

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 237

SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 13334
DATED APRIL 10, 2004
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED

Investigation of disputes between Southeastern Pennsylvania Transportation Authority and the United
Transportation Union

(National Mediation Board Case No. A-13220)

WASHINGTON, D.C.
MAY 11, 2004

Washington, D.C.
May 11, 2004

The President
The White House
Washington, DC 20500

Dear Mr. President:

On April 12, 2004, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order 13334, you established an Emergency Board to investigate a dispute between the Southeastern Pennsylvania Transportation Authority and certain of its employees represented by the United Transportation Union.

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

The Board acknowledges the invaluable assistance of Susanna C. Fisher and Cristina A. Bonaca, staff attorneys of the National Mediation Board, who rendered valuable aid to the Board throughout the proceedings.

Respectfully Submitted,

Richard R. Kasher, Chairman

Robert E. Peterson, Member

David P. Twomey, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 237 (PEB or 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), and by Executive Order 13334 effective April 12, 2004. The Board was ordered to investigate and report its findings and recommendations regarding an unadjusted dispute between the Southeastern Pennsylvania Transportation Authority (SEPTA or Carrier) and certain of its employees represented by the United Transportation Union (UTU or Organization). A copy of the Executive Order is attached as Appendix A.

On April 12, 2004, the President appointed Richard R. Kasher, an arbitrator from Villanova, Pennsylvania, as Chairman of the Board, and Robert E. Peterson, an arbitrator from Briarcliff Manor, New York, and David P. Twomey, an arbitrator from Quincy, Massachusetts, as Members. The National Mediation Board (NMB) appointed Susanna C. Fisher, Esq. and Cristina A. Bonaca, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

SEPTA is a regional transportation authority created by the Pennsylvania legislature in 1964 to provide mass transit service within the City of Philadelphia and the surrounding counties. Beginning in 1964, SEPTA absorbed the assets of numerous private companies operating bus and rail services in the Southeastern Pennsylvania area. Today, SEPTA is the fifth largest transportation system in the United States, providing approximately 298.4 million passenger trips a year. SEPTA serves the City of Philadelphia and Bucks, Chester, Delaware and Montgomery Counties. SEPTA's operations are overseen by a fifteen-member Board of Directors, who are appointed by the Governor of Pennsylvania (1), the Pennsylvania Senate and House of Representatives (4), the City of Philadelphia (2), and Bucks, Chester, Delaware and Montgomery Counties (2 each).

SEPTA provides transportation services in various modes, including bus, trackless trolley, subway, elevated, light rail, paratransit, shared-rides and commuter rail. In total, SEPTA operates and maintains 2,303 revenue vehicles on 195 routes covering approximately 1,918 route miles. SEPTA also operates and maintains 280 active stations and over 450 miles of track and related facilities. SEPTA employs a total of approximately 8,900 employees, of whom approximately 7,000 are represented by labor unions. Of SEPTA's unionized employees, approximately 5,700 (or 81 percent) are transit employees who are not covered by the RLA.

SEPTA's transit and rail operations are organized in a number of different divisions. The largest SEPTA division is the City Transit Division (CTD), which SEPTA has operated since 1968. The CTD comprises 84 bus routes, five trackless trolley routes, five trolley routes, and two subway lines, the majority of which operate within the City of Philadelphia. The CTD employs a total of approximately 6,000 employees, including both management and union personnel.

SEPTA's suburban operations are divided between two operating divisions, the Victory Division and the Frontier Division, which primarily provide bus and some light rail service in the suburban counties.

The dispute before this Board involves SEPTA's Regional Rail Division (RRD). The RRD serves the City of Philadelphia, and Bucks, Chester, Delaware and Montgomery Counties, and offers service to Newark, Wilmington, and Claymont, Delaware, and Trenton and West Trenton, New Jersey. The commuter rail services provided by the RRD were formerly provided by the commuter rail divisions of the Penn Central and Reading Railroads, and were operated by Conrail from 1976 through 1982. SEPTA acquired Conrail's commuter operations in 1983. The RRD includes 13 separate train routes, and has approximately 1,763 employees, of whom approximately 1,300 are unionized. The RRD provided 28.1 million passenger trips in FY 2003, or nine percent of the total number of passenger trips system-wide.

B. The Organization

The UTU is a transportation labor union representing approximately 125,000 active and retired railroad, bus, and mass transit workers in the United States and Canada.

Membership is drawn primarily from the operating crafts in the railroad industry and includes conductors, brakemen, switchmen, ground service personnel, locomotive engineers, hostlers, and workers in associated crafts. More than 1,800 railroad yardmasters also are represented by the UTU. The UTU's 8,000 bus and transit members include drivers, mechanics, and employees in related occupations.

The dispute before this Board involves approximately 365 Conductors and Assistant Conductors.

III. HISTORY OF THE DISPUTE

On February 12, 2002, the UTU, pursuant to Section 6 of the RLA, served on SEPTA a notice to amend their collective bargaining agreement with the Carrier pertaining to changes in rates of pay, rules, and working conditions. Among other things, this notice requested three consecutive annual wage increases of ten percent. This proposal also included a request for longevity pay effective July 2002 and July 2003 for certain employees.

The parties were not able to resolve these and several other issues, or certain counter proposals advanced by SEPTA. In June 2002, the UTU filed a request for mediation with the NMB. The NMB docketed the mediation case on June 24, 2002.

After a year and a half of mediation sessions, the NMB, on December 4, 2003, in accordance with Section 5, First, of the RLA, urged SEPTA and the UTU to enter into an agreement to submit its collective bargaining dispute to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). The UTU unconditionally accepted the NMB's proffer of arbitration on December 13, 2003. On January 15, 2004, SEPTA advised the NMB that it would conditionally accept the NMB's proffer of arbitration.

On January 22, 2004, the NMB requested that SEPTA provide "unconditional acceptance or rejection" of the proffer of arbitration. SEPTA responded on January 26, 2004, stating: "SEPTA is not in a position to unconditionally accept the Board's [NMB] proffer of arbitration and submit all aspects of the dispute between SEPTA and the United Transportation Union to arbitration without any limitation on the arbitrator's authority."

On January 30, 2004, the NMB notified the parties that it considered "SEPTA's failure to provide an unconditional response to the Board's [NMB] proffer to be a rejection."

On March 12, 2004, the NMB advised the parties that it was the judgment of the NMB that "all practical methods provided in the RLA adjusting the dispute have been exhausted." The NMB stated that its services (except as provided in Section 155, Third and in Sections 159a and 160 of the RLA) were terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m. EDT on April 12, 2004.

On March 25, 2004, in accordance with Section 9a of the RLA, SEPTA requested that the President establish a PEB to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA provides that any party to the dispute, or the Governor of any State through which the service that is the subject of the dispute is operated, may request the President to establish an Emergency Board. Upon the request,

the President shall create an Emergency Board. Therefore, on April 10, 2004, the President created this Emergency Board, effective April 12, 2004.

With the single exception of its Rail Division Conductor and Assistant Conductor employees represented by UTU Local 61, collective bargaining agreements have been entered into by SEPTA and its employees represented by all other unions. These other agreements have been ratified by the individual union memberships and the SEPTA Board.

On June 19, 2003, SEPTA presented the UTU with a draft memorandum of agreement for the proposed settlement of issues in the negotiations involving Conductors and Assistant Conductors. The draft agreement closely follows the wage increase pattern principle of settlements adopted by the other unions, and, with certain major exceptions, the agreement adopted by SEPTA's Rail Division Engineers represented by the Brotherhood of Locomotive Engineers (BLE).

The June 19, 2003 SEPTA proposal to the UTU provided for three separate basic wage increases over the term of the contract. The wage increases cover a differing three year period of time from the years contained in agreements adopted by the other unions, and, in particular the agreement between SEPTA and the BLE.

The BLE agreement provides for five separate increases, with the first two wage increases being in the same amount previously contracted for by the UTU, namely, three percent effective July 1, 2001, and three percent effective July 7, 2002. The remaining wage increases contained in the BLE agreement are:

- 3 percent effective July 6, 2003
- 3 percent effective July 4, 2004
- 3 percent effective July 3, 2005

The June 19, 2003 SEPTA wage proposal to the UTU was as follows:

- 3 percent on January 4, 2004
- 3 percent on January 2, 2005
- 4 percent on January 1, 2006

Insofar as the longevity issue is concerned, the BLE agreement reads as follows:

Effective July 11, 2004, all Engineers with ten more years of seniority will receive a \$1.00 increase in the hourly rate. Thereafter, all other Engineers will receive said increase on their ten year anniversary.

Effective July 10, 2005, all Engineers with 15 or more years of seniority will receive a \$1.00 increase in the hourly rate. Thereafter, all other Engineers will receive said increase on their 15 year anniversary.

The SEPTA proposal of June 19, 2003 to the UTU included language regarding longevity pay. This longevity pay proposal differed materially from longevity pay for the BLE as it was based upon a UTU member achieving 15 years of service and then providing that employee with a \$1500 lump sum payment for the first pay period in each January for the life of that particular contract. The lump sum payment would not be added to the base rate of pay for Conductors and Assistant Conductors. The proposed contract language read:

Effective upon ratification, for the life of this contract, the first pay period of January each employee who has 15 years of service shall receive a \$1500 lump sum longevity payment (not added to the base pay rate).

At the hearing before the Board on April 28, 2004, SEPTA placed into the record a proposed memorandum of agreement that differed materially from that presented to the UTU on June 19, 2003. This proposed memorandum of agreement provides increases in rates of pay as follows:

3 percent upon ratification by the parties
3 percent on July 4, 2004
4 percent on July 3, 2005

Although, as stated above, the proposal SEPTA presented to the UTU on June 19, 2003 included provisions for lump sum payments, the SEPTA proposal that was made a part of the record at the April 28, 2004 hearing contains no provision for longevity pay.

IV. ACTIVITIES OF THE EMERGENCY BOARD

An organizational telephone conference was held by the Board with the parties on April 15, 2004. Procedural issues were discussed, and a schedule of hearings was determined. Pursuant to that schedule, both parties provided the Board with pre-hearing submissions on April 23, 2004. A hearing was held on April 28, 2004 in Philadelphia, Pennsylvania. The Board held executive sessions with the parties on April 29, 2004 in Philadelphia. The Board met in executive session in Philadelphia on May 4 and 5, 2004, and in Washington, DC on May 7 and 8, 2004, to consider the dispute and prepare its Report. Both parties were provided with a full and fair opportunity to present testimony, documentary evidence and argument in support of their respective positions.

V. POSITIONS OF THE PARTIES

A. Summary of the UTU's Position

The UTU contends that since Engineers, Conductors, and Assistant Conductors work together as members of train crews on SEPTA, it is essential that Conductors and Assistant Conductors represented by the UTU and Engineers represented by the BLE work cooperatively to run the trains safely and efficiently, and that the longevity pay pattern applicable to Engineers apply as well to Conductors and Assistant Conductors. According to the UTU, SEPTA has never adequately explained why the Carrier should be exempt from the local pattern of longevity pay for its RRD operating employees or why a deviation is justified. The Organization argues that SEPTA's assertions about the need for longevity pay to retain Engineers do not bear analysis because attrition rates for Engineers and Conductors are not significantly different. The UTU contends that because of the interdependence of train crew members - - Engineers, Conductors, and Assistant Conductors - - no other SEPTA union can demonstrate entitlement to longevity pay. The UTU points out that the Rail Division generates 28 percent of SEPTA's income, but incurs just 24.7 percent of expenses; and that the total cost of longevity pay is hardly prohibitive.

Additionally, the UTU proposed certain other changes in the parties' collective bargaining agreement, which proposed changes the Board will address in the Recommendations section of this Report.

B. Summary of SEPTA's Position

SEPTA states that its proposal to the UTU is based on the pattern established by its agreement with the Transport Workers Union of America, Local 234, (TWU), its largest and most powerful union. SEPTA argues that a party seeking an exception to the pattern bears a heavy burden, and must demonstrate special and compelling circumstances. The Carrier states that it agreed to longevity pay in its agreement with the BLE because of compelling reasons associated with Engineer attrition. The Carrier states that voluntary attrition rates for Conductors is less than 1.1 percent and the pay for Conductors is more than competitive in the Philadelphia market. The Carrier asserts that the UTU has not met its burden in this case. SEPTA rejects the notion of a separate pattern for "operating crafts" covered by the RLA.

SEPTA points out that in early 2005, it will negotiate its next agreement with TWU, Local 234, having persuaded TWU to accept a one-year agreement with a zero percent increase to base wages and a lump sum payment. SEPTA argues that if it were to grant longevity pay for Conductors in addition to the three percent, three percent, four percent TWU pattern, it would make bargaining nearly impossible with TWU, damage

SEPTA's finances, imperil its ability to obtain funding from the Pennsylvania legislature, and lead its other unions to seek longevity pay.

Additionally, SEPTA proposed certain other changes in the parties' collective bargaining agreement, which proposed changes the Board will address in the Recommendations section of this Report.

VI. RECOMMENDATIONS

Before addressing the specific matters in dispute, the Board recognizes the budgetary constraints and uncertainty of funding that SEPTA submits it faces for the operation of commuter services. SEPTA's Chief Financial Officer/Treasurer and its Senior Director of Budgets provided the Board with informative documentation concerning what they say is an immediate budget crisis and a long-term financial challenge. Particular emphasis was directed to the fact that SEPTA funding comes from a variety of sources. In addition to passenger revenues, appropriations and subsidies come from the General Assembly of the Commonwealth of Pennsylvania, the City of Philadelphia, and the four suburban counties surrounding the City of Philadelphia (Bucks, Chester, Delaware and Montgomery). The Board understands these financial constraints.

As previously noted the RRD, which is serviced by the employees involved in this dispute, serves the City of Philadelphia and the four counties mentioned, and also provides transportation services as far north as Trenton and West Trenton, New Jersey, and as far south as Newark, Delaware. Rail transportation services in these areas came to be a part of SEPTA in 1983, when it assumed operations over the rail lines which had formerly been operated by several rail carriers and their successors, namely, Penn Central, Reading Railroad, and Conrail.

The Board further notes that SEPTA calculated its labor costs as representing 46.8 percent of its operating budget, with fringe benefits for health and welfare representing another 22.7 percent of its overall budget. It was said that the CTD is the largest component of the operating budget at 66.4 percent, with the RRD being 24.7 percent. The CTD was said to contribute the largest share of passenger revenue, at 66.2 percent, with the RRD providing 28 percent.

It thus appears that the RRD contributes 28 percent of all revenues, or 3.3 percent more than its budgeted operating costs, whereas the transit divisions have a negative 0.2 operating cost as compared with revenue income.

The Board recognizes the historical wage and working relationship between railroad Engineers and Conductors. Engineers and Conductors are members of unions

that have historically been recognized as constituting the "operating" employees; that is, those employees responsible for work that is directly connected with the operation of trains. Other railroad employees are classified as "non-operating" employees. They perform work associated with such functions as the repair and maintenance of engines and rail cars, track maintenance, signal systems, station and clerical work.

Almost since the inception of collective bargaining in the railroad industry, Engineers and Conductors, employees in the operating group, have generally had a wage relationship with each other. Increases in basic rates of pay have generally followed carefully woven patterns because of the operating rules' requirement that Engineers and Conductors work together to affect a safe and efficient performance of their respective and intertwining duties.

Engineers and Conductors perform their assigned duties subject to the same operating rules, regulations and practices, and the same safety rules. The performance of their work is subject to numerous federal statutes, rules, regulations and guidelines. Both must understand bulletins and special orders concerning the operation of their trains, and also know the physical characteristics of the routes over which their train assignments traverse. Both Engineers and Conductors are subject to and must pass periodic physical and book off rules examinations to remain in active service. Although the Conductor is generally designated as the operating train crew member in charge of the train, he or she works closely with the Engineers to assure that their train operates according to specific time intervals set for arrivals and departures from passenger stations. The assignments for which they bid and are awarded pair Engineers and Conductors for established periods of time.

SEPTA's training schedules for Conductors and Engineers indicate that it takes 126 days to train a Conductor and 157 days to train an Engineer, with most of the time being spent in like training activities. Differences involve Engineers being given 20 days on a training unit and 15 more days than Conductors in on-the-job training. Conductors are given five days of additional equipment training and a revenue refresher course that is not provided to Engineers.

There are, of course, certain differences between the job of an Engineer and a Conductor. It is arguable whether one or the other of their jobs is the more demanding.

An Engineer is statutorily required to become and remain certified so as to remain in active service. Certification is unique to Engineers, and numerous collective bargaining agreements throughout the railroad industry provide a special monetary allowance for such certification. In operating from a locomotive engine or a motorized rail car, an Engineer must constantly be alert to such matters as the authorized speed of the train, signal indications, track roadbed conditions, and obstructions that may suddenly appear along the right of way. The Engineer also has the responsibility of stopping and

moving a train at passenger stations in a safe and smooth manner so as to not cause injury to passengers or members of the train crew.

On the other hand, Conductors must assure that passengers entrain and detrain in a safe manner, opening and closing, as necessary, trap doors to steps that lead to station platforms where there is no high level platform. The performance of this and other job functions often require Conductors to leave a passenger car to stand on a station platform in the best and worst of climatic conditions. After assuring that passengers are clear of the train, it is the responsibility of the Conductor to signal the Engineer that it is safe for the train to leave a stopped position. En route, the Conductor has a responsibility to assure that a revenue fare has been paid or is collected. This requires that the Conductor know and enforce ticket revenue rules and procedures, check monthly commutation tickets, hole punch multiple ride tickets, and collect cash fares from passengers who had not previously purchased a ticket whether it be for a short distance of a stop or two or to the end of the run.

Conductors also have the duty of being alert to assistance needed by passengers in frail health or with certain disabilities, to handle emergencies, and to look out for the safety and well being of passengers.

Whereas the Engineer ordinarily remains in the cab of a locomotive engine or the compartment of a rail car for the duration of the over the road trip, the Conductor must walk the cars of the train to collect transportation; respond to inquiries of passengers with polite diplomacy pertaining to, among other things, the reason for any operating irregularities or service disruptions; and assure that passengers are not riding past their fare destination. The Conductor also has the duty to provide announcements of station stops. At the end of a run, the Engineer departs the train. Meantime, it is the responsibility of the Conductor to check for passengers who may have fallen asleep and forgotten to get off the train, check for personal property left behind, and prepare an accounting report of fares and collections.

The Board now turns its attention to the specific issues in dispute.

A. Longevity Pay

As set forth previously, almost since the inception of collective bargaining in the railroad industry, employees in the operating group have generally had a wage relationship with each other; and increases in rates of pay have generally followed carefully woven patterns. SEPTA has recognized this historic relationship.¹

In recognition of the interdependence of train crew members in commuter rail operations, their assignments are bulletined as one job. The Conductor is the operating crew member with the responsibility of being in charge of the train, while the Engineer has the responsibility of operating the passenger train in a safe and smooth manner. In a past round of bargaining a basis existed for the Carrier to provide a certification allowance only to Engineers as such a certification is unique to this craft and is required for each Engineer to remain in active service; and the Carrier initiated and then ended a special "pay for performance" allowance only for Engineers in past rounds of bargaining.

Weighing the common training, the interwoven responsibilities, and common work and safety rules applicable to both Engineers and Conductors, the Board believes a compelling reason exists for recommending longevity pay for Conductors with ten and 15 years of service with the Carrier. While Engineers will receive \$1.00 per hour as longevity pay, the Board recommends that Conductors be granted 92 cents per hour longevity pay. The 92 cents would be paid to Conductors only, first when such Conductors have achieved ten years of seniority, and an additional 92 cents of longevity pay would be payable when such Conductors achieve 15 years of seniority. It is recommended that these longevity increments be made effective July 11, 2004 for Conductors with ten or more years of seniority. Thereafter, all other Conductors will receive such increase on their ten year anniversary. On July 10, 2005, all Conductors with 15 or more years of seniority will receive a 92 cent increase in the hourly rate. Thereafter, all other Conductors will receive said increase on their 15 year anniversary. The 92 cents, rather than \$1.00 payments, represents the Board's understanding of the approximate wage differential that currently exists between Engineers and Conductors in

¹ When the UTU negotiated their last contract as of July 30, 2000, the Carrier gave the UTU General Chairman a "me too" letter which stated:

This will confirm our understanding that during the three-year term of this Agreement (July 14, 1999 through July 14, 2002), employees covered thereto shall receive percentage salaries and/or lump sum payments equal to the employees represented by the Brotherhood of Locomotive Engineers.

The Board believes that this letter shows that the Carrier expressed a commitment to the UTU to continue the wage relationship of the UTU with the BLE; and the UTU obviously carefully sought to continue the wage pattern with the BLE for the three year duration applicable to all of the Carrier's collective bargaining agreements for the round of bargaining in question.

their respective basic hourly rates of pay. The Board does not recommend longevity pay for Assistant Conductors.

The Board has reviewed all of the attrition data available regarding Engineers and Conductors for the period of time immediately preceding both the UTU and BLE agreements, including 1998, 1999, and the year 2000 up to the signing of the respective agreements in that year. Considering the wealth of experience derived from working together as a crew in commuter rail service for ten years and 15 years an allowance to reward and retain both Engineers and Conductors is appropriate. To recognize one craft and not the other would surely fracture the work and pay harmony interwoven between these two groups.

The Carrier perceives an adverse impact on its bargaining with TWU Local 234 for a March 2005 contract if the UTU Conductors receive the longevity pay in question. TWU Local 234 is in fact the largest and most powerful union dealing with SEPTA. The Philadelphia community acclaimed the settlement worked out in negotiations led by the General Manager of SEPTA and the President of the TWU, which avoided a strike in March 2004. With a four percent wage increase for TWU members effective in December 2003, some four months prior to the expiration of their agreement, these astute parties gave themselves time to study the complex issues related to medical insurance by agreeing to a lump sum payment of \$1000 in August 2004 and the continuation of fully paid medical insurance through March 2005. Surely, regarding the longevity pay issue before this Board, these sophisticated parties, SEPTA and the TWU, in their future negotiations will recognize that this Board dealt with this issue strictly limited to the two operating crafts that form each train crew for regional rail service. Indeed, the Board believes no other RLA craft or class, or any classification of transit employees has the commonality of work rules, training and interests culminating in the formation of single train crews and requiring the continuation of a harmony of pay rules in the interest of efficient service to the public.

B. Wages

The Board recommends the following increases to the wage schedule:

- 3 percent effective on ratification
- 3 percent effective July 4, 2004
- 4 percent effective July 3, 2005

C. Retroactivity

SEPTA states that its refusal to agree to a retroactive wage increase is a key component of its long-established labor relations strategy. By refusing to grant increases retroactively, SEPTA maintains it encourages good faith negotiations and prompt

resolution of disputes, and discourages unions from holding out for more favorable treatment.

The UTU maintains that the wage increases be made retroactive because of what it says was the position of SEPTA in refusing to bargain on the issue of longevity, thereby unnecessarily protracting negotiations.

The Board recommends that there be no retroactive wage increase considering the totality of the facts and circumstances before the Board as of the date of this Report.

D. Physician Verification of Illness

Provisions of the current SEPTA/UTU Agreement prescribe that an employee who marks off sick is required to present a verification of sickness or illness for absences of three or more days. The UTU requests that this time period be expanded to five days.

The record before the Board does not contain sufficient evidence to support the UTU's proposal. The Board, therefore, recommends that the UTU proposal be withdrawn.

E. Medical Insurance Coverage

The Board has not been presented with sufficient probative data to recommend that the UTU contract be singled out for a modification of benefits with regard to persons who are not yet employed by SEPTA. Therefore, the Board recommends that the SEPTA proposal be withdrawn.

F. Conductor Seniority and Training

The UTU seeks a contract provision to provide that when a junior Conductor not holding a Conductor's position is force-assigned to a lower paying Conductor's position that the force-assigned employee be compensated the greater of the daily earnings between the two positions. The UTU argues that the force-assignment of employees to Conductor positions is a consequence of there being an insufficient number of qualified Conductors to cover SEPTA's commuter train service.

SEPTA maintains that it has addressed the UTU concern by reason of having trained an additional 58 full Conductors, a number it believes is sufficient to address any alleged concern about Conductors not being able to pick assignments that can be performed by Assistant Conductors.

The Board is satisfied that SEPTA has made a good faith effort to address the UTU concern and, therefore, finds no reason to recommend a penalty provision in the agreement.

G. Holidays

The UTU has proposed that all holidays be handled in the same manner as Martin Luther King Day, Presidents' Day, and Good Friday as reflected in Section 601(f) of the parties' agreement. That is, if a paid holiday occurs while an employee is on vacation, the employee has the option of taking holiday pay or a floating holiday.

The Board recommends adoption of this UTU proposal.

H. On the Job Training Allowance

Current rules of the collective bargaining agreement provide that Conductors who act as instructors for employees being trained for Assistant Conductor positions receive a 50 cent per hour on-the-job training allowance.

The Board recommends that this training allowance payment practice be codified and incorporated in the written agreement.

I. Vacation Eligibility

The current UTU Agreement requires that employees hired on or after January 1, 1983 must work at least 195 days (including vacation days) to be eligible for vacation in the following year. The UTU has proposed that the number of days be reduced to 120 days (excluding vacation).

The Board recommends that the UTU proposal be withdrawn.

J. Short Term Disability Insurance Program

SEPTA submits that the BLE gave up certain itemized cost elements of its agreement to offset the cost of this benefit, a fixed cost of \$20.65 per month, per member.

The Board recommends that, if the UTU continues to seek a Short Term Disability Insurance Program, the Organization engage in conferences with SEPTA concerning the manner by which the cost of such program may be offset.

K. Retiree Life Insurance

The current agreement between the UTU and SEPTA provides retirees with a \$2,000 life insurance policy.

The most recently negotiated SEPTA/BLE Agreement includes a provision covering retiree life insurance that reads as follows:

Retiree Life Insurance: In Section 806, amount to increase coverage (to \$10,000) for any employee retiring during the term of the Labor Agreement.

The Board recommends that SEPTA agree to the UTU's proposal to increase retiree life insurance coverage to \$10,000 for any employee retiring during the term of the agreement.

VII. CONCLUSIONS

The above recommendations address all of the open issues which the Board has deemed necessary for resolution. The Board recommends that any other proposals, not specifically addressed above, be withdrawn.

It should be abundantly clear in reading the above findings and observations that the Board respects, and its individual members have in other PEB proceedings and elsewhere adhered to, the principle of pattern bargaining and settlements.

The Board's recommendation that longevity pay be extended to UTU Conductors is premised upon the unique character of the "crew" relationship between Engineers and Conductors.

It is the Board's earnest hope, in keeping with the intent of Section 9a(c)(1) of the RLA, that the parties will now enter into a collective bargaining agreement based on the recommendations that we have set forth in our Report.

Respectfully Submitted,

Richard R. Kasher, Chairman

Robert E. Peterson, Member

David P. Twomey, Member

APPENDIX A

THE WHITE HOUSE

Office of the Press Secretary
(Crawford, Texas)

For Immediate Release

April 10, 2004

EXECUTIVE ORDER

**ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY
AND ITS CONDUCTORS REPRESENTED BY THE UNITED TRANSPORTATION UNION**

A dispute exists between the Southeastern Pennsylvania Transportation Authority, and its conductors represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151-188 (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 Emergency Board ("Board"). There is established, effective April 12, 2004, a Board of three members to be appointed by the President to investigate and report on 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 this 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 in the conditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

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 section 2 of this order.

GEORGE W. BUSH

**THE WHITE HOUSE,
April 10, 2004.**

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