

REPORT
to
THE PRESIDENT

by
EMERGENCY BOARD

NO. 216

APPOINTED BY EXECUTIVE ORDER 12650,
DATED SEPTEMBER 9, 1988
PURSUANT TO SECTION 9A OF
THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between the Port Authority Trans-
Hudson Corporation and its employees represented by the
Brotherhood of Locomotive Engineers

(National Mediation Board Case No. A-11895)

WASHINGTON, D.C.
OCTOBER 21, 1988

LETTER OF TRANSMITTAL

New York, New York
October 21, 1988

The President
The White House
Washington, D.C.

Dear Mr. President:

On September 9, 1988, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12650, you created an Emergency Board to investigate a dispute between the Port Authority Trans-Hudson Corporation and its employees represented by the Brotherhood of Locomotive Engineers.

The Board has now the honor to submit to you, in accordance with the provisions of the Railway Labor Act, its Report and Recommendations concerning an appropriate resolution of the dispute.

Respectfully,



Arvid Anderson, Chairman



Irving Bergman, Member



Thomas Rinaldo, Member

TABLE OF CONTENTS

	Page
I. Creation of the Emergency Board.....	1
II. Parties to the Dispute.....	1
A. The Carrier.....	1
B. The Organization.....	3
III. History of the Dispute.....	3
IV. Activities of the Emergency Board.....	4
V. Issues.....	5
A. Wages.....	5
B. Health and Welfare.....	6
C. Other Benefits.....	7
VI. Discussion and Recommendations.....	8
A. Wages.....	8
B. Health and Welfare.....	13
C. Other Benefits.....	14
VII. Conclusion.....	15
Appendix	
Executive Order 12650	

I. CREATION OF THE EMERGENCY BOARD

Emergency Board No. 216 (the "Board") was established by the President pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159(a), and by Executive Order 12650. The Board was ordered to investigate and report its findings and recommendations regarding a dispute between the Port Authority Trans-Hudson Corporation (PATH) and its employees represented by the Brotherhood of Locomotive Engineers. A copy of the Executive Order is attached as Appendix A.

The President appointed Arvid Anderson, an arbitrator from Fort Myers, Florida, as Chairman of the Board. Irving T. Bergman, an attorney and arbitrator from Lawrence, New York and Thomas N. Rinaldo, an attorney and arbitrator from Buffalo, New York, were appointed as Members. The National Mediation Board assigned Joseph E. Anderson as Special Assistant to the Emergency Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

The Port Authority Trans-Hudson Corporation ("PATH" or the "Carrier") is a rail commuter line which carries more than 200,000 passengers daily between Newark, Jersey City and Hoboken in New Jersey and the World Trade Center and Penn Station in New York City. Though only 13.9 miles long, it serves 13 stations -- seven in New Jersey and six in New York. PATH has a fleet of approximately 400 passenger rail cars. About 300 are used daily during peak hours. PATH has 1,115 employees.

PATH is a wholly-owned subsidiary of the Port Authority of New York and New Jersey. The Authority took over the rail line from the bankrupt Hudson and Manhattan railroad in 1962. Since then, as before, the rail line has been an ever-deepening deficit operation. In 1963, with 29.2 million riders, it had a gross operating deficit of \$2.3 million. In 1987, with 51.3 million riders, its gross operating deficit was \$87.9 million. The balance of its operating deficit is regularly made up by the tolls charged by the Port Authority.

PATH summarized its operations from 1979 to 1987 as follows:

PATH OPERATING SUMMARY

	1979	1987
Total passengers carried. . . .	44,273, 038	58,190,500
Total passenger miles	198,073,145	306,030,139
Typical weekday morning peak (7-10:00 a.m., Fall).	60,942	78,851
Employee compensation	\$24,697,800	\$78,020,000
Total expenses.	\$43,017,000	\$146,150,000
Total revenues.	\$14,717,000	\$58,186,000
Gross operating deficit	\$38,448,000	\$87,964,000
Cumulative gross operating deficit (From Sept. 1962)\$267,384,000	\$1,013,078,000
Cumulative capital investment (From Sept. 1962)\$272,424,000	\$641,698,000
Revenue per passenger	\$0.30	\$1.00
Cost per passenger.	\$1.20	\$2.51
Operating loss per passenger. .	\$0.90	\$1.51

Causes for the operating losses are, of course, not peculiar to PATH. They are shared by many other public transit operations. As elsewhere, pressure continually to increase fares -- PATH fares being set by the Governors of New Jersey and New York -- has to be balanced against public interest, necessity, convenience, ridership incentives, and a host of other factors.

B. The Organization

The Brotherhood of Locomotive Engineers represents 178 employees designated as "Motormen" in the Locomotive Engineers craft or class employed by the Carrier. The remainder of the Carrier's organized employees are represented by eight other unions.

III. HISTORY OF THE DISPUTE

The present dispute originated with the Organization serving on July 8, 1985 a notice under Section 6 of the Railway Labor Act asking for improvements in wages, rules and benefits. Direct negotiations between the parties were to no avail, and the Carrier and the Organization applied jointly for mediation by the National Mediation Board in May of 1987.

Mediation began in July of 1987 under the direction of Mediator E.B. Meredith. In March 1988, the Organization requested that the National Mediation Board release it and proffer arbitration. After a final mediatory effort on July 8, 1988 by Member Joshua M. Javits and Mediator Joseph E. Anderson, the arbitration proffer was made. This was rejected by the Organization on August 2, 1988. In a further effort to resolve the dispute, however, the National Mediation Board conducted a Public Interest conference led by Member Joshua M. Javits and Mediator Joseph Anderson, on September 7, 1988. Following such conference, the dispute remained unresolved.

Significant to this dispute is the recent history of bargaining by the Carrier with the six organizations, representing other employees, which have reached agreement with the Carrier

calling for changes in wage and benefits levels, with new moratorium periods ending on various dates between October 18, 1988 and May 28, 1989. These organizations are:

United Transportation Union

Transport Workers Union

American Railway Supervisors Association

International Brotherhood of Teamsters

International Brotherhood of Electrical Workers
(two units)

American Train Dispatchers Association

Negotiations are in progress with the Brotherhood of Railroad Signalmen, while the dispute between the Carrier and the Transportations Communication Union-Carmen Division was the subject of Emergency Board No. 214's Report, issued August 9, 1988.

IV. ACTIVITIES OF THE EMERGENCY BOARD

The Board conducted a hearing on the issues in dispute on September 27, 1988 in New York City. The parties were given full opportunity to present evidence, testimony, argument and rebuttal.

In its deliberations to prepare this Report, the Board gave full consideration to the hearing transcript and documents submitted in evidence by the parties.

V. ISSUES

A. Wages

The Carrier proposes a three year agreement with wage increases effective September of each year, as follows:

1985 - 5% or \$16.63 per hour
1986 - 5% or \$17.49 per hour
1987 - 5% or \$18.30 per hour

The Carrier's proposed wage increases are based upon the percentage of wage increase offered and agreed to by the six other organizations on the property. PATH's offer presents an option: five percent increases each of the three years with no increase in the Carrier's contribution to the existing supplemental pension plan, or 5.2%, 5.2% and 4.6% each year with a 10 cents per hour increase in the Carrier's contribution to the pension plan.

BLE proposes the following wage increases, effective each July 8.

1985 - 7% or \$16.95 per hour
1986 - 7% or \$18.17 per hour
1987 - 7% or \$19.37 per hour

BLE bases its proposal on the lump sum payment offered by the New Jersey Transit System plus an additional three percent per year. When that rate is averaged with the rates paid by the Long Island Rail Road and Metro North it will result in a rate in excess of \$19 per hour.

BLE's position is that instead of being compared to other organizations on the property, a better basis for comparison is with other passenger engineers in the New York Metropolitan area. The Organization cites wage rates on the Long Island Rail Road, Amtrak, Metro-North, and New Jersey Transit.

In addition, BLE cites two provisions of the Rail Safety Improvement Act of 1988, Public Law 100-342. It is the Organization's contention that these provisions, one of which "dilutes" the responsibility of railroads for violation of federal safety statutes and makes engineers subject to fines and imprisonment, and the other of which establishes a program for licensing and certifying engineers, as well as a provision requiring installation of devices such as event recorders, "show that the bill has formally recognized the engineer as first cousin to the airline pilot."

BLE also proposes that the Carrier pay interest on any retroactive wage settlement.

PATH's position is that the rates for Motormen, which is the term it uses for engineers, are properly compared to the rates for Motormen employed by the New York City Transit Authority which also operates a subway transit system and not to the engineers employed by the Long Island Railroad, Metro North and New Jersey Transit.

B. Health and Welfare

1. Major Medical

BLE proposes an increase in the lifetime major medical insurance cap from \$100,000 to \$1,000,000. PATH proposes a \$500,000 maximum.

BLE also proposes the establishment of a co-pay prescription plan. The Carrier has no proposal on this subject.

2. Life Insurance

PATH has offered \$10,000 of optional life insurance coverage upon retirement paid for by the employee, or an increase from \$5,000 to \$10,000 of paid-up insurance at age 65 on a non-contributory basis to the other organizations on the property. BLE "assumes" that this proposal would extend to it as well.

3. Medical Examinations

PATH's current policy regarding its required medical examinations is that employees must fast 6 hours prior to these examinations. At present, Motormen are allowed 3 hours with no loss of pay to undergo these examinations. The Organization proposes that the Carrier compensate the employees for the day's wage loss, based upon the premise that operating trains while fasting is an unsafe practice. The Carrier does not find it economically feasible to provide a day off due to medical examinations.

BLE's final proposal on the subject of medical examinations is that employees be compensated for time lost for follow-up testing. PATH, in response, points out that individuals in these circumstances are placed on sick leave.

4. Disability Benefits

BLE proposes that the current disability benefit be increased from \$28.00 per year of service per month to \$34.30 per year of service per month. The Carrier's position is that any increase in disability benefits should derive from wage increases.

C. Other Benefits

1. Clothing Allowance

Motormen on PATH are not required to wear uniforms while performing their job functions. Nevertheless, it is the Organization's position that Motormen should be provided with an annual clothing maintenance allowance of \$150.00. This is the same amount provided for in the Carrier's agreement with the United Transportation Union. PATH's position is that since there is no uniform requirement there is no need for a uniform allowance. In response, BLE cites a notice issued this past summer notifying the employees of their responsibility to wear "proper attire" while on the job.

2. Meal Allowance

The Organization proposes that their agreement be amended to provide a meal allowance of \$7.50 when a Motorman's tour of duty exceeds 10 hours. This represents an increase from the current allowance of \$2.25. In support of its position, BLE refers to the Report of Emergency Board No. 214, which recommended for employees represented by the Transportation Communications Union-Carmen Division, an increase to \$5.00 after 10 hours, and \$10.00 after 14 hours. The Carrier maintains that a meal allowance is an "anachronism" when employees receive a substantial amount of overtime pay, and proposes no increase in this benefit.

3. Holidays

The original BLE proposal on this issue was that employees receive an additional five holidays per year. In view of Emergency Board No. 214's recommendation that employees be granted Martin Luther King's Birthday as an additional

holiday, BLE asks that this day be added to its proposal. PATH's offer is to add Martin Luther King's Birthday to the 11 existing holidays.

4. Union Officials

The Organization proposes 4 hours' minimum pay for union officials attending conferences required by the Carrier. The Carrier takes the position that these employees are already compensated by the union and therefore does not accede to BLE's proposal.

5. Motor-Switchmen Working Last Shift

BLE proposes that the current agreement be amended to treat Motor-Switchmen working the last shift as if they were working as Motormen. The current provision states that Motormen working the last shift be scheduled for tours of duty which work a maximum of six hours, exclusive of overtime. The Carrier takes the position that the Organization's proposal would increase the cost of operation.

VI. DISCUSSION AND RECOMMENDATIONS

A. Wages

The Carrier has submitted for our consideration the agreements that have been completed with 57% of the Carrier's organized labor force. These agreements have followed a pattern of an annual 5% wage increase in each of the three years. The pattern offered and established by the Carrier for the majority of its organized employees includes annual five percent wage increases; the addition of a paid holiday, Martin Luther King's Birthday; an increase to \$500,000 in lifetime major medical benefits; an increase in paid-up life insurance to either, at the employee's option, \$10,000 fully paid at age 65, or \$5,000 fully paid and \$10,000 contributory at the group rate.

The report of Emergency Board No. 214, dated August 9, 1988 recommended the 5% hourly wage pattern for the carmen unit.

The Organization rejects any tendency toward "pattern bargaining" with the other organizations representing PATH employees. It maintains that the imposition of such a pattern would be totally inappropriate because increased technology has altered the

relationship of the relative duties and responsibilities among the various crafts asserting they should be compared with engineers in the New York Metropolitan area, i.e. the Long Island Railroad, Amtrak, Metro-North and New Jersey Transit.

The Organization cites the recent enactment of the Rail Safety Improvement Act of 1988 (Public Law 100-342) to emphasize the increasing responsibilities of an engineer's job.

The Carrier, in response, has submitted for our consideration an analysis of Motormen rates comparison of the commuter railroads in the New York-New Jersey-Connecticut metropolitan area.

MOTORMAN COMPARISONS

	<u>PATH</u>	<u>LIRR</u>	<u>NYCTA</u>	<u>METRO NO.</u>	<u>NJT</u>
DEC '80	11.96	12.66	9.08		
JAN '81		13.42			
APR '81			9.81		
JUN '81		13.82			
SEP '81	12.35				
JAN '82		14.65			
MAR '82	12.57				
APR '82			10.88		
SEP '82	13.56				
JAN '83		15.68		15.79	13.54
APR '83			11.92		
SEP '83	14.61				
JAN '84		16.77		16.74	14.21
APR '84			12.40		
JUL '84			12.75		
SEP '84	15.81			17.91	
JAN '85		17.61			15.06
APR '85			13.39		
JUL '85					***1,000 Lump Sum
SEP '85	16.63*				
JAN '86		18.49		18.81**	
APR '86			14.19		
JUL '86					***15.51
SEP '86	17.49*				
JAN '87				19.66**	
APR '87			15.04		
JUL '87					***15.98
AUG '87		19.41			
SEP '87	18.30*				
JAN '88				20.64**	
APR '88			15.94		
JUL '88					***16.46
AUG '88		20.28			
MAY '89			16.74		
MAY '90			17.64		

* Assumes 5% increase per year with 10 cents per hour going to pension in last year as agreed to by PATH's seven other unions and as recommended by E.B. #214 for BRC.

** Contract has not been signed as yet; assumes BLE will follow pattern of 5%, 4.5%, 5% accepted by other Metro No. unions.

*** Contract has not been signed as yet; assumes BLE will follow pattern of \$1,000 lump sum payment plus three 3% annual raises accepted by other NJT unions.

1. Figures for Metro North begin with their initial agreement. Metro North has the right to release engineers during their tour for a minimum of 1 hour and a maximum of 4 hours, and pay them at 1/2 rate during this release.

The Board is not convinced of the validity of the Organization's claims that increasingly sophisticated equipment and reduced manning have combined to produce an "enormous" rise in the productivity of and responsibility shouldered by Motormen. Nor is this Board persuaded that technological changes have altered the relative duties and responsibilities among the various crafts so as to depart from the allocation of wage rates and the wage pattern accepted by the majority of the crafts. We concur in Emergency Board 214's assessment that collective bargaining, over the years, has adequately measured the differences in skills and responsibilities among PATH employees and we find no justification to recommend a wage increase greater than the wage pattern accepted by a majority of the crafts.

We are also not persuaded that the Rail Safety Improvement Act of 1988 (Public Law 100-342) will significantly distinguish or alter the responsibility of Motormen. Although the Act may affect an engineer's performance in operating a motor vehicle the difference does not presently justify a departure from the wage pattern established by the Carrier and accepted by the majority of the work force.

The Carrier's wage offer of 5% per year for three years is consistent with the pattern settlements established on the Carrier's line and is reasonably comparable with or in some cases exceeds settlements with Motormen on the other commuter lines in the Metropolitan area. If the Organization accepts the Carrier's offer, hourly wages will be raised to \$18.30. It should be noted that the Carrier's offer of 5% is 1% less in the last two years than that of the New York City Transit Authority. Nevertheless, the Carrier's rate of \$18.30 will still be far ahead of the New York City Transit rate which will only reach \$17.64 in May of 1990; the most relevant comparison.

An additional factor in our consideration has been the changes in the Consumer Price Index. The following Carrier exhibit shows that the increase in the Motormen's wage rates have exceeded the Consumer Price Index.

MOTORMAN RATE - CONSUMER PRICE INDEX

<u>YEAR</u>	<u>CPI*</u>	<u>% INCREASE OVER PRIOR</u>	<u>HOURLY RATE</u>	<u>% INCREASE OVER PRIOR</u>
1965	94.3		\$ 3.95	
1970	119.0	26.2	4.85	22.8
1975	166.6	40.0	8.01	65.2
1980	236.0	42.1	11.91	48.7
SEPT 82	278.9	18.2	13.56	13.9
SEPT 83	288.1	3.3	14.61	7.8
SEPT 84	299.9	4.1	15.81	8.2
SEPT 85	309.3	3.1	16.60	5.2
SEPT 86	317.5	2.7	17.43	5.2
SEPT 87	337.4	6.3	18.30	5.2
INCREASE (1965-9/87) + 257.7%			INCREASE (1965-9/87)	363.3%
INCREASE (1980-9/87) + 43%			INCREASE (1980-9/87)	53.7%
INCREASE (9/84-9/87) 12.5%			INCREASE (9/84-9/87)	15.7%

* URBAN WAGE EARNERS (NY, NORTHEASTERN NJ)

B. HEALTH AND WELFARE

1. Major Medical

The Organization's request to increase the individual lifetime major medical cap from \$100,000 to \$1,000,000 and their added request for a co-pay prescription plan are significant cost items which would unbalance the pattern of settlements. Nevertheless, we endorse the Carrier's offer to increase the individual lifetime major medical maximum from \$100,000 to \$500,000.

2. Life Insurance

We recommend that the Carrier's life insurance offer that has been accepted in the other agreements of an increase of \$5,000 to \$10,000 (with an alternate option of \$10,000 increased contributory insurance with the current \$5,000 non-contributory insurance) be extended to this Organization.

3. Medical Examinations

We understand the Organization's claim to be that Motormen cannot operate the trains safely if they are required to fast six hours before a medical examination. The necessity to fast prior to a medical examination is so universally practiced that there is no reason to grant additional time with pay over and above the three hours pay already allotted.

The Organization contends that when an employee is removed from service by the medical department for further testing the employee may lose pay if the testing later indicates that he is qualified for service.

The agreement of the parties provides that sick pay does not begin until after the first five days of sickness. Since we lack evidence of the impact of such occasions, we defer this issue to the parties for further bargaining.

4. Disability Benefits

We agree with the Carrier's position that any increase in the disability benefits must come from wage increases.

C. Other Benefits

1. Clothing Allowance

It is the Organization's position that Motormen should be provided with an annual clothing maintenance allowance of \$150.00, the same amount provided for in the Carrier's agreement with the United Transportation Union. PATH's position is that since there is no uniform requirement there is no need for a uniform allowance. We agree.

2. Meal Allowance

The Organization proposes that their agreement be amended to provide a meal allowance of \$7.50 when a Motorman's tour of duty exceeds 10 hours. This represents an increase from the current allowance of \$2.25. In support of its position, BLE refers to the Report of Emergency Board No. 214, which recommended for employees represented by the Transportation Communications Union Carmen-Division an increase to \$5.00 after 10 hours, and \$10.00 after 14 hours. The Carrier maintains that a meal allowance is an "anachronism" when employees receive a substantial amount of overtime pay, and proposes no increase in this benefit. This Board recommends that because of the substantial changes in food prices since the present level was established, the Organization's proposal should be adopted.

3. Holidays

The original BLE proposal on this issue was that employees should receive an additional five holidays per year. In view of Emergency Board No. 214's recommendation that employees be granted Martin Luther King's Birthday as an additional holiday, BLE asks that this day be added to its proposal. PATH's offer is to add Martin Luther King's Birthday to the 11 existing holidays. We so recommend. Moreover we find no basis for granting the additional five holidays originally requested by the Organization.

4. Union Officials

The Organization proposes 4 hours' minimum pay for union officials attending conferences required by the Carrier. The Carrier's position is that these employees are already

compensated by the union and therefore does not accept BLE's proposal. We recommend that the Organization's proposal be accepted with the provision that such payment be limited to the time actually required and that no full-time paid union official be covered by this provision. We make this recommendation because the time requested is within the control of the Carrier.

5. Motor Switchmen Working Last Shift

The agreement currently provides that Motormen working the last shift be scheduled for tours of duty which work a maximum of six (6) hours, exclusive of overtime. The Organization contends that because the benefit was negotiated in lieu of a shift differential it should be extended to Motor Switchmen. However, sufficient evidence has not been presented to support the Organization's request to extend this benefit to Motor Switchmen.

VII. CONCLUSION

For the reasons stated above, the Board respectfully urges the parties to accept our conclusions and recommendations.



Aryid Anderson, Chairman



Irving Bergman, Member



Thomas Rinaldo, Member

APPENDIX

EXECUTIVE ORDER

12650

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN THE PORT AUTHORITY TRANS-HUDSON CORPORATION
AND CERTAIN OF ITS EMPLOYEES REPRESENTED BY
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

A dispute exists between the Port Authority Trans-Hudson Corporation and certain of 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 (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. Section 159a).

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

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, it is hereby ordered as follows:

Section 1. Establishment of Board. There is established, effective September 9, 1988, 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 its findings to the President with respect to the dispute within 30 days after the date 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. Expiration. The Board shall terminate upon the submission of the report provided for in Section 2 of this Order.

RONALD REAGAN

THE WHITE HOUSE,
September 9, 1988.

###