Report

TO

THE PRESIDENT

BY

EMERGENCY BOARD No. 176

APPOINTED BY EXECUTIVE ORDER 11486 DATED OCTOBER 3, 1969, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED.

To investigate disputes between the carriers represented by the National Railway Labor Conference and the Eastern, Western and Southeastern Carriers' Conference Committees and certain of their employees represented by the Employes' Conference Committee composed of the International Association of Machinists and Aerospace Workers, the Sheet Metal Workers' International Association, the International Brotherhood of Electrical Workers, and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.

(National Mediation Board Case No. A–8563.)

WASHINGTON, D.C.
NOVEMBER 2, 1969

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *November 2, 1969.*

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT:

On October 3, 1969, pursuant to Section 10 of the Railway Labor Act, as amended, and by Executive Order 11486, you created an Emergency Board to investigate disputes between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Employes' Conference Committee composed of the International Association of Machinists and Aerospace Workers, the Sheet Metal Workers' International Association, the International Brotherhood of Electrical Workers, and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, labor organizations. That Board, composed of the undersigned, has the honor herewith to submit its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

RALPH T. SEWARD, *Chairman.*
ROBERT G. HOWLETT, *Member.*
E. ROBERT LIVERNASH, *Member.*

CREATION OF THE EMERGENCY BOARD

Emergency Board No. 176 was created by Executive Order 11486, issued October 3, 1969, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate and report its findings on the unadjusted disputes between the railroad carriers represented by the National Railway Labor Conference (comprised of the Eastern, Western and Southeastern Carriers' Conference Committees) and certain of their shopcraft employees represented by the Employes' Conference Committee composed of the International Association of Machinists and Aerospace Workers, the Sheet Metal Workers' International Association, the International Brotherhood of Electrical Workers, and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, labor organizations.

President Nixon appointed the following persons as members of the Board: Ralph T. Seward, attorney and arbitrator, Washington, D.C., Chairman; Robert G. Howlett, attorney and Chairman of the Michigan Employment Relations Commission, Grand Rapids, Mich.; and Prof. E. Robert Livernash, Graduate School of Business Administration, Harvard University, Cambridge, Mass.

The Board convened in Washington, D.C., on October 6, 1969, to discuss procedural matters with the parties, and thereafter for 3 days between October 11 and October 14, 1969, held public hearings in Washington, D.C., at which the parties were given full opportunity to present evidence and argument. Thereafter, at a series of meetings, the Board endeavored to assist the parties to reach agreement on the issues in dispute. These mediation efforts and the present status of the parties' bargaining, will be discussed more fully below.

BACKGROUND

The Carriers before this Board include almost all of the Class I railroads of the United States and account for more than 95 percent of the country's total railroad mileage. The Organizations represent approximately 48,000 shopcraft workers who are employed in the maintenance and repair of the locomotives, cars, and other equipment used by the Carriers in rail transportation. A large percentage of these employees work in the Carriers' "back shops"—i.e., large shops where locomotives and railroad cars are inspected, disassembled, reassembled, and generally overhauled. Others work at large repair areas, making

the "running repairs" needed when equipment breaks down and must be quickly restored to operating condition, and still others work at various outlying points dealing with minor repairs and maintenance.

During 1966 and 1967 these Carriers and Organizations [1] were involved in a major wage dispute which lasted almost 18 months, which defied the mediatory efforts of a series of Government boards [2] and which was finally settled only by virtue of an act of Congress which gave binding effect to the determination of the last of these boards.[3] It is unnecessary to recount the full history of this dispute in this report. Certain of the issues which then arose, however, have reappeared in the dispute presently before this Board, and an understanding of these issues requires some knowledge of their background in the prior controversy.

One of the recurrent issues has been the question whether the pattern of general increases granted to other railroad employees should be followed in respect to the shopcrafts. Most railroad labor organizations represent only railroad employees. The four organizations before this Board, on the other hand, represent not only railroad shopcraft employees but skilled tradesmen in many other industries, who are engaged not only in maintaining and repairing transportation equipment but also in manufacturing and in the construction trades. Comparisons with wage levels in these other industries, thus, have peculiar importance and significance to these unions, and they have a corresponding impatience with proposals which would limit their wage movements to patterns set in the railroads. The Carriers, of course, who must bargain separately with many organizations, are under extreme pressure to adhere to the patterns established by the early settlements in any round of wage increases. Departures from the patterns might either require the reopening of prior settlements or the disruption of relations with the organizations which had taken the risk of making such prior settlements and which—if later settlements exceeded theirs—might be reluctant to take such a risk again. As a result, both the earlier dispute and the present one have been framed, in part, by the Carriers' pleas for adherence to the established railroad patterns of general increases and the Organizations' claims that any such limitation on their wage progress would be unreasonable and unfair.

Another recurrent issue has involved the Organizations' claims of inequity. These claims have centered, in part, on the assertion that many years of wage adjustments made on cents-per-hour basis have

[1] Further shopcraft organizations were also parties to this dispute: The Brotherhood of Railway Carmen of America and the International Brotherhood of Firemen and Oilers.

[2] The National Mediation Board; Emergency Board No. 169 (the "Ginsberg Board"); a Special Panel appointed by the President (the "Fahy Board"); and a Special Board appointed pursuant to Public Law 90–54 (the "Morse Board").

[3] Public Law 90–54.

unduly narrowed the differential between journeymen mechanics, on the one hand, and helpers and other less skilled employees, on the other. As to this, it has been the Carriers' position that this "wage compression," insofar as it relates to intrarailroad-industry wage relationships, can best be dealt with by substituting percentage wage adjustments for cents-per-hour adjustments and thus gradually widening the differential. Further, the Carriers have consistently challenged the Organizations' claims that the rates of journermen mechanics in the railroad shopcrafts are inequitably low as compared to those of skilled tradesmen in other industries. The advent of diesel-electric locomotives and improvements in repair and parts-changing techniques, the Carriers submit, have substantially lessened the skill required of the great majority of their craftsmen. Hence, in the Carrier's opinion, no meaningful comparisons between the rates paid in the railroad shops and those paid elsewhere can be made unless railroad work assignments are first studied and evaluated.

The determination of the Morse Board which finally settled the wage issues in the 1966–67 dispute dealt with both the "general increase pattern" and the "inequity" phases of this dispute. Without going into details, it may fairly be said that its general increase determination (a 6-percent increase to run from January 1, 1967, to July 1, 1968, and an additional 5-percent increase to run from July 1, 1968, to January 1, 1969) gave substantial effect to the existing railroad increase pattern for the year 1967 and the first half of 1968 and established a new pattern for the last half of 1968. Wage agreements subsequently negotiated between the carriers and the other railroad labor organizations followed this new pattern for the last half of 1968 and then went further and established a new pattern of general increases for the year 1969. This pattern called for general increases of 2 percent effective January 1, 1969, and of 3 percent effective July 1, 1969. In the present dispute over 1969 wages, thus, the shopcraft organizations have again found themselves faced with an already established pattern of general increases, which has been uniformly applied to the great majority of railroad employees and to which the carriers ask them to adhere.

With regard to the "inequity" issue, the Morse Board's determination provided for four successive 5-cent increases, effective April 1, 1967, October 1, 1967, April 1, 1968, and October 1, 1968. Further, to assist the parties in their future bargaining, the Board called for the making of a comprehensive study of the facts underlying the "skill differential" and "wage inequity" issues, the study to be carried out under the auspices of the Department of Labor with the parties' agreement and promised cooperation. This study—a mon-

umental undertaking, made even more difficult by the controversial nature of the issues and the fact that much relevant information could not be obtained because of limitations imposed by the parties themselves—has since been most effectively carried out.[4] At the threshold of the present dispute, thus, the position of the journeymen mechanics relative to their helpers and other railroad employees had been substantially improved and much information had been made available bearing on their wage relationships with craftsmen in other industries. The equity of journeymen mechanics' rates, nevertheless, was still a major issue between the parties.

One further point about the 1966–67 dispute should be noted. Both parties, in that dispute, had made proposals touching questions other than the "general increase pattern" and "wage inequity" issues so far discussed. The Organizations had asked for the establishment of a system of cost-of-living wage adjustments, for shift differentials, for additional overtime pay, and for improvements in such "fringe" areas as vacations, holidays, lunch periods, and jury duty pay. The Carriers had asked, among other things, for revisions in a number of work rules which they considered overly restrictive, including those governing the crossing of craft jurisdictional lines, the contracting out of work and the advance notice requirement in case of emergency force reductions, and had also requested the establishment of a rule that would require adherence to the common law rule of damages for breach of collective bargaining agreements. With the exception of a portion of the vacation issue, on which the parties reached agreement, all of these various proposals were withdrawn during the course of the dispute. A number of them have reappeared among the issues before this Board, however, and the requests of the Carriers with respect to certain work rule changes have this time received major attention. It is important to recognize that these work rule issues are not new and that the Carriers have long been taking the position that if they are to grant special increases to journeymen mechanics in the shopcrafts they should be allowed to improve the efficiency and lower the cost of their shop operations.

THE PRESENT DISPUTE

The present dispute began in November 1968, when both parties served notices pursuant to Section 6 of the Railway Labor Act proposing changes in their agreements. The Organizations' proposals dealt mainly with wage rates to be established as of January 1, 1969, and the Carriers' proposals, for the most part, renewed requests

[4] *Railroad Shopcraft Factfinding Study,* U.S. Department of Labor, Labor-Management Services Administration, Washington, D.C., September 1968.

made in 1966 for changes in work rules. The specific proposals and the issues to which they have given rise will be discussed below. Before entering this discussion, however, we think certain comments should be made concerning the general course of the dispute, its present posture, and the motive and purpose of our findings and recommendations.

Our first comment concerns the apparent absence of anything more than perfunctory bargaining between the parties prior to the creation of this Board. While we do not have detailed information, we gather from the parties that between November 1968, when the notices were filed, and October 1969, when the Nation was threatened by strikes and retaliatory lockouts that might have brought most railroad transportation to a halt, the parties met to discuss the issues on only a few occasions, and the total time they spent in face-to-face bargaining amounted to less than 15 hours. In pointing this out we do not find fault with any of the parties' representatives or discount the efforts of the National Mediation Board to mediate the dispute. It seems to us, however, that the parties have assumed from the start that this dispute would eventually be brought to a Presidential Emergency Board, that bargaining was futile prior to the creation of such a board, and that the procedures of the National Mediation Board were little more than hurdles to be cleared before an Emergency Board could be created. Indeed, we suspect that in some minds, at least, the assumption has gone further and that even the procedures of this Board have been considered merely a barrier to be cleared before the real test comes and it is discovered whether, as an alternative to a nationwide railroad stoppage, Congress will intervene and provide a machinery for final settlement. Any system of labor law and labor relations which induces the parties in an essential industry to operate on such assumptions is failing to serve the public interest, and calls for serious study and review.

It is not only the relationship of Government to the parties' bargaining, however, that needs reexamination. It is also the basic structure of independent multiunion bargaining which has evolved in the railroad industry and which has shaped the major issues in this dispute. The "wage pattern" issue, which has been a major obstacle to the settlement of this case, is an inevitable product of that structure. The contention of the shopcrafts that their wage claims should be considered on their merits regardless of what other railroad unions have agreed to and the contention of the carriers that they must adhere to the pattern of general increases established for the majority of their employees are understandable and irreconcilable. Imaginative and energetic wage bargaining, alone, will not suffice to resolve the

dilemma, for basically it is not a wage issue. It is an issue which concerns the basic framework of railroad bargaining and the ability of the railroad organization to participate in the setting of any wage pattern to which it is to be bound.

Our final comment is that effective bargaining between the parties has now finally begun and that though no permanent resolution of the "wage pattern" dilemma is possible at this time, the framework of a possible agreement for the year 1969 has started to emerge from their discussions. Tentative agreement has been reached as to one or two matters; certain proposals have, to all intents and purposes, been withdrawn; and the parties have given some indication of the priorities they attach to their remaining claims. Clearly, the parties have a long and difficult road still to travel before they can reach agreement. The possibility of an eventual impasse is still very real. It is our belief and our recommendation, however, that the parties should continue their bargaining during the coming weeks in an effort to reach agreement and avoid the need for further governmental intervention.

The remainder of this report is devoted to a discussion of the issues which still face the parties. We have endeavored to cast this discussion in such a form as to aid the parties in their bargaining. The withdrawal of issues is noted and tentative agreements form the basis of recommendations. As to the stubborn issues still in dispute, however, we have not attempted to make final recommendations or substitute our judgment for that of the parties. Rather we have endeavored to show the direction in which we think agreement lies and—where we can perceive them—point to the emerging outlines of such agreement.

THE ISSUES

Attached as Appendix A and Appendix B are the full statements of the Organizations' and the Carriers' proposals.

The Organizations' proposals relate to the following: A. Establishment of uniform minimum rates of pay; B. Adjustment of straight-time wage rates and differentials; C. Skill wage adjustments; D. Cost-of-living adjustments; E. Interest on deferred payment of increases; F. Shift differentials; and G. Pay for Saturday and Sunday work. The wage issues contained in the Organizations' proposals A, B, C, and D will be discussed below, as will certain of the Carriers' proposals. Organization proposals E, F, and G will not be discussed since it is the recommendation of the Board that the Organizations withdraw these proposals from this negotiation.

THE WAGE ISSUES

Uniform Minimum Rates of Pay (Organization proposal A)

The Organizations request the following minimum rates of pay to be effective January 1, 1969:

Machinists	$3.60
Boilermakers	3.60
Blacksmiths	3.60
Sheet metal workers	3.60
Electrical workers	3.60
Linemen	3.55
Groundmen	3.22
Coal pier elevator and hoist operator	3.55
Helpers, all crafts	3.05

Apprentices:

Period	*Regular apprentices*	*Helper apprentices*
1st	$2.80	$3.05
2d	2.83	3.08
3d	2.86	3.11
4th	2.89	3.14
5th	2.92	3.17
6th	2.95	3.20
7th	3.02	----------
8th	3.12	----------

The above uniform minimum rates of pay are designed primarily to eliminate the existing four decimal system of wage payment. The Organizations argue that the existing rates of pay are unrealistic and that the adjustments requested would provide, for the most part, increases in mills and tenths of mills. In a few instances, associated with slight variations in wage rates among railroad properties, the proposed minimum scales would increase a few wage rates as much as 2 or 3 cents per hour.

The Carriers have indicated a willingness to adjust all basic wage rates to the nearest whole cent, but not to accept the proposed minimum scale.

Despite this difference, the Board believes the parties are near agreement on this issue. In the interest of uniformity and simplicity we suggest that the Organizations' proposal be accepted as the basis for settlement.

General Wage Adjustment (Organizations' proposals B and D)

The Organizations' request a 10-percent general wage increase, effective January 1, 1969, supplemented by an escalator clause providing a cost-of-living adjustment of 1 cent per hour for each three-tenths point change in the Consumer Price Index above the base index for

December 1968, with such adjustments to be effective April 1, 1969, and each quarter thereafter.

As noted in the background discussion, the general wage increase issue cannot be considered apart from the pattern offer by the Carriers of a 2-percent wage increase to be effective January 1, 1969, and an additional 3-percent adjustment to be effective July 1, 1969.

Again, as earlier stated, this Board is trapped in the "pattern" dilemma faced by the parties and by many previous Emergency Boards. The Organizations are asked to accept a general wage increase which was established at bargaining tables at which they were not represented, a wage increase agreement which is thus not of their making. The frustration of the Organizations at being locked into an established pattern is understandable, but, equally understandable is the Carriers unwillingness to break and upset, for the year 1969, a wage agreement voluntarily negotiated in good faith at an earlier date. Late settlements above a pattern earlier established penalize employees involved in the earlier voluntary negotiations. This is destructive of the broader system of collective bargaining in the industry. Until and unless the structure of bargaining is modified in the industry there can be no improved approach to this difficult problem. Under these circumstances this Board cannot recommend departure from the wage pattern already in effect for some 77 percent of all railroad employees.

This conclusion, however, only emphasizes the need for further bargaining with regard to wage increases which, because they would be based on factors peculiar to the shopcrafts, would not break the established pattern. One such avenue to special increases lies in the negotiations now in progress in the work rule area, discussed below. To the extent and degree mutually satisfactory modifications of rules are negotiated, appropriate wage adjustments could be made. Wage increases justified by modifications in rules which, through improved organization of work, contribute to efficiency, productivity, and cost reduction would not be incompatible with earlier wage settlements. On the contrary, the Board is of the opinion that negotiations of this character should be encouraged in the industry.

Skill Wage Adjustments (Organization proposal C)

The Organizations request additional wage increases to all journeymen and mechanics, including supervisors, of 10 cents per hour effective April 1, 1969, and 10 cents per hour effective October 1, 1969, to continue to correct alleged inequities in the pay of railroad shopcraft mechanics relative to the wage rates received by employees in occupations of similar or identical skill existing in manufacturing and other industries.

As we have pointed out above, questions relating to alleged inequities in pay for railroad skilled mechanics when their pay is compared to rates of pay prevailing in other industries for similar or identical occupations, and alleged inequities in pay for railroad mechanics when their pay is compared to others within and among railroad crafts and classes of employees—all arising from the continuous application over the years of uniform cents-per-hour wage increases to all railroad employees—have been studied and acted upon by earlier railroad Boards.

Of special interest to this Board in this connection, are the results of the *Railroad Shopcraft Factfinding Study* carried out by the Department of Labor in accordance with the recommendations of the Morse Board. Because of the inherent difficulties of the task and because of the failure of the parties to agree on the scope and content of this aspect of the study, the Labor Department could not make a detailed job analysis of the work performed by railroad shopcraft employees as compared to that of employees in skilled occupations elsewhere or compare wage rates on the basis of such an analysis. No attempt was made to assess the relative degree of skill and responsibility required of railroad and other similarly named mechanics. Attention was directed rather to wage trends and to changes in *wage-rate differentials* over the years since 1953, as developed from existing wage data and wage surveys. Within the limits of the method employed, and with the available data, it appears that the special wage adjustments resulting from the recommendations of earlier Boards were not only appropriate, but also effective in alleviating the general inequity then existing between the pay of railroad shopcraft mechanics and the pay of employees in occupations included in BLS Metropolitan Area Wage Surveys and Navy Pay Surveys.

The significance of the special Department of Labor study is made clear by Carriers' Exhibit No. 14, pages 77 and 78, which brings up to date (July 1969) the comparison between railroad shop mechanics and U.S. Navy pay levels. The indexes by which these comparisons are portrayed include an assumed 1969 pattern increase for railroad shop mechanics, and, with this inclusion, disclose that the special skill wage adjustments recommended by the Fahy Board in its Report of April 22, 1967, and increased and effected by the Morse Board in its determinations of September 15, 1967, have restored or even modestly improved the relative pay position which existed for railroad shop mechanics in the years 1953–58, and which had become quite unfavorable for railroad shop mechanics during the years 1960–66.

Indeed, the available data with regard to wage progress and changes in the magnitude of differentials between railroad pay and occupa-

tional pay in outside industry, would not support a conclusion that a pay inequity presently exists.

It should be emphasized that this Board has not attempted to assess the pay of railroad mechanics in the light of the skill and responsibility required for the *average* assignment actually performed relative to the pay received in maintenance occupations for the exercise of the skill and responsibility generally required in such occupations. Patently, it is far easier to generate heat than light on this difficult question.

While this Board cannot support a general skilled wage rate adjustment, there remains a very important related question as to the continuing appropriateness of a single wage rate in each craft. In the judgment of the Board the uniform wage rate fails to compensate adequately the minority of employees who perform assignments demanding the exercise of particularly marked or outstanding skill and responsibility. The testimony on this point establishes an inequity in pay among mechanics with reference to the performance of these more skilled and more responsible assignments.

While recognizing the serious complexity of our suggestion, we are of the opinion that the parties should establish through negotiation a Class I Mechanic Rate, not less than 20 cents per hour in excess of the Regular Mechanic Rate, and negotiate those assignments on each railroad property to which this rate might properly be applied. It is recognized that such assignments would be open to bid, and that those successfully bidding the assignments must be capable of performing the work. As a general guide, it is suggested that some 15 to 25 percent of men employed as mechanics might at this time be filling assignments to which the proposed Class I rate should properly be applied. Our judgment is that a determination through negotiation of the more skilled and responsible assignments to which a Class I wage rate would then be applied, and the negotiation of such a rate, would move in the direction of removing a pay inequity in the existing wage structure which will otherwise become more serious with continuing technological change.

THE RULE-CHANGE ISSUES

The Carriers proposed rule changes on the following subjects: (1) Classification of Work; (2) Revision of September 25, 1964 Agreement; (3) Monetary Claims; (4) Discipline and Investigation; (5) Force Reductions; (6) 40-Hour Workweek Rules; (7) Eliminate Starting Time Rule; (8) Assignment and Use of Employees; (9) Transfer of Employees; (10) Filling of Temporary Vacancies or Augmentation of Force; (11) Changing Employees From One Shift to Another; and (12) Wrecker Crews and Equipment.

At the mediation sessions, necessarily curtailed by the 30 days statutory limit on the Board's existence, discussion concentrated on the Carriers' first five proposals which, if adopted, the Carriers urge, would importantly reduce maintenance and repair costs.

As Carriers' Proposals Nos. 6 through 11, inclusive, were not explored by the Board during the mediation sessions, we recommend that they be withdrawn from the current negotiations.[5]

Near the end of the mediation sessions the Board, to advance the process of agreement, suggested that the Carriers withdraw the Monetary Claims Proposal (Proposal 3, Appendix B). The Carriers acceded to the Board's suggestion, hence discussion is limited to Carriers' Proposals Nos. 1, 2, 4, and 5.

Classification of Work (Proposal 1, Appendix B)

New technology including the substitution of diesel locomotives for steam locomotives has, the Carriers contend, so changed maintenance and repair of equipment that the scheduling and performance of certain work on craft lines is neither realistic or efficient.

The Carriers did not pursue the all-inclusive change suggested by the wording of Proposal No. 1, but urged the adoption of a rule which would afford greater flexibility in assignments of mechanics at all locations, thus extending and expanding the outlying points rule.

The outlying points rule adopted by Addendum No. 6 to Decision 222 of the United States Railroad Labor Board reads:

> Rule 32 . . . At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary.[6]

The Carriers illustrate the practicability of greater flexibility by citing repair and maintenance in the air transportation and truck industries and in diesel locomotives manufacture, where such stringent craft limitations do not exist.

The Organizations, noting the failure of Emergency Boards in the past to adopt similar proposals,[7] contend that a rule based on the proposal would violate Section 2, Fourth, of the Railway Labor Act (45 U.S.C. 152, Fourth) which authorizes employees to bargain collectively on the basis of craft. Legitimate needs of the Carriers have, the Organizations aver, been recognized within the statutory limits, by the

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[5] The Carriers have informed the Board that Proposal No. 12 is withdrawn from these proceedings.

[6] Under Rule 32, foremen are, under certain circumstances, authorized to perform mechanics' work.

[7] Board No. 106, Report of May 15, 1954; Board No. 160, Report of August 7, 1964; Boards Nos. 161, 162, 163, Report of August 18, 1964; Board No. 169, Report of March 10, 1967.

outlying points rule, and by permitting mechanics to cross craft lines in emergencies.

During the mediation sessions information was offered which disclosed that craft lines in both back shops and at running repair points have been relaxed by local agreements between several Carriers and the Organizations.

While the Carriers' Proposal No. 1 is too broad to serve as a basis for agreement in the context of the history of craft bargaining pursuant to the Railway Labor Act, the evidence leads to the conclusion that there is merit in the Carriers' contention that changing technology and the need for increased efficiency warrants greater flexibility in the use of mechanics.

During the mediation sessions at the request of the Board several suggestions for a new rule were discussed, including: (1) The extension of the outlying points rule to various combinations of running repair locations, back shops, and shifts; (2) the performance by a mechanic during a work assignment of incidental work covered by the classification of work rules of another craft or crafts; (3) the performance of incidental work of one craft by a mechanic of another craft limited to running repair work locations; (4) the definition of incidental work, and (5) limitations which might or should be placed on incidental work.

The Carriers' and Organizations' representatives, engaging in serious exploration and discussion, made progress in bargaining for a rule which would be acceptable to both parties, but when the mediation sessions ended had not reached an agreement.

We recommend that the Carriers and Organizations continue to engage in intensive collective bargaining in an effort to reach an agreement which will afford greater flexibility in the use of mechanics. It is apparent that significant cost reduction can be made in the area of craft work assignments.

Revision of September 25, 1964, Agreement (Proposal 2, Appendix B)

The Organizations have served notice on the Chicago, Burlington & Quincy Railroad and the Missouri Pacific Railroad to modify the contracting out provision (Section 2 of Article I) of the September 25, 1964, Agreement.

The Carriers receded from their original proposal that all restrictions on contracting out agreements, etc., be eliminated and proposed a 2-year moratorium on the service of notices to change the contracting out provisions of the September 25, 1964, Agreement.

The Organizations appear willing to agree to a moratorium for all Carriers except the Chicago, Burlington & Quincy Railroad and the Missouri Pacific Railroad. A moratorium thus restricted is not sat-

isfactory to the Carriers. The Organizations are unwilling to consent to a moratorium unless satisfactory arrangements are made with the two carriers on which the Organizations have served notices.

At the Board's suggestion, a meeting between representatives of the Organizations and of the Chicago, Burlington & Quincy Railroad was held on October 28, 1969.[8] We have been advised that progress was made toward resolution of the controversy. It is apparent, however, that additional meetings will be required before consummation of an agreement satisfactory to both the Organizations and the Chicago, Burlington & Quincy Railroad. Negotiations with regard to problems on the Missouri Pacific Railroad may also be necessary.

We believe that the Organizations and the Chicago, Burlington & Quincy Railroad should continue discussions in an effort to resolve the differences between them. If agreement is reached, and if the Missouri Pacific problems can be disposed of, we recommend that the Organizations consent to a 2-year moratorium for the service of notices for any change in the contracting out provision (Section 2 of Article I) of the September 25, 1964, Agreement.

We further recommend that the Organizations and Carriers establish a procedure for joint discussions during the moratorium on the contracting out provision of the September 25, 1964, Agreement in order to: (1) develop a better understanding of the Carriers' and employees' problems in this crucial area; (2) adopt needed changes, if any, in the contracting out agreement; and (3) provide for the administration thereof.

Discipline and Investigation (Proposal 4, Appendix B)

The Carriers propose the establishment of a rule which will require the National Railroad Adjustment Board to apply the common law rule of damages in awarding back pay to each employee reinstated after discharge or disciplinary suspension. Under this proposed rule there would be credited against wages to which a reinstated employee is entitled, amounts earned at other employment. The Carriers further propose that an employee be required to exercise reasonable diligence in seeking other employment, or face loss of back pay.

The new rule is necessary, the Carriers aver, because some Adjustment Board decisions have not set off amounts earned in outside employment or required employees to seek other employment following suspension or discharge. Emergency Board No. 33 in 1946 and Emergency Board No. 57 in 1948 recommended adoption of a rule providing for deduction of outside earnings.

[8] There had been prior discussion between CB&Q and union representatives, but no action has been taken by the Organizations on the notice served on the Missouri Pacific Railroad.

The Organizations in opposing adoption of the proposed rule urge that: (1) the National Railroad Adjustment Board has seldom awarded back pay without taking into consideration amounts earned by an employee in outside employment, hence the issue is of minimal importance; (2) in those occasional instances when back pay, without deductions for outside earnings, has been awarded it would appear to have resulted from an employer's arbitrary or capricious action in discharge or suspension; (3) Carriers would suffer no consequences from violation of an employee's rights; and (4) it is always difficult, and often impossible, for a suspended or discharged employee to secure employment.

The Organizations urge that if a rule were adopted it should specify that "wage loss" includes fringe benefits.

Under Anglo-American law and generally by arbitral decision in American industry, employees damaged by breach of employment contracts, both collective and individual, are compensated solely for wages lost. Outside earnings from other employment are commonly deducted from wages due.

We are in accord with the principle of the Carriers' proposal that employees who are suspended or discharged should be compensated for wage loss and that earnings from other employment should be deducted. We agree with the Organizations' thesis that any such rule should include payment for fringe benefits. We recognize the validity of the Organizations' argument that there may be circumstances wherein an employee should not be required to seek outside employment. We are of the opinion that a requirement that an employee seek outside employment is not practical in disciplinary suspensions, which, we are advised by representatives of the Carriers and Organizations, seldom exceed 30 days.

Although the parties have not reached agreement on this issue, we think they are not far apart, and that the following language should be adopted as the basis for further discussions:

If it is found that an employee has been unjustly suspended or discharged, such employee shall be reinstated with his seniority rights unimpaired and be compensated in an amount which will not exceed his wage loss resulting from such suspension or discharge, less amounts earned in other employment. "Wage Loss" shall include fringe benefits such as vacation pay, holiday pay and employer contributions to the Railroad Retirement Trust Fund.

The National Railroad Adjustment Board may consider in determining the wage loss whether a discharged, but not a suspended, employee should have attempted to secure other employment, and if it finds in the affirmative, shall determine whether reasonable diligence has been exercised, and may consider this factor in determining the amount, if any, due to a discharged employee.

Force Reductions (Proposal 5, Appendix B)

The Carriers contend that the current rule requiring 16 hours' notice of force reductions in emergency situations is impossible of practical application as emergencies do not afford advance warning. The Carriers, however, are required to observe the 16-hour requirement. Some National Railroad Adjustment Board decisions have relied on the second proviso of Article VI of the August 21, 1954, Agreement, holding that, despite emergencies that cause suspension of railroad operations, the work that would normally be performed by the shopcrafts continued to exist or could be performed consequently the 16-hour rule did not apply and the 5 days' notice rule was applicable.[9] Because of these rulings Carriers have, they contend, been unable to reduce work forces even though the work may be unnecessary or even futile because of the emergency.

During the collective bargaining sessions, the representatives of the Carriers and Organizations discussed the several aspects of the Force Reductions Rule. Based on tentative agreements reached in such discussions, we propose a revision of Article VI of the August 1954, Agreement, which in our opinion will remove the Carriers' valid objections thereto, while also protecting employees' legitimate interests. We recommend that Article VI of the August 21, 1954, Agreement be revised to read:

A. Rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph B below, provided that such conditions result in suspension of a Carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four (4) hours' pay at the applicable rate for his position.

B. Rules, agreements or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced are hereby modified so as not to require advance notice where a suspension of a Carrier's operations in whole or in part is due to a labor dispute between said Carrier and any of its employees.

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[9] The Carriers' original Proposal No. 5 includes elimination of the 5 days' advance notice requirement applicable when carriers abolish permanent positions or reduce forces, but the Carriers did not press this portion of the proposal at either the hearing or during mediation. The 5-day notice requirement for abolishing permanent positions was adopted following the recommendation of Emergency Board No. 145 in its report of May 3, 1962.

CONCLUSION

The primary suggestion and recommendation of the Board is that the parties continue to negotiate within the framework of this Report. More specifically, we propose that:

1. The Organizations accept for the year 1969 the wage proposal of the Carriers of a 2-percent wage increase to be effective January 1, 1969, and an additional 3 percent adjustment to be effective July 1, 1969.

2. The Carriers accept the uniform minimum rates of pay proposed by the Organizations.

3. The Carriers and Organizations negotiate a Class I Mechanic Rate not less than 20 cents per hour above the Regular Mechanic Rate, to be applied to the more skilled and responsible assignments as determined by the parties within the limits suggested and to be effective upon agreement.

4. Negotiations be continued with respect to rule modification and the granting to the shopcrafts of a special additional wage increase in recognition of added efficiency and productivity made possible by such modification. In this connection, it is urged that the special negotiations which have been begun, apart from this proceeding, related to the operation of the contracting out rule of a particular carrier, be carried through to a successful agreement and that all obstacles to the successful negotiation of a 2-year moratorium on changes in the contracting out rule be removed.

5. The Carriers and Organizations withdraw from the present negotiations all of their respective proposals not within the framework of this Board's report and recommendations.

Serious and difficult negotiations will be required to face realistically the issues remaining and particularly the monetary implications of rule changes. The Board is confident, nevertheless, that a framework of agreement has been erected.

Finally, we wish to express our sincere appreciation of the constructive approach which the parties have taken in exploring avenues for agreement and the courtesy and consideration they have extended to us.

Respectfully submitted,

RALPH T. SEWARD, *Chairman.*
ROBERT G. HOWLETT, *Member.*
E. ROBERT LIVERNASH, *Member.*

WASHINGTON, D.C., *November 2, 1969.*

Appendix A

PROPOSALS OF THE ORGANIZATIONS

A. Establishment of Uniform Minimum Rates of Pay

1. (a) Effective January 1, 1969, establish a uniform minimum rate of pay for all Machinists, Sheet Metal Workers, Electricians, Boilermakers, and Blacksmiths of $3.60 per hour and for all classes of Electrical workers in the Communications Department, except groundmen, of $3.55 per hour.

   (b) Effective January 1, 1969, establish a uniform minimum rate of pay for all helpers of the crafts identified in A1(a) of $3.05 per hour and for all groundmen of $3.22 per hour.

   (c) Effective January 1, 1969, establish a uniform minimum schedule of rates of pay for all regular and helper apprentices of the crafts identified in A1(a) on the following basis:

Period	*Regular apprentices*	*Helper apprentices*
1st	$2.80	$3.05
2d	2.83	3.08
3d	2.86	3.11
4th	2.89	3.14
5th	2.92	3.17
6th	2.95	3.20
7th	3.02	----------
8th	3.12	----------

B. Adjustment of Straight-Time Wage Rates and Differentials

1. Increase all straight-time rates of pay established in A1 (a), (b), and (c) or existing higher rates of pay, including differentials, by an amount equal to 10 percent effective January 1, 1969, for all employes represented by the organizations signatory to this notice, regardless of classification or job title, applied so as to give effect to this increase in pay regardless of the method of payment.

C. Skill Wage Adjustments

1. Additional skill wage adjustments for all journeymen and mechanics, including supervisors represented by these organizations, in the amount of ten cents (10¢) per hour effective April 1, 1969, and ten cents (10¢) per hour effective October 1, 1969.

D. Cost-of-Living Adjustment

1. Wage rates established in accordance with parts A, B, and C of this notice shall be subject to a cost-of-living adjustment, effective April 1, 1969, July 1, 1969, October 1, 1969, and January 1, 1970, and each quarter thereafter. Such cost-of-living adjustment shall be in the amount of one cent (1¢) per hour

for each three-tenths (0.3) of a point change in the Bureau of Labor Statistics Consumers' Price Index for the months of March, June, September, and December, respectively, above the base index figure for December, 1968 (1957–59=100) except that it shall not operate to reduce wage rates below those established under parts A, B, and C of this notice.

E. Interest on Deferred Payment of Increases

1. Six percent (6%) interest to be paid on all increases due, starting thirty (30) days after the effective date of the increase.

F. Shift Differentials

1. In addition to all other wage payments required, effective January 1, 1969, all employes shall be paid shift differentials of ten cents (10¢) per hour for work on any shift beginning at or after 12:00 Noon and before 5:00 p.m., and fifteen cents (15¢) per hour for work on any shift beginning at or after 5:00 p.m. and before 6:00 a.m.

G. Saturday and Sunday Work

1. Employes assigned to work on Saturday and Sunday will be paid at time and one-half rate of pay, effective January 1, 1969.

Appendix B

PROPOSALS OF THE CARRIERS

1. Classification of Work

All agreements, rules, regulations, interpretations and practices, however established, governing the classification of work of mechanics, helpers, and apprentices shall be merged into three classifications of work rules. The first rule shall govern the work of all mechanics, the second the work of all helpers, and the third the work of all apprentices. Thereafter, any work covered by such a consolidated rule may be assigned to and performed by any employee of the class to which the rule is applicable irrespective of craft.

The number of mechanics, helpers, and apprentices shall be determined as nearly as practicable by the ratio which exists in each seniority district among these crafts on the effective date of these rules.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

2. Revision of September 25, 1964, Agreement

Eliminate all agreements, rules, regulations, interpretations, and practices however established which in any way handicap or interfere with the carriers' right to:

1. Contract out work;
2. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing, or repairing of which is to be performed by the lessor or seller;
3. Trade-in or repurchase of equipment or unit exchange.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretation, or practices considered by the carrier to be more favorable may be retained.

3. Monetary Claims

Establish a rule to provide that no monetary claim based on the failure of the carrier to use an employee to perform work shall be valid unless the claimant was the employee contractually entitled to perform the work and was available and qualified to do so, and no monetary award based on such a claim shall exceed the equivalent of the time actually required to perform the claimed work on a minute basis at the straight time rate, less amounts earned in any capacity in other railroad employment or outside employment, and less any amounts received as unemployment compensation.

Existing rules, agreement, interpretations, or practices, however established, which provide for penalty payments for failure to use an employee contractually entitled to perform work shall be modified to conform with the foregoing, and

where there is no rule, agreement, interpretation, or practice providing for penalty pay, none shall be established by this rule.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

4. Discipline and Investigation

Amend all existing rules, agreements, interpretations, or practices, however established, dealing with discipline and investigation in such manner so as to make the following effective:

> If it is found that an employee has been unjustly suspended or dismissed from service, such employee shall be reinstated with his seniority rights unimpaired and be compensated for wage loss, if any, suffered by him resulting from said suspension or dismissal less any amount earned, or which could have been earned by the exercise of reasonable diligence, during such period of suspension or dismissal.

All agreements, rules, regulations, interpretations, or practices, however established, which conflict with the above shall be eliminated except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

5. Force Reductions

Establish a rule or amend existing rules to provide that no advance notice shall be necessary to abolish positions or make force reductions.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

6. 40-Hour Workweek Rules

A. Eliminate all agreements, rules, regulations, interpretations, and practices, however established, applicable to the 40-hour workweek for regularly assigned employees which are in conflict with the rule set forth in paragraph B.

B. Establish a rule to provide that:

1. The normal workweek of regularly assigned employees shall be 40 hours consisting of 5 days of 8 hours each, with any 2 consecutive or nonconsecutive days off in each 7. Such workweeks may be staggered in accordance with the carrier's operational requirements.

2. Regular relief assignments may include different starting times, duties, and work locations.

3. Nothing in this rule shall constitute a guarantee of any number of hours or days of work or pay.

4. Work performed by a regularly assigned employee on either or both of his assigned rest days shall be paid for at the straight rates, unless the work performed on either of the assigned rest days would require him to work more than 40 straight-time hours in the workweek, in which event the work performed on either of his rest days in excess of 40 straight-time hours in the workweek shall be paid for at the rate of time and one-half.

5. Any overtime worked by the employee will be computed into straight-time hours and be used for purposes of determining when he has completed

his 40-hour workweek but not for the purpose of determining when the time and one-half rate is applicable.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

7. Eliminate Starting Time Rule

Eliminate all starting time and uniform commencing and quitting time rules, regulations, interpretations, and practices, however established, and substitute in lieu thereof the following:

All starting time, change in starting time, and uniform starting and quitting time rules, regulations, interpretations, or practices, however established, which prevent or restrict carrier from fixing or changing the starting time of employees, individually or as groups, are eliminated. Carrier may, without restriction, fix or change the starting time of all employees.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

8. Assignment and Use of Employees

The carrier shall not be required to work an employee if working him would entail payment to him of more than the straight-time rate, and use of another person in his place shall not be basis for claims of an employee not used.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

9. Transfer of Employees

Establish a rule, or amend existing rules, to provide that management shall have the restricted right to transfer employees from one seniority point and/or district to another in order to meet carrier's service requirements.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

10. Filling of Temporary Vacancies or Augmentation of Force

Establish a rule or amend existing rules to permit the filling of temporary vacancies or augmenting of force without restriction. This to include the employment of temporary personnel or the use of furloughed employees most readily available without necessity of following seniority roster.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

11. Changing Employees From One Shift to Another

Establish a rule to give management the unrestricted right to change employees from one shift to another at straight-time rate.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

12. Wrecker Crews and Equipment

Management shall have the unrestricted right to determine the composition of wreck crews and the number and class to be called for wrecks. When called, at management's discretion, they shall be dispatched within yard limits or outside yard limits to the wreck by whatever means the carrier deems feasible and returned in like manner. The equipment needed may be transported separately at a time and by whatever means desired by carrier. The use of any cranes, including wrecker cranes, and exchange of cranes between carriers, shall be without penalty to carrier. All waiting and traveling while in wrecker service shall be paid for at straight-time rate.

All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the above shall be eliminated, except that any existing rules, regulations, interpretations, or practices considered by the carrier to be more favorable may be retained.

U.S. GOVERNMENT PRINTING OFFICE: 1969