REPORT TO THE PRESIDENT

BY

EMERGENCY BOARD NO. 181

APPOINTED BY EXECUTIVE ORDER 11663
DATED MARCH 31, 1972, PURSUANT TO SECTION 10
OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between certain carriers represented by the National Railway Labor Conference, comprised of the Eastern, Western and Southeastern Carriers' Conference Committees, and certain of their employees represented by the Sheet Metal Workers' International Association (AFL-CIO).

(NMB Cases A-9101 and A-9101 Sub No. 1)

WASHINGTON, D.C.
APRIL 30, 1972

LETTER OF TRANSMITTAL

Washington, D.C.
April 30, 1972

The President
The White House
Washington, D.C.

Dear Mr. President:

The Emergency Board created by your Executive Order No. 11663 of March 31, 1972, pursuant to Section 10 of the Railway Labor Act, as amended, to investigate the dispute between the carriers represented by the National Railway Labor Conference and certain of their employees represented by the Sheet Metal Workers' International Association (AFL-CIO), has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Respectfully submitted,

Charles M. Rehmus, Chairman

Clare B. McDermott, Member

Alexander B. Porter, Member

HISTORY OF THE DISPUTE

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 Organization represents approximately 6,000 shopcraft workers who are employed in the maintenance and repair of the locomotives, cars, and other equipment used by the Carriers in rail transportation.

Certain crucial aspects of the current dispute go back to the shopcrafts national wage and rules dispute in 1969 and 1970. At that time, the Sheet Metal Workers' International Association bargained jointly with three other shopcraft unions: The International Association of Machinists, the International Brotherhood of Electrical Workers and the International Brotherhood of Boilermakers and Blacksmiths. On December 4, 1969, subsequent to the report of Emergency Board No. 176, the parties initialed a Memorandum of Understanding in settlement of that dispute. This understanding contained a new work rule, the so-called "incidental work rule," which allowed certain work traditionally performed by members of one craft to be performed by workers of other crafts at running repair locations. The terms of the Memorandum of Understanding were submitted to the respective unions' memberships for ratification. While three of the four unions' memberships did ratify the agreement, the membership of the Sheet Metal Workers rejected it. Reportedly, the basis for rejection was the new incidental work rule. Under the unanimity understanding of the four unions, the agreement was therefore considered rejected by all.

Negotiations resumed between the parties and continued until late in January 1970, when the unions announced that they would selectively strike some of the Nation's rail carriers. When the unions struck the Union Pacific Railroad, the National Railway Labor Conference member carriers threatened a Nationwide lockout. Both parties were enjoined from their actions by a U.S. District Court on January 31, 1970. In March, the U.S. District Court in Washington, D.C. issued a preliminary injunction prohibiting the unions from striking selectively and on the next day, the unions announced that they would strike nationwide on March 5, 1970. However, on March 4, Congress passed and the President signed Public Law 91-203 requiring the parties to maintain the *status quo* for an additional 37 days. When further negotiations failed to bring about a resolution of the dispute, the Congress passed and the President signed Public Law 91-226 which put into effect the terms of the Memorandum of Understanding initialed by the parties on December 4, 1969. This Congressionally-enforced agreement was not subject to change until January 1, 1971.

In November 1970, the Sheet Metal Workers, now acting independently of the other shopcrafts, served Section 6 notices on the various railroads requesting certain changes in their collective bargaining agreements pertaining to wages, fringe benefits and work rules. In brief, these proposals called for establishment of uniform minimum rates of pay, two 20 percent wage increases effective on January 1, 1971, and 1972, and another wage increase effective on January 1, 1973, the size of that increase to be determined by a special formula based on the average wage increases in the organized airline and trucking industries for equipment maintenance personnel from January 1, 1970,

through January 1, 1973. The union's Section 6 notice also called for a cost-of-living clause, penalty payments for tardy retroactive pay increases, longevity pay, shift differentials, bereavement leave, premium pay for Saturday and Sunday work, and a savings clause. Finally, the union proposed abrogation of the incidental work rule.

The Carriers served their Section 6 notices on the Organization in December 1970. The Carriers' notices called for the establishment of a general mechanic rate with a new wage rate to be negotiated by the parties as well as various work rule changes.

Subsequent to the exchange of Section 6 notices by the Sheet Metal Workers and the Carriers in late 1970, the parties met on numerous occasions in an attempt to bring about a settlement. When this failed, the parties applied to the National Mediation Board for mediation services in July, 1971. Negotiations between the parties resumed under the auspices of the National Mediation Board. After extensive mediation efforts it became apparent to the Board that a settlement was not then possible, and the Board proffered arbitration to the parties. The Carriers were amenable to arbitration, but the Sheet Metal Workers declined. The National Mediation Board released the case on March 1, 1972, thereby permitting the parties to resort to self-help on April 1, 1972. On March 31, the President created Emergency Board No. 181 to investigate and report on the dispute, thereby imposing a 60-day period during which the parties are required to maintain the *status quo*.

CREATION OF THE EMERGENCY BOARD

Emergency Board No. 181 was created by Executive Order 11663, issued on March 31, 1972, pursuant to Section 10 of the Railway Labor Act, as amended. President Nixon appointed the following members of the Board: Charles M. Rehmus, Co-Director of the Institute of Labor and Industrial Relations, The University of Michigan - Wayne State University, Ann Arbor, Michigan, Chairman; Clare B. McDermott, Arbitrator, Pittsburgh, Pennsylvania, Member; and Alexander B. Porter, Arbitrator, Washington, D.C., Member.

The Board convened in closed hearing with Carrier representatives on April 13, 1972, at the National Railway Labor Conference, and on April 14 with Association representatives at the Sheet Metal Workers' International Association, both in Washington, D.C. Transcripts and exhibits submitted at these closed hearings were exchanged between the parties on April 15. Public hearings were held in Washington, D.C. on April 24 and 25.

During both its closed and public hearings the Board received the full and constructive cooperation of both parties. The Board is particularly appreciative of the willingness of the parties to allow the Board to complete its work within the time constraints imposed by the Railway Labor Act by limiting their direct and rebuttal presentations to those issues considered by them to be of greatest importance and difficulty. The Board believes this procedure avoided the almost ritualistic elements that have surrounded some past Emergency Board proceedings and yet in no way

limited the parties in fully developing their positions on those issues on which they felt the Board's recommendations might be helpful to them.

THE ECONOMIC ISSUES

The basic position of the Sheet Metal Workers with regard to wages is that their members in railroading are paid less than their counterparts with similar training and skills in other industries. Many of their members are in the building and construction trades, where wages are of course among the highest in the Nation. Equally or more importantly, their railroad members' wages are less than the average of wages paid to equipment maintenance personnel working under collective bargaining agreements in the trucking and airline industries. The Association therefore contends that this is now the time to bring railroad sheet metal worker wages up substantially, to create an escalator to protect these wages from erosion due to inflation, and at least to begin to achieve comparability to the average of wages paid to mechanics in the other transportation industries which are Federally regulated and with which the railroads compete. To achieve these ends the Association has made the following proposals:

> 1. Effective January 1, 1971, establish a uniform minimum rate for Sheet Metal Workers of $4.35 per hour, or 7¢ higher than the now-current minimum rate of $4.28, with lesser uniform minimums for helpers and apprentices.
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> 2. Effective January 1, 1971, increase all rates, including those established in 1. above, by 20 percent.
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> 3. Effective January 1, 1972, increase all existing rates by 20 percent.

4. Effective January 1, 1973, increase all straight time wage rates by the amount necessary to achieve comparability with the average wage paid to organized equipment maintenance personnel in the trucking and air carrier industries.

5. Establish a cost-of-living adjustment beginning April 1, 1971, and quarterly thereafter, of 1¢ per hour for each .3 change in the Bureau of Labor Statistics Consumer Price Index.

The Association states that no substantial hard bargaining has taken place between the parties over these wage proposals, and concedes that they are negotiable. The Association does however earnestly seek to establish the principle that there should be at least a beginning made on wage comparability between railroad maintenance workers, specifically sheet metal workers, and equipment maintenance personnel in related transportation industries.

The Carriers estimate that the Association's proposals would raise the wages paid to sheet metal workers from the current figure of $4.28 per hour to $6.65 per hour by April 1, 1973, without estimating the small additional cost which might be involved in acceding to the wage comparability formula proposed vis-a-vis other transportation industries. The Carriers assume that other organized railroad employees would insist on maintaining established inter-craft and intra-industry wage relationships. Therefore the ultimate cost to the industry, if it were to accede to the Association's proposals, would be $2.5 billion annually. The Carriers believe this proposal to be an absurdity in an industry that netted only $707 million of operating income in 1971. The Carriers propose instead that the Sheet Metal Workers should accept their proposal of $1.22 per

hour to be introduced gradually over the period between January 1, 1971 and June 30, 1973. This proposal would bring sheet metal worker rates to $5.50 per hour by April 1, 1973. The Carriers reject both the Association's proposals for cost-of-living adjustments and the wage comparability formula.

Cost-of-Living and Wage Comparability Formulas

The Association proposal for a quarterly cost-of-living adjustment is based on the undoubted fact that negotiated wage levels are eroded by inflation and that similar adjustments may now be found in collective bargaining agreements covering approximately 5 million organized workers. It is also true that such formulas were found in some railroad agreements at various periods during the 1950s, although all have since been removed. One of the reasons that this type of quarterly adjustment is not today found in railroad agreements is the peculiarly difficult position such periodic adjustments put upon an employer whose rates and charges are regulated by law. Regulated carriers are simply not as flexible in adjusting prices to rapidly changing wage costs as are other industries. Emergency Board No. 178 considered this same cost-of-living escalator issue and stated it was not recommending it principally because "we think the Carriers, not in the same position to proceed with price increases as are other industries, should have the benefit of firm predictibility of wage costs." We agree in general with that Board's conclusion, and we believe that periodic fixed wage adjustments that allow for projected increases in the cost of living are more appropriate in the railroad industry.

So far as the proposed wage comparability formula is concerned, the Sheet Metal Workers contend their members in railroading are as competent, as capable and as skilled as their counterparts in the airline and over-the-road trucking industries. They are therefore entitled to comparable hourly wages. The Association notes that one-half of its members on the railroads have completed apprenticeship training. The Association states that the sheet metal craft in railroading is composed of mechanics with skills in (1) sheetmetal work, (2) coppersmithing, (3) pipe fitting, (4) steam fitting, (5) refrigeration fitting, (6) plumbing, (7) radiator repairing, (8) pipe and sheetmetal welding of various types, and (9) babbitting. The Association believes that few so-called composite mechanics in outside industry are as multi-skilled as railroad sheet metal workers. The Association therefore asks that future railroad sheet metal worker wages should be based upon an average to be computed after a survey of wages paid to what it believes are comparably-skilled employees in cognate industries. It notes that such a formula would avoid the recurring acrimonious wage disputes that have arisen every few years in the railroad industry. It also contends that the wage levels that would be derived from such a formula would be fully appropriate in light of the fact that earnings of railroad sheet metal workers are well below the annual earnings necessary to maintain a moderate standard of living in the 15 largest cities in the United States, as determined by the Bureau of Labor Statistics Family Budget.

The Carriers believe that there is little or no substance to the claim that the pay of railroad sheet metal workers should be tied to the pay of mechanics in the airline

and trucking industries. While one-half of railroad sheet metal workers have completed apprenticeship training, the other half have not. They note that 91 percent of railroad sheet metal workers were upgraded to mechanic positions after less than six months' employment. The Carriers contend that the requirements for airline and trucking mechanics are far more demanding. In the case of the airlines, the Carriers note that about one-half of mechanics hold airframe, powerplant, or radiomen's licenses granted under Federal regulations. These licenses require many more hours of schooling and/or experience than is required for mechanics in the railroad industry. The Carriers further contend that there is no equality between railroad sheet metal workers and the airline and truck mechanics in terms of job content. They contend that mechanics in airline and trucking industries are composite mechanics, required to have the skills possessed by members of several of the different railroad mechanic crafts. The Carriers contend that a majority of railroad mechanics simply exchange standardized parts and are in reality more comparable to workers employed in the Electro-Motive Division (EMD) of the General Motors Corporation, where many railroad locomotives are built. They note that their wage offer is very favorable when compared to EMD rates. In summary, the Carriers contend that the comparison urged upon this Board by the Association is invalid in terms either of the skills required or of job content. They believe that the wages paid to railroad mechanics are quite reasonable in light of more valid comparisons with mechanical trades in industry generally.

The issue of the appropriate wage level for mechanics in the railroad industry is not new. It was considered in great detail by the Special Board created by Public Law 90-54 in 1967. That Board found that the parties lacked the fundamental facts and essential information necessary to conduct meaningful collective bargaining on issues concerning an alleged wage lag of skilled railroad employees. It therefore recommended that a comprehensive fact finding study be undertaken by the U. S. Department of Labor in cooperation with the parties to resolve this problem. As a result, the Railroad Shopcraft Factfinding Study was prepared by the Department of Labor and published in September, 1968. In this study it was reported that despite many meetings with representatives of both the Shopcrafts and the Carriers "the parties were unable to agree on the treatment to be given one crucial segment of the study – comparison of skilled job classifications in railroad shops with similar job classifications in other industries which was to serve as the basis for inter-industry wage comparisons." As a consequence, the shopcraft study was able only to trace the historical relationship between the wages of shopcraft workers and skilled mechanical workers in some other industries. It did not compare job duties or skill requirements. At this time, therefore, there is still not available the kind of systematic job evaluation of skill requirements, job duties and job content between railroad mechanics and mechanics in other industries which would allow this Board to make the kind of determination which is urged upon it by the Association.

It may well be that the job skills and job content of mechanics employed in various transportation industries are very similar. The shopcrafts have never agreed to a job evaluation study which would permit such a determination to be made. On the other hand, it may equally well be that the skills and content of railroad mechanics' jobs are more akin to production and manufacturing mechanics, as contended by the Carriers. No data has been presented to us, or probably is even currently available, that would allow such a determination to be made.

In the negotiations which followed the recommendations of Emergency Board 176, the parties were unable to agree upon the establishment of special differential rates for highly skilled work assignments as recommended by that Board. Instead, the unions insisted that the 20¢ which would have applied to up to 25 percent of the most highly skilled mechanics, if the recommendations had been followed, be converted to a 5¢ per hour increase for all mechanics. This was finally agreed to by the parties, and was made effective July 1, 1969. Again, these events make it impossible for this Board to conclude that the kinds of skill differentials and skill comparisons urged by the Association are in fact appropriate.

In summary of the foregoing, this Board does not find that the information and evidence submitted to it is sufficient to conclude that the wage comparability formula urged by the Association be recommended. Neither does the Board reach the conclusion that it is inappropriate. Ultimately such a decision can appropriately be made only if the railroad shopcraft unions in general, and the sheet metal workers specifically, will

agree to the kind of detailed job evaluation proposed by the Special Board. Until such time, some other basis for determining the wage rates of railroad sheet metal workers must be relied upon.

Railroad Wage Settlements

The Carriers have offered the Sheet Metal Workers the same wage increases that it has settled upon with every other labor organization on the railroads. These settlements cover nearly 99 percent of all employees and include all five of the other unions that represent shopcraft employees. These proposed wage increases are as follows:

January 1, 1971 — 10 cents
April 1, 1971 — 15 cents (mechanics and higher)
8 cents (all others)
October 1, 1971 — 5 percent
April 1, 1972 — 5 percent
October 1, 1972 — 5 percent
April 1, 1973 — 25 cents

In addition, the Carriers have offered the Sheet Metal Workers the fringe benefits upon which it has settled with the other unions. These include a ninth paid holiday; a fifth week of vacation for employees with 25 years of service, effective January 1, 1973; payments to employees injured in off-track vehicle accidents; and a supplemental sickness benefits plan, effective July 1, 1973.

The Carriers contend that the fact that this settlement has been agreed to by every other union in the industry creates the most clear-cut kind of "pattern" which should be followed by the Association. They note that the preservation of this pattern is of utmost importance to current wage stability and to the future of railroad negotiations,

particularly in an industry characterized by extensive multiple unionism and considerable inter-union rivalry.

It is entirely true that pattern bargaining has often characterized railroad negotiations. It is also true that a number of recent Emergency Boards have struggled with the issue of the Carrier argument concerning the need to follow patterns versus a contention by one or another union that it has the right to bargain for itself and should not be compelled to follow slavishly what another union has done. In general, Emergency Boards 174, 175, 176 and 179 accepted the pattern argument. Emergency Board 178 felt the issues with which it was faced required rejection of the pattern argument.

This Board has concluded that where a pattern is clearly established and ascertainable, as here, and where the union involved cannot clearly demonstrate an inequity or a rational and convincing basis for a changed wage structure, the pattern should be followed. As noted in the previous section, the Association has not convinced the Board by a preponderance of substantial evidence that a wholly new basis for setting the wages of its members is appropriate. The pattern of railroad wages established at the present time is perhaps the most pervasive in railroad history. The Carrier offer is a generous one and will raise wages over 9 percent annually during its period. If it had not been clearly established as a pattern prior to August 15, 1971, it would perhaps not conform to existing regulations established by the National Pay Board. While it does not raise wages and earnings to the levels that the Association thinks appropriate, it can hardly be deemed wholly inadequate when it has been accepted by many other unions

representing over a half-million other railroad employees. We therefore believe and recommend that the Association should accept the Carrier offer on wages and fringe benefits.

INCIDENTAL WORK RULE

The most critical issue in this dispute, the Board believes, centers around the Union's demand for the abrogation of the incidental work rule. The rule reads as follows:

> At running repair work locations which are not designated as outlying points where a mechanic or mechanics of a craft or crafts are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work rules of another craft or crafts, such mechanic or mechanics may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incidental" when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment. In no instance will the work of overhauling, repairing, modifying or otherwise improving equipment be regarded as incidental.
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> If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time

required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.

Background and Impact

Leaving aside such historical antecedents as the outlying points rule and the "kite rail" rule to which further reference will be made below, the incidental work rule may be said to have originated on December 4, 1969, when the negotiators for the Carriers and for the four shopcraft unions, including the Sheet Metal Workers' International Association, initialed a Memorandum of Understanding setting forth the parties' tentative agreement on all then outstanding issues, including the incidental work rule. As described earlier, the Memorandum of Understanding was subsequently submitted to the membership of the four shopcraft unions for ratification and was turned down by the membership of the Sheet Metal Workers. An impasse ensued which was ultimately resolved by the enactment of Public Law 91-226, providing that "the memorandum of understanding, dated December 4, 1969, shall have the same effect (including the preclusion of resort to either strike or lockout) as though arrived at by agreement of the parties under the Railway Labor Act...." Public Law 91-226 further provided, however, that, consistent with the terms of the Memorandum of Understanding, either party would be free on September 1, 1970, to serve notice of its wish to change (effective January 1, 1971) any of the provisions of the Memorandum of Understanding, including, of course, the incidental work rule. Consistent with the latter provision, the Sheet Metal Workers now seek to eliminate the incidental work rule.

The Association claims — with substantial justification, the Board believes — that the impact of the incidental work rule upon the Sheet Metal Worker's craft is far greater than upon any of the other shopcrafts involved. The plain fact is that the great bulk of the work of the railroad Sheet Metal Workers' craft, involving pipe fitting and sheet metal work of various kinds, is work which commonly must be disconnected or removed (and subsequently connected or put back in place) in order to get at many of the component parts of the diesel locomotives and other equipment serviced by the shopcrafts. Accordingly, insofar as running repair work is concerned, there appears to be some truth as well as hyperbole in the statement by one of the Association's witnesses that "most of our work is 'incidental'. It's as simple as that."

The degree to which the Sheet Metal Worker craft bears the primary burden of the cross-craft assignments permitted under the rule is best demonstrated by the Carriers' own pilot survey of the actual working of the rule on five selected railroads. That survey, the only substantial evidence in the record reflecting actual observation and recording of assignments involving the incidental work rule, reflects the experience at 13 running repair locations at which such assignments were observed and recorded during an average of 6.6 days per location. The Carriers' summary of the survey shows a total of 365 actual work assignments in which the craftsman performing the main assignment also performed incidental work of one or more of the other crafts. It further shows that, in 303 of the 365 assignments or 83 percent of the total, the "main assignment" craftsman performed "incidental work" of the Sheet Metal Workers craft. In contrast,

each of the other shopcrafts was adversely affected by the rule's application less than 15 percent of the time; and some of them, notably the Machinists, gained far more than they lost.

The summary further shows that the total time lost by the Sheet Metal Workers was 144½ hours over approximately one week of the survey, whereas the total time they gained through performing the incidental work of the other crafts was 10¾ hours, for a net loss of about 134 hours. True, the majority of the assignments are shown to have involved 30 minutes or less of incidental sheet metal work. But, at the same time, the survey reveals that a substantial fraction of the assignments (approximately 13 percent) involved "incidental" work of more than one hour. In the Board's judgment, assignments of the latter magnitude can scarcely be dismissed as "incidental" in any normal sense of the word. Nor can the net total hours lost (134 hours) by sheet metal workers during an average span of 6.6 days at the 13 facilities covered by the survey be dismissed as inconsequential.

In addition to the foregoing survey of 13 selected railroad facilities, the Carriers have presented a so-called "National survey" which sets forth the "estimates" of sixty railroads concerning their experience under the incidental work rule. In the Board's judgment, the educated guesses reflected in the sixty participating railroads' estimates as to the impact of the incidental work rule during the months in question are interesting and partially informative but too speculative to be relied upon. It is not clear why the sixty railroads were not asked to observe and record their actual experience

with the rule during selected months rather than merely to estimate the rule's effects for months already past. It is difficult not to suspect that the Carriers – and, as will appear below, the Association – were somewhat fearful of the facts which might be yielded by an in-depth survey on the rule's effects nationally. If the results of the pilot survey discussed above are any guide – and the Board concludes they are – the parties' reluctance to probe deeply into the rule's effects on a national scale was well-founded. As the Board has already indicated, the pilot survey's results provide ammunition for both parties' viewpoints. On the one hand, the incidental work rule has a very broad impact upon the Sheet Metal Workers in four out of five cases. On the other hand, that impact is relatively superficial, entailing in most cases less than 30 minutes of incidental work per assignment.

As indicated above, the Association has been no less reluctant than the Carriers to probe in depth into the actual workings of the rule. The Association conducted its own survey in the days immediately preceding the hearings before the Board, writing to its representatives throughout the country to request information concerning their experience with the rule. However, the results of the survey, consisting of general affirmations that the rule has in fact been misapplied or has caused unspecified hardship to the Sheet Metal Workers, are so lacking in particulars that they provide no real guidance to the Board. The Association has backed up its survey's broad findings with numerous grievance claims which have been filed at several locations around the country. But these, too, provide only a spotty picture of the impact of the rule upon the Sheet Metal Workers' craft.

In summary of the foregoing, the evidence presented to the Board does not demonstrate that the impact of the rule upon the average sheet metal worker is sufficiently great to justify the Association's position that the rule should be abrogated. On the other hand, it is apparent to the Board that there are instances of over-zealousness in Carrier administration of the rule as it presently exists. The following sections detail the various allegations made by the Sheet Metal Workers of misapplication and improper administration of the rule. As will be seen, some of these are found by this Board to be without substance or merit. In other cases, however, the Board finds that the rule has been misused and has recommended that the parties negotiate clarifications to the rule or new understandings as to how the rule is to be applied. The following sections detail the Board's findings and recommendations with regard to each of the major alleged ambiguities and misapplications in the present rule.

Alleged General Ambiguity

The Sheet Metal Workers have made broad charges that the incidental work rule is so vague and ambiguous as to be impossible of reasonable application. It is claimed in general that the rule should be declared void for vagueness.

The Board is not persuaded, however, that the claimed ambiguities in the rule are of such seriousness as to furnish any solid ground for the Sheet Metal Workers' current posture in opposing its inclusion in their agreement with the Carriers. But the record does suggest several areas where the Board may recommend useful guidance as to practical avenues along which the rule should be applied.

For instance, it is said that there is no national definition of what are "running repair work locations." That is true, in the sense that no written definition is included in the statement of the rule.

It is reasonably clear, however, that this was not a real problem of any magnitude between these immediate parties over the months of the rule's existence prior to the present dispute. With a few possible exceptions, the parties on the individual roads seem to be in no substantial doubt as to which sites on their properties are "running repair work locations." There have been a relatively few time claims filed on the grounds that certain disputed "out-of-craft" work could not be done under authority of the incidental work rule because the site was not a "running repair work location. Some numbers of such disputes would be expected in the early stages of any new work rule, and these are being processed by the parties in routine fashion. There is no reason to doubt that ultimately they will be able to resolve them on a fair and realistic basis. If not, they may be resolved expeditiously through the accelerated grievance procedure recommended hereinafter.

A closely related irritant seems to lie in the Sheet Metal Workers' general allegation that some roads, in some situations after the rule became effective, made sham reclassifications of maintenance sites from so-called back shops, or heavy repair areas, to "running repair locations" in order to expand application of the incidental work rule to places never before thought of as such.

The Carriers deny this, and the record of any such obvious misuse of the rule is vague and uncertain. In light of these circumstances, perhaps the most useful approach for the Board at this stage would be to declare, as indeed the Carriers themselves affirm, that paper reclassification of sites was not contemplated under the incidental work rule.

Facilities and Structures

It is alleged that the rule has been applied to work on facilities and structures. It is abundantly clear that the incidental work rule was not meant to excuse performance of any "out-of-craft" work by a craftsman assigned to repair, maintain, inspect, or otherwise work on buildings, structures or any other kind of on-site facilities. The rule applies only to incidental work on rolling stock.

Specificity of Assignment

The record made before this Board does contain some instances of apparent misunderstandings of the scope or operation of the rule at given properties by one party or the other. As to those situations, it may be that this Board's statement of the manner in which the rule was meant to operate will prevent future misapprehensions and thus enable both parties to contemplate use of the rule with more confidence.

One such situation is seen in the instances where the "main work assignment" is stated in general and all-inclusive terms, such as "Prepare locomotive for service." That is too broad to be workable in any practical sense as an application of the incidental work

rule. Any and all kinds of work could be justified as "incidental" to such a main assignment. Thus, it must be jointly understood that in practical application the "main work assignment" must be stated with that degree of specificity that the nature of the task admits, e.g., remove generator, replace governor, repair radiator. Broad, general and sweeping assignments, if made, are not appropriate assignments for application of the incidental work rule.

Inspection

Another deeply felt reservation is found in the Sheet Metal Workers' claim that the incidental work rule does not apply at all to "inspection work." The rule on its face has no such limitation. The Sheet Metal Workers, however, rely on a statement of the then Chairman of the National Railway Labor Conference before the House Committee on Interstate and Foreign Commerce which, they say, concedes that the rule would not be triggered by performance of inspection.

In the context in which it was spoken, however, the statement indicates that inspection cannot be considered "incidental work." To put it another way, inspection is a main assignment.

In order to reduce any real or apparent misunderstandings as to operation of the rule in this regard, it should be clear that the rule does not change any rights to work spelled out in any classification of work rules or in any other source. Whatever inspection work was possessed by any given craft before the rule was not changed in

any way. Each craft continues to do its own traditional inspection, whether required by Federal regulations or by the Carrier.

If, however, that inspection, conducted as it always has been, discloses that a particular part or piece of equipment must be changed out or repaired, then the incidental work rule does come into play according to its clear terms and allows the craft whose work it is to change out or repair the part to do the "incidental work" required to remove obstacles to that "main work assignment." This assumes, of course, that the "incidental work" does not comprise a preponderant part of the total amount of work involved in the assignment.

Thus, inspection is not incidental work; it is always the "main work assignment." But repair work which is done as a result of inspection can trigger application of the incidental work rule. All this assumes that the inspection and repair are done at "running repair locations."

Time Checks

A matter of great concern to the Sheet Metal Workers relates to the operation of the provisions for time checks which are built into the rule as a safeguard against overreaching of the "preponderant part" limitation. There are many general and some specific charges of seeming abuses of the time-check provisions, as by a local supervisor's allegedly refusing to conduct one when requested and making improper or inaccurate time checks.

The Carriers suggest that this charge of the Association has been exaggerated out of all reasonable proportions, especially in view of the Carriers' survey showing that

in nearly two years of operation of the rule, only 13 time checks have been requested. It nevertheless may be helpful to clarify the respective rights and obligations of the parties under the time check part of the rule.

When an "out-of-craft" assignment is being made under the rule and a dispute develops as to the preponderant part of the work and the Shop Committee requests a time check, the rule states that the Carrier may continue with its assignment of the work, but it is equally clear that a time check must be made of the "incidental work" and of the "main work assignment." If the time check shows that the former exceeds the latter, a time claim must be honored promptly for the actual time required for performance of the incidental work.

The Association argues that there is no obligation in the rule to conduct a time check, but the Carriers concede the contrary, and it is clear to the Board that, in return for the Carrier's right to continue with its assignment, it is obliged then and there to conduct the requested time check of the assignment in dispute. Thus, to the extent that the Association's refusal to accept the incidental work rule is based on the assumption that the rule gives no right to a time check of the work assignment in dispute, it is mistaken.

On the other hand, both parties are entitled to protection against the inconvenience and harassment of unreasonably repetitive requests for time checks on identical or very similar work assignments. To the extent that repetitive assignments practically can be standardized, the local parties should do so. They should conduct a sufficient

number of time checks to arrive at a normalized time for such standardized assignments which then could be used to govern future applications of the incidental work rule to that work.

Counting "Repair Time"

Another situation which came to light was the Sheet Metal Workers' feeling that, when running a required time check in order to determine whether the "incidental work" comprises a "preponderant part of the total work involved," time spent on the main assignment repairing a particular piece of equipment should not be counted. The claim is that only the time required to remove the defective part was to be counted, and not the time spent repairing the part once it was exposed or removed.

Nothing on the face of the rule even suggests that interpretation, and nothing in the day-to-day operations at running repair locations on the properties would call for such an application of the rule. Considering its language and apparent purpose, reasonable application of the rule in this regard would count as part of the "main work assignment" any time spent on repairing of the part by the craftsman assigned to that work, whether the part were repaired in place or after being removed from the equipment. If, however, the part were removed by one employee and repaired by another, the "main assignment" would have been only to remove it and not to repair it. Therefore, only removal time could be counted and credited to the "main work assignment."

That appears to be the manner in which the Carriers are generally applying the rule, and hence there is no occasion to recommend any change in this respect.

Perhaps it should be cautioned here, that, as the rule states and the parties agree, repair work itself never can be "incidental work," and that remains true no matter how much or how little time it might require.

Maximum Time Limit

As functionally defined in the rule itself, "Work shall be regarded as 'incidental' when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment."

The kind of activity referred to is the preliminary and postliminary clearing away and later replacement of items such as those mentioned in the rule which stand in the way of getting at the main work assignment. The word itself tends to suggest some minimal period of time relative to that of the main work assignment and perhaps an absolute maximum time, as well.

In apparent contrast to that thought are the substantial number of examples in the record, no matter whether the Board looks to the Sheet Metal Workers' survey or to the Carriers', of "incidental work" which took over one hour, or over two hours, or in some cases up to four, six, and eight hours. Indeed, it appears from the Carriers' surveys that more than 13 percent of the occasions listed involved "incidental work" which took an hour or more. The Board feels it entirely inconsistent with the underlying rationale of the incidental work rule to include in its assignment of extended

duration. The Board therefore recommends that the parties negotiate a maximum limitation of one hour on application of the rule. Any lower limitation than this, however, would destroy the basic purpose of the rule.

Relief and Sick Days

The Association has expressed some concern that Carriers have abused the incidental work rule by making out-of-craft assignments on shifts when no sheet metal worker is present because of illness or relief days.

Apparently there have been disputes on this ground on individual properties, but the Board does not believe that this is really related to the incidental work rule. That rule does not excuse performance of any, or any more, incidental work on shifts when sheet metal workers are not present than it does on shifts when they are. Problems of out-of-craft assignment when particular crafts are absent relate to the scheduling of employees and to operation of the classification of work rules rather than to operation of the incidental work rule.

"Kite Tail" Rules

In order to remove any doubt, the Board should make it clear that the incidental work rule is different from any extant "kite tail" rule mentioned in this proceeding. The incidental work rule does not create a "kite tail" on properties where none now exist nor does it destroy a "kite tail" where one does exist. They are separate problems, with different histories.

Accelerated Grievance Procedure

Throughout the history of this dispute the Association has expressed its concern that the existing minor disputes procedure, under which some two years are normally required to process a claim through Division Two of the National Railroad Adjustment Board, does not adequately protect its members against abuses of the rule. The Board believes that most of the disputes which may arise concerning the rule can be promptly and fairly settled on the job site, if the Shop Committees make appropriate use of the time-check device. Nevertheless, it recognizes that not all disputes can be resolved through this device and that, in view of the emotionally-charged character of this entire issue, an expedited procedure for resolving disputes under the incidental work rule is warranted.

The Board recommends, therefore, that an accelerated grievance procedure be established for handling incidental work rule disputes outside NRAB channels. To insure prompt handling of such disputes, the Board urges the parties: 1) to establish explicit time limits for the processing of these disputes through the lower steps; 2) to create at the national level a final review board composed of an equal number of representatives from each party, to whom such disputes may be promptly appealed failing settlement at the lower levels; 3) to empower such final review board, by majority vote, to decide finally any and all incidental work rule disputes; and 4) to provide that, if the final review board either is unable to arrive at a majority decision or fails to act within a specified time period, the dispute may be immediately appealed by either party to a

neutral arbitrator mutually selected by the parties, or, if they are unable to agree on such a person, by the National Mediation Board.

MORATORIUM

The Carriers have proposed that there be contained in any agreement a moratorium on any new Section 6 notices on matters covered by these current notices until January 1, 1973, not to become effective before July 1, 1973; that certain few subjects be excepted from such a moratorium, and that proposals not specifically dealt with in the moratorium provision be served or progressed only within the peaceful provisions of the Railway Labor Act.

The Association has responded that while the subject of a moratorium is negotiable, the proposed limitation on Section 6 notices on matters not covered by the current notices and not otherwise excepted asks a surrender of statutory rights with respect to issues which have not been bargained between the parties. It notes that Emergency Board 178 refused to make such a recommendation, and that it opposes such a moratorium for the reasons given by that Board.

This Board believes that there is no legal or principled objection to two contracting parties agreeing that settlement of issues currently before them will settle all major issues between them until some future stated time. Moreover, the Board notes that settlement of the current dispute between these parties will leave only some thirteen months before new proposals can become effective, and only seven months before new notices can be filed. In consideration of the very substantial wage offer

made by the Carriers, as well as resolution of the other problems currently in dispute between these parties, the Board recommends that the Association accept the moratorium proposal of the Carriers.

OTHER PROPOSALS

Although not heretofore discussed in this report, in May 1969 the Sheet Metal Workers along with five other shopcraft unions served Section 6 notices to change their national vacation agreement. This notice, as it pertains to the Sheet Metal Workers, was before this Board.

Further, during the course of these negotiations, the Association also proposed the establishment of penalty payments for deferred wage increases, longevity pay, shift differentials, bereavement leave, overtime pay for Saturday and Sunday work, and a savings clause. The Carriers also proposed certain changes relating to working conditions. While the parties have introduced exhibits and related testimony in support of some of these proposals, the entire emphasis of their respective presentations was directed only to those issues which they considered to be the major areas of importance and disagreement.

The parties have indicated that the ultimate resolution of this dispute is contingent upon their reaching agreement on the principal issues. The Board has therefore spent almost none of its time on these other issues. It has examined them in a cursory fashion, however, and has concluded that none of them are of such consequence that they should at this time operate unduly to delay or bar settlement of this negotiation.

SUMMARY AND CONCLUSIONS

The following is a summary of the conclusions of the Board with respect to those issues which the parties deemed of greatest importance and difficulty and upon which they sought the Board's recommendations.

1. The Board does not find that the Association has established by a substantial preponderance of the evidence that an entirely new basis for setting the wage of Sheet Metal Workers should be established. The Board has further found that the existing pattern of wage settlements is the best established and most pervasive in the history of the railroad industry. The Board therefore recommends that the Association accept the Carriers' offer on wages and fringe benefits.

2. The most critical issue before the Board is the Association proposal that the incidental work rule should be abrogated. The Board has concluded there is no doubt on the one hand that the incidental work rule has a broader impact on the Sheet Metal Worker's craft than on any of the other railroad shopcrafts. On the other hand, the Board finds that in most situations the impact is relatively superficial, entailing in most cases less than 30 minutes of incidental work per assignment. The Board therefore does not recommend that the incidental work rule be abrogated. The Board has recommended, however, a series of clarifications and changes which, if agreed to by the parties, it believes would allow the rule to operate with fewer misunderstandings and more in keeping with the original intent of the rule when it was negotiated.

3. In light of the substantial wage offer proposed by the Carriers and the clarifications of the incidental work rule proposed by the Board, and in view of the fact that the settlement proposed will be subject to new notices within seven months which can be effective within approximately thirteen months, the Board recommends that the Association accept the Carrier proposal for a moratorium.

The Board is deeply appreciative of the willingness of the parties to confine their presentations to those issues which they deemed of greatest significance to them. The Board earnestly hopes that its findings and recommendations will be of value to the parties in resolving their current negotiations peacefully in the near future.

Respectfully submitted,

Charles M. Rehmus, Chairman

Clare B. McDermott, Member

Alexander B. Porter, Member

Washington, D.C., April 30, 1972