Report

TO

THE PRESIDENT

BY THE

EMERGENCY BOARD

APPOINTED OCTOBER 10, 1945,
PURSUANT TO SECTION 10 OF THE
RAILWAY LABOR ACT,
AS AMENDED

To investigate unadjusted disputes between the Railway Express Agency, Inc., and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a Labor Organization.

WASHINGTON, D. C.

OCTOBER 31, 1945

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THE PRESIDENT,
The White House.

DEAR MR. PRESIDENT: The Emergency Board appointed by you on October 10, 1945, under section 10 of the Railway Labor Act to investigate unadjusted disputes between the Railway Express Agency, Inc., and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has the honor to submit herewith its report.

Respectfully submitted.

(Signed) H. NATHAN SWAIM, *Chairman.*
(Signed) EUGENE L. PADBERG, *Member.*
(Signed) HENRI BURQUE, *Member.*

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD APPOINTED OCTOBER 10, 1945, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT AS AMENDED

In re: Railway Express Agency, Inc., and certain of its Employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a Labor Organization.

The President appointed this Emergency Board pursuant to the provisions of section 10 of the Railway Labor Act, and in accordance with his Executive order of October 5, 1945, to investigate and report its findings respecting certain matters in dispute between the Railway Express Agency, Inc., and certain of its employees represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

The Board convened in Room A of the Departmental Auditorium Building in Washington, D. C., at 2 o'clock, p. m., on October 16, 1945, with all members present.

At a preliminary organization meeting, the Board elected H. Nathan Swaim as Chairman, and confirmed the appointment of Frank M. Williams & Co. as its official reporter.

There were appearances by Thomas P. O'Brien, Kenneth M. Hindley, and David Kaplan on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Albert M. Hartung and Peter W. Wilson appeared on behalf of the Railway Express Agency.

The Board held public hearings and conferences commencing October 16 and concluding on October 25, 1945.

Pursuant to the request of the President that we should "make every effort to adjust the disputes," conferences were held with representatives of the Railway Express Agency and of the Union throughout the entire day of October 26, 1945. In these conferences, neither side was willing to recede from its position with respect to the proposed increase in wages which the Union had demanded, and which was the principal question involved in the disputes. It was, therefore, found impossible to effect a compromise settlement of the disputes.

HISTORY OF THE CONTROVERSIES HERE IN QUESTION

The controversies between the parties, constituting the disputes which this Board was appointed to investigate and report on, consisted of two separate disputes, which were designated in the files of the National Mediation Board as Case A–2013 and Case A–2035.

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America represents the vehicle employees of the Railway Express Agency in Cincinnati, Ohio; Cleveland, Ohio; Newark, N. J.; Philadelphia, Pa.; St. Louis, Mo.; San Francisco, Calif.; Chicago, Ill.; New York City, N. Y.; and in certain other localities in the vicinity of these cities in which a majority of such vehicle employees hold membership in the Brotherhood of Teamsters. The employees so represented number about 7,500, this number constituting about one-third of all of the vehicle employees and one-tenth of the total employees of the Express Agency. The vehicle employees of the Railway Express Agency in all these places are working under a current agreement between the Agency and the Teamsters, effective March 1, 1944, which is generally referred to by the parties to this dispute as the "National Agreement." In addition to this agreement, Locals 459 and 808 of the Teamsters have a so-called "Local Agreement" with the Express Agency which governs the hours and working conditions of the approximately 4,150 vehicle employees of the Railway Express Agency in the New York Metropolitan District.

National Mediation Case A–2013 grew out of a demand by the International Brotherhood of Teamsters organization for a 10-cent per hour increase in wages for all vehicle employees represented by the Brotherhood in all of the above-named cities, except in the New York Metropolitan District.

National Mediation Case A–2035 resulted from a demand for a wage increase of 20 percent for vehicle employees of the Railway Express Agency in the New York Metropolitan District, and for changes in many of the present rules in the current Local Agreement.

The demands of these two cases progressed through negotiations and mediation without settlement, and on July 12, 1945, H. H. Schwartz, Chairman of the National Railway Labor Panel, pursuant to authority vested in him by Executive Order 9172, and subject to the provisions of that order and of section 202 of the Stabilization Extension Act of 1944, created an Emergency Board to investigate and report on said disputes. That Board consisted of the Honorable Walter P. Stacy, Dr. I. L. Sharfman, and Dr. John A. Lapp, all members of the National Railway Labor Panel. That Board met in New York, N. Y., and held hearings from July 26 to August 16, 1945. The testimony and argument produced before

them during such hearings made a record consisting of 1,778 pages, and, in addition, there were 75 voluminous exhibits introduced. The parties before that Board, upon the conclusion of the argument on August 16, 1945, agreed and stipulated that the Board might file its report with the President on or before September 1, 1945. Their report to the President was dated August 24, 1945.

In the period intervening between August 16 and August 24, 1945, when the report to the President was made, the President issued a statement concerning labor relations which indicated some relaxation of wage control and stabilization policies during the reconversion period, and on August 18, 1945, the President issued an Executive order on reconversion, being Executive Order No. 9599.

The Stacy Emergency Board reported that no "substandards of living" were involved in the wage demands involved in these cases; that the requirements of the Little Steel Formula had been satisfied by increases theretofore granted to the employees; that the rates then being paid to the employees were tested going rates; that the demands of the Teamsters could not be supported under the stabilization program as it existed at the time the case was presented; and, finally, that the Executive order of August 18, 1945, did not enable that Board to reach contrary conclusions on the basis of the record of the proceedings before that Board. They pointed out in their report that:

> In the absence of change in that program (stabilization program) as of the time of completion of testimony in this case, the present Board finds no basis for reaching a different conclusion.

And again:

> Negotiations between the parties, mediation by the National Mediation Board, and the submission of testimony in the proceeding before this Emergency Board were all completed before any change was made in the stabilization program.

And, finally, the report of that Board said:

> The record in this proceeding was addressed to the situation as it existed prior to August 18, 1945. * * * It would be patently unfair to the parties to apply a record made under one set of circumstances to a new and radically different situation. In these circumstances the new Executive order, in and of itself, cannot be made to alter the negative conclusions previously set forth.

The Stacy Board, therefore, did not recommend any increase in the rate of pay to the employees involved in this proceeding.

After the report of the Stacy Board, the National Mediation Board held numerous conferences with the parties seeking to secure an agreement of the parties on the basis of said report. Such an agreement was not reached, and finally the employees, by overwhelming vote, refused to accept the recommendations of the Stacy Board and voted to strike.

Since a strike of the vehicle employees represented in these disputes would tie up all express shipments to and from the eight large cities covered by the Teamsters' agreement with the Express Agency, such a strike would necessarily "threaten substantially to interrupt interstate commerce to a degree such as to deprive" all of these communities "of essential transportation service." It was this emergency which caused the creation of this Emergency Board by the President under section 10 of the Railway Labor Act.

At the first session of the hearings before this Board, the representatives of the employees of the National Group asked leave to amend their demand for an increase in wages from 10 to 25 cents per hour. The representatives for the Express Agency objected to such an amendment, on the ground that a new demand, which had not even been made on the Express Agency, could not constitute a dispute which this Board could consider since this Board had been authorized to investigate and report only on disputes existing on October 5, 1945, the date of the creation of this Board. The objection was sustained.

The representatives of the Express Agency, in their opening statement, questioned the authority of this Board to investigate and report on this dispute, on the ground that since the Stacy Board was appointed as an Emergency Board by the Chairman of the National Railway Labor Panel, pursuant to authority vested in him by Executive Order 9172, the President was without power to appoint another Emergency Board under section 10 of the Railway Labor Act. The Board considered the position taken on this question by the representatives of the Express Agency to be without merit, and the hearing proceeded.

While the proceedings before the Stacy Board were conducted as separate hearings, in that evidence concerning the demands of the New York Metropolitan District employees were first heard, and then the evidence concerning the demand of the National Group, the hearing held by this Board concerned both disputes, and the evidence concerning both disputes was introduced together.

On the first day of this hearing, it was agreed and stipulated that the record of the testimony and arguments before the Stacy Board, and the exhibits introduced in that hearing, should be read and considered by this Board. This was done. Supplementary testimony and exhibits were then introduced, in part to emphasize some of the points which the parties had attempted to make before the Stacy Board, and in part to cover the period from April 15, 1945, up to the date of this hearing. We are therefore basing our report and recommendations on the entire record of the proceedings before the Stacy Board and on the testimony, exhibits, and arguments of the representatives of the two parties before this Board. The report

of the Stacy Board was also made a part of the record at the hearing before this Board, and was duly considered.

We shall first discuss the question of the wage demands of the two groups of employees, and then the demands for changes in rules of the employees of the New York Metropolitan District.

WAGES

As stated above, the National Group had demanded of the Express Agency a flat increase of 10 cents an hour, while the employees of the New York Metropolitan District demanded a 20 percent increase in their wages. We shall consider the testimony and record with respect to both of these demands.

Drivers constitute the largest number of the vehicle employees and their wage rate is the key rate in this dispute. Under the current agreement, drivers in New York receive $49.96 per week or $216.49 per month. In Chicago, they now receive $210.10 per month. In the other cities their wages vary. The Express Agency's Exhibit 21 before the Stacy Board shows the average compensation per straight time hour now being paid to the employees here involved is $1.0916.

Various theories were advanced in support of the demands of the employees for increased wages. First, the employees insisted, and there were many exhibits tending to support this contention, that the wages of the Railway Express employees had not progressed proportionately to the progress realized by workers in other industries. The exhibits included showed data for 25 manufacturing industries, compiled by the National Industrial Conference Board, and also data for manufacturing and nonmanufacturing industries, compiled by the United States Bureau of Labor. According to the Conference Board data, average weekly earnings by 25 manufacturing industries as of April 1945, had been increased by $19.50, or 63.7 percent over January 1941. Also, the average hourly earnings for these same industries had increased over the amount being paid in January 1941 by 34.2 cents per hour, or 45.1 percent. The exhibits introduced, taken from the data of the Bureau of Labor, showed average weekly earnings for the workers of all manufacturing industries, as of April 1945, to have been increased by $19.42, or 70 percent, over January 1941, and that the average hourly earnings of the workers in these industries increased from January 1941, to April 1945, 35.6 cents, or 51.7 percent.

As compared with these increases, it was shown that the vehicle employees of the Railway Express Agency had received increases in their wage rates averaging only about 17 percent during the period from January 1941 to April 1945; and that, in addition to

these disparities in rate increases, the workweek of the Express Agency employees was decreased from 48 to 44 hours, while in most of the other industries considered, exclusive of the railroads, the basic workweek had been reduced to 40 hours.

The various exhibits and the testimony concerning them would seem to show very clearly that the rate of the increase in pay of the workers here involved between January 1941 and April 1945, did lag far behind the rate of increase for the great majority of workers. Other exhibits were introduced in which the Railway Express Agency employees had been placed in their relative position as to the rate of increase in hourly earnings and weekly earnings with the workers of other industries. In each such exhibit, the relative position of the employees of the Railway Express Agency ranked very near the bottom of the list.

Since April 15, 1945, the employees of the Railway Express Agency have received no increases in their rates of pay, although supplementary evidence introduced in the hearing before this Board showed that the upward trend in wage rates in general had been materially accelerated during this period.

The Brotherhood of Teamsters also insisted that there had been a very real disparity between the increase in the wages of these employees from January 15, 1941, to April 15, 1945, and the increase in the cost of living during the same period. Employees' Exhibit No. 37, introduced before the Stacy Board in the hearing on the National case, which was prepared from records of the United States Bureau of Labor Statistics, showed that, using January 15, 1941, as a base, the average cost of food, clothing, rent, fuel, electricity and ice, house furnishings and miscellaneous, had risen on April 15, 1945, to 126.1. There was also testimony tending to show that, because of hidden increases resulting from sellers' markets, there should be added three or four percentage points, as recommended on November 14, 1944, by a committee of statisticians appointed by the President. The exhibit referred to, and this testimony, seemed to justify the contention that during the period from January 15, 1941, to April 15, 1945, the general cost of living to these workers had risen approximately 30 percent, and, as we pointed out above, the average weekly wage rates of these employees had increased during the same period by only a little more than 17 percent. Since these employees have received no increase in their rates of pay since April 15, 1945, it is evident that this disparity has not diminished since that date. This means, of course, that considering the present real value in purchasing power of their wages, these workers are receiving less pay today than they were in January 1941.

It was also the contention on behalf of the employees that the vehicle men who were employed by the Railway Express Agency,

because of the qualifications required of such men to obtain a position, and because of the nature of their work and the responsibilities entailed, were entitled to a substantial differential over the ordinary cartage driver. It was insisted that this fact had always been recognized by the Agency, until recently, by the payment of wages to these drivers substantially higher than were paid in the different communities to the ordinary cartage drivers, but that within the past few years, at least in some of the communities here involved, this differential had either been materially lessened or entirely wiped out because the drivers in the general trucking industry progressed more rapidly than the Express Agency drivers in increases in rates of pay.

The employees also contended that the immediate future held in prospect a decrease in the amount of pay that they would be able to actually enjoy each week because the number of overtime hours that they would be permitted to work would be materially decreased. Exhibits were produced which tended to support this contention, exhibits which showed that the average number of hours of overtime which each man had been permitted to work prior to the war period had been very small as compared to the overtime hours worked during the war period. Representatives of the Agency, of course, admitted that they would use the men only on such overtime work as was necessary, and that good business dictated this policy. They also contended that the decrease in overtime was not certain, and the amount thereof could be only a matter of conjecture. It was pointed out, however, that the exhibits showing the amount of overtime paid before the war and the increased number of men which would necessarily be available within the near future justified an inference supporting the employees' contention on this point.

As opposed to these contentions by the employees, the representatives of the Express Agency insisted that in practically every city involved, a comparison of the wages paid to its employees would show that its employees were today receiving wages substantially in excess of the wages being received by drivers in the general trucking industry. It was admitted, however, that this had been the practice of the Agency and its predecessors over a long period of years, and that it was necessary in order to secure the type of man with the qualifications which they desired. It was shown that prior to the war period, the Agency required a certificate of graduation from high school by the men making application to it for positions, although this requirement was relaxed during the war period. It would seem that the responsibility attendant upon a position as driver for the trucks of the Express Agency and the necessary educational qualifications required, would justify a substantial differential between these men and the drivers in the general trucking

industry, and the fact that in most cities they are now receiving a higher wage than many of the drivers of the general trucking industry would not be a valid argument against their demand that their wages keep pace with the general rate of increase in wages and the cost of living.

The chief contention of the Express Agency, however, was that the cost of the increases in wages, and the changes in rules as demanded by the employees, would amount to so much that the Agency could not afford to meet these demands. The Express Agency introduced in the hearing before the Stacy Board and before this Board many exhibits in support of this contention. To understand these exhibits and the testimony relating to them, a brief explanation of the Railway Express Agency, Inc., is necessary.

In 1929 the Railway Express Agency, Inc., was organized by a group of the larger railroads of the United States for the purpose of taking over the express business then being conducted by American Railway Express Company and Southeastern Express Company. Eventually, the Railway Express Agency, Inc., purchased the assets and took over the business of all of the independent Railway Express companies. All of the capital stock of the Railway Express Agency, Inc., is owned by a majority of the Class 1 railroad companies of the United States.

The Express Agency is so operated, and its books are so kept, that it can never show either a profit or a loss. After the payment from its total revenue of all its other operating expenses, the amount remaining is designated as "express privileges payments to rail and other carriers," and is distributed to the railroads for the transportation of express shipments by rail. Men who are necessary to accompany and care for these express shipments are furnished by the Express Agency. The only service furnished by the railroads in return for the payment to them of their share of these "express privileges payments" is the furnishing of the cars in which the express shipments are carried, and the motive power for said cars, plus space in some of the smaller stations where the Agency does not have space which it uses exclusively. On property used exclusively by the Agency, it pays a rental to the railroad owning the property, and this payment would be reflected on its books under operating expenses.

Page 1 of the Agency's Exhibit 21, introduced before the Stacy Board, showed a comparison of express privileges payments for a period beginning with the year 1929 up to and including April 30, 1945. In 1929, the payment of express privileges payments to the railroads amounted to 51.51 percent of the express domestic or gross revenue account. This percentage figure varies from year to year. In 1933, it was 37.53 percent; in 1934, it was 39.57 percent; in 1937, it was 35.07 percent; in 1938, it was 32.71 percent; in 1939,

it was 35.09 percent; in 1941, it was 32.91 percent; in 1942, it was 42.22 percent; in 1944, it was 38.10 percent; and for the 4 months ending April 30, 1945, it was 40.50 percent.

In his testimony before this Board, W. A. Benson, Vice President in charge of accounts of the Railway Express Agency, testified that for the month of September 1945, the average revenue per shipment of express was $1.85½; that the total shipments of express during 1944, multiplied by this amount would have produced a total revenue for 1944 of $371,536,916.77, instead of $393,972,311 and that if the Express Agency were to meet all the demands of the employees involved in the disputes before this Board, and then apply the advantages of those demands to all of the other employees of the Express Agency, it would cost $59,457,236, which would necessitate a 16 percent raise in the rates of the Express Agency to meet such increased expenses, and to keep the payments to the railroads for their services and facilities at their present level. By the Express Agency's Exhibit No. 23, the Express Agency showed, however, that if the full demands of the employees involved in the present disputes were met only as to increases in rates of pay, the total cost of such raises, including the additional retirement and unemployment insurance taxes thereon, would amount to only $3,463,800.83, and that if these increases in rates of pay were extended to all of the employees of the Railway Express Agency, the total cost to the Agency would be $20,325,986.25. To arrive at the figure of $59,457,236.25, Mr. Benson also included the increased cost to the Agency of granting payment of time and one-half at increased rates of pay under the 40-hour week for work performed on Saturday, payment of double time at increased rates of pay under the 40-hour week for work performed on Sundays, also payment of time and one-half for work performed on the four additional holidays demanded by the employees, and the increases in the length of vacations; and the application of all of these benefits to all of the employees of the Railway Express Agency. We therefore see that if the full wage increase demands of the particular employees involved in this dispute were met, the total cost to the Agency would be only $3,463,800.83, instead of $59,457,236.25, and on cross-examination Mr. Benson admitted that this amount would have reduced the ratio of express privileges payments to express domestic in the year 1944 a little less than 1 percent.

According to page 1 of said Exhibit 21, there was paid to the railroads in 1944 the total sum of $150,088,195, and for the 4 months ended April 30, 1945, the sum of $60,611,889. If all of the demands for wage increases for the employees involved in this dispute were met, it would change the ratio of this actual amount paid in 1944 less than 1 percent, which would still leave the railroads

receiving as express privileges payments the sum of $146,624,-394.17 for their services to the Agency during that year.

The Board was furnished with no satisfactory evidence as to the cost to the railroad companies of furnishing to the Express Agency the services which are given in consideration of the payment to them of these express privileges payments. This is a matter the information concerning which is peculiarly within the control of the Express Agency and the railroads owning the Express Agency. It would seem to be only fair to expect to be furnished such information by the Express Agency, if such information would support the contentions of the Express Agency that it is necessary to continue to pay to the railroad companies express privilege payments in the same percentage in which such payments are now being made.

The Express Agency did introduce its exhibit 2 in the hearing before this Board, which was a photostatic copy of a chart from a cost analysis report made by the late Joseph D. Eastman while serving as the Federal Coordinator. This report showed the unit revenues and costs of all railway passenger service, including express cars, for the year 1933. The report showed the revenues of the railroads from its express cars as being $44,544,000, and the costs of such service to the railroads as $98,808,000. The loss to the railroads from this business was shown as $54,264,000. Mr. Benson admitted that this did not represent an out-of-pocket loss, and explained that "while the railroads and other line haul carriers actually incurred very substantial expenses in handling express, and are entitled to reasonable compensation for their services and facilities, it has not been possible to prepare a cost study free from criticism because of the many factors involved, and the necessary use of arbitrary apportionment." No explanation was given of how Mr. Eastman arrived at the figures shown on Carrier's Exhibit No. 2, nor as to how many arbitrary apportionments were made in arriving at such figures. Mr. Benson, who, as stated above, is the Vice President of the Express Agency, in charge of Accounts, said further that no study of the costs of this service had been made since the Eastman report covering the year 1933. It is to be noted, of course, that the year 1933 produced less revenue for the Express Agency, according to page 1 of its exhibit 21, than any other year during the period from 1929 to 1944, and it is also to be noted that according to Mr. Eastman's report, every other branch of the passenger service except the transportation of mail showed a substantial loss. We can not assume from the fact that the Agency's Exhibit 2 covering the year 1933 showed a purported loss to the railroads from their express business on payments to the railroads of 37½ percent of the express domestic when the total express domestic for that year amounted to only $122,596,185, that there

was a loss to the railroad companies for the year 1944 on the payment to them of 38.10 percent which produced $150,088,195; nor can we assume that there would be a loss to the railroads if that percentage were decreased by less than 1 percent, the amount necessary to cover the entire demands for increases in the wages of the employees involved in this dispute. We therefore conclude and find that there is insufficient evidence before this Board on which to base a finding that the increased expense to the Railway Express Agency of meeting the wage increases demanded by the employees involved in these disputes, with the resultant decreased express privileges payments to the railroads, would furnish any basis for a request on the part of the Express Agency for an increase in its rates.

We may note at this point that the increases in wages hereinafter recommended will amount to a total annual expense to the Express Agency of approximately $1,500,000 less than the sum of $3,463,-800.83 discussed above as being the cost of all wage increases demanded by the employees. This means that the actual expense of the wage increases which we are recommending in this report will amount to only approximately $2,000,000. It is interesting to note from the Express Agency's Exhibit No. 3, introduced at this hearing, that in each of the first 6 months of this year, the railroads received an increase of more than this amount over the amount received for the corresponding month in 1944. For August and September (partly estimated) decreases in the express privileges payments received by the railroad companies were shown, as compared with the corresponding months of 1944. It is the opinion of this Board, however, that these decreases, resulting from decreases in total operating revenue, were the immediate result of the cessation of hostilities and do not represent a trend which will probably continue.

Representatives for the Express Agency also earnestly contend that since the wages of all the employees here involved have been increased approximately 17 percent since January 15, 1941, and since no substandards of living are involved, demands of the employees can not be supported under the Stabilization Program; and that the Executive order of August 18, 1945, does not enable this Board, under the record before it, to avoid that result. The Representatives for the Express Agency insist that Executive Order 9599, dated August 18, 1945, gives no authority to this Board to consider situations as they existed on and prior to the date of the Order, but that the Order had to do only with such changed conditions and situations as might occur thereafter during the period of reconversion. We cannot agree with that interpretation of the Order. Article I of said Order states the guiding policies which

shall govern all departments and agencies of the government concerned with the problems arising out of the transition from war to peace.

Paragraph 1 (C) of that article provides as follows:

> To move as rapidly as possible without endangering the stability of the economy toward the removal of price, wage, production and other controls and toward the restoration of collective bargaining and the free market.

Paragraph 2 of Article IV of said Order is as follows:

> In addition to the authority to approve increases to correct gross inequities and for other specified purposes, conferred by Section 2 of Title II of Executive Order 9250, the National War Labor Board or other designated agency is hereby authorized to approve, without regard to the limitations contained in any other orders or directives, such increases as may be necessary to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy; provided, however, that in dispute cases this additional authority shall not be used to direct increases to be effective as of a date prior to the date of this order.
>
> Where the National War Labor Board or other designated agency, or the Price Administrator, shall have reason to believe that a proposed wage or salary increase will require a change in the price ceiling of the commodity or services involved, such proposed increase, if approved by the National War Labor Board or such other designated agency under the authority of this section shall become effective only if also approved by the Director of Economic Stabilization.

Paragraph 3 of that same Article provides:

> Officials charged with the settlement of labor disputes in accordance with the terms of Executive Order 9017 and Section 7 of the War Labor Disputes Act shall consider that labor disputes which would interrupt work contributing to the production of military supplies or interfere with effective transition to a peacetime economy are disputes which interrupt work contributing to the effective prosecution of the war.

We are of the opinion that by this Executive Order it was recognized that there were at that time inequities and maladjustments which had arisen prior to that time by reason of wages of certain groups of workers not keeping pace with the wages of other groups and with the increase in the cost of living; that it was the purpose of the President by that Executive Order to relax the standards of the Stabilization Program then in effect and thereby to make it possible for the National War Labor Board and other designated agencies to grant increases in wages to remedy those situations, as well as situations arising after the date of that Order from cuts in the pay of workers resulting from decrease in the number of hours of employment and the consequent loss of overtime pay, from the

reclassification of workers to lower paying grades, and from workers being compelled to accept peacetime employment for lower wages.

Inequities and maladjustments existing at the time said Executive Order was issued would thereafter be emphasized and increased in one or more of the above particulars. It would seem unfair to exclude from the benefits of said Order workers who, on August 18, 1945, were subjected to inequities or maladjustments in the matter of their pay. It would seem unfair to deny relief to such workers until events occurring subsequent to August 18 had resulted in additional inequities or maladjustments. The failure to correct such existing maladjustments or inequities would interfere with the effective transition to a peacetime economy just as surely as would the failure to correct those arising after that date.

We must ascribe to the Order a meaning which would result in fairness to all workers and accomplish its announced purpose.

By section 202 of the amendment to the Emergency Price Control Act of 1942, approved June 30, 1944, it was provided that section 4 of said act should be amended by adding at the end thereof the following new paragraph:

> In any dispute between employees and carriers subject to the Railway Labor Act, as amended, as to changes affecting wage or salary payments, the procedures of such Act shall be followed for the purpose of bringing about a settlement of such dispute. Any agency provided for by such Act, as a prerequisite to effecting or recommending a settlement of any such dispute, shall make a specific finding and certification that the changes proposed by such settlement or recommended settlement are consistent with such standards as may then be in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies. Where such finding and certification are made by such agency, they shall be conclusive, and it shall be lawful for the employees and carriers by agreement, to put into effect the changes proposed by the settlement or recommended settlement with respect to which such finding and certification were made.

By this amendment to the Stabilization Act, Emergency Boards are given the power and the responsibility of making a specific finding that a proposed or recommended settlement is consistent with such standards as may *then* be in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies, and that such finding of the Emergency Boards shall be conclusive and authorize the employees and the carriers to put into effect the changes so proposed or recommended. This amendment clearly refers to the Stabilization Program and standards in effect at the time the finding and certification are made, not at the time the original demands of employees were made, as contended for here by the representatives of the Agency.

By Executive Order 9599, the President changed the standards of the Stabilization Program, and it seems to us to so relax the standards theretofore existing as to make it possible, so far as the present standards of the Stabilization Program are concerned, to grant increases in wages to the employees here involved.

We find that the employees involved in this dispute, have shown inequities and maladjustments within the meaning of paragraph 2 of article IV of the Executive Order 9599, which, if not corrected in such a manner as to settle the disputes now before this Board, will result in a stoppage of work which would interfere with the effective transition to a peacetime economy.

We find in the record before us no sufficient reason for recommending a greater increase in pay for the vehicle employees of the Agency in the New York Metropolitan District than for such employees working in the other large cities covered by the National Agreement.

We therefore recommend that all of said employes involved in these disputes be granted a flat increase in their rates of pay of ten cents (10¢) per hour, and that such increases be made retroactive to include August 20, 1945.

RULES OF LOCAL AGREEMENT

In National Mediation Case A–2035, the Local Unions of the Teamsters asked for certain changes in the rules of the working agreement which they now have with the Express Agency. The Agency, in turn, also requested certain changes.

There is, as shown above, the National Agreement between the Express Agency and the Brotherhood of Teamsters, which governs the hours of service and working conditions of chauffeurs and helpers, stablemen and garagemen, who are now represented by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in the following cities: Cincinnati, Ohio; Cleveland, Ohio; Newark, N. J.; New York, N. Y.; Philadelphia, Pa.; St. Louis, Mo.; San Francisco, Calif.; Chicago, Ill.; and in any other city in which a majority of these classes of employees may hold membership in the Brotherhood of Teamsters. In addition to this agreement, covering all of the above-named cities, including New York, there is the "Local Agreement" between the Express Agency and its employees represented by Locals 808 and 459 of the International Brotherhood of Teamsters, applicable to all employees in the vehicle service in the New York Metropolitan District. It is the rules of this Local Agreement in which changes are sought.

Authority for making a local agreement is found in Rule 77 of the National Agreement providing as follows:

> Employees in the vehicle service will have the right through their duly accredited representative in the district to arrange with the official in charge for any change, not in conflict with these rules, in the rules and working conditions not provided for.

It is apparent, however, that in the Local Agreement here in question there are many rules containing provisions different from the corresponding rules in the National Agreement and which may therefore be said to be in conflict with the National Agreement. By reason of this fact, the Teamsters insist that the demands they are now making for changes in the Local Agreement should be considered and decided on the merits and without regard to the National Agreement. The Agency, on the other hand, insists that it should not be compelled to accede to any amendment which would be in conflict with the National Agreement.

It is also true that the rules in which changes are now sought have resulted from conferences, negotiations and controversies between the parties extending over a period of many years. While such rules are all subject to such changes as the parties may agree upon, this Board does not feel justified in making a recommendation for any change except in such cases as the evidence may show the present rule to be working a real hardship on one of the parties or to constitute a real inequity. We feel that the mere desire of either party for a change which would merely better its position and which is not dictated by hardship or inequity should be voluntarily agreed upon by the parties and not made the subject of compulsion by a recommendation of this Board.

TITLE AND PREAMBLE: The first suggested changes are found in the Preamble and Title of the Local Agreement. The Union suggests certain changes in the title and preamble of the working agreement to harmonize the same with its suggestion of a change in rules which would put in effect a closed shop in the New York Metropolitan District. Our later decision on that question makes unnecessary any change in the Title and Preamble of the working agreement.

RULE 1—EMPLOYEES AFFECTED: Rule 1, being the scope rule of the present agreement, provides as follows:

> These rules shall govern the hours of service and working conditions of Drivers, Chauffeurs, Helpers (including Helpers in buildings on delivery and pick-up work), Hourly Rated Employees and Garagemen. All others in Vehicle Department excepted; namely, Supervisors, Inspectors, Foremen, Dispatchers, Office Help. It is agreed that appointments to vacancies or new positions in excepted groups referred to above as Supervisors, Inspectors, Foremen, Dispatchers, shall be made only from employees of the Vehicle Division.
>
> NOTE.—Office help referred to in exceptions are Supervisors' Clerks as agreed upon and personal office force of Superintendent.

The Union suggests that this rule be changed by deleting therefrom, under the excepted employees, inspectors, foremen, dispatchers and office help, and by also deleting from the employees covered by the rule hourly rated employees.

The Railway Express Agency has a working agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, which contain a scope rule reading as follows:

> Employees Affected—Rule 1. These rules shall govern the hours of service and working conditions of all employees in service in the Railway Express Agencies in the United States, subject to the exceptions noted below.

The exceptions noted are certain named crafts, and then "chauffeurs and helpers, stablemen and garagemen who are now represented by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America in the following cities:" and the rule then names the cities which are covered by the Teamsters' agreement.

It is thus seen that the positions of inspectors, foremen, dispatchers and office help now expressly excepted from the Local Agreement here in question with the Teamsters are expressly covered by the Agency's agreement with the Clerks. We see no sufficient reason for recommending that the Agency enter into an agreement with the Teamsters which would be in direct violation of its agreement with the Clerks. Such a change in the Teamsters' agreement could only result in a jurisdictional dispute between the Teamsters and the Clerks. Such a change should only be made on an agreement between the Agency, the Teamsters and the Clerks.

The question as to the elimination of hourly paid employees from the scope rule will be considered in connection with the next rule.

We do not recommend any change in the scope rule of the present Local Agreement.

RULE 2—CLASSIFYING POSITIONS: This rule of the Local Agreement now reads as follows:

> All employees will be classified as regulars, substitutes, and hourly rated employees, the number to be increased or decreased as may be determined by business conditions. Prior to decrease the duly accredited representatives will be notified so that they can, by conference with the Management, discuss reasons for and details of such decreases.
>
> Hourly rated employees will be confined to Packing Houses, where express shipments are consolidated, and such other locations as may be mutually agreed upon, and they shall be guaranteed a minimum of four (4) hours per day, when used.

The Union has requested that all employees be classified either as regulars or substitutes, and that the hourly rated employees be

taken out of the Agreement. The Agency, on the other hand, proposed that all employees be classified as "regulars, substitutes, extra and hourly rated employees," thus inserting the word "extra" in the present classifications. The Agency also suggested that the rule be changed to provide that hourly rated employees should be carried on a separate seniority roster and should have their names listed and numbered in the order of seniority, with their seniority dating from the day their pay started, and that they should have no seniority rights or standing on the regular vehicle service roster; that regular recurring fluctuations of traffic should be handled to the fullest extent possible by regular full-time employees, and that when it appears that there will still be work which cannot be handled by regular full-time employees, that extra employees may be used on a full-day basis with no guarantee of a full week's work; and finally that such extra employees be taken in accordance with seniority from the furloughed list and be used for a full day, exclusive of meal period, for the greatest number of days per week possible. The Union contended that all of the work of the Agency could be done by regular and full-time substitutes without the use of extra and hourly paid employees. The Agency's contention was that the use of extra men should be broadened to meet the fluctuating business of the service which the Agency renders, and that hourly rated employees are necessary to meet the unusual fluctuations in the express business.

It will be noted that the present rule confines the use of hourly rated employees to Packing Houses, where express shipments are consolidated, and to such other locations as may be mutually agreed upon.

We do not find sufficient evidence in the record to justify our recommending the change sought by the Union or the changes requested by the Agency.

PROPOSED NEW RULE OF EMPLOYMENT: The Brotherhood of Teamsters asked for a new rule which was to be designated as Rule 3—Rule of Employment, reading as follows:

> Only members of Locals 808 and 459 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with paid-up due books shall be employed and new employees shall become paid up members within thirty (30) days after date of employment. Union dues shall be payable three (3) months in advance and deducted from the salary of the members, by the Employer.

The Railway Express Agency is covered by the Railway Labor Act. Under the Fourth Paragraph of the General Duties of Carriers covered by said Act, it is provided as follows:

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The ma-

> jority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the rights of its employees to join organizations or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative or other agency of collective bargaining, or in performing any work therefor, or to influence them to join or remain, or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments or other contributions payable to labor organizations or to collect or to assist in the collection of any such dues, fees, assessments or other contributions.

In the case of Elgin, Joilet & Eastern Railway vs. Burley, decided June 11, 1945, the Supreme Court of the United States referred to an opinion of the Attorney General interpreting the Railway Labor Act as prohibiting provisions of a contract such as the one here proposed, and in a footnote commented as follows:

> In this connection, it is important to recall that the Act does not contemplate the existence of closed shops, to the extent, at any rate, that the carrier is forbidden to make such agreements.

It is thus seen that a recommendation for the adoption by the parties of this proposed rule would be a recommendation for the Agency to make an agreement to violate the express terms of the Railway Labor Act. We can make no such recommendation.

RULE 3—DUTIES OF VEHICLE EMPLOYEES: This rule now is as follows:

> All work of Vehicle Division shall be performed by employees coming within the jurisdiction of that Division. Only employees of the Vehicle Division shall be used to load or unload vehicles with the exception of trailers and loading and unloading while feeding. All tractor-trailer service shall be confined exclusively to transfer work.
>
> NOTE.—Where vehicles are now being preloaded, the present practice shall not be increased, nor shall it be instituted at any other office or terminal unless by mutual agreement.
>
> All vehicles used exclusively in Baggage Service must be manned by A Driver and Helper.

The Teamsters propose that this rule be modified in such a manner as to make it possible for all employees in the vehicle division to load or unload vehicles, including trailers. The Agency, on the other hand, requested that the rule be changed so that loading or unloading "while feeding" should also include loading or unloading while carrying over and settling, and also requested that all restrictions on preloading be removed.

The Teamsters also proposed that the word "exclusively" be removed from the last paragraph, on the ground that the rule might be abused by adding a small amount of other shipments to a load of vehicles devoted to baggage.

Here again we have the Teamsters suggesting a change in their agreement which would make it conflict with the current Agreement between the Agency and the Clerks' organization. If this proposal of the Union were accepted, a jurisdictional dispute between the Teamsters and the Clerks would result. While it is conceivable that the word "exclusively" in the last paragraph of the present rule might be abused, such abuse would constitute a grievance which could be handled as such. We find no sufficient reason for recommending the changes in this rule proposed by the Teamsters or the Agency.

RULE 3A—DUTIES OF GARAGEMAN: This rule now provides that

> All duties indicated on Garagemen's Roster shall be performed only by Garagemen.

The Teamsters' organization proposed that this rule be amended by adding the words,

> including the cleaning of all cars, with the exception of windshield.

The chief reason for this proposed change seems to be to prevent the Agency from requiring drivers to clean their cars. In general, the work of cleaning cars is done by the Garagemen, and could not be considered the work of drivers. We therefore are of the opinion that requiring drivers to clean cars would constitute grounds for a grievance, and could be handled accordingly. We recommend no change in this rule.

PROPOSED NEW RULE ON EXCEPTED POSITIONS: The Agency proposed the following new rule:

> Employees now filling or promoted to excepted or official positions, shall retain all their rights and continue to accumulate seniority.
>
> An employee relieved from excepted or official position may return to his former position or may, within three (3) days thereafter, displace a junior employee who had bid in a position bulletined during period he held such excepted or official position. Employees displaced by such employees may exercise their rights in accordance with provisions of Rule #10 of this agreement.

Since we have not recommended a change in the excepted positions, we find no justification for recommending the adoption of this new rule.

RULE 6—BULLETIN: The rule in the present agreement reads as follows:

> New positions or vacancies shall be bulletined within seven (7) days in agreed upon places accessible to all employees affected for a period of five (5) working days (not calendar days); bulletin to show Schedule Number, Title, Starting Point, Starting Time, Finishing Point of Vehicle, Type of Vehicle (Gas or Electric), Day of Rest, Duration of Meal Period and Rate of Pay.
>
> Employees desiring such positions will file applications with the designated official within time specified and awards will be made within five (5) days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. Copies of all Bulletins and Awards will be furnished to the duly accredited representatives.
>
> NOTE.—Schedules in pick-up and delivery service shall be deemed to cover certain assignments, and any unusual change in such assignments shall be considered the abolishment of the position.

The first suggested change by the Teamsters in this rule is that the Bulletin, in addition to showing whether the vehicle is gas or electric, should also specify as to whether it is a tractor.

This seems to be a reasonable request on the part of the employees, since there was evidence to show that driving a tractor involves a different type of work and is ordinarily done by employees in a different type of uniform. We therefore recommend that this change in the agreement be made.

The employees also suggested that there be added to the first paragraph of the rule a provision that in the award of a pistol permit position, a man shall not be prohibited from covering said position until he secures a permit. The employees insist that due to the securing of these permits by the Agency there is often a delay in securing the permit, and a consequent delay in the man covering the position. It seems, however, that a man securing such a position must have a pistol permit in order to comply with the law. To comply with such a provision it would be necessary to have on such vehicle an extra man with a pistol permit during the time such permit was being secured. This would seem to be an unnecessary hardship on the Agency, and since we find in the record no reason why the Agency should delay in the securing of such permit, we recommend no change in the rule in this respect.

We find no sufficient reason for the Agency objecting to the request of the Union that this rule be further amended by the additional provision that pick-up and delivery runs must show the Book Number to advise an applicant as to the section of the District covered by the position, and therefore we recommend such an amendment.

The employees have also requested a change in this rule which would require that in posting the name of the successful applicant for the position, his seniority date shall be stated. We note that in the hearing before the Stacy Board on this controversy, it was shown that the parties in conference on February 15, 1945, agreed to post the seniority date of successful applicants, and we therefore recommend such a change in the rules.

The employees also requested that, instead of furnishing copies of all Bulletins and Awards to the duly accredited representatives of the employees, they should be furnished to the "Local Unions." For reasons above assigned in discussing the question of closed shop, we do not recommend this change.

The employees also asked for an addition to the rule which would provide that an employee awarded a tractor schedule shall not be compelled to drive a four-wheel truck during his tour of duty, and that the same should apply to an employee awarded a gas or electric truck schedule, except in the case of a breakdown, when a four-wheel truck may be substituted, or vice versa, and also that no employee on an electric truck schedule should be compelled to operate a gas truck schedule, except in the case of a breakdown.

The record showed no compelling reason for the employees to object to transfers from gas to electric trucks, or vice versa, but for the reasons assigned above, we believe that an employee awarded a tractor schedule should not be transferred to a four-wheel vehicle during his tour of duty except in case of a breakdown or emergency, and recommend that the rule be changed accordingly.

The Union requested as to the note to this rule that the word "unusual" before "change" be eliminated, leaving the rule provide that any change in such assignments shall be considered the abolishment of the position. The Agency, on the other hand, recommended that the note be entirely eliminated. We find in the record insufficient evidence to support either proposal. It is therefore recommended that the note to the rule be retained as it now stands.

RULE 7—BIDDING: The present rule is as follows:

> Driver, Helper and Garagemen's vacancies and new positions will be posted on Garage and other turn-out point bulletin boards for a period of five (5) working days (not calendar days) and subject to bid in accordance with the following:
>
> (A) In order that Drivers, Helpers, and Garagemen may have opportunity to indicate a desire for changing starting time, place of schedule, they may bid on drivers', helpers' and garagemen's vacancies and new positions.
>
> (B) Awards will be made in accordance with seniority rights. Employees thus awarded bulletined positions will be allowed fifteen (15) days in which to qualify as to fitness and ability. They shall be given fair and impartial instructions, as to the

duties of the position to which assigned. Employees failing to qualify shall retain all their seniority rights and may bid on all bulletined positions but may not displace any regular assigned employee.

(C) The name of the successful applicant will thereafter be posted on all bulletin boards for a period of five (5) days.

NOTE.—Since the majority of bulletined positions have a starting time on Saturday and Monday different from the balance of the week, it is understood and agreed that this difference shall be no greater than one (1) hour either earlier or later on Saturdays and shall not exceed two (2) hours earlier on Mondays.

The first change suggested in this rule by the Union was that it be amended by the addition of the words "Inspectors, Dispatchers, Foremen, Supervisors' Clerks," to comply with their proposal for the amendment of the scope rule. Since we did not recommend the Union's proposal on the amendment of the scope rule, we cannot recommend the request as to the change of this rule.

The Union next proposed that the details of bulletined positions shall not be changed until at least ninety (90) days after they are awarded. We see no valid reason for prohibiting the Agency from making such changes for such a long period of time. The requested amendment is therefore not recommended.

The Union also requested a change in paragraph (C) of this rule by inserting a provision for posting the seniority of the successful applicant. This is recommended pursuant to the agreement with the management above mentioned.

The Union also suggested that the note to this rule be amended to read as follows:

> Since the majority of bulletined positions have a starting time on Monday different from the balance of the week, it is understood and agreed that this difference shall be no greater than two (2) hours earlier on Monday.

The Agency, on the other hand, proposed that the rule be changed by permitting a difference of 2 hours in the starting time on both Saturdays and Mondays, either earlier or later.

Neither of those changes is recommended.

RULE 8—CHANGE OF STARTING TIME: The rule at present reads as follows:

> Regular assignments shall have a fixed starting time, and the fixed starting time will not be changed, without at least thirty-six (36) hours advance notice in writing to the employees affected.
>
> When the fixed starting time of a regular assigned position is changed, employees affected may, within five days (5) working days (not calendar days) thereafter exercise their seniority rights to any positions held by a junior employee. Other employees affected may exercise their seniority rights in the same manner.

On this rule, the Union requested an amendment which would make the rule applicable to all assignments and that no changes in starting time could be made other than on January 1 or July 1, and that the fixed starting time should not be changed without 72 hours' advance notice in writing to the employees.

The Agency, on the other hand, asks that the rule be amended giving it the permission to change the starting time, even in regular assignments, in cases of emergency without any notice.

The Union also proposed that the second paragraph of this rule be amended to provide that when the fixed starting time of a regularly assigned position is changed, the employees affected may exercise their seniority rights to any regular position held by a junior employee and that other regular employees affected may exercise their seniority rights in the same manner.

The Agency would amend this rule to provide that when the starting time is changed more than 1 hour for more than 7 consecutive days, the employees affected may, upon 36 hours' advance notice, exercise their seniority rights to any position held by a junior employee, and also requested that the rule provide that if one or more changes in starting time are made within a 90-day period, such changes shall be considered cumulative, to the end that the 1-hour period shall be reckoned within the 90-day period from the time the first change became effective, and if the net change within the period exceeds 1 hour, the rule should become effective.

We find no impelling reason for recommending any of these changes without the agreement of both parties, except the proposed change which would provide 72 hours' notice, instead of the present 36 hours' notice, of the change in a fixed starting time. Since this question of starting time is important to all employees, and would be especially important in a city the size of New York City, we recommend this change in this rule.

RULE 9—NOTIFIED OR CALLED: The rule in the present Local Agreement provides as follows:

> Employees notified or called to perform work not continuous with, before or after the regularly assigned work period, shall be allowed a minimum of four hours at time and one-half time rate. This rule shall not apply to Sunday or Holiday assignments.
> NOTE.—The provisions of this rule shall also be applied to the senior extra substitute list employee in every case where it is proved that Rule 3 or 3A was violated.

The employees have requested a change in this rule to provide that employees notified or called to perform work not continuous with, before or after the regularly assigned work period, shall be allowed a minimum of a full day's pay at time and one-half time rate.

The Agency requests that this rule, as it now reads, be restricted to employees not on duty, and to work performed before or after the regularly assigned bulletined work. They also request that the provision of the present rule that it shall not apply to Sunday or holiday assignments be retained, while the employees request that it apply to all days of the week.

No great hardship appears to have resulted to either party by the operation of this rule as it now stands. We therefore recommend that it not be changed. However, on the former hearing, the parties agreed that if this rule were not changed, the note to the rule should be eliminated. That is recommended.

RULE 10—REDUCTION IN FORCE: The present rule 10 reads as follows:

> When forces are reduced or positions abolished, employees whose positions are discontinued will be given at least thirty-six hours advance notice and must exercise their seniority rights over junior employees within five days (working days, not calendar days) from the date of discontinuance or abolishment and those failing to do so will forfeit those rights, but will be employed so far as possible in accordance with their seniority, on any extra or substitute work. Employees who are displaced from their positions by senior employees, under this rule, must exercise their seniority rights in the same manner.
>
> Employees who do not possess sufficient seniority rights to displace a junior employee in a regular, substitute or hourly position will be laid off. A list of employees laid off, under this rule, shall be supplied by the Management to the duly accredited representative of the employees.
>
> Employees laid off due to reduction in force and who fail to report for service in seven days, after being notified (by mail or telegraph) to address last given, will be considered out of service. A list of employees notified under this rule shall be given to the duly accredited representatives and no new employee shall be hired until all employees laid off, under this rule, are returned to service, or have failed to return within the prescribed time limit.
>
> No outside equipment shall be hired unless a driver from the Vehicle Division is assigned to ride with same while engaged in Agency work.
>
> When the occupant of a regular scheduled position is absent, the senior, qualified employee from the substitute group reporting at that time and point will be assigned to cover the position.

In the first paragraph of this rule, the Union suggests that the 36-hour notice should be changed to 72 hours. The notice of 72 hours, it would seem, would be more equitable in the New York Metropolitan District, where these rules are in force, and we recommend that this amendment to the rules be made.

The Union also requests that the following be added to the first paragraph of this rule:

> When a displacement is effected, the employee getting the position shall automatically take over the precise duties performed by the displaced employee.

This proposed rule would seem to unduly tie the hands of management without any sufficient reason therefor. It is therefore not recommended.

In the second paragraph of this rule, the Union again suggests that the words "duly accredited representative of the employees" shall be replaced by the words "Local Unions." For reasons above assigned, this change is not recommended.

In the third paragraph of the rule, the Union suggests that the failure of employees to report for service in 7 days after being notified by mail or telegraph be amended to a notice of 10 days by registered mail. The method of giving notice was agreed to in conference, and the amendment of the time of notice seems not to be justified by the record.

The Union also suggested that the fourth paragraph of this rule be amended to conform to the proposal of the Union for a closed shop. For reasons above assigned, this change is not recommended.

The Union requested that the fifth paragraph of this rule be left out of this agreement, and a new rule, 11A, substituted therefor, which would provide that no outside equipment shall be used unless a driver of Local 808 or 459 is assigned to operate the same. The evidence seemed to indicate that vehicles with drivers were hired only when the Agency had no equipment of its own available. The additional cost of hiring such outside equipment, and the present rule providing that a driver from the vehicle division shall be assigned to ride with such a vehicle while engaged in Agency work, would seem to provide all of the protection to the employees which they could rightfully demand. This requested amendment is not recommended.

In lieu of the last paragraph, the Union suggested a paragraph to provide that when the occupant of a regularly scheduled position is absent, an employee from the substitute group will be assigned to cover the position, and that the regular employee will be paid a day's pay if the position is not covered. The Union would also provide in a note to this paragraph that on Union business the above penalty shall not apply. In the absence of voluntary agreement between the Agency and the Union, we find no justification for recommending this change in the rule.

RULE 11—ROSTER: The only change recommended in this rule is the substitution of the words "the Local Unions" for the words "duly accredited representative of the employees" at two places in the rule. For reasons heretofore given, this change is not recommended.

RULES 12 TO 18, INCLUSIVE: In these rules, headed "Discipline and Grievances," we find provision made for investigation, hearing, appeal, further appeal, grievances, advice of cause, and exoneration. These provisions seem to be in conformity with those contemplated in the Railway Labor Act. The Union proposes a substitute for all of these rules just enumerated:

> No employee shall be suspended from work, or dismissed while charges are pending, until an investigation has been held between the representative of the Local Unions and the proper official of the Company. Failure to hold the investigation within two (2) days, all charges against the employee shall be withdrawn.
>
> If an employee is dissatisfied with the decision, the Union shall notify the Company that they are demanding an Arbitration ruling and hearing and such Arbitration shall be held within five (5) days of such notice.
>
> All decisions of the Arbitrator shall be final and binding. If the final decision decrees that the charges against the employee were not sustained the record shall be cleared of all the charges and the employee shall be reinstated and paid for all time lost.
>
> Should any dispute arise between the Employer and the Union over the interpretation or application of any part of this Agreement, or otherwise an immediate attempt shall be made to adjust the matter by the Official designated by both parties, within a period of two (2) days. If the dispute is not settled satisfactorily in this instance, it shall be submitted to Arbitration within five (5) days.
>
> An impartial Arbitrator shall be engaged under this rule. The selection of an arbitrator shall be made by both parties to this agreement. The compensation or retainer shall be agreed to by both parties and the cost to be equally divided.

This proposed rule, intended to take care of rules 12 to 18, inclusive, seems to have some merit, but as submitted it would also seem that it is neither adequate nor sufficiently explicit to be a workable rule. It does not seem that it would prove satisfactory in practice. It would seem that the parties ought to and could agree upon a provision supplemental to the present rules, so as to devise some means of finally disposing of cases as they arise in a more expeditious and a more simple way. This should improve the present grievance procedure, which is somewhat cumbersome. It is the recommendation of this Board that the rules 12 to 18, inclusive, be retained, and that the parties get together and explore the possibility of reaching some agreement that would provide for a more prompt and an ultimate disposition of unadjusted grievances.

RULE 19—LEAVE OF ABSENCE: We find here another suggested amendment to the rule proposed by the Union that the words "duly accredited representatives" or "duly accredited representatives of the employees," wherever they appear, be substituted by the words "Local Unions." This conforms to prior proposals to

which consideration has been duly given, and the same result reached.

The Union further suggests that the second paragraph of the rule be eliminated, and the following substituted in its stead:

> An employee shall have the right to cease work, due to illness, or for any personal business that requires his attention.
> Nothing in the preceding paragraphs shall be held to establish any right on the part of employee for leave of absence for the purpose of engaging in other business.

This is certainly a broad proposal. It would give the employee too much discretion, in that he could decide for himself what "for any personal business that requires his attention" means. It would not be conducive to proper management to recommend such a change.

Further, in keeping with the proposal which we have just considered above, the Union also suggests that the words "or qualifying themselves to do so" appearing in the note to the rule, be stricken out. Not having recommended the adoption of the proposal connected with this, a similar result will naturally follow. We find no grounds advanced in the record that would warrant changing any part of this rule.

RULE 20—EXTENSION OF SENIORITY: This rule now reads as follows:

> Employees elected as representative of employees, shall be considered on leave of absence and in the service of the Express Company, and shall retain their seniority rank and rights, if asserted within thirty (30) days after release from this excepted employment.
> Employees elected or appointed as representative under this rule shall notify the management of their election or appointment and shall request renewal of leave of absence contemplated by this rule at least once each twelve months.
> Employees who have entered the military or naval service of the United States since the Selective Draft Law of 1940 by either enlistment or who are drafted under the law shall be considered on leave of absence and in the service of the Railway Express Agency, Inc., and shall retain their seniority rights if asserted within forty (40) days after release from the service of the United States Government.

The Union's proposal is that whether Union officials be appointed or elected, they shall be given leave of absence, and that the words "shall be considered on leave of absence and in the service of the Express Company" shall be striken out and that the words "and in the service of the Railway Express Agency, Inc.," be eliminated from the paragraph relating to service in the armed forces.

The Union further proposed that the provision regarding the renewal of leaves of absence for Union officials every 12 months be stricken out. The Agency does not agree to such changes.

The first suggestion in the proposal of the Union that the word "appointed" as well as "elected" officials of the Union be granted leave of absence is a simple correction that is a possible source of conflict, from what information we get, and the Board is of the opinion that the words "or appointed" should be added, and it is further recommended that the Union's proposal that the words "and in the service of the Express Company" be omitted be adopted. We do not find that either party contemplates that the inclusion of the words that are incorporated in this rule would bring about a complete status of employment, and this does not seem to be necessary in order to effectuate the rule with respect to seniority. The object is to safeguard seniority rights, and the omission of the words confines the rule to this purpose for which it was incorporated into the agreement. Likewise the words "and in the service of the Railway Express Agency, Inc.," in the last paragraph of the rule relating to military and naval service should be stricken out. We do not agree, however, that the words "and shall request renewal of leave of absence contemplated by this rule at least once each 12 months," found in the second paragraph of the rule, be stricken from this paragraph. The present rule seems to be a reasonable requirement, and not burdensome to the employee selected for Union offices. Consequently, the Board recommends that rule 20 be amended to read as follows:

> Employees elected or appointed as Representatives of employees shall be considered on leave of absence and shall retain their seniority rank and rights, if asserted within thirty (30) days after release from this excepted employment.
>
> Employees elected or appointed as representatives under this rule shall notify the management of their election or appointment and shall request renewal of leave of absence contemplated by this rule at least once each twelve months.
>
> Employees who have entered the military or naval service of the United States since the Selective Draft Law of 1940 by either enlistment or who are drafted under the law shall be considered on leave of absence, and shall retain their seniority rights if asserted within forty (40) days after release from the service of the United States Government.

RULE 21—DULY ACCREDITED REPRESENTATIVE: The rule now reads as follows:

> Where the term "duly accredited representative" appears in these rules it will be understood to mean the regular constituted committee representing the employees of the Railway Express Agency or the Officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America of which that committee is a part will constitute a "Duly Accredited Representative."

The Union proposed a change, which is as follows:

> Where the term "duly accredited representative" or "Local

Unions" appears in these rules it will be understood to mean the regular constituted committee representing Local Union 459 and 808 and the Officers of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, of which that committee is a part will constitute a "Duly Accredited Representative."

The question here presented has been considered in previous rules, and though this one is referred to as the basic rule where the change should be made, the Board does not feel that the substituted rule proposed by the Union should be adopted here, any more than it has been adopted heretofore.

RULE 22—PERIOD OF WORK: This rule provides that the working hours for each day of the week shall be from Monday to Friday, inclusive, 7 hours and 40 minutes, and on Saturday, 5 hours and 40 minutes. This rule further provides that 6 days shall constitute a week's work, except that this number of days shall be reduced in a week in which a holiday occurs by the number of such holidays.

Regular employees, who through no fault of their own, are released before their full day's work is complete, shall be paid not less than a full day's pay. Hourly employees, if used 4 hours or more, shall be paid a minimum guarantee of 6 hours; if used more than 6 hours they shall be guaranteed a full day's pay.

The Union proposes a rule, which would be new rule 17, which provides for working hours of 8 hours for each day from Monday to Friday, inclusive. A further proposal is that 5 days shall constitute a week's work, except that this number of days shall be reduced in a week in which a holiday occurs by the number of such holidays. An employee who, through no fault of his own, is released before the full day's work is completed, shall be paid no less than a full day's pay.

The object of the proposed new rule is, of course, to bring about a 5-day week of 8 hours per day, or a 40-hour week, and to make Saturdays and Sundays days of rest. In view of the character of the work required on the part of the Agency, these changes do not seem to be practical.

The business of the Express Agency necessitates work to be done on each day of the week, and even though Saturday is a short day, there is still need for working hours on that day. It would not be feasible to eliminate the Saturday work altogether. Since the work, therefore, must go on, the suggested changes would only result in an increase of wages, rather than reducing the hours of work, which is what the Union is contending for. This question of wages has been considered elsewhere. There is an additional reason for not recommending the change proposed by the Union. A contract between the Railway Express Agency and the Teamsters

was entered into February 2, 1944, which contained the following paragraph:

> The supplementary increases provided for in paragraph 3 hereof shall be paid as the equivalent of or in lieu of claims for time and one-half pay for time worked over 40 hours per week, and shall be paid until Proclamation by the President of the United States or Declaration by the Congress of the cessation of hostilities and thereafter until changed in accordance with the Railway Labor Act, as amended. This paragraph, agreed to in time of war, shall be without prejudice to the right of either party after the expiration of the date above stated to seek a change in the agreement which is now made with respect to such supplementary increases, in accordance with the provisions of the Railway Labor Act, as amended. Overtime compensation shall continue to be computed and paid in accordance with the provisions of existing agreements and the rules now governing overtime payments shall remain in effect subject to the right of either party to seek any change in or supplement to such rules, provided that no request for overtime penalty pay shall be sought during such period for any hours worked solely because they are worked in excess of 40 per week.

These stipulations are specific and lead to no conflict. There is nothing in the record that would support acceptance or recommendation of the changes here sought by the Union. They are therefore disapproved.

The Union further asks that the word "regular" be eliminated from the second paragraph, and that the fourth paragraph be stricken out in its entirety. Previous rules and previous suggested changes to the same effect have been rejected, and this proposal must also be rejected.

RULE 22A—PERIOD OF WORK—GARAGEMEN: Under the rule garagemen's working hours are seven and one-third (7⅓) consecutive working hours exclusive of meal period, and 6 days constitute a week's work, except that this number of days shall be reduced in a week in which a holiday occurs by the number of such holidays. And further, if regular employees, through no fault of theirs, are released before their full day's work is completed, they shall be paid not less than a full day's pay.

The Union now proposes that this rule 22A be eliminated to conform with the requested changes in rule 22. The suggested changes in rule 22 having been rejected, it follows that the suggested proposal here should also be rejected, and it is so recommended.

RULE 23—MEAL PERIOD: This rule now reads as follows:

> Employees shall be allowed one hour meal period between the ending of the fourth hour and the ending of the sixth hour of duty, excepting employees with turn-out between 1:00 P. M. and

5:00 P. M., may be allowed thirty minute meal period. If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid for at the overtime rate and twenty minutes with pay in which to eat shall be afforded at the first opportunity, if the employee's time card shows that he has not been fed within the prescribed time limit the penal clause prescribed in this rule, will automatically apply.

The Union proposed that the same length of meal period apply to men turning out from 1 p. m. to 5 p. m. as to others. The Agency rejected this request and proposed in addition that the responsibility be placed on the employee to request a meal period within the specified hours.

The evidence is not convincing that the length of the meal period should be increased for all employees turning out between 1 p. m. and 5 p. m. We believe, on the other hand, that the Agency's proposal to put the responsibility for requesting the meal period on the employee would result in misunderstanding and confusion. We recommend that the present rule be continued unchanged.

RULE 24—OVERTIME: This rule now reads as follows:

Work performed in excess of the number of hours constituting a day's work (as indicated in Rule 22) shall be paid at time and one-half times the hourly rate, and shall be paid on actual minute basis.

NOTE.—It is agreed that in no instance shall an employee be required to work beyond eleven hours in any one day. Except in case of breakdowns, for all time worked in excess of eleven hours, in addition to time and one-half time rate allowed for actual time worked beyond assigned day, an additional minimum allowance will be made of four (4) hours at time and one-half time rate.

In lieu of the note the Union proposed the following:

More than three (3) hours overtime in any one day shall be compensated by payment of an additional four (4) hours pay at time and one-half rate, over actual hours worked.

Employees shall not be required to suspend duties until the completion of his last assignment.

The Agency proposed that there be substituted the following note:

NOTE.—It is understood and agreed that employees may be clocked off duty after working regularly assigned hours as indicated in Rule 22 on any given day.

The rule as it now stands requires payment for time over 11 hours at the regular time and one-half rate, and a penalty payment of 4 hours at time and one-half beyond the hours actually worked, except in cases of breakdowns. The Union proposal would, by the elimination of the exception for breakdowns, require the extra payment in all cases where an employee worked more than 11

hours. Furthermore, the Union proposes that employees be not required to suspend duties until the completion of their last assignment. This would hamper the Agency's efforts to reduce long hours of service, and would probably increase the special penalty payments. The Union's proposal that the employees be not required to suspend duties until the completion of their last assignment was met by the counter-proposal of the Agency for the express recognition of its right to clock its employees off duty after regularly assigned hours. The Union objects to termination of a day's work at points away from the terminal. The Agency wishes to remove any doubt of its right to terminate a day at the end of the assigned hours and avoid overtime. The Board does not find that either of the proposals is entirely satisfactory. It therefore does not recommend any changes in this rule.

RULES 25 AND 26: Neither party recommended any change in rules 25 or 26.

RULE 27—SUNDAYS: The proposed Union rule presents the same question which we considered and disposed of under rule 22.

RULE 28—HOLIDAYS: This rule now reads as follows:

> New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day are recognized as holidays without pay deduction provided employee works three days in the pay week in which the holiday occurs. If work is performed on recognized holidays, time and one-half additional will be allowed for a full day.

The Union proposed an amendment here which would provide for 4 additional holidays and the change of the 3-day proviso to 1 day.

This request not only conflicts with the National Agreement which the Agency holds with the Teamsters, but also with the Agreement which it holds with the Clerks. No convincing information has been received which would make it appear to warrant us in recommending that the number of holidays be increased. The present provision that an employee must have worked 3 days in a week in which a holiday occurs also appears to be reasonable. No change is therefore recommended in this rule.

RULE 31—VACATIONS: This rule now reads as follows:

> Vacations will be granted to all employees upon the following basis and conditions:
> (A) Employees having more than one year's service but less than ten years' service—six working days with pay.
> (B) Employees having ten years' or more service but less than fifteen years' service—nine working days with pay.
> (C) Employees having fifteen years' service or more—twelve working days with pay.

(D) All vacations shall be assigned in accordance with seniority in the Supervisor's district, but in no case will a man with more than ten (10) years' service be granted a vacation earlier than April, nor later than October.

The Union proposed the following rule:

Vacations will be granted to all employees upon the following basis and conditions:

(A) Employees having more than one year's service but less than five (5) years' service, ten (10) working days with pay.
(B) Employees having five (5) years' or more, fifteen (15) working days with pay.
(C) All vacations shall be given in accordance with seniority in the supervisors district but in no case may a vacation be given earlier than May or after September to any employee with five (5) years' or more seniority.
(D) All employees shall be paid for their vacation in advance.

We find that the standard vacation period in the nonoperating railroad employments is now established at 1 week for employees of 1 to 5 years' service and 2 weeks for employees of 5 years or more of service. The same is the standard vacation period approved by the National War Labor Board in numerous industries. We therefore recommend that a vacation period of 6 working days be granted to employees of 1 to 5 years' service, and to employees of 5 years and over vacations of 12 working days.

PROPOSED NEW RULE ON INSUBORDINATION: This proposed new rule on insubordination reads as follows:

All employees covered by this agreement and who perform their duties in accordance with same shall in no manner be charged with insubordination, or disrespectful attitude.

The employees have proposed a new rule, to be entitled "Insubordination," the provisions of which would seem to place with each individual employee the right to interpret the provisions of the agreement and to have his judgment final as to what the agreement means. This, it would seem, would take away one of the prerogatives of management, and in view of the fact that any employee harmed by an improper interpretation of the agreement on the part of management may prosecute a grievance therefor, we deem the adoption of the new rule inadvisable, and do not recommend it.

RULE 35—TERMINATING CLAUSE: This rule now reads as follows:

This agreement shall be effective as of February 2, 1944 and shall continue in effect for one year and thereafter until it is changed as provided herein, or under the provisions of the amended Railway Labor Act.
Should either of the parties of this agreement desire to revise or modify these rules, thirty days' written advance notice, contain-

ing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.

The terminating clause proposed by the employees reads as follows:

> This agreement shall be in effect from February 2, 1945 and continue in effect for the duration of the war and six (6) months thereafter, or until no later than August 31, 1946. This agreement shall be subject to renegotiations on written notice of such intentions on at least ninety (90) days notice prior to expiration date.
>
> NOTE.—The provisions of these rules are to be effective as of February 2, 1945.

We find no reason for any amendment of this rule, other than to substitute for February 2, 1944, such effective date as the parties may agree upon.

CERTIFICATION

In conformity with the provisions of the Stabilization Act of October 2, 1942, as amended by section 202 of the act approved June 30, 1944, this Board finds and certifies that in its opinion the recommended settlements involved in this proceeding are consistent with the stabilization standards now in effect, established by or pursuant to law, for the purpose of controlling inflationary tendencies.

Respectfully submitted,

(Signed) H. NATHAN SWAIM, *Chairman.*
(Signed) EUGENE L. PADBERG, *Member.*
(Signed) HENRI BURQUE, *Member.*

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