

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 246

SUBMITTED PURSUANT TO

EXECUTIVE ORDER DATED JUNE 14, 2014 ESTABLISHING AN EMERGENCY BOARD
TO INVESTIGATE A DISPUTE BETWEEN THE SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY AND BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AND TRAINMEN AND INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

AND SECTION 9a OF THE RAILWAY LABOR ACT, AS AMENDED

(National Mediation Board Case Nos. A-13559 and A-13566)

WASHINGTON, D.C.

July 14, 2014

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July 14, 2014

The Honorable Barack Obama
President of the United States
The White House
Washington, D.C. 20500


Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order dated June 14, 2014, you established an Emergency Board, effective 12:01 a.m., Eastern Daylight Time, June 15, 2014, to investigate a dispute between the Southeastern Pennsylvania Transportation Authority, and certain of its employees represented by the Brotherhood of Locomotive Engineers and Trainmen and the International Brotherhood of Electrical Workers (collectively, the Organizations).

Following its investigation of the issues in dispute, including both hearings and meetings with the parties, the Board now has the honor to submit its Report to you setting forth our recommendations for equitable resolution of the dispute between the parties.

The Board acknowledges with thanks the assistance of Norman L. Graber, Esq. and Angela I. Heverling, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

Respectfully submitted,



Richard R. Kasher, Chairman



Ann S. Kenis, Member



Bonnie Siber Weinstock, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 246 (“PEB” or “Board”) was established by the President pursuant to Section 9a of the Railway Labor Act (“RLA”), as amended, 45 U.S.C. §151 *et seq.* including §159a, and by Executive Order dated June 14, 2014. The Board was created to investigate and report its findings and recommendations regarding a dispute between the Southeastern Pennsylvania Transportation Authority (“SEPTA”) and certain of its employees represented by the unions described below. A copy of the Executive Order is attached as Appendix A.

The President appointed Richard R. Kasher, of Villanova, Pennsylvania, as Chairman of the Board, and Ann S. Kenis, of Valparaiso, Indiana, and Bonnie Siber Weinstock, of Melville, New York, as Members. The National Mediation Board (“NMB”) appointed Norman L. Graber, Esq. and Angela I. Heverling, Esq. as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

SEPTA

SEPTA is a metropolitan transportation authority that operates various forms of public transit— commuter rail, bus, subway and elevated rail, light rail, trolleybus, paratransit, and shared-rides—that serves 3.9 million people in and around Philadelphia, Pennsylvania. Overall, SEPTA has the 6th largest transportation system in the United States, providing approximately 337 million passenger trips a year. In total, it controls 280 stations, over 450 miles of track, 2,800 revenue vehicles, and 145 routes covering approximately 2,200 route miles. SEPTA's headquarters are located in Center City, Philadelphia.

SEPTA’s commuter rail operation, covered by the RLA and at issue in this proceeding, serves the combined city and county of Philadelphia, Delaware County, Montgomery County,

Bucks County, and Chester County. It also serves Newark, Wilmington, and Claymont in Delaware, and Trenton and West Trenton in New Jersey. The commuter rail operation has 13 separate train routes and provided 36 million passenger trips in fiscal year 2013.

The Labor Organizations

The Brotherhood of Locomotive Engineers and Trainmen (“BLET”) represents approximately 200 Locomotive Engineers on SEPTA’s Regional Rail Division (“RRD”). They are responsible for the operation of rail passenger cars. The International Brotherhood of Electrical Workers (“IBEW”) represents approximately 215 Electrical Workers who perform electrical work on SEPTA’s electrified rail facilities, maintaining rail vehicles, substations, overhead power lines, communications equipment and high voltage and traction equipment. (The BLET and IBEW are collectively referred to herein as the “Organizations.”)

III. HISTORY OF THE DISPUTE

On February 2, 2009 and July 23, 2009, pursuant to Section 6 of the RLA, IBEW and BLET, respectively, served on SEPTA formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute in direct negotiations. Applications for mediation were filed with the NMB by BLET on April 9, 2010 and by IBEW on June 21, 2010.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On May 1, 2014, the NMB, in accordance with Section 5, First, of the RLA, urged SEPTA and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA (“proffer of arbitration”). On May 2 and 6, 2014, BLET and IBEW, respectively,

accepted the NMB's proffer of arbitration, and on May 8, 2014, SEPTA declined the NMB's proffer of arbitration.

On May 14, 2014, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Daylight Time, on Saturday, June 14, 2014. Absent the establishment of an Emergency Board, BLET and IBEW commenced a strike on June 14, 2014.

On June 14, 2014, in accordance with Section 9a of the RLA, the Governor of Pennsylvania requested that the President establish an Emergency Board to investigate and issue a Report and Recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. Thereafter, on June 14, 2014, the President created this Emergency Board, effective June 15, 2014. BLET and IBEW ceased striking when the Emergency Board became effective.

IV. ACTIVITIES OF THE EMERGENCY BOARD

Following an organizational meeting by conference call, the Board issued an organizational letter on June 16, 2014, in which the ground rules for the Board's procedures were set forth. Pursuant to those ground rules, the parties submitted pre-hearing briefs to the Board on June 20, 2014. Hearings on the dispute were held on June 23 and 24, 2014, in Philadelphia, Pennsylvania. All parties were represented by counsel and had a full and fair opportunity to present oral and documentary evidence and argument.

The Board Chairman met informally with SEPTA and the Organizations on July 1, 2014 in Philadelphia, Pennsylvania, in an attempt to facilitate a settlement of the disputes.

The Board met in a series of telephonic Executive Sessions and in person in Washington, D.C. The Board has thoroughly considered the evidence and arguments presented by all parties in this proceeding. The Board sincerely hopes that the Recommendations contained herein will enable the parties to resolve their contract impasses.

V. DISCUSSION

A. Overview

SEPTA negotiates with 17 separate labor unions. Eight of the unions, including the two Organizations in this case, are part of SEPTA's RRD, which is governed by the RLA. The other nine unions are covered by state law, not the RLA. Transport Workers Union Local 234 ("TWU") represents approximately 5,080 employees on SEPTA's City Transit Division ("CTD"), or approximately 70% of all of SEPTA's union-represented employees. Employees represented by TWU and the other represented employees not covered by the RLA have the right under state law to strike immediately upon expiration of their collective bargaining agreements.

There is no dispute that SEPTA engages in pattern bargaining. The Organizations and SEPTA agree on that salient point. SEPTA's collective bargaining agreements with TWU establish the pattern that is followed in SEPTA's contracts with its 16 other smaller bargaining units, including BLET and IBEW. The parties agree that one of the significant issues before the Board turns on which party's proposals in this case more accurately reflect the pattern set by SEPTA's 2009 agreement with TWU.

The BLET and IBEW take the position that the employees they represent are entitled to receive the full value of the agreement SEPTA reached with TWU that set the pattern for bargaining. That agreement included provisions enhancing the existing pension provided to TWU represented employees at an additional cost to SEPTA during the term of that agreement.

The Organizations contend that the additional expenditure caused by the pension enhancements represents the equivalent value of a 2.78% wage increase for those BLET and IBEW represented employees. SEPTA maintains that an internal pattern was firmly established in bargaining and it does not include a wage increase linked to the TWU pension enhancements. In any event, SEPTA argues, the increased TWU employee contributions to the pension plan pay for the pension improvements, so they are cost neutral.

The Organizations also assert that SEPTA's most recent agreement with the United Transportation Union Local 61 ("UTU"), which SEPTA has characterized as within the pattern of bargaining, pays the UTU represented conductors a certification allowance of \$0.6121 per hour. The Organizations calculate this to be the equivalent of a 2.29% wage increase for those employees. BLET and IBEW argue that if the pattern is to be honored, then BLET and IBEW represented employees also are due an equivalent increase. Further, the Organizations contend that the \$0.6121 hourly payment represents a change in the historic pay differential between locomotive engineers and conductors. Thus, they submit the pay differential should be restored by adding an additional 10.4% adjustment to the engineers' wages. SEPTA rejects these arguments and contends that the UTU agreement contains a certification allowance because conductors now are subject to decertifiable events that can affect their employment.

The Organizations contend that there is additional value elsewhere in the collective bargaining agreements SEPTA reached with other unions. To the Organizations, it is clear that the bare general wage increases in the TWU agreement represent the floor, not the ceiling, for the economic pattern in bargaining. One such example they cite is the agreement reached with the Brotherhood of Maintenance of Way Employees Division of the Teamsters Rail Conference ("BMWED") which grants every employee a .5% wage adjustment before general wage

increases are applied. SEPTA acknowledges that there are times when one union or another prefers a different economic distribution of benefits but contends that such an arrangement is nevertheless within the pattern of bargaining. SEPTA urges the Board to recommend that this dispute be settled on the same basis as the 2009 pattern agreements between it and all other unions representing SEPTA employees.

The other significant area of dispute between the parties involves retroactivity. The BLET and IBEW say they will accept the general wage increases in the TWU agreement, but only if they come with full retroactivity. They claim that SEPTA's continuing refusal to provide documentation has prevented resolution by the parties, to the point that IBEW electrical workers have worked through an entire contract period without a wage increase, while the BLET engineers are four years into the process of negotiating an agreement that will end in 2015. SEPTA, on the other hand, offers no retroactivity. SEPTA remains committed to following what it describes as its "unwavering policy" of not making wage increases retroactive. Moreover, SEPTA claims that it provided the Organizations with all relevant and material information as requested. Therefore, SEPTA argues, no equitable reasons exist for deviating from its longstanding policy.

The remaining issues, while less economically consequential, are nonetheless important to the parties. Both the BLET and the IBEW seek a prescription bridge so that their members who retire at or before age 62 are provided continuing prescription drug coverage until they become Medicare eligible.

The BLET is asking to liberalize the employees' ability to take vacations in single day increments and to pay for those single days at the rate of 9.6 hours per day because most engineers work a six-day week.

The IBEW seeks a continuation of health insurance coverage for a small group of retirees and their spouses; the counting of some sick time toward vacation eligibility; an extension of the right to take vacation in single day increments; and an increase in the at-work accidental death benefit to \$500,000.

For its part, SEPTA proposes a requirement that locomotive engineers wear uniforms.

B. The TWU Agreement

On November 8, 2009, SEPTA concluded a new five-year agreement with TWU, effective March 15, 2009, that provided for a \$1250 signing bonus and general wage increases as follows:

July 4, 2010	1.5%
December 12, 2010	1%
December 11, 2011	2.5%
December 9, 2012	3.5%
December 8, 2013	3%

The 2009 TWU agreement also changed the pension plan to increase the employee benefits multiplier. The agreement that expired in 2009 provided for a 1.8% pension formula multiplier for all years of an employee's service. The new agreement limited that 1.8% pension formula multiplier to an employee's first 10 years of service and to service years beyond 30, while increasing the multiplier for the years in between. Under the new agreement, the multipliers for employees who retire after 2009 are as follows:

Years 1-10	1.8% multiplier
Years 11-20	2.0% multiplier
Years 21-30	2.2% multiplier
Years 30+	1.8% multiplier

SEPTA points out that the 2009 TWU agreement was negotiated during the worst economic downturn in modern history. During bargaining with TWU, SEPTA insisted that it was unwilling to make any improvement to the pension plan that was not cost-neutral. Based on

information from its actuaries, SEPTA determined that the requested increases in pension multipliers would be cost-neutral if employees increased their contributions by 1½% of their wages. Accordingly, in the 2009 contract, TWU agreed to increase employee contributions from 2% to 3½% of employee earnings. Those increased contributions were phased in over the term of the contract so as not to eclipse the wage increases in the contract.

SEPTA acknowledges that the 2009 TWU agreement caused an increase in its contribution to the cost of the pension plan. For the first few years of the TWU contract, SEPTA's contribution to the plan increased because employee contributions were phased in. SEPTA emphasizes that, over time, the value of the increase in employee contributions to the fund will grow until the cost increase initially borne by SEPTA is completely offset by the increases in employee contributions to the plan.

The Organizations take a different view of the TWU pension improvement. They maintain that SEPTA incurred additional costs during the term of the 2009 TWU agreement as a result of the pension enhancement which should be monetized in the form of a percentage wage increase for BLET and IBEW represented employees. The Organizations argue that the newly-negotiated increase in the TWU employee contribution reduced, but did not eliminate, the additional cost of the increased benefit incurred by SEPTA. The net amount that SEPTA had to make in annual required contributions to the pension plan during the five-year term of the 2009 TWU Agreement was approximately 35 million dollars, even after taking employee contributions into account.

Regardless of whether the increased costs to SEPTA are eventually offset many years from now by the increases in the employees' contribution rate, the Organizations contend that SEPTA's additional pension expenditure during the term of the 2009 TWU contract represents

significant added value to the TWU pattern agreement. Based on their actuarial calculations, BLET and IBEW maintain that the enhanced pension benefit is equivalent to a 2.78% wage increase. Thus, in order to be consistent with pattern bargaining, BLET and IBEW argue that their unit members are entitled to a lump sum equivalent to the additional economic value enjoyed by TWU represented employees during the term of their 2009 collective bargaining agreement with SEPTA.

C. Pattern Considerations

The importance of pattern bargaining and how it has been implemented at SEPTA is a major consideration in this case. SEPTA has engaged in pattern bargaining with the representatives of all of its unionized employees for many years, following the pattern set by the agreement with TWU. As SEPTA points out, TWU wields enormous bargaining power because it represents the vast majority of unionized employees on the city transit side of SEPTA's operations and, as a non-RLA union, it has the immediate right to strike upon expiration of its collective bargaining agreements. A strike on city transit causes disproportionate harm to SEPTA's city ridership, which is heavily dependent on public transportation. By following pattern bargaining, SEPTA argues that the other unions take advantage of TWU's leverage at the bargaining table.

SEPTA maintained in bargaining with the Organizations and in its presentation to the PEB that the internal pattern already established by 15 of the 17 unions representing SEPTA employees should be given controlling weight. The 15 agreements cover 95% of SEPTA's union workers. SEPTA urges the Board to consider, in particular, that all the other rail unions, including the UTU, have agreed to the pattern wage increases set by the 2009 TWU agreement without any additional wage increase tied to the TWU pension enhancements.

Equally important, SEPTA argues that it has never converted a pension enhancement received by TWU into a wage increase for current employees. By the same token, SEPTA's contributions under federal railroad retirement laws for RLA covered employees have never been treated as part of pattern bargaining. SEPTA maintains that any departure from the parties' historical practice of treating pensions as outside the pattern set by the TWU agreement would have the effect of destabilizing the bargaining relationships at SEPTA. SEPTA contends that if the Organizations in this case are permitted to deviate from the pattern, other unions would be discouraged from making early settlements and encouraged to try "leapfrogging," that is, attempting to outdo one another in bargaining.

BLET and IBEW urge the Board to recommend adoption of the Organizations' proposals because they most closely follow the pattern. Relying on PEB No. 243, the Organizations state that pattern bargaining must "appropriately adapt and fully monetize certain integral parts of the overall bargaining reflected therein." BLET and IBEW submit that PEB No. 243 found: "For the two bargains to be comparable as fair and appropriate resolutions, the costs to the Carriers and the benefits to the affected members as a group need not be exact but should be roughly equivalent." Here, the Organizations say, the enhancements to the TWU pension were "integral parts of the overall bargain" reached with TWU. Therefore, the Organizations argue that the Board must consider the entire economic package, not just the basic wage increases, and then decide on a monetized basis which party's proposal most closely approximates the same overall bargain. The Organizations submit that their wage proposals should be recommended since they are faithful to the pattern of bargaining set by TWU and fairly and appropriately grant BLET and IBEW represented employees a "roughly equivalent" settlement.

VI. FINDINGS AND RECOMMENDATIONS

A. Wages

The BLET and the IBEW propose that their agreements reflect the same general wage increases at the same intervals as the TWU agreement, though because the contract renewal dates for the two unions are different, with different beginning dates:

<u>BLET</u> (Term 7/15/10-7/14/15)	<u>IBEW</u> (Term 7/1/09-6/30/14)
Signing bonus - \$1,250	Signing bonus - \$1,250
November 15, 2011 – 1.5%	November 1, 2010 – 1.5%
April 15, 2012 – 1.0%	April 1, 2011 – 1.0%
April 15, 2013 – 2.5%	April 1, 2012 – 2.5%
April 15, 2014 – 3.5%	April 1, 2013 – 3.5%
April 15, 2015 – 3.0%	April 1, 2014 – 3.0%

These proposals accept 0% for the first 16 months, just as TWU did, in exchange for a \$1250 signing bonus. The Organizations also propose a lump sum payment with the equivalent value of a 2.78% wage increase to reflect the enhanced pension benefits in the TWU agreement.

SEPTA proposes that the existing pattern wage settlements should be recommended without any enhancement based on the TWU pension improvement.

After thorough consideration, and in view of the Discussion in Section V of this Report, the Board recommends that wages be increased based on adherence to the internal pattern of settlement followed by all other unions on SEPTA's property. The wage rates we recommend are those stated above, except as modified *infra*, with respect to the date of the last increase for the BLET. The Board recognizes that the Organizations strenuously argue they should receive percentage wage increases equal to the "value" of the 2009 TWU agreement, including the pension enhancements. Their position was forcefully opposed by SEPTA. Indeed, at hearing, the parties devoted considerable time and attention to their respective actuarial calculations of the value of the TWU pension improvements. Whether the pension enhancements are cost-

neutral to SEPTA, over the term of the 2009 TWU contract or over the course of several decades, is a matter in sharp dispute.

To reach this issue, however, we would necessarily have to conclude that the conversion of pension enhancements into wage increases for current employees is part of the firmly established pattern of bargaining between SEPTA and its unions. The evidence shows us otherwise. Settlements reached by SEPTA with all of its other unions are clearly relevant to consider in this matter and provide insight into what we believe is the appropriate, relevant pattern in this case. More specifically, the wages the Board recommends are the same as those agreed upon in the 2009 TWU agreement. The TWU agreement covered more than 5,000 SEPTA employees and is by far the largest bargaining unit on the property. Thereafter, all other unions, except for BLET and IBEW, agreed to identical wage settlements. Those agreements cover 95% of SEPTA's union workers.

There is another important point to consider. The historical practice on SEPTA property has never included the cost of retirement as part of the economic pattern. This is so for good reason. Railroad employees on SEPTA's rail division are covered by federal railroad labor laws and the federal Railroad Retirement System. Non-rail employees are part of the transit pension plan and the state's labor relations laws. As SEPTA persuasively argues, it is not possible or practical to do an "apples-to-apples" comparison between railroad retirement and the transit pension plan. The two are structured differently and, as a result, the parties have never attempted to monetize the pensions or treat them as part of the pattern. For example, during the period 2009-2014, SEPTA asserts that its pension costs for the Organizations (under the federal Railroad Retirement System) increased by approximately 12%. SEPTA did not seek to offer the Organizations less than the pattern wages to reflect these added costs.

Consistent with the parties' historical practice of treating pensions as being outside the pattern set by the TWU agreement, every other rail union, including the UTU, settled on the basis of the 2009 TWU agreement with no additional wage increase based on the pension enhancement received by TWU. That those terms proved acceptable as a basis for all the other rail unions reaching agreement with SEPTA provides strong evidence for concluding that the Organizations' demand for a percentage wage increase based on the 2009 TWU pension improvement is outside the pattern.

The finding of pattern does not mean that deviations may not be recommended or bargained when appropriate. In fact, the parties have cited instances in which one or more unions representing SEPTA's workers have proposed a different economic distribution of the wage benefits for a new collective bargaining agreement. Moreover, as PEBs have recognized, there are times when one craft or another is subject to new legal obligations which may warrant a departure from the pattern. Neither of those circumstances applies in this instance, however. The Organizations' proposed wage increase based on the 2009 TWU pension enhancements represents a significant increase in benefits that has no direct equivalent to the settlements agreed to by all other unions on SEPTA property and is not based upon any corresponding new legal requirements.

According to SEPTA, the "pattern" resulting from the 2009 TWU negotiations is the signing bonus, the series of wage increases described above, and an increased uniform allowance. As the Board has found, the pension enhancements received by the TWU are not included in the pattern. Based on the evidence presented, the Board finds that the "pattern" for the 2009 negotiations is the signing bonus, the series of wage increases listed above, an increased uniform allowance, and other elements that are present in other contracts, as described below.

B. Retroactivity

There is disagreement on the matter of retroactivity. The Organizations demand retroactivity in order to receive what they characterize as the full benefit of the pattern agreement set by the TWU, and in order not to provide an incentive to SEPTA to be intransigent in its negotiations. SEPTA insists that it has never agreed to retroactivity in its negotiations with any of the 17 unions on the property, and it submits that it certainly would not do so in this case as it believes the Organizations were dilatory in reaching agreement with them. SEPTA contends that any grant of retroactive wages would reward a union for “holding out for more” and seeking to “break the pattern.” It alleges that the effect would be labor relations instability.

The Organizations, on the other hand, urge that they were not “holding out for more” nor were they dilatory in negotiations. Instead, according to the Organizations, it was SEPTA’s failure to produce sufficiently detailed information regarding the cost of TWU’s pension enhancements that stalled these negotiations. The Organizations therefore insist that retroactivity is necessary to give them the full value of the pattern, which they otherwise would have accepted much earlier, if SEPTA had been forthcoming with the requested information.

The Board has carefully considered the arguments of the parties and has studied the substantial documentation in support of each party’s position. The Board finds, consistent with the findings of prior Presidential Emergency Boards on this property, that retroactivity is to be considered as part of the totality of the circumstances to be weighed in arriving at a determination. Though PEB Nos. 231 and 237 declined to award retroactivity, each PEB did so for reasons other than SEPTA’s stated explanation that it never grants retroactivity, and this Board does the same.

Upon consideration of the totality of the circumstances and all components of the items at issue before this Board, we decline to recommend retroactivity. In the round of negotiations at issue in this proceeding, none of the unions on this property received retroactive wage increases. Of the eight contracts representing employees in SEPTA's RRD, none of the six contracts settled to date provided for retroactivity. When the UTU contract was settled in September 2013, there was no retroactivity, and it was the latest settling union, leaving only the BLET and the IBEW as unresolved.

In addition, though the BLET and IBEW repeatedly asked for documentation of the costs associated with the TWU pension improvements, it is not accurate to say that they never received documentation. It is true that they did not receive documentation in the form they would have preferred, nor was the documentation as responsive as the Board believes it could have been. However, the record evidence in this proceeding reveals that the approximately \$4 million cost per year, which SEPTA conveyed as the cost of the TWU pension enhancements, ultimately was confirmed by the Organizations' actuaries. While the Board is persuaded that a more complete exchange of information would have enabled these negotiations to be more productive and efficient, the Board does not find that the chronology of events places all the blame on SEPTA so as to justify retroactivity when none has been given to any other union on the property, and in view of our finding that the pension enhancements are not part of the pattern.

C. Certification Allowance

The record is uncontroverted that in 1996, the BLE (as it was then known) negotiated a certification allowance for locomotive engineers who met the federal requirements for certification. The BLET asserts that in the give and take of contract negotiations, it gave up

other things to gain this certification allowance which began as a daily allowance and, in July 2006, became an hourly allowance of \$0.50 per hour.

In the 2009 round of negotiations, the UTU, representing conductors, negotiated a \$0.59 per hour certification allowance for the conductors who met the newly created federal certification for that position. (That rate increased shortly thereafter to \$0.6121 per hour, and on September 7, 2014, the rate will increase to \$0.6305 per hour.) The BLET asserts that the UTU gave up nothing to get the new benefit of a certification allowance. Accordingly, the BLET asks that it receive an increase in the certification allowance to \$0.6758, plus an additional \$0.6121, subject to future wage increases, to maintain the value of its original certification allowance.

The Board finds that the certification allowance in the BLET contract will increase by the across-the-board wage increases, as the parties historically have treated this wage item. Viewing the totality of the costs associated with the pattern in this round of bargaining, the Board does not recommend an additional increase in the certification allowance for the BLET beyond the application of the across-the-board increases to the current certification allowance.

The IBEW requests a \$0.59 per hour increase “for UTU’s free allowance.” The Board finds that the certification allowance was recommended by PEB No. 231 in recognition of the added responsibilities of achieving the federally required certification and the penalties that flow from failing to achieve it. As there currently is no comparable requirement for IBEW represented employees, the Board finds no basis to recommend a certification allowance or the value thereof to the IBEW.

D. Conductors’ Wages Relative to Engineers’ Wages

PEB No. 237 held that with respect to these parties, there is a “special pay relationship” between conductors (represented by the UTU) and engineers (represented by the BLET). The BLET argues that, historically, engineers have been paid at least 10.4% more than conductors.

The BLET asserts that this announced differential dates back to 1983 and SEPTA's first collective bargaining agreement with the BLE. The Board is persuaded that these parties and other PEBs have preserved this wage structure of engineers receiving approximately 10 percent more than the wages paid to conductors. For example, PEB No. 237 recommended longevity pay for conductors that was \$0.92 per hour when the engineers were receiving \$1.00 per hour.

SEPTA asserts that it never recognized a strict 10 percent pay differential between conductors and engineers. However, a Letter Agreement between the BLE and SEPTA, dated May 12, 1983, states, "The hourly wage rates for Engineers set forth in the Agreement dated May 12, 1983 are consistent with the understanding arrived at during negotiations that such hourly wage rates will be 10.4% over and above the hourly wage rates for Conductors." Though the record does not indicate whether this Letter Agreement is still in effect, the Board finds, consistent with PEB No. 237, that the historical wage relationship between conductors and engineers is part and parcel of the wage structure that we recommend be preserved. In order to preserve this historical wage relationship, the BLET must receive a modest wage increase, as described below.

SEPTA contends that if the wage rates in the TWU pattern are applied, the wage rates of engineers will be 12.26% greater than the wage rates of conductors. Therefore, in SEPTA's view, the interwoven wage structure between engineers and conductors is fully preserved. The Board does not agree. SEPTA's calculation is based on comparing the conductors' base wage rates after an increase on September 7, 2014 with the engineers' base wage rates after the pattern increase on April 15, 2015. As these contracts have different expiration dates, the Board finds that the more apt comparison would be to compare the wages of conductors and engineers at a point in time in one calendar year to determine whether the historical wage differential between

the two classifications has been preserved. By selecting September 15, 2014 as the point of analysis, the Board compares the “top wage rates” for conductors after the September 2014 wage increase with the top wage rate for engineers after their April 2014 wage increase (according to the pattern). By this comparison, the conductors’ top wage rate is \$29.97 and the engineers’ top wage rate is \$32.74.

To preserve a 10.4% differential between engineers and conductors, the engineers should have an hourly wage rate of \$33.09 by September 7, 2014. Since the engineers’ wage rate on April 15, 2014, according to the pattern, would become \$32.74, the engineers should receive an increase effective September 7, 2014 of \$0.35 per hour to preserve the historic differential between these groups.

In reaching this calculation, the Board does not include the certification allowance as part of the wages since the parties and the PEBs considering this issue have treated the certification allowance as a separate item on top of wages. This Board agrees with the prior PEBs on this issue. Accordingly, the Board recommends an increase to the wage rate of engineers, effective September 7, 2014, of \$0.35 per hour in order to approximately preserve the long-standing salary relationships between engineers and conductors.

E. Signing Bonus and Off Schedule Payments

As indicated in the “Wages” section above, the pattern established by the TWU agreement included a \$1,250 signing bonus payable upon ratification of the new contract, which was in lieu of a wage increase in the first 16 months of the agreement. That signing bonus is part of the pattern and, therefore, is to be paid to the Organizations upon their ratification of new contracts.

Separate and apart from the signing bonus, the Board is persuaded that an off-schedule payment to the BLET represented employees, which is not included in base salary, is appropriate on the facts of this case for several reasons. SEPTA acknowledges that unions may negotiate terms in addition to the pattern settlement if those unions choose to make concessions or find ways to fund other contract terms that SEPTA and the unions can agree upon. For example, SEPTA explained that in the 2009 round of negotiations, the BMWED negotiated an improvement to their dental plan and wage parity by moving some wage increases back and giving up some holidays in order to “pay for” those changes.

In a similar vein, the Board recommends that the BLET delay its final wage increase until June 15, 2015. This change, together with the institution of a uniform requirement for the BLET, discussed *infra*, warrants a one-time, off schedule payment in the amount of \$1,500 for the BLET represented employees upon ratification of a new agreement.

F. IBEW’s “65 Special Proposal”

Article VIII, Section 801(d) of the current IBEW Agreement contains a provision that addresses continuing health insurance coverage for certain retirees:

For employees retiring on or after September 2, 1990 who are enrolled in Blue Cross/Blue Shield or HMO equivalent and who are less than age 65, the Authority will pay for them and their spouses (when applicable) 100% of the premiums for Blue Cross/Blue Shield or HMO equivalents, afforded by paragraph (a): (i) for the period until they reach age 65, or (ii) until they become eligible for Medicare, whichever comes first. After such period, the Authority will pay 100% of premiums of Blue Cross 65 Special or HMO equivalent. This benefit will be guaranteed for each such retiring employee and his/her spouse for the term of this labor agreement or until the ratification of the subsequent labor agreement if it is not continued by renegotiations.

The IBEW points out that presently there are 16 retired electrical workers and spouses who are eligible for this coverage; no one else can join this group under the existing contract language and the IBEW is not proposing that the group be expanded. The IBEW further argues

that continuing health insurance coverage for retirees has been part of IBEW's agreements with SEPTA since at least 1992 and that SEPTA's agreement with TWU provides for substantially the same retiree coverage. We are further told that in April 2013, SEPTA ceased paying insurance premiums for this benefit and the ensuing dispute over the propriety of that action is currently the subject of arbitration.

Because this is a longstanding benefit consistent with the retiree health insurance coverage provided to TWU represented employees, the Board recommends a continuation of benefits provided under Article VIII, Section 801(d).

G. Prescription Drug Coverage

The Organizations propose a bridge for prescription drug coverage. The Organizations claim that SEPTA provides up to five years' continuing prescription drug coverage to certain employees covered by other collective bargaining agreements. Currently, BLET and IBEW employees who retire before age 62 do not have continued employer-paid prescription drug coverage for themselves or their spouses until they are eligible for Medicare. Rather, under their current contracts, they have the option to purchase prescription coverage under COBRA for 24 months (for the BLET) or 36 months (for the IBEW).

In light of the other recommendations herein, the Board does not recommend a change with respect to this benefit.

H. Additional Accidental Death Insurance

IBEW represented employees presently are provided accidental death and dismemberment insurance for injuries that occur on the job. The insurance is capped at \$8,000. IBEW proposes that accidental death benefits be increased to \$500,000 for its members. In its recent agreements with TWU and UTU, SEPTA agreed to provide a \$500,000 accidental death

benefit and added assault, robbery or accident in the course of employment as events that trigger the insurance benefits.

Given the hazardous nature of the work performed by the electrical workers, the Board finds a compelling reason for providing accidental death benefits equal or equivalent to the benefits provided under the TWU and UTU Agreements. We recommend that the electrical workers' accidental death benefit be increased to \$500,000.

I. Vacation Days

BLET Proposal:

The current BLET Agreement provides in Section 901(g):

Employees who qualify for ten (10) days vacation may elect to take five (5) days in single days if such election is made at the time of the vacation picking. Individual day requests will be granted on a first-come first-served basis only and by mutual agreement between employee and supervisor (see Productivity letter). Single day vacations must be taken no later than the 15th of the particular year or be forfeited

BLET proposes that this language be changed to read:

Employees who qualify for fifteen (15) days vacation may elect to take ten (10) days in single days if such election is made at the time of vacation picking. Single day vacations will be paid at the rate of 9.6 hours per day and must be taken no later than December 15th of the particular year or be forfeited.

BLET argues that the purpose of the proposed change is to broaden the right to take vacations in single day increments and to compensate the engineers for SEPTA's requirement that they work six days. According to the BLET, these benefits are already afforded to conductors in the UTU Agreement.

The Board recommends that Section 901(g) be amended as hereafter described.

SEPTA's 2006 Agreement with UTU, representing conductors, contains the following language:

Section 901 (f): Regular employees who are scheduled to work six (6) days per week will receive forty-eight (48) hours of pay at their straight time hourly rate for each week of vacation. All other employees will receive forty-four (44) hours of pay at their straight time rate for each week of vacation. This section shall also be applied to pay for single day vacations....

Section 901 (h): Employees who qualify for ten (10) days vacation may elect to take ten (10) days in single days if such election is made at the time of the vacation picking. Single day vacations selected will be granted in order of seniority from quotas established by SEPTA. The employees who will be granted their selected day off will be on a list posted at the PAC Center. Single day vacations must be taken no later than December 15th of the particular year or be forfeited.

The Board is cognizant of the fact that engineers and conductors are the operational employees who must work together cooperatively and safely to operate the trains on SEPTA's rail division. There is no doubt that a large number of these operating employees on the rail side of SEPTA work six days per week. Although the BLET seeks payment at the rate of 9.6 hours of pay for single day vacations in recognition of the engineers' regularly scheduled six-day work week, it must be emphasized that the UTU agreement provides for payment at the rate of 8 hours per day in such circumstances. Therefore, the Board does not recommend a change in compensation to engineers taking single day vacations as the BLET proposes.

The UTU agreement permits eligible conductors to take ten (10) single days of vacation. The Board recommends that the BLET agreement should permit employees who qualify for fifteen (15) days of vacation to elect to take ten (10) in single days.

IBEW Proposal:

Presently, the IBEW agreement only allows employees with eight or more years of service to take any of their vacation time in single day increments. Employees with eight years of service qualify for 15 days vacation which may be taken in single days. The IBEW proposes that this right to take vacations in single day increments be extended to employees with at least two years of service who qualify for 10 days of vacation. They would be permitted to elect to

take five days in single days. To extend the benefit to those with fewer years of service, the IBEW would agree to reduce the number of single days that 15 day vacation-qualified employees may take singly from 15 to 10.

SEPTA has offered no opposition to the IBEW's proposal. In the absence of any compelling justification for requiring an employee to wait eight years before being able to take a single day off using his or her vacation leave, the Board recommends that IBEW's proposal be adopted.

J. Counting Sick Days Toward Vacation Eligibility

IBEW proposes that the following language be added to the agreement:

Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with three (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

The Board recommends that this proposal be withdrawn. The IBEW has presented insufficient evidence to support the change it currently seeks with regard to liberalizing vacation eligibility requirements to include the use of sick days.

K. Uniforms and Clothing Allowances

SEPTA proposed, "Engineers shall be required to wear the Authority prescribed uniform." SEPTA offered into the record as an overview of its labor relations history and policies the testimony of Patrick Battel, then Chief Labor Relations Officer for SEPTA when he addressed PEB No. 239 in July 2006. In that testimony, Mr. Battel explained the basis for SEPTA's request that engineers be required to wear uniforms:

Beyond SEPTA's belief that our engineers should look professional, that it looks bad to the riding public to have our engineers wearing sweatpants and jeans and

T-shirts, that beyond that issue, we believe there is a security issue for our engineers. We want them to be recognizable in the event of a crisis by the police and by the public.

And now, on a security basis, you know, all you have to do is point out the recent the recent terrorist attacks on trains in Bombay and – and a couple of years ago on Madrid and knowing that transit systems are – are, you know – are targeted, that we want to be prepared and want our engineers to be identifiable.

Though PEB No. 239 did not then recommend that demand, the rationale for the request is the same today. The BLET counters that “uniforms for engineers are neither prudent nor necessary” and further argues that “throughout the rail industry, engineers have never been required to wear uniforms.”

The Board is persuaded that a requirement for engineers to wear a uniform and to be readily recognizable to the riding public or to emergency services workers is a rational component of a safety plan. As indicated above, PEB No. 237 recognized the close working relationship between conductors and engineers. The record reveals that conductors wear uniforms, while engineers currently do not. The conductors also have a clothing allowance, which is appropriate for the maintenance of a required uniform. The Board finds that together with the requirement for engineers to wear uniforms should be a clothing allowance. Significantly, as part of the 2009 round of negotiations, SEPTA granted increases in clothing and/or tool allowances as part of the pattern with the TWU, and also granted such increases to the UTU. Accordingly, the Board finds that a clothing allowance in the amount of \$270 is inexorably intertwined with the requirement for engineers to wear a uniform. Our recommended dollar amount for the BLET clothing allowance is the same as that paid to UTU conductors.

With respect to the IBEW, SEPTA’s proposal included an increase in the Clothing, Tools and Equipment provision of the contract from \$360 per year effective July 1, 2010, to \$365

effective July 1, 2011, and \$370 on July 1, 2012, and \$375 on July 1, 2013. As indicated above, SEPTA described the increase in the tool and clothing allowance to be part of the pattern established by the TWU. Accordingly, the increases described in this paragraph are recommended for inclusion in the IBEW contract.

The Recommendations set forth herein address all of the open issues presented to the Board which the Board deems necessary for resolution. The Board recommends that any other proposals not specifically addressed herein be withdrawn.

VII. CONCLUSION

The Board appreciates the parties' efforts and the manner in which they provided us with comprehensive evidence and arguments in support of their respective positions.

We have fashioned Recommendations, including a number of "findings," which we encourage the parties to consider in forming the basis of a fair and equitable settlement of this dispute.

The Board anticipates that neither SEPTA nor the Organizations will be entirely satisfied with our Recommendations. It would be unfortunate if, in the words of the United States Supreme Court, the "purposefully long and drawn out [bargaining] procedures" of the Railway Labor Act extend through a good part of the winter of 2014-2015 and end in the final offer selection procedures of Section 9 of the RLA.

It is our opinion that the parties' best interests, and relieving the anxiety and uncertainty of the traveling public, would be served if our Recommendations provided the basis for the parties to meet and resolve their differences.

In closing, the Board gratefully acknowledges the counsel and professional assistance rendered by Norman L. Graber, Esq. and Angela I. Heverling, Esq. of the National Mediation Board throughout this process.

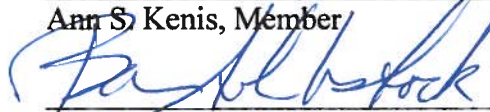
Respectfully submitted,



Richard R. Kasher, Chairman



Ann S. Kenis, Member



Bonnie Siber Weinstock, Member

APPENDIX A

Presidential Documents

Executive Order 13670 of June 14, 2014

Establishing an Emergency Board To Investigate Disputes Between the Southeastern Pennsylvania Transportation Authority and Certain of Its Employees Represented by Certain Labor Organizations

Disputes exist between the Southeastern Pennsylvania Transportation Authority (SEPTA) and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

The disputes heretofore have not been adjusted under the provisions of the Railway Labor Act, as amended, 45 U. S. C. 151–188 (RLA).

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

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

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 RLA, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on June 15, 2014, a Board of three members to be appointed by the President to investigate and report on these disputes. 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 disputes within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the RLA, for 120 days from the date of the creation of the Board, no change in the conditions out of which the disputes 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.

A handwritten signature in black ink, appearing to be Barack Obama's signature, written in a cursive style.

THE WHITE HOUSE,
June 14, 2014.

LABOR ORGANIZATIONS

Brotherhood of Locomotive Engineers and Trainmen

International Brotherhood of Electrical Workers

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