of such employees on furlough, and that many shopcraft employees are not in fact subject to job protection. They propose that the present restrictions on contracting out be tightened to define the term "substantial" for purposes of ascertaining whether contracting out should be allowed on the basis of cost advantage. They would require a cost advantage of at least 20 percent. They would also require carriers to calculate cost comparisons with outside contractors on the basis of direct labor costs plus materials, excluding indirect and overhead costs.

The unions also argue that the expedited dispute resolution system for contracting out disputes which was imposed on them by PEB 219 has been overloaded by the carriers, that the time frames have proven unworkable, and that the parties-pay system is unnecessarily expensive. The unions urge that the time frames be relaxed and they be given the option to adjudicate such disputes through RLA Section 3 processes.

### Carriers' Position

The carriers argue that the restrictions on contracting out contained in the prior agreement are burdensome and reduce efficiencies. They deny that shopcraft employees are seriously threatened by contracting out. They point out that the percentage of shopcraft work contracted out is only about 10

percent and that shopcraft employment is relatively stable, with only about a 1 percent yearly decline over the term of the prior agreement.

The carriers object to the unions' proposals to define "substantial" savings as being unnecessarily restrictive. They contend that such determinations are best made on a cases-by-case basis. They assert that the unions' proposal to eliminate the carriers' ability to include their total costs in comparing outside proposals does not reflect business realities.

The carriers propose to eliminate all restrictions on contracting out and let the market determine the extent to which work will be contracted out. They contend that any employees displaced as a result of contracting out are adequately protected from adverse consequences by existing job protections.

Recommendation

The contracting out clause in the prior agreements has been a source of frustration and disappointment to these parties. The unions believe the clause has failed to provide the kind of job security and stability they seek. The carriers believe the clause has failed to permit the kind of efficiency and flexibility they need. Similar problems have occurred among the maintenance crafts in major industries and have often been dealt with through so-called "base force" agreements that guarantee full employment for a prescribed number of positions while at the same time permitting management the freedom to contract out. Such arrangements have been embraced at different times and places by unions representing steelworkers, autoworkers, teamsters, and others. We believe a similar initiative in the railroad industry might well help the parties meet their very different

objectives. This appears to be a particularly appropriate moment for such an initiative given the relatively stable maintenance force in recent years and the high predictability of the maintenance workload generated at particular levels of operation.

The carriers should guarantee for the term of the agreement the employment of all shopcraft employees now in active service. The carriers should also retain for the duration of the agreement all existing shopcraft positions and fill them in accordance with contractual procedures. Together, the positions and employees described are termed the base force. Except as otherwise mutually agreed, the number, classification and initial location of positions and the individual employees constituting the base force should be determined as of the date of issuance of this Report. We intend that this recommended base force structure would neither enlarge nor diminish job protections under any other agreement or statute.

In return for guaranteeing the base force for the duration of the agreement, the unions should permit the carriers the unrestricted right to contract out work as they see fit without regard to the requirements of the prior agreement. The carriers should continue to provide the unions with notices of their intent to contract out work together with sufficient information to apprise the unions of the scope and nature of the job.

Determinations necessary to implement a base force agreement should be made on a craft-by-craft basis at the national and local levels as appropriate. Any disagreements should be resolved through binding arbitration.

Failure by the carriers to implement and maintain the base force during the term of the agreement should result in reimposition of the limitations on

contracting out found in the prior agreements. In that event, any contracting out that occurred during the period the base force agreements were in effect should not be relied upon in any way in the resolution of subsequent contracting out disputes.

If the union or the carriers in any of the three collective bargaining relationships rejects the base force concept, we would recommend that the present terms regulating contracting out in that relationship be continued. We find none of the changes proposed by the parties to be sufficiently meritorious.

We believe that the requirements placed on the carriers to maintain the base force will achieve the job security sought by the unions. Those requirements should result in the carriers fully utilizing shopcraft employees consistent with the base force, while at the same time allowing carriers the flexibility to contract out work as necessary.

We believe that the base force structure and the freedom to contract out work without restriction should eliminate disputes between the parties regarding contracting out. In the event that the base force is not adopted, the dispute resolution mechanism provided for in PEB 219 should be continued on the same basis.

## H. INCIDENTAL WORK RULE

IAM and SMWIA Position

The unions wish to amend the incidental work rule that became effective for shopcraft employees following the recommendations of PEB 219. The rule permits a railroad to assign work in one craft to employees in another craft if the work is incidental to their main work assignment.

As the rule is currently written, each incidental task is treated separately when determining whether the time normally required to accomplish incidental work exceeds the time normally required to accomplish the main work assignment. The IAM and SMWIA propose to amend the rule to provide that in making this determination, all incidental work, including simple tasks, be considered in the aggregate.

The IAM further proposes that when "simple tasks" are to be assigned to employees outside the craft which performs a main work assignment they may be performed only by an employee who is qualified to perform the main work assignment. Currently, "simple tasks" may be performed by any shopcraft employee capable of performing them up to a maximum of two hours per shift. The SMWIA proposes that this two hour limitation be reduced to one hour. Alternatively, the IAM suggests that if the incidental work rule cannot be clarified in accordance with its proposals, it should be eliminated altogether.

Carriers' Position

The carriers are opposed to the changes in the incidental work rule suggested. In their view, these changes would eviscerate the incidental work rule and render it useless.

The carriers propose amending the "simple task" component of the rule by removing the current maximum of two hours per shift that shopcraft employees are allowed to perform simple tasks. To the carriers, this is an artificial and unwarranted restriction. They contend that many simple tasks in the rail industry take more than two hours to complete. The carriers assert that many railroads are reluctant to use the "simple task" exception in the incidental work rule if there is any possibility at all that the work will take longer than two hours to complete. They also propose that simple tasks be assigned to any craft employee capable of performing them with the understanding that the hours spent performing a simple task will not be considered when determining what constitutes a "preponderant part of the assignment."

Recommendation

This Board recommends no change to the incidental work rule during this round of bargaining. This recommendation is consistent with the agreements reached between the class I railroads and the UTU and BLE to defer any changes to major work rules during this round of bargaining. It is also consistent with the tentative agreement reached with the BRS.

We consider it noteworthy that the incidental work rule was a new rule adopted during the last round of bargaining. Following the

recommendations of PEB 219, the rule became effective for the IBEW and the SMWIA on July 29, 1991, and for the IAM in July of 1992. The rule was intended to strike a balance between the jurisdictional lines separating the shopcrafts and the needs of the railroads to perform shopcraft work efficiently. We suggest that more time is needed to judge whether this balance has been met. In our view, it is premature to fine tune or make adjustments to the relatively nascent incidental work rule at this time. This also includes the two hour limitation on "simple tasks" which are tasks that require no special tools and no special training. Accordingly, we recommend that the unions and the carriers withdraw their respective proposals to amend the incidental work rule.

## I. RIGHT OF SELECTION

### Carriers' Position

The carriers argue that certain key positions on the shop floor, such as lead persons, require special qualities or characteristics that generally have no relation to seniority. However, shopcraft rules bar railroads from filling such positions without regard to seniority. Accordingly, the carriers propose that they be allowed to select employees for a limited number of key positions. Under their proposal, carriers would be required to articulate clearly the special qualifications required and give the general chairmen advance notice in writing of the positions they wish to fill without consideration to seniority.

Unions' Position

The unions are opposed to the carriers' proposal since it will vitiate the contractual right of their members to select craft positions based on seniority.

Recommendation

Seniority is a valuable right enjoyed by employees which should not be abridged in the absence of compelling reasons. Under the carriers' proposal, positions within each of the shopcrafts' bargaining units would be excluded from normal bidding and assignment in accordance with seniority. The carriers have not offered persuasive evidence of the need for this deviation from normal seniority applications. Therefore, we recommend that the Carriers withdraw the proposal.

J. SENIORITY RETENTION

SMWIA Position

The SMWIA proposes that sheetmetal workers who are promoted to supervisory positions be required to tender a reciprocal consideration in exchange for their retention of seniority as sheetmetal workers.

Carriers' Position

The carriers are not opposed to this proposal provided that all other issues are satisfactorily resolved.

Recommendation

Following the recommendations of PEB 211 in 1986, several unions, including the IBEW, negotiated agreements providing that members who were promoted to supervisory positions be required to pay a fee in order to retain and accumulate their seniority. The SMWIA did not participate in PEB 211 and therefore did not negotiate a seniority retention provision similar to that negotiated by other labor organizations.

The SMWIA proposal is fair and should be adopted provided that it apply prospectively from a date mutually agreed to with the carriers.

## K. CONRAIL ISSUES

Unions' Position, Employee Protection

The unions propose that Article I of the September 25, 1964 Agreement apply to the Consolidated Rail Corporation (Conrail) as it does to all other class I railroads. They believe that the reasons for excluding Conrail from this agreement are no longer applicable. They maintain that when Conrail was exempted from the employee protective provisions of the agreement, it was a fledgling operation that required federal assistance. Now, however, it is a thriving, profitable rail freight carrier not unlike other class I railroads. There is no longer any reason to exclude Conrail employees from the protection afforded other shopcraft employees involved in this proceeding.

Carriers' Position, Employee Protection

The carriers are opposed to the unions' proposal for several reasons. Initially, they note that Congress specifically exempted Conrail from the agreement in the Northeast Rail Service Act of 1981 because the excessive cost of existing labor protection threatened Conrail's ability to become a viable and profitable entity. Moreover, Conrail has developed a comprehensive and generous labor protection package which, unlike the 1964 agreement, provides employees with essential resources which will assist them to return to the work force. Additionally, the carriers contend that due to the geographic area in which Conrail primarily operates, it is more vulnerable to competition from the trucking industry.

In the light of these unique circumstances, the carriers claim that Conrail simply cannot afford the cost of the unions' proposal. And in any event the carriers maintain that shopcraft employment has actually increased at Conrail thereby eliminating any need for the protective benefits of the 1964 agreement.

Carriers' Position, Intracraft Assignment Rule

Conrail proposes to change Rules 2-A-4(b) in the IAM and IBEW agreements governing the assignment of work within the machinist and electrician crafts. Under these rules, when Conrail advertises a vacancy it may identify only a single major duty for the position. As a result, the carriers maintain that Conrail may not assign the employee filling the position to any other task within his or her craft for more than thirty minutes without incurring up to three hours of penalty pay. According to the carriers, this prevents these employees from performing work they are

qualified to perform and imposes a penalty payment for assigning machinists and electricians work that may be different from their initial assignments but are nevertheless still within their respective classifications of work.

Unions' Position, Intracraft Assignment Rule

The IAM and IBEW are opposed to any change in their respective intracraft assignment rules on Conrail. They assert that these rules have only one purpose, namely to protect the seniority rights of an employee when Conrail is filling vacancies. They contend that if Conrail merely follows the seven-step procedure required by Rule 2-A-4(a) when filling day-to-day vacancies, in most cases it will be able to fill these vacancies without incurring a penalty payment.

Recommendation

This Board is not persuaded that Conrail should continue to be exempt from Article I of the September 25, 1964 Agreement. It is noteworthy that Conrail is the only class I railroad exempt from this agreement. The agreement applies to approximately 87 percent of class I railroad shopcraft employees.

The reasons why Congress exempted Conrail from the labor protective provisions of the agreement in 1981 are no longer applicable. Conrail is now a viable, growing and profitable rail freight carrier. Although it faces significant competition from the trucking industry so do other class I railroads. If shopcraft opportunities have grown on Conrail since 1991 as Conrail claims then any apprehension it has over the labor protection provided by the agreement seems groundless.

There is no question that the protective program which Conrail introduced for its employees is generous and innovative. However, only employees hired on Conrail prior to March 31, 1976, are eligible for these benefits. Thus, approximately one-third of the shopcraft employees on Conrail have no protective benefits in the event of a layoff other than the statutory benefits provided by the Railroad Unemployment Insurance Act.

For all the foregoing reasons, we recommend that Article I of the agreement apply to shopcraft employees on Conrail. Naturally, Conrail has the right to exclude shopcraft employees from the protective program it introduced for its employees if the agreement is adopted. Shopcraft employees may not pyramid protective benefits provided by Conrail on the protection afforded by the agreement.

Conrail and the unions have sharp differences regarding the application of the intracraft assignment rules governing machinists and electricians. We believe this is a matter that the parties themselves are best capable of resolving. We recommend that they negotiate with respect to this matter, and should they fail to reach an agreement, this matter should be submitted to binding arbitration.

## L. SHORT LINE SALES PROTECTION

### Unions' Position

The IBEW and SMWIA propose that the class I railroads provide their shopcraft employees with protection in the event of any short line sales. They ask that the carriers agree to: (1) give six months advance notice of any short

line transaction; (2) negotiate a fair and equitable protective agreement prior to consuming a short line transaction; and (3) insure that successor carriers grant priority in hiring to displaced employees and recognize and bargain with the shopcraft unions.

Carriers' Position

The carriers claim that the unions' proposal is not a proper subject for bargaining since, among other things, it would give the unions veto power over short line sales transactions contrary to the Supreme Court's decision in Pittsburgh & L.E.R. Co. v. Railway Executives, 491 U.S. 490 (1989). Moreover, the unions' demand that the selling property require the short line purchaser to recognize and bargain with the seller's shopcraft employees violates the rights of the buyer's employees under Section 2, Fourth, of the Railway Labor Act. Nevertheless, the carriers are willing to provide shopcraft employees the same protection and benefits that were afforded engine and train service employees in their recent agreements.

Recommendation

This Board is of the opinion that employees are entitled to adequate advance notice of any intent by a railroad to sell a portion of its lines. This is a proper subject of bargaining under the Railway Labor Act. The remainder of the unions' proposal raises a myriad of legal, statutory and factual issues much too difficult for this Board to examine thoroughly in the time available to us. Accordingly, we recommend this portion of the proposal be withdrawn and that the matter of short line sales be addressed in another forum that can adequately and carefully consider the complex questions raised by the unions' proposal.

## M. LABOR MANAGEMENT COMMITTEES

### Unions' Position

The unions wish to eliminate all existing labor-management committees except those formally agreed to by the unions and the carriers. They also propose that joint steering committees be established on each property to oversee all committees. The unions and the carriers would have equal representation on such committees and each party would have veto power over committee initiatives. The unions further propose that participation in these committees be voluntary and that carriers pay for all time lost by their members. The unions contend that on most carriers, management presently selects the employees for joint committees.

The unions further urge that productivity gains and profits emanating from committee initiatives be shared among all craft employees and that committees not be permitted to develop any program that will eliminate jobs or in any way adversely affect employees. And lastly, the unions want assurances that labor-management committees not become involved with collective bargaining issues.

### Carriers' Position

The carriers maintain that for a considerable period of time joint committees have been established to address issues of mutual concern to management and employees, such as safety, health and quality improvement. According to the carriers, employee participation in these joint committees has always been voluntary. The carriers are concerned that union veto power over

committee initiatives and union control over employee participation in joint committees will impede the free and open exchange of ideas between shopcraft employees and their supervisors. The carriers ask that the unions' proposal be rejected for these reasons and also because it is inconsistent with the national pattern that has been established in this round of bargaining.

Recommendation

Joint labor-management committees, such as safety committees, have been in effect on most of the nation's railroads for a considerable period of time. No doubt, many of these committees have proven beneficial to both management and employees. The carriers contend that employee participation in these committees is entirely voluntary. In our view, the unions' far-reaching proposal would eliminate many committees that have proven beneficial in the past.

Apparently, the unions have taken issue with the manner in which joint committees have functioned on some properties, notably CSXT. In our opinion, problems associated with these committees should be addressed locally rather than being submitted to this Board. It would be counterproductive to modify or eliminate employee-management committees on those class I railroads where no significant problems exist.

## N. BRIAN FREEMAN ENTERPRISES

### Unions' Position

The unions propose that the carriers compensate Brian Freeman Enterprises (BFE) for fees and expenses charged by BFE to the unions in 1987 and in 1988 in connection with BFE's work on the restructuring of the Burlington Northern, CSXT and Santa Fe and the purchase by third parties of large interests in those railroads. Alternatively, they suggest that the matter be submitted to binding arbitration.

### Carriers' Position

The carriers maintain that the unions' proposal is improperly before the Board since it is not a subject of mandatory bargaining. And in any event, the carriers contend that a Federal Court has already ruled that CSXT was not responsible for BFE's fees and expenses.

### Recommendation

It is clear that the carriers never entered into a contract to pay BFE for services it rendered on behalf of the unions. Indeed, this was the conclusion of the United States District Court in Brian Freeman Enterprises v. CSX Transportation. There is no ambiguity in that decision. The carriers are simply not liable for the fees and expenses incurred by BFE. There is no need to address the question of whether this proposal by the unions is an impermissible subject of mandatory bargaining as the carriers claim.

## O. REPRINT OF AGREEMENTS

### Unions' Position

The unions propose that the carriers assume the cost of reprinting the collective bargaining agreements and furnishing them to shopcraft employees.

### Carriers' Position

The carriers have not expressed a position on this proposal.

### Recommendation

The unions contend that carriers have historically assumed the cost of reprinting collective bargaining agreements and distributing them to covered employees. This Board recommends that the parties continue whatever the practice has been regarding the printing and distribution.

## P. SAVINGS CLAUSE

### Carriers' Position

The carriers argue that a savings clause should be included in the agreements to allow a particular carrier, upon notice, to protect local rules more favorable to that carrier than corresponding national rules. They point out that there has been an established practice to include such provisions. They

contend that failure to include such a provision creates possible complications.

Unions' Position

The unions did not speak to the issue.

Recommendation

We recommend a standard savings clause be included to preserve both carrier and union rights.

Q. MORATORIUM

Unions' Position

The unions propose that a limited moratorium be imposed, excluding subjects which have been, or could have been, proposed in local bargaining. Their moratorium would expire at the end of December 1997. They protest that a broader moratorium would preclude negotiations on local issues not previously raised, a prohibition broader than that historically imposed. The unions complain that PEB 219 and other Boards in that round of bargaining deviated from that reasonable historical practice.

Carriers' Position

The carriers propose a blanket moratorium which would prohibit all interim bargaining, including bargaining on issues denominated as "local"

during the term of the agreement. They argue that the prohibition is necessary to insure stability through the term of the agreement and that such prohibition is both consistent with the terms of other agreements in this round of bargaining as well as the terms of the moratorium imposed by PEB 219. The carriers point out that numerous voluntary local agreements were reached during the terms of the prior agreements, notwithstanding the moratorium, and that, to its knowledge, no actual local negotiations would be extinguished by imposition of the moratorium.

Recommendation

It is a purpose of the Railway Labor Act's statutory dispute resolution process to avoid interruptions in commerce. The stability and finality to which the parties and public are entitled from the process cannot be achieved if unresolved local issues threaten to result in strikes or lockouts affecting the entire, integrated rail industry. Accordingly, we recommend that the carriers' proposal for the same blanket moratorium recommended by PEB 219 be adopted and that the unions' proposal for a more limited moratorium be withdrawn.

The Board recognizes that many issues between the parties are property-specific and may be better resolved on a local basis. Nothing in our recommendations limit the parties from discussing and resolving such issues on the basis of mutual advantage. Indeed, such resolutions have been reached during the term of the prior agreements. The broad moratorium does not preclude such procedures during the term of the new agreements. It simply precludes invocation of impasse procedures and self-help with respect to such issues as now exist or as may arise during the term of the agreements. Moreover, the parties have brought to national handling a number of issues

which affect only a single property; and the record indicates that resolutions have been reached in the only two local shopcraft negotiations identified as ongoing during the national negotiations. The Board concludes that the broad moratorium imposes necessary, and not unreasonable, burdens on the parties.

## VII. CONCLUSION

These recommendations represent our best judgment on the merits and equities of this dispute. We cannot improve on the final words of the Board in PEB 220 and will therefore repeat them:

> "We think it would be unrealistic and a costly exercise in futility for all concerned if our total recommendations did not take into consideration, as a critical ingredient, their acceptability by the parties. Nevertheless, we think it impracticable to ask that the parties adopt these recommendations unconditionally and without modification. As the Railway Labor Act does not make them binding, we expect that the parties will make adjustments as needed, or if necessary, subject them to major revision. In any case, we hope that we have provided a well-marked road map for good faith use by the parties in completing their contracts through the process of free collective bargaining. We express to the parties our profound thanks for the intelligent, comprehensive, and professional presentation of their cases and for their patience and cooperation with our procedures. . ."

We also wish to acknowledge with gratitude the help we have received from Roland Watkins, the Special Counsel to the Board.

Richard Mittenthal, Chairman

Robert M. O'Brien, Member

M. David Vaughn, Member

EXECUTIVE ORDER

. 13004 . . .

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE DISPUTES BETWEEN CERTAIN RAILROADS REPRESENTED BY THE NATIONAL RAILWAY LABOR CONFERENCE AND THEIR EMPLOYEES REPRESENTED BY CERTAIN LABOR ORGANIZATIONS

Disputes exist between certain railroads represented by the National Railway Labor Conference and their employees represented by certain labor organizations. The railroads and labor organizations involved in these disputes are designated on the attached lists, which are made a part of this order.

These 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 17, 1996, a Board of three members to be appointed by the President to investigate the disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any railroad carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. Report. The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. Maintaining Conditions. As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has made its report to the President, no change, except by agreement of the parties, shall be made by the

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

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

Sec. 5. Expiration. The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.

William J. Clinton

THE WHITE HOUSE,

May 17, 1996.

RAILROADS

Alameda Belt Line Railway
Alton & Southern Railroad
American Refrigerator Transit Company
Arkansas Memphis Bridge Company
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company
Belt Railway Company of Chicago
Brownsville & Matamoros Bridge Company
Burlington Northern Railroad Company
    Allouez Taconite Facility
    Brainerd Timber Treating Plant
    Western Fruit Express Company
Camas Prairie Railroad Company
Canadian National North America
Central California Traction Company
Chicago Heights Terminal Railroad
Chicago Heights Terminal Transfer Railroad
Chicago and North Western Railway Company
Chicago South Shore and South Bend Railroad
Consolidated Rail Corporation
CSX Transportation, Inc.
    The Baltimore and Ohio Railroad Company (former)
    The Chesapeake and Ohio Railway Company (former)
    Louisville and Nashville Railroad Company (former)
    Seaboard Coast Line Railroad Company (former)
Houston Belt and Terminal Railway
Joint Railroad Agency - National Stock Yards
The Kansas City Southern Railway Company
    CP-Kansas City Southern Joint Agency
Kansas City Terminal Railway Company
Lake Superior & Ishpeming Railroad Company
Los Angeles Junction Railroad Company
Missouri Pacific Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Corporation
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
    Norfolk & Western Railway Company
    Tennessee, Alabama and Georgia Railway Company
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
Texarkana Union Station Trust Company
Union Pacific Fruit Express
Union Pacific Railroad
    Galveston, Houston and Henderson Railroad
    Missouri-Kansas-Texas Railroad
    Oklahoma, Kansas & Texas Railroad
Western Pacific Railroad
Wichita Terminal Association

LABOR ORGANIZATIONS

Brotherhood of Railroad Signalmen
International Association of Machinists & Aerospace Workers, AFL-CIO
International Brotherhood of Electrical Workers
Sheet Metal Workers International Association

Appendix "B"

THE WHITE HOUSE

WASHINGTON

June 13, 1996

Richard Mittenthal
Chairman
Presidential Emergency Board No. 230
c/o National Mediation Board
Washington, D.C. 20572

Dear Mr. Mittenthal:

On behalf of the President, I am granting an extension for the reporting requirements for Emergency Board No. 230 until June 23, 1996, as requested. I would like to take this opportunity to express our gratitude to you and the other members of the Board for the work that you are doing. We greatly appreciate your assistance in this important matter.

Sincerely,

Jack Quinn
Counsel to the President

cc: Magdalena Jacobsen, Chair
National Mediation Board

Roland Watkins
Special Counsel to PEB No. 230