

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 231

**SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13012
DATED JULY 18, 1996
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED**

*Investigation of disputes between Southeastern Pennsylvania Transportation Authority
and the Brotherhood of Locomotive Engineers.*

(National Mediation Board Case No. A-12627)

**WASHINGTON, D.C.
AUGUST 16, 1996**

Washington, D.C.
August 16, 1996

The President
The White House
Washington, D.C.

Dear Mr. President:

On July 18, 1996, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order 13012, you established an Emergency Board to investigate a dispute between the Southeastern Pennsylvania Transportation Authority and its employees represented by the Brotherhood of Locomotive Engineers.


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 records its grateful appreciation for the generous assistance and good counsel given by Joyce M. Klein, Esq., of the National Mediation Board staff, who served as Special Counsel in these proceedings.

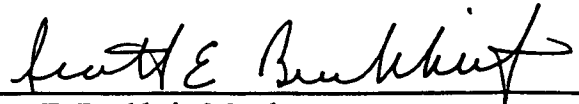
Respectfully,



Robert E. Peterson, Chairman



Gladys Gershenfeld, Member



Scott E. Buchheit, Member

TABLE OF CONTENTS

I. CREATION OF THE EMERGENCY BOARD	1
II. PARTIES TO THE DISPUTE	1
A. The Carrier	1
B. The Organization	2
III. HISTORY OF THE DISPUTE	2
IV. ACTIVITIES OF THE EMERGENCY BOARD	3
V. SCOPE OF THE BOARD'S AUTHORITY	3
VI. POSITIONS OF THE PARTIES	4
A. BLE	4
1. Term of Agreement	4
2. Wages	4
3. Certification Allowance	4
4. Training Allowance	5
5. Vacations	5
6. Pensions	5
7. Extra Board	5
B. SEPTA	6
1. Term of Agreement	6
2. Wages	6
VII. RECOMMENDATIONS	6
A. Term of Agreement	6
B. Wages	7
C. Certification Allowance	9
D. Training Allowance	11
E. Vacations	12
F. Pensions	13
G. Extra Board	13
H. Health and Welfare Cost Containment	13
VIII. CONCLUSIONS	14
APPENDIX A	A-1

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 231 (Board) was established by the President pursuant to Section 9a of the Railway Labor Act, as amended, 45 U.S.C. §151 et seq. including §159a (RLA or Act), and by Executive Order 13012, dated July 18, 1996. The Board was ordered to investigate and report its findings and recommendations regarding an unadjusted dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA or Authority) and certain of its employees represented by the Brotherhood of Locomotive Engineers (BLE or Organization). A copy of the Executive Order is attached as Appendix A.

On July 18, 1996, the President appointed Robert E. Peterson, an arbitrator from Briarcliff Manor, New York, as Chairman of the Board, and Gladys Gershenfeld, an arbitrator from Flourtown, Pennsylvania, and Scott E. Buchheit, an arbitrator from Haddonfield, New Jersey, as Members. The National Mediation Board (NMB) appointed Joyce M. Klein, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

SEPTA is a regional agency created in 1964 to consolidate and operate privately owned transportation services in the City of Philadelphia and the four surrounding Pennsylvania counties of Bucks, Chester, Delaware and Montgomery. In 1983, pursuant to the Rail Passenger Services Act as amended by the Northeast Rail Service Act of 1981 (NERSA), 45 U.S.C. §590, SEPTA assumed operation of commuter rail lines previously operated by the Consolidated Rail Corporation (Conrail).

SEPTA operates a total of 2358 bus and rail vehicles over 129 routes. It carries an annual total of 292 million passengers and operates 71 million route miles annually. SEPTA employs approximately 10,000 employees. Approximately 8100 of those employees are covered by Agreements with 17 Unions and Organizations. SEPTA's Commuter Rail Division employs 1588 employees, including the employees covered by the Agreement at issue in this proceeding.

SEPTA has four operating divisions: (1) the City Transit Division which provides bus, subway, trackless trolley and light-rail service in the City of Philadelphia, (2) the Suburban Transit Division which provides bus, trolley and third-rail interurban service in the four suburban counties, (3) the Paratransit Division which uses independent contractors to provide service to physically impaired individuals in Philadelphia and the four suburban counties and (4) the Commuter Rail Division. SEPTA's Commuter Rail Division operates 346 rail cars on seven routes, all sharing three stations in Center City Philadelphia. The Commuter Rail Division also provides service to

Division. SEPTA's Commuter Rail Division operates 346 rail cars on seven routes, all sharing three stations in Center City Philadelphia. The Commuter Rail Division also provides service to Wilmington, Delaware and Trenton, New Jersey. The Commuter Rail Division serves approximately eight percent of the total passengers carried by SEPTA. Every week, the Commuter Rail Division carries approximately 89,000 passengers. Its passenger service operates over a system covering approximately 282 miles of track.

B. The Organization

The General Committee of Adjustment of the Brotherhood of Locomotive Engineers represents approximately 180 locomotive engineers employed by SEPTA. Approximately 25 percent of SEPTA's engineers who originally transferred from Conrail continue to retain "flow back" rights to employment on Conrail.

III. HISTORY OF THE DISPUTE

In 1983 the dispute over the terms and conditions of the transfer of commuter rail operations from Conrail to SEPTA led to the creation of Emergency Board No. 196 and a subsequent 108-day strike before the parties reached settlement. Since that time, SEPTA and BLE have resolved their major disputes through negotiations and mediation without resort to self-help or the assistance of an emergency board.

In this round of negotiations, in accordance with the Act, BLE served a Section 6 notice on July 20, 1993 for changes in rates of pay, rules and working conditions. The parties were unable to reach an agreement on the issues during negotiations. Consequently, on April 5, 1994, BLE filed an application for the NMB's mediation services. Despite mediation conducted by then NMB Chairwoman Magdalena G. Jacobsen and Mediators John J. Bavis, Samuel J. Cognata and Robert E. Cerjan, and intermittent negotiations by the parties, little progress at settling the dispute had been made by May of 1996. On May 31, 1996, the NMB proffered arbitration of the dispute under Section 5 of the Act. In the weeks that followed this proffer, NMB Member Jacobsen and Mediator Bavis made further attempts to assist the parties to resolve their dispute. However, their efforts were unsuccessful and, on June 18, 1996, BLE rejected the proffer of arbitration. On that same date, the NMB released the parties from mediation, establishing a thirty-day "cooling off" period.

On June 24, 1996, SEPTA requested that President Clinton create an emergency board pursuant to Section 9a of the Act, which provides procedures for the resolution of bargaining impasses involving publicly funded and operated commuter authorities. This Board was created on July 18, 1996, and a new status quo period was established.

IV. ACTIVITIES OF THE EMERGENCY BOARD

An organizational telephone conference was held with the parties on July 19, 1996, at which time procedural issues were discussed and a schedule of hearings was determined. Pursuant to that schedule, both parties made opening statements to the Board on July 24, 1996. Hearings continued on July 25, August 6 and 8, 1996. Both parties were provided adequate opportunity to present testimony, documentary evidence and argument. The Board held executive sessions with the parties on July 24 and August 8, 1996. On July 24 and August 7, 13, 14 and 15, 1996, the Board itself met in executive session in Philadelphia, Pennsylvania and Washington, D.C. to consider the dispute and prepare its report.

V. SCOPE OF THE BOARD'S AUTHORITY

During the hearings, the parties disagreed about the scope of the Board's authority to issue recommendations on proposals not included in BLE's Section 6 notice. The Board determined that it would hear testimony as each party chose to present it and would rule subsequently on the scope of its authority.

SEPTA objects to the Board's consideration of any proposals not included in a Section 6 notice. Specifically, SEPTA objects to Board consideration of a six-year agreement, a certification allowance or an increase in pension benefits. It asserts that these items were not specifically included in BLE's Section 6 notice.

BLE asserts that the Board may consider all of its proposals. In support of its position, BLE directs the Board to its proposals for settlement submitted during the bargaining process which covered each of these issues. BLE also cites Flight Engineers International Association v. Eastern Airlines, 208 F.Supp. 182 (S.D.N.Y. 1962), where the court found that a new Section 6 notice was not necessary to permit Eastern Airlines to engage in self-help over a crew consist question which had not been included in the Carrier's Section 6 notice. In FEIA v. EAL, the court noted that requiring the Carrier to file a new Section 6 notice over each new issue that arose as a major dispute could result in instability from continually starting the Act's processes over again. The court declined to elevate form over substance and instead focused on a question relevant to this proceeding: "Have the parties negotiated with respect to those fundamental issues dividing them within the context of the 'major dispute' proceedings under the Railway Labor Act?" 208 F.Supp. at 190.

The Board determines that the scope of its authority encompasses each of the issues as presented by the parties. The BLE filed its Section 6 notice in July 1993. It filed for mediation on April 5, 1994. During the course of negotiations and mediation, BLE and SEPTA each made a series of proposals involving various issues to resolve the dispute. BLE's proposals included, among other things, a six-year wage package, certification allowance and pension improvements. SEPTA also made a six-year proposal including wages and other items. While the "dispute" initially may have been confined to the proposals contained in the Section 6 notice, the dispute evolved with the

negotiations and mediation process. The Act's definition of "dispute" includes "changes in rates of pay, rules or working conditions not adjusted by the parties in conference." 45 U.S.C. §155, First. In the Board's view, the "dispute" which has become the subject of this Board included a range of proposals proffered at different times during the negotiations process, including each of the issues presented to the Board. Therefore, the Board will address each of the issues raised by the parties.

VI. POSITIONS OF THE PARTIES

A. BLE

In its presentation to the Board, the Organization identified the dispute as involving: (1) Term of Agreement, (2) Wages, (3) Certification Allowance, (4) Training Allowance, (5) Vacations, (6) Pensions and (7) Extra Board. The proposals of BLE on each of these items are as follows:

1. Term of Agreement

A six-year agreement, beginning July 15, 1994 and concluding July 13, 2000.

2. Wages

- Within thirty days after the effective date of Agreement, each engineer shall receive a lump-sum bonus of \$500 which shall not be rolled into the wage rate.
- Effective July 15, 1994, the Pay for Performance program is converted into wages with the base rate being increased by \$.50 per hour.
- Effective October 15, 1995, the base wage rate shall be increased by 3.5%.
- Effective October 15, 1996, the base wage rate shall be increased by 3.5%.
- Effective April 15, 1997, the base wage rate shall be increased by 3.5%.
- Effective July 14, 1997, the base wage rate shall be increased by an equity adjustment in the amount of \$1.00 per hour.
- Effective April 15, 1998, the base wage rate shall be increased by 3%.
- Effective April 15, 1999, the base wage rate shall be increased by 3%.
- Effective April 15, 2000, the base wage rate shall be increased by 3%.
- Effective July 14, 2000, the base wage rate shall be increased by an equity adjustment in the amount of \$1.00 per hour.
- The current cost-of-living allowance is continued through the term of the Agreement.

3. Certification Allowance

Beginning the effective date of the Agreement, each engineer shall be paid a certification allowance of \$12.00 per day in addition to all other payments for each day the engineer performs service or is required to be available for service.

4. Training Allowance

Beginning with the effective date of the Agreement, engineers with five or more years of service shall receive a training allowance of \$.50 per compensated hour, provided that the engineers have not had their certificate validly revoked within the preceding twelve months. In exchange for this payment, the engineers agree to provide training to engineer trainees and other employees as SEPTA may properly assign to ride the head end of trains. Engineers may decline in writing, on an annual basis, the opportunity to provide instruction as defined herein, but will forfeit the allowance for any period during which they decline.

Engineers who provide training as outlined in the preceding paragraph shall be paid an additional \$.50 per hour for each hour they are assigned to directly and immediately supervise a certified student engineer in their charge.

5. Vacations

Effective January 1, 1997, the weekly allowance for engineers' vacation pay shall be calculated on 1/52 of the preceding year's gross wages or 40 times the hourly rate, whichever is greater. For vacations taken in less than a weekly installment, effective January 1, 1997, the daily vacation allowance shall be paid in an amount equal to 1/260 of the engineer's preceding year's gross wages, or eight times the applicable hourly rate, whichever is greater, for each day of vacation taken. Each week of vacation converted into daily increments under the provisions of this paragraph shall be considered five vacation days.

6. Pensions

SEPTA shall create a §401(a) retirement plan for engineers with a \$1000 annual contribution by SEPTA, effective January 15, 1997. SEPTA's annual contribution shall increase to \$2000, effective January 15, 2000.

7. Extra Board

Effective with the first picking following the effective date of this Agreement, extra list engineers will be guaranteed eight hours' wages for each day they are required to be available with a minimum of five and a maximum of six days per week.

B. SEPTA

In its presentation to the Board, SEPTA identified the dispute as involving a term of agreement and a general wage increase. The proposals of SEPTA on each of these items are as follows:

1. Term of Agreement

A three-year Agreement, beginning July 15, 1994 and concluding July 14, 1997.

2. Wages

- A \$500 lump-sum payment upon ratification.
- 3.5 % increase after 15 months.
- 3.5 % increase 12 months later.
- 3.5 % increase 6 months later.

SEPTA proposes that increases should be based upon the BLE Agreement's amendable date of July 15, 1994, with no retroactivity. In other words, based upon BLE's amendable date, the first wage increase would have been due on October 15, 1995. According to SEPTA, that increase would now be payable to engineers upon ratification. If an Agreement is ratified by October 15, 1996, the second 3.5 % increase would be payable to engineers on that date, and, assuming an Agreement is ratified by April 15, 1997, the final increase would be payable to engineers on that date.

VII. RECOMMENDATIONS

A. Term of Agreement

The Board recommends that the parties' Agreement be for a term of six years, covering the period from July 15, 1994 through July 13, 2000. As previously noted, the Board concludes that it does indeed have authority to make a recommendation for a period covering six years. Moreover, the Board concludes that the present circumstances make it advisable to do so. If the Agreement were for a period of only three years in length, the new amendable date would be on or about July 14, 1997, less than one year from now. While an Agreement three years in length would be preferable to no Agreement at all, it is much less desirable than an Agreement six years in length. The parties need only look to the time and effort they have already expended on these negotiations to reveal the truth of this observation. The parties now need a substantial period of labor peace. Were it necessary for them to engage formally in a new round of negotiations covering the period from 1997 through 2000, it would likely be disruptive to sound labor relations and create renewed instability in the parties' relationship.

B. Wages

The BLE contends that the wage increases, equity adjustments, Pay for Performance conversion and COLA it seeks are necessary to achieve parity with the wage rate received by engineers who work for other commuter railroads. It notes that engineers working for New Jersey Transit, Metro-North Commuter Railroad and the Long Island Rail Road all receive wages far greater than engineers who work for SEPTA. According to BLE, there is no justification for this disparity and it must therefore be eliminated over the life of this Agreement. BLE does not give credence to the Authority's arguments concerning the need to adhere to internal patterns, as it believes that a practice exists on this property of granting engineers economic wages and benefits beyond those received by other employees. Finally, BLE maintains that there is no justification for SEPTA's refusal to make its offer retroactive, as it has previously granted a retroactive wage increase.

The Authority asserts that the wage increase it offers BLE for 1994-1997 adheres to a pattern of settlement that exists on its property. It contends that consistent with the historical practice on the property, this pattern was first established in the 1992 settlement between SEPTA and the Transport Workers Union of America (TWU) and followed in every subsequent Agreement involving all Unions and Organizations representing SEPTA employees. The Authority also argues that the wage increase sought by BLE far exceeds this pattern of settlement and were it achieved, pattern bargaining would be destroyed. SEPTA considers issues of external parity to be irrelevant in light of the finding of Emergency Board No. 196 that wages should be based upon local conditions. The Authority further maintains that while a second pattern of wage settlement is now occurring based upon the 1995-1998 SEPTA/TWU settlement, the annual 3% wage increases therein are all self-funded by other modifications in the Agreements. Concerning retroactivity, SEPTA contends that its position here is consistent with its longstanding practice of not granting retroactivity, and this practice is necessary in order to compel timely resolution of new Agreements.

The Board recommends that wages be increased during the term of the Agreement consistent with the internal pattern of settlement followed by all other Unions and Organizations on the Authority's property. More specifically, for the first three years of the Agreement, each bargaining unit member shall receive a \$500 lump-sum payment and a 3.5% general wage increase upon ratification, a 3.5% general wage increase in October 1996 (27 months from the amendable date of term) and a third 3.5% general wage increase six months thereafter. The COLA formula will remain unchanged with COLA adjustments to be paid from the first payroll period subsequent to ratification. For the last three years of the Agreement, wages should be increased by 3% in each year, with corresponding cost-saving offsets in the spirit of the 1995 SEPTA/TWU Agreement and the other Agreements with Unions and Organizations which have subsequently followed.

The Board is compelled to make these recommendations based upon the unbroken internal pattern of wage settlement for Agreements covering comparable time periods involving SEPTA and all other Unions and Organizations on the Authority's property. More specifically, aside from the issue of retroactivity, the wages the Board recommends are the same as those agreed upon in the SEPTA/TWU Agreement covering the period from 1992 through 1995. This Agreement covered

approximately 5000 SEPTA employees, by far the largest bargaining unit on the property. Thereafter, all other Unions and Organizations on SEPTA's property, except for the BLE, agreed to identical wage settlements. Further, more than half the Unions and Organization on the property have by now also agreed to new wage settlements identical to those contained in the 1995-1998 SEPTA/TWU Agreement.

In these circumstances, the Board finds persuasive the Authority's argument that the internal pattern of wage settlements during this round of negotiations should be given controlling weight. There is extensive testimony and evidence in the record concerning the importance of adhering to an internal pattern of wage settlement. The breaking of an internal pattern of wage settlement by the last Organization in a long line of settlements could indeed adversely impact upon SEPTA's relationship with its other bargaining units. Were the Board here to recommend a wage increase consistent with that sought by BLE, and were that increase granted by the Authority, one of two consequences, or a combination thereof, would likely occur. Morale of employees represented by other Unions and Organizations would be negatively impacted by realization that BLE members had achieved a result better than that which they had achieved and/or other bargaining units would use the BLE settlement as a springboard to seek increased benefits during the next round of negotiations. Other Unions and Organizations would also make compelling external parity arguments. These results, however, would adversely effect the continuity and stability of employment and the public interest.

In making its wage recommendation, the Board is mindful of the fact that since the initial Agreements between SEPTA and the Organizations representing rail employees, BLE members, particularly those who entered the Authority's service at a new starting wage rate, have received increases in economic benefits beyond those received by other employees. As argued by BLE, both it and the Authority have implicitly if not explicitly recognized that some of the recommendations of Emergency Board No. 196 did not work in the marketplace with respect to retention of engineers. Nonetheless, it is not clear that there currently exists a marketplace need for wage adjustments beyond the pattern in this round of negotiations. Thus, the Board believes that the considerations mitigating in favor of adherence to the internal pattern of wages on balance outweigh considerations mitigating towards any possible pattern of engineers receiving wage increases beyond those of other organizations.

The Board also recognizes that BLE has argued forcefully that it should receive wage increases in excess of the internal pattern to make up for internal compression of wages between it and employees represented by other Organizations as well as to eliminate the negative external comparisons with engineers on other commuter railroads. The Board concludes, however, that these considerations are on balance an insufficient reason for now breaking the rigid pattern of wage settlements agreed to by all other Unions on the Authority's property. This is true for several reasons. The internal pattern of wage increases is not a meager one. More specifically, in the first three years alone it allows for a \$500 lump-sum payment upon ratification, three increases of 3.5% and maintenance of the COLA. Nor does it include any major loss of benefits for the Organization's members. The acceptability of the Board's recommendations must also be viewed in light of

SEPTA's economic condition. While BLE skillfully and creatively argues that funds are available to grant the wage increases it seeks, it is beyond dispute that SEPTA suffers from severe economic difficulties. In order to maintain basic operations, the Authority has needed to use substantial capital funds for daily operating expenses and has further needed to reduce its management staff by a considerable amount. Finally, adherence to the pattern of wage settlements does not preclude economic adjustments in other areas.

As to retroactivity, the Board recommendations pattern the manner in which this issue was handled in the most recent Agreement between SEPTA and the United Transportation Union (UTU). That settlement, based upon the 1992-1995 SEPTA/TWU Agreement, was the only one achieved more than 15 months after the original amendable date and thus the only one in which retroactivity was a major issue. That settlement did not include retroactivity, although it did include other new benefits of value to the UTU members. Similarly, this Board's recommendation does not include retroactivity but does include recommendations for other new benefits, most notably a certification allowance, which are of value to BLE members. In any event, the full value of the SEPTA/BLE Agreement should not be less than the full value of employee wages and benefits included in settlements with other Organizations and Unions on SEPTA's property, particularly the most recent SEPTA/UTU Agreement.

Finally, the Board's recommendation does not include the Organization's request to convert the Pay for Performance program into wages. SEPTA's position is that this program terminated on the amendable date. The Board cannot determine whether or not the program continues to exist. That dispute is currently the subject of a Section 3 claim, and this Board expresses no opinion as to the proper outcome of the claim. The Board notes, however, that it may be in the best interest of both sides now to resolve that dispute as part of a comprehensive new Agreement.

C. Certification Allowance

The BLE contends that since certification now plays such an important role in the manner in which engineers may be held accountable for their job performance, engineers are entitled to a monetary allowance for the responsibility and sanctions associated with that historical change in their employment relationship. BLE thus asks that engineers be granted an allowance of \$12 a day, in addition to all other payments, for each day that an engineer performs service or is required to be available for duty.

According to SEPTA, if engineers were to be provided a certification allowance, it could impact upon its entire transit operation because no certification premium is provided to other employees. Notwithstanding the absence of such an allowance, SEPTA submits that virtually all of its employees have some kind of certification or licensing requirement for their jobs. Reference is made to the certification or licensing of shop craft employees in order to be able to perform such work as welding, plumbing, and air conditioning.

The Board recommends that a certification allowance be included in the Agreement.

The Board is persuaded by the Organization's argument that enactment of the Rail Safety Improvement Act of 1988 (PL 100-342, June 28, 1988) (RSIA) had a dramatic impact upon the conditions of employment for engineers. RSIA essentially made individuals civilly responsible for violations of Federal Railroad Administration (FRA) regulations or safety statutes. It specifically provided for fines of up to \$20,000 for willful violations of regulations. It empowered the FRA to remove someone from safety sensitive service if it had a problem with that person's conduct. It directed the FRA to develop a program of licensing or certification for locomotive engineers.

It is apparent to the Board that it has also been determined on other properties that RSIA had a dramatic impact upon the conditions of employment for engineers. More specifically, the record establishes that certification allowances range from \$15 per day on both the Southern Pacific and Grand Trunk railroads to \$4 per day on a short line railway in the Midwest. In the more immediate geographic area, New Jersey Transit has agreed to a \$5 per day allowance, and both the Long Island Rail Road and Metro-North Commuter Railroad have a \$10 per day certification allowance.

The Board is sensitive to SEPTA's concern that the granting of a certification allowance to engineers will result in similar demands from other employees. It is convinced, however, that the certification of engineers is distinguishable from the licensing of all other employees on the property. No other group of SEPTA employees are so affected by the stringent performance standards, sanctions and higher responsibilities which are now required under the FRA certification program. Moreover, the record reveals that while it normally takes eight to nine months for an individual to become a qualified engineer, it normally takes an individual about one month to become licensed as a bus operator. In addition, the penalty for a shop craft employee not becoming qualified for the various items of work mentioned by SEPTA is that the employee would be disqualified from working on jobs which specifically require a license. Unlike engineers, shop craft employees are not subject to a suspension from service or a loss of employment as a consequence of a failure to obtain or maintain a license.

In short, engineer certification is unique. Further, it is not unusual for an Agreement on this property to address a concern unique to a particular class of employees.

As to the form and amount of the certification allowance, the Board recommends that there be a \$500 lump-sum payment to each engineer upon ratification of an Agreement as reimbursement for costs associated on a direct and indirect basis for having engaged in the certification procedures. In addition, the Board recommends that there be a certification allowance of \$4.00 for each day that service is performed as an engineer subsequent to ratification of the Agreement. The daily certification allowance shall remain in effect until the amendable date, that is July 13, 2000. Thereafter, it shall terminate unless subsequently reincorporated into the parties' Agreement through negotiations. This arrangement will best reconcile the legitimate desires of the Organization for a certification allowance with the Authority's legitimate concerns over the present and future impact of such a program.

D. Training Allowance

The Organization associates its training proposal with the testimony it elicited on a chronic shortage of certified engineers on the property and the resulting need to continually train new engineers. According to BLE data, 276 engineers left SEPTA between 1993 and 1996, and of 197 engineers trained by SEPTA, 69 have left. The BLE also argues that compensation for engineer-instructors is a common practice in the railroad industry.

The Authority maintains that its turnover rate is low at present, 2.9 % from 1990 through 1995. SEPTA data show approximately 200 engineers who have left its employ and a gradual decline in loss of engineers except for the years 1984 and 1987. SEPTA cites efforts that it made in 1984 and 1988 as evidence that if a serious shortage exists, the Authority will take whatever action is required to address the problem.

The Board recommends that there be a limited training allowance incorporated within the parties' Agreement.

In reaching this conclusion, the Board has found the history of this item to be an important consideration. On or about July 3, 1984, faced with a severe shortage of engineers that required a reduction in service, the parties entered into an agreement to provide engineer-instructors for on-the-job training of student engineers. Payment, in accordance with this Agreement was provided as follows:

A differential of \$.50 per hour will be paid (with a minimum of \$2.00 per day) in addition to other earnings for a tour of duty performed as an engineer-instructor.

In 1988, SEPTA addressed another period of serious shortage of engineers by implementing a stabilization program that provided incentive pay for reductions in turnover. Currently, however, neither the training program nor the stabilization program are in effect. Supervisors are doing the on-the-job training after new employees complete their certification training.

Although the work force is stable at present--only two engineers had left in 1995--the Board believes it would be in the interest of both parties to reinstitute a plan whereby the Authority can direct certified engineers to train new employees as the need arises. Such a plan reflects the concern of BLE members about accountability for the proper operation of equipment by student engineers.

The BLE proposal, however, expands the concept in the 1984 agreement and provides (1) \$.50 per hour for all engineers available for training, as well as (2) \$.50 per hour while engaged in instruction. It is the Board's opinion that the first portion is unrealistic, particularly in a period of fiscal strain. Further, when the problem was severe in 1984, payment was provided only for actual hours of instruction, and the need is not evident now for a different compensation basis.

Thus, the Board recommends that the parties include in their Agreement provision for an allowance more limited than that sought by BLE. This provision would provide that effective upon ratification, engineers with five years of seniority, who indicate their availability to serve as instructors and who are so directed by SEPTA, will receive a payment of \$.50 per hour while engaged in instructing trainees.

E. Vacations

Section 901 (e) of the parties' current Agreement provides the following method of calculating vacation pay:

Regular employees will receive 44 hours of pay at their regular hourly rate for each week of vacation. Extra employees will be paid 8 hours straight time pay based on five days per week at the employee's regular rate.

The BLE contends that the current vacation payment of 44 hours does not compensate for hours actually worked. According to the Organization, a majority of the engineers currently work six days a week and the engineers' weekly pay on average is for 60 hours of work. The proposed standard of 1/52 of the previous year's earnings is based on a railroad industry practice, which includes overtime earnings as well as straight-time earnings. The 1/260 standard is designed to cover vacations taken as single days, which are allowed under the parties' Agreement.

According to SEPTA, the matter of a 1/52 vacation allowance was a major issue in contention during the first contract negotiations in 1983 between SEPTA and BLE. SEPTA cites this issue as an example of a railroad work rule that it found unacceptable and notes that the negotiated vacation clause that was eventually placed in the SEPTA/BLE Agreement was based upon the SEPTA/TWU Agreement. Moreover, SEPTA expresses concern that an increase in the vacation allowance for engineers would spread throughout the property as other Unions and Organizations seek the same benefit.

The Board recommends that Section 901(e) of the parties' Agreement be amended as hereinafter described.

SEPTA's initial agreement with UTU, representing conductors, provided the same 44-hour language as that in the BLE Agreement. In the most recent UTU Agreement, however, SEPTA and the UTU agreed that employees scheduled to work six days a week will receive an increase of four hours' vacation allowance, or a total of 48 hours' pay for each week of vacation. The Board believes that a parallel modification should now be made in the SEPTA/BLE Agreement. That modification would not, however, be expanded to include the proposed 1/52 and 1/260 allowances sought by BLE, which the Board finds excessive under the financial conditions surrounding these negotiations.

The Board appreciates the Authority's concern that an increase in the vacation allowance for engineers would cause other employees also to seek improvements in their various vacation benefits.

Employees represented by the UTU and BLE, however, work under circumstances unique to operating employees. The UTU vacation modification recognized the large number of operating employees in the Commuter Rail Division who work six days a week, which is not claimed to be the prevalent work schedule for other divisions of the Authority. The BLE Agreement should now reflect a similar recognition. Moreover, the Board believes that increasing the BLE vacation allowance by four hours would serve as an incentive as well as an acknowledgment of the heavy work schedule of engineers.

Accordingly, the Board recommends that SEPTA and BLE modify Section 901 (e) of their Agreement and model the new vacation allowance on the language of the most recent SEPTA/UTU Agreement.

F. Pensions

The BLE has requested a pension enhancement of \$1,000 per year effective January 1, 1997 and a \$2,000 per year enhancement effective January 1, 2000.

The Board recommends that this proposal be withdrawn.

The BLE has offered insufficient rationale for granting a pension enhancement. Further, it is obvious that the cost impact of this item makes it unrealistic for the Board to recommend.

G. Extra Board

The BLE has proposed that effective with the first pick of assignments following the effective date of settlement of this dispute, extra list engineers be guaranteed eight hours of wages for each day that they are required to be available, with a minimum of five days and a maximum of six days per week. This proposal would have the effect of increasing the guarantee for six days from 44 to 48 hours of pay per week.

The Board recommends that this proposal be withdrawn.

In the most recent SEPTA/UTU settlement, it was agreed that the guarantee for six days be increased from 40 to 44 hours per week. The BLE has presented insufficient evidence to support an increase in its guarantee beyond that of UTU.

H. Health and Welfare Cost Containmentment

The parties reached agreement on August 17, 1992 that certain health cost containments would be included as part of their next settlement. The Board endorses the actions of the parties in this regard and recommends that their agreement be made a part of the settlement of this dispute.

VIII. CONCLUSIONS

The formal presentations of the parties before the Board were exceptional. Advocacy was vigorous. Each side fully and skillfully represented its constituency. An extensive record of the issues was developed that has enabled the Board to consider all aspects of the dispute. The recommendations of the Board provide a realistic basis for settlement of the dispute. The time is now ripe for that settlement to occur. Clearly, further continuation of this dispute would no longer be in the best interest of either side. The Board therefore urges SEPTA and BLE to use these recommendations in a renewed effort to reach a negotiated settlement.

Finally, the Board concludes its work by offering its grateful appreciation to Joyce M. Klein, Esq., of the National Mediation Board staff. Her generous assistance and advice as Special Counsel to the Board were invaluable.

Respectfully,



Robert E. Peterson, Chairman



Gladys Gershenfeld, Member



Scott E. Buchheit, Member

EXECUTIVE ORDER

13102
- - - - -ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY AND THEIR EMPLOYEES REPRESENTED BY
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

A dispute exists between the Southeastern Pennsylvania Transportation Authority and its employees represented by the Brotherhood of Locomotive Engineers.

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

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

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

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

Section 1. Establishment of the Board. There is established effective July 19, 1996, a Board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

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

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

Sec. 4. 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 submission of the report provided for in section 2 of this order.

William S. Clinton

THE WHITE HOUSE,
July 18, 1996.