

REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 223

**SUBMITTED PURSUANT TO EXECUTIVE ORDER NO. 12874
DATED OCTOBER 20, 1993
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED**

Investigation of disputes between The Long Island Rail Road Company and United Transportation Union.

(National Mediation Board Case Nos. A-12557, A-12558, A-12559 and A-12560)

**WASHINGTON, D.C.
DECEMBER 17, 1993**

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I. CREATION OF THE EMERGENCY BOARD

Emergency Board Number 223 ("Board") was established by the President pursuant to Section 9a of the Railway Labor Act, as amended, 45 U.S.C. §159a, by Executive Order 12874, dated October 20, 1993. The Board was ordered to investigate and report its findings and recommendations regarding unadjusted disputes between The Long Island Rail Road Company ("LIRR" or "Carrier") and certain of its employees represented by the United Transportation Union ("UTU" or "Organization"). A copy of the Executive Order is attached as Appendix "A."

On October 20, 1993, the President appointed Bonnie Siber Weinstock as Chairperson of the Board, and Charlotte Gold and M. David Vaughn as Members. The National Mediation Board appointed Joyce M. Klein, Esq. as Assistant to the Board.

At the request of the parties, and with the endorsement of the Board, the time within which the Board would render its Report and Recommendations ("Report") was extended by the President to December 20, 1993. This extension did not modify the time periods initiated under Section 9a of the Railway Labor Act when the Board was created on October 20, 1993.

II. PARTIES TO THE DISPUTES

A. THE CARRIER

The Long Island Rail Road Company is a Class I railroad subject to the jurisdiction of the Interstate Commerce Commission and the provisions and procedures of the Railway Labor Act. The LIRR is a public benefit corporation owned and operated by the Metropolitan Transportation Authority ("MTA"), an agency of the State of New York. The New York State Legislature created the MTA in 1965 to continue, develop and improve commuter transportation in the New York metropolitan area. The MTA, through its subsidiary agencies, serves 13.2 million people in New York City and its suburbs.

Every weekday, the LIRR carries over 250,000 passengers. Its freight and passenger service operate over a system covering approximately 594 miles of track. The LIRR employs more than 5700 employees, approximately 2340 of whom are covered by the collective bargaining agreements between the LIRR and UTU that are at issue in this proceeding.

B. THE ORGANIZATION

In these disputes, the United Transportation Union represents the Trainmen (Locals 645 and 1831), Maintenance of Way Employees (Local 29 or "Trackmen"), Maintenance of Way Supervisors (Local 645B), Carmen, and the Special Service Attendants employed by the

Long Island Rail Road. The UTU also represents LIRR's Yardmasters, who are not a party to this proceeding.

III. HISTORY OF THE DISPUTES

A. BACKGROUND

The last round of negotiations between the LIRR and UTU was completed without the assistance of an emergency board. The agreements for Maintenance of Way Employees and Carmen were completed on August 20, 1991, for the period July 1, 1989 to January 1, 1992. The agreements for Trainmen and Special Service Attendants for the same period were completed on May 31, 1991, and negotiations covering the Maintenance of Way Supervisors for that period were completed on April 8, 1992.

In November 1991, the LIRR and the UTU, pursuant to Section 6 of the Railway Labor Act, served on one another their respective notices of demand to amend provisions of their collective bargaining agreements. The parties negotiated through the remainder of 1991 and 1992. On February 16, 1993, joint applications for mediation were filed with the National Mediation Board. The cases were docketed as follows:

CRAFT OR CLASS	NMB CASE NUMBER
Trainmen/Special Service Attendants	A-12557
Carmen	A-12558
Maintenance of Way Employees	A-12559
Maintenance of Way Supervisors	A-12560

Mediator Robert Martin commenced mediation on all four cases on March 8, 1993. During May 1993, Mediator Paul Chorbajian also conducted mediation sessions with the parties. Throughout the course of mediation, NMB Member Joshua M. Javits participated in the mediation sessions. Subsequently, the NMB determined that the parties were deadlocked, and on September 17, 1993, the NMB proffered arbitration in accordance with Section 5, First, of the Railway Labor Act. Arbitration was rejected by the UTU on that same date. Thereafter, on September 20, 1993, the NMB released the parties from mediation and the statutory "status quo" period began to run.

On October 6, 1993, the LIRR requested that President Clinton create an emergency board pursuant to Section 9a of the Railway Labor Act, which provides procedures for the resolution of bargaining impasses involving publicly funded and operated commuter authorities. Although the parties were released from formal

mediation, Mediator Martin engaged in a final mediation session with the parties on October 19, 1993. This Board was created on October 20, 1993, and a new status quo period was established.

B. ACTIVITIES OF THE EMERGENCY BOARD

An organizational meeting was held with the parties on October 22, 1993, at which time they narrowed the scope of the issues to be presented to the Board, and agreed upon the "groundrules" for this proceeding. Pursuant to those groundrules, the parties filed extensive pre-hearing briefs on November 10, 1993, detailing their positions on the issues before the Board. On November 15 and 16, 1993, the Board conducted formal hearings at which the parties presented evidence and argument in support of their respective positions. A post-hearing brief was filed by the Organization on November 25, 1993 and a reply brief was filed by the Carrier on November 30, 1993.

The Board met in executive session with the parties after the hearing on November 16, 1993. Other executive sessions were held on November 15th, and December 4th, as well as by conference calls.

The Board observes that the parties have been in negotiations for an extended period of time, but they remain far apart. For reasons best known to them, the slow pace and minimal movement in the negotiations have brought the parties to the procedures and time constraints under Section 9a of the Railway Labor Act. This lack of agreement is unfortunate, and furthers neither the interests of employees nor the public. Indeed, the Board believes it advantageous for the parties to reach agreement through negotiations, and to do so earlier, rather than later, in the process. We urge the parties to engage in earnest, meaningful negotiations with the goal of settling this impasse, rather than merely waiting for the Section 9a procedures to run their course.

IV. REPORT AND RECOMMENDATIONS

A. INTRODUCTION

The Board has thoroughly studied and considered all of the evidence and argument presented by the parties at the hearing, as well as in their pre-hearing and post-hearing submissions. The factual assertions in this Report are taken from the record in the proceeding. This Report makes recommendations for a new three year agreement whose term would be January 1, 1992 through December 31, 1994 ("Agreement"). Each of the recommendations made by the Board in this Report must be considered as part of an integrated whole. The Board has developed a "package" that seeks to strike a balance between the Carrier's desire for work rule changes to achieve both flexibility in operations and reductions in costs, and the Organization's interest in protecting rights previously gained in its collective negotiations, together with its desire to achieve a

fair wage increase for its members. Accordingly, some proposals that might have yielded increased management flexibility, and that may have been worthwhile in the abstract were not recommended, because they placed a disproportionate burden on the unit when viewed in light of the benefits conferred. At the same time, the impact on the Carrier of added costs has been a major consideration in structuring an appropriate level of benefits to recommend herein.

B. WAGES

As a background to its wage proposal, the Carrier sought to impress upon the Board that the Long Island Rail Road is but one of the constituent agencies of the Metropolitan Transportation Authority. The other constituent agencies are the NYC Transit Authority, Metro-North Commuter Railroad ("Metro-North"), the Triborough Bridge and Tunnel Authority ("TBTA"), the Metropolitan Suburban Bus Authority ("MSBA"), and Staten Island Rapid Transit Operating Authority ("SIRTOA"). The Carrier proffered that the MTA's mission was to create a "seamless" regional transportation system in the New York metropolitan area. In addition, the Carrier argued that the significant subsidies received by the LIRR, as well as by the other constituent agencies of the MTA (except the TBTA), demonstrate the need for cohesive oversight authority by the MTA. Throughout the proceedings, the Carrier referred to these constituent agencies as the "MTA family."

The Carrier strenuously urged a wage settlement not greater than the "pattern" of negotiated settlements set by the Transit Authority in its negotiations with the Transport Workers Union, and followed across the "MTA family." The MTA maintains that agreements within its various agencies were negotiated consistent with the MTA Strategic Business Plan:

...commencing in 1991, all agreements negotiated to succeed expired or expiring labor contracts would impose no net increase in costs during the first two years and only a modest increase in the third year.

The Carrier asserted in its pre-hearing brief that the negotiated settlements within the MTA form a pattern. (See Appendix B "Settlements.") The Carrier also argued that the contract settlement for New York City municipal workers (7 percent over 39 months) and the settlement with New York State workers (9.25 percent over 4 years) drove the settlement between the Transit Authority and the TWU. The Carrier also suggested that any effort to search for a consistent pattern in the rail industry or the commuter rail segment outside of the MTA was an "exercise in futility."

The Board examined the Memoranda of Agreement memorializing the settlements of some of the constituent agencies of the MTA. The Board has carefully considered this evidence, and finds that while there appears to be somewhat of a "pattern" of settlements between the New York City Transit Authority and the unions with whom it negotiates, the "pattern" is much less clear for agreements across the MTA's constituent agencies. In addition to the Transit Authority, the only other MTA agency to conclude an agreement is the Metropolitan Suburban Bus Authority, operating busses in Nassau County. Metro-North, TBTA and the LIRR are all at impasse. Further, as depicted in Appendix B, the MSBA employees received a 4.5 percent wage increase in 1992, while the Transit Authority employees received a 2.5 percent increase. The Board finds that this difference, together with variations in health and welfare contributions, defy categorization as a "pattern."

Further, like prior Presidential Emergency Boards, this Board is persuaded that the wage increases granted to other railroad workers in the metropolitan area may be instructive as comparisons for people providing transportation services. Nevertheless, the LIRR employees in issue in this proceeding should not be bound automatically by the settlement achieved by a prior group, because a "pattern" is not clearly discernible. The Board also notes that the LIRR is a "heavy rail" operation, and its employees perform different duties under different conditions than subway or bus employees of the Transit Authority. Those differences have been, and continue to be, reflected in the agreements and acknowledged by the Carrier:

The LIRR does not insist upon an unthinking acceptance or application of the pattern established by the TA-TWU agreement. We acknowledge that each labor organization and each negotiation present their own issues that need to be addressed.

Acknowledging that each of the constituent agencies of the MTA has its own unique features, the recommendations of the Board with respect to the matter of wages attempts to take into account some of these unique features of the LIRR, while being aware of the interrelationship between the constituent agencies of the MTA.

The Carrier proposed a lump sum payment of \$1000 for those employed on January 1, 1992, a 2 percent wage increase effective January 1, 1993, and a 3.5 percent wage increase effective January 1, 1994. This wage proposal was conditioned upon the Organization's acceptance of certain work rule changes and modifications to the health and welfare benefits to produce a "zero net cost" settlement.

To put the Carrier's proposal in its proper perspective, the Board notes the following 1991 wage settlements from the expired agreements:

Metro-North:	5 percent
Transit Authority:	2 percent
LIRR (with UTU):	zero

The UTU's last increases were 5 percent on July 1, 1989 and on July 1, 1990. Thus, the UTU received no wage increase for the 18 months preceding the expiration of the contract. Even though the parties mutually bargained the prior agreement, the fact remains that the record does not reveal any other organization negotiating with the MTA that had a zero wage increase in the last year of the expired agreement.

When one compares the wage increases for 1991, it is apparent that the LIRR has lagged behind what the MTA asserts as a "pattern." The Board hastens to add that the Carrier explained its position in the last negotiations, that the operating expenses of the LIRR exceeded those of comparable sister agencies, specifically Metro-North, and that the Carrier sought to narrow that wage range. Though mindful that the zero percent wage increase was in the prior agreement, which is not a period in issue before this Board, this information does bear on the Carrier's position regarding the MTA "pattern."

Against the backdrop of the Carrier's strenuous argument for only a "pattern" wage increase stands the Organization's demand for across-the-board wage increases of 8.5 percent for 1992, 6 percent for 1993 and 6 percent for 1994. In addition, the Organization requests that the night differential be increased to 10 percent of current wages. (The current night differential is 10 percent of the rates in effect on December 31, 1984.) The Organization justifies these demands by increased productivity on the LIRR, predicted increased ridership, increased rider satisfaction, comparability with wage increases given to other area workers (both in transportation and other sectors), and the high cost of living in Nassau and Suffolk Counties where LIRR employees typically reside. At the hearing, the Organization presented an economist to support its demand for higher wages, pension and health insurance benefits.

The Board has very carefully studied the evidence and argument presented by the parties in their written and oral submissions. The Board has weighed the Carrier's budgetary constraints, together with issues of productivity, cost of living increases, comparability with other similar industries (both public and private) and the public interest in maintaining reliable, quality service while stemming the increase in operating costs and the resultant increase in fares (or taxes to subsidize the Carrier). The Board also understands the Carrier's commitment to the MTA's

"no net cost" objective, and our recommendations provide an opportunity for the Carrier to approach, or even achieve, that goal. However, we also note that the Carrier's wage proposals, if adopted, will almost certainly result in decreases in the real wages of employees, whose rates have already been frozen since 1990.

The Board is persuaded that modest wage increases are in order, in keeping with the trend in other commuter transportation entities. At the same time, the Organization deserves to reap some of the benefits from the work rule and health care reforms proposed herein, which will increase the Carrier's efficiency and produce substantial immediate and recurring cost savings.

It is with this very delicate, albeit imprecise, balance that the Board makes the following recommendations with respect to wages: Effective January 1, 1992, a 2.5 percent across-the-board wage increase should be applied to the base wage rates in effect on December 31, 1991. Effective January 1, 1993, a 2.5 percent across-the-board wage increase should be applied to the base wages in effect on December 31, 1992. Effective January 1, 1994, a 3.5 percent across-the-board wage increase should be applied to the base wages in effect on December 31, 1993. It is intended that these wage increases be fully retroactive. The Board finds that these wage increases fall within the range of those offered to employees performing comparable service on other MTA properties. Our recommendation also takes into consideration past wage increases, and cost of living factors particular to the UTU represented employees, and the other rule changes recommended in this Report which bear on the overall savings to the Carrier and potential costs to unit members.

The Organization also requested that the current night differential, which is paid based upon the wage rates in effect on December 31, 1984, instead be based upon current wage rates. In light of other proposals recommended herein, which have economic costs associated with them, the Board does not recommend a change in the night differential.

C. PENSIONS

By way of background, the Organization offered the following brief introduction to the pension structure at the LIRR:

Currently, UTU members hired prior to 1988 are eligible for the LIRR Pension Plan and Plan for Additional Pensions as early as age 50 and on average begin receiving a pension at age 55. At age 65 they are currently eligible to receive a full Railroad Retirement Act Annuity. LIRR Pensions are reduced at age 65 by all or a portion of the Railroad Retirement Act Annuity. Members

employed after January 1, 1988 are eligible for the Money Purchase Plan and are also eligible for a Railroad Retirement Act Annuity at age 65.

The Organization proposed three changes in the pension benefits to unit employees. These proposals are not recommended, given the Board's desire to balance the proposals that can be granted with limited resources. The fourth proposal, however, dealing with the computation of benefits, is recommended.

1. Selection and Timing of Joint and Survivor Options. The Organization alleged that employees have been harmed by the requirement to select one of the Joint and Survivor Options upon separation from service, even though that election may be years before the commencement of benefits. The Organization proposed that employees be permitted to review and change their selection of annuity options under the LIRR Pension Plan and Plan for Additional Benefits up to the commencement of benefits under those plans.

At the hearing, the Carrier indicated that it had not had time to study this proposal, "and, quite frankly, it's a proposal that we may well be receptive to. On the face of it, it has some logic to it." This Board therefore recommends that the parties negotiate this proposal directly.

2. Method of Rail Road Retirement Offset to LIRR Plans. Under the current pension system, an employee who retires prior to the age of 65 receives a benefit under the Plan For Additional Pensions, which the Organization explained is calculated as follows:

2 percent of the Employee's Final Average Remuneration, or Final Average Base Remuneration if larger, multiplied by 1/12th of the number of his Months of Service up to a maximum of 300; plus

1.5 percent of his Final Average Remuneration, or Final Average Base Remuneration if larger, multiplied by 1/12th of the number of his Months of Service in excess of 300; minus

the monthly pension payable to him prior to attaining age 65 under the Basic Plan.

At age 65, the employee's monthly pension entitlement is reduced by a percentage of the retired employee's full Railroad Retirement Act Annuity (RRRAA) equal to the following percentages:

(i) for an Employee who has 240 months of Credited Service prior to July 1, 1974, 25 percent;

(ii) for an Employee not included above who was an Employee prior to July 1, 1974, 50 percent;

(iii) for any other Employee, 100 percent.

This is referred to herein as the RRRAA offset. The Organization claims that after age 65, the amount of the LIRR Pensions are reduced by the RRRAA plus all cost of living increases in the RRRAA from the date of separation from service. Most interesting is the Organization's assertion that because the average employee retires by the age of 55, the offset hurts the employee's ability to continue his standard of living during all of his retirement. The Organization asks that the RRRAA offset not include cost of living increases.

The Board has carefully considered the Organization's argument on this proposal. The Board finds that any changes in the pension plan at this time would entail considerable immediate expense to the Carrier, as well as spiraling costs in the future. In addition, there is evidence in the record to suggest that any change in the calculation of the RRRAA offset could jeopardize the plan's status under the Internal Revenue Code and could result in loss of favored tax treatment to the beneficiaries. For all of these reasons, the Board declines to recommend this proposal.

3. Money Purchase Plan. The Organization proposed that the Carrier increase from 3 percent to 6 percent its contribution into the Money Purchase Plan, available to unit members hired after January 1, 1988, in lieu of participation in the current defined benefit retirement plan. The Organization strenuously argues that the current contribution rate of 3 percent by members and 3 percent by the Carrier is inadequate to fund an appropriate level of benefits upon retirement.

The Board finds, for the reasons relevant to the above-mentioned pension proposal, that the instant request is also too costly at this time. In addition, though the Organization urged that an increase in contribution rate was needed, it did not suggest that employees should increase their rate of contribution. Since the cost of this proposal is so significant, the Board will not recommend an increase in the employer contribution to the Money Purchase Plan.

4. Clarification of Methods of Computing Benefits. The Organization asserted that the combination of pension plans is extremely complex, and that there is a perception that "certain actuarial reductions for certain options is excessive and punitive to UTU members." The Organization therefore asked that there be a "joint review of all of the formulas for computing benefits to ensure that UTU members are receiving the negotiated benefit amounts." The Carrier answered that such information is already available to all unit members.

Upon consideration of this demand, the Board finds that it is appropriate for the Carrier to meet with the Organization to explain the formulas for computing benefits, and to satisfy the Organization's concern that employees are receiving their negotiated retirement benefits. Further, the Board recommends that the Carrier and the Organization assist employees in understanding their pension entitlements, and aid them in making informed choices regarding annuity options. The record at the hearing did not reveal the current manner for providing this information to employees. The Board therefore finds that the Carrier should communicate to the employees eligible to retire the name and office location of the Carrier's representative who is available to explain the various retirement benefit options. The Board believes this will generate no additional expense to the Carrier.

D. HEALTH AND WELFARE PLANS - BACKGROUND

The cost of health care represents a large and growing burden to society. A significant percentage of the cost of health care is attributable to inefficient administration and delivery of health services and to unnecessary tests, services and procedures.

The systems under which health care is provided are the subject of a variety of reform proposals at the national level, intended to broaden coverage, increase efficiency and reduce waste. While the legitimacy of the concerns addressed by those proposals is not disputed, the outcome, shape, cost and timing of reform efforts cannot be predicted. Certainly, it would be speculative for the Carrier and Organization to make cost and budget determinations on the basis of anticipated reforms. Accordingly, while health and welfare issues between the parties reflect the national debate, the Board believes these issues must be resolved on their merits, rather than on the basis of anticipated outcomes on the national level. Our discussion and recommendations so reflect.

1. Present Health and Welfare Benefit Structure. The Carrier presently provides health benefits to UTU-represented employees and their families through four separate plans, administered by at least two different insurance carriers. Benefits include reimbursement for hospital and physician services, as well as major medical. Each plan contains both Preferred Provider Organization ("PPO") benefits ("in-plan") and employee-selected, non-PPO providers ("out-of-plan"), although Trainmen hired after 1988 are required to use the PPO benefits. Benefit levels and procedures differ somewhat from plan to plan. The plans are relatively small and expensive to administer. The coverage and benefit levels are quite generous. Waste, inefficiency and unnecessary services inflate the cost of the plans, without producing concomitant benefits to employees and their dependents.

The Carrier pays the entire cost of the plans; there are no employee contributions and relatively low deductibles. The costs of the plans have been very high - \$7,500 per employee per year - and have increased rapidly, almost 55 percent over the past 4 years (for all LIRR employees). Absent action by the parties, further escalation, well in excess of inflation, is anticipated.

The LIRR asserts that health and welfare benefit costs for UTU-represented employees of the Carrier are 30 percent higher than for employees of Metro-North and twice as high as the expenses for Transit Authority employees.

The Carrier also provides prescription, optical, dental and life insurance benefits to UTU-represented employees through separate plans fully funded by the LIRR. The benefit levels are negotiated, and the Carrier is obligated to pay the costs necessary to provide the benefits. Similar benefits are provided to other of the Carrier's employees, including the UTU-represented Carmen, through the Joint Benefit Trust, into which the Carrier makes defined contributions. The trust determines the benefit levels which can be provided. There are clearly economies of scale and administration in a single, defined contribution trust, as well as predictability in cost to the Carrier.

2. Positions of the Parties. The Carrier has proposed a comprehensive restructuring of the health and welfare benefits provided to UTU-represented employees. The health proposals may be grouped into three major areas: first, the consolidation of the several plans into a single plan for purposes of administration and uniformity of benefits and procedures; second, changes in benefit levels and in administration of benefits to reduce unnecessary procedures; and, third, changes to shift costs to employees through co-payments and increased deductibles.

In addition, the Carrier proposes to provide prescription, optical and dental benefits through the Joint Benefit Trust, a defined contribution plan, with the trust making determinations as to the types and levels of benefits to be provided. The Carrier proposes payments to the Trust in the same amount and manner as it pays on behalf of Carmen.

The Carrier asserts that the implementation of its total package will result in important savings, which it maintains is necessary in order to fund the wage increase it has proposed. Absent such restructuring, argues the Carrier, there will be no savings, and any wage increase will result in a higher net cost to the Carrier and, ultimately, to taxpayers.

The Organization concedes that there are certain inefficiencies in the plans, and areas in which costs can be reduced, without significantly decreasing needed benefits or increasing costs to employees. However, it contends that the

separate plans, high benefit levels, and low costs to employees have been hard-won over the years, frequently through trading off work rules, modified wage increases and other concessions in return for gains in health and welfare benefits. It asserts that each separate unit of UTU-represented employees should be entitled to retain its separate health plan and benefit package.

The Organization contends that there is insufficient information in the record to allow this Board to make meaningful recommendations changing health and welfare benefits. It points out that the negotiations and presentations are taking place during the pendency of the national debate on health care reform, the outcome of which may moot, or even be inconsistent with, the Carrier's proposals. It proposes, instead, that a study committee be set up to look into these issues and report within 18 months. The Organization asks that until the Committee completes its work, the status quo should be maintained.

E. HEALTH AND WELFARE PLANS - RECOMMENDATIONS

The Board is persuaded that health care costs resulting from existing plans, administration, and benefits are high and must be controlled. This is so, not only because of the total amount of money at issue or the rate of increase in costs, but because some significant percentage of the costs of health benefits do not produce benefit, or sufficient benefit, to employees or their families. Thus, some increases in efficiency and cost savings to the Carrier may be produced with relatively small costs to employees.

The Board acknowledges the complexity of the issues involved in health care, and we are aware of the difficulties in making decisions on specific benefits and procedures in the context of the Board's proceedings. It is certainly the case that the parties are more familiar with their negotiated benefits than the Board. The Board believes that changes in the health and welfare system are appropriate and should be undertaken by the parties.

1. Joint Study Committee. The Board is persuaded that establishment of a Joint Study Committee, in the structure recommended by the Organization, is a useful mechanism to accomplish further changes through development and review of options. We so recommend.

The Board notes, in this regard, that the Carrier did not advance its proposals for restructuring as being derived from a pre-packaged plan; instead, it would apparently place an agreed-upon package for bid by and/or negotiation with providers. To the extent that the parties might mutually benefit from amendment to the Carrier's restructuring proposals, the Joint Study Committee should constitute a useful forum for such dialogue.

We are not recommending that all changes in health and welfare benefits be frozen, pending that Committee's report. We are persuaded, instead, that the restructuring of the health and welfare plans, and the initiation of cost-cutting, efficiency-increasing programs should be undertaken by the Carrier immediately during the pendency of the Committee's operation. As discussed specifically below, certain items are being referred to the Joint Study Committee. Of course, we do not mean to preclude the parties from bringing other issues to the Committee to increase the efficiency and decrease the cost of health benefits. To be perfectly clear, the Board recommends that the Carrier have the right to implement immediately the changes proposed below, notwithstanding the Joint Study Committee's deliberations.

2. Uniform Health Benefit Plan. There is efficiency and simplicity in bringing all UTU-represented employees (except the Maintenance of Way Supervisors, whose status is separately addressed) into a single, uniform plan providing both in-plan and out-of-plan options. The Board believes that such a plan would not only have advantages under the existing national health care delivery structure, but would have greater flexibility in responding to changes that might be made nationally in the future. Such a plan would also eliminate additional administrative costs and inconsistent levels of benefits from unit to unit, for which there is no present justification, whatever may have been the historical roots of the differences.

The Board recommends that a single, uniform plan be established for all UTU-represented units at issue in this proceeding (except the Maintenance of Way Supervisors), preserving both the present delivery options and providing substantially comparable coverage and benefit levels of the existing, separate plans, except as specifically provided below. It is essential, in the conversion, that employees and their dependents not lose coverage to which they would otherwise be entitled through "preexisting conditions" restrictions or other, similar provisions in the new plan.

The Board acknowledges that the development of a uniform plan is both critical to health care reform on the property, and extremely difficult to implement. For this reason, disputes regarding whether the uniform plan has provided "substantially comparable benefits" are to be referred to binding arbitration as set forth below.

Arbitration of questions of "substantially comparable benefits" should be before a panel of three arbitrators. The Organization and the Carrier should each designate an arbitrator to serve on the panel, and those two arbitrators should select a third who will act as chairperson of the panel. The costs of the arbitrators should be shared equally by the parties, and the decision of the arbitration panel should be final and binding.

3. Co-payments and Deductibles. The Board also recommends that co-payments and deductibles be increased as noted below. Such participation by employees is increasingly common. The use of such techniques is well-recognized as increasing employee responsibility in the determinations to obtain medical care, or particular kinds of medical care. To support such payments, it is not necessary to find that employees are abusing the system, and the Board makes no findings in that regard.

The Board is sympathetic to the Carrier's desire to encourage employees to shift their plan participation to the PPO option. To the extent that co-payments give employees a financial interest in their health care choices and instill a sense of moderation in their utilization of services, the Board is persuaded that a modest co-payment of \$5 per visit is appropriate, and we so recommend.

With respect to increasing the deductibles, the Board agrees with the Carrier that deductibles should be increased from \$150 for individuals to \$200, and from \$300 for families to \$400.

These are the only changes recommended by the Board to deductibles and co-payments. The Board expressly rejects the Carrier's proposal to index deductibles and co-payments to the Medical Care component of the Consumer Price Index. Instead, these matters should be left to the parties for future negotiations.

4. Utilization Review. The Board also recommends adoption of a modified form of increased utilization review and advance certification requirements for non-emergency procedures. Such procedures can be effective in eliminating unnecessary tests, services and procedures and in encouraging lower-cost options to obtain substantially the same medical results. The Board is persuaded that any such procedures must be driven by determinations of medical necessity.

The Board concludes that while utilization review is a worthwhile goal, some of the particular components suggested by the Carrier are too extreme in their departure from the current benefits and are not recommended. For example, the Board declines to recommend adoption of Diagnostic Related Group ("DRG") management. However, the Board recommends that employees and their dependents be required to undergo pre-certification review for non-emergency, in-patient medical admissions, and for all non-emergency surgery (both in-patient and out-patient). The Board further recommends that any disputes regarding medical necessity be submitted to expedited determination by a physician, board certified in the area relevant to the patient's care. The costs of any such consultations should be borne by the Carrier.

5. Psychiatric Benefits. The Board is not persuaded that sufficient justification has been presented, at this point, to support a recommendation that existing psychiatric and substance abuse benefits be substantially reduced. The data on over-use of such benefits does not appear to have been derived from experience with UTU-represented employees and their dependents. We recommend, instead, that this issue be referred to the Joint Study Committee for further review and that benefit levels and treatment alternatives be adjusted on the basis of more study as to the use of such benefits and the impact of proposed changes on the health of employees and their families.

6. Joint Benefit Trust. The Board is persuaded that efficiency and uniformity would be increased by changing the current method of providing prescription, optical and dental benefits to provide them through the Joint Benefit Trust. We recommend that the Carrier's proposals regarding the Joint Benefit Trust be adopted.

7. Chiropractic Benefits. The Board is not persuaded that sufficient justification has been shown to warrant the Carrier proposed 50 percent reduction in the reimbursement for chiropractic expenses. The status of the benefit is appropriately addressed by the Joint Study Committee; the Board recommends that it be referred there.

8. Termination of Benefits. The Carrier has proposed to terminate benefits the day an employee ceases to be an active employee. The Board declines to recommend this proposal, because of its impact on employees who may be inactive due to no fault of their own (e.g., illness or on-the-job injury). Instead, this matter should be referred to the Joint Study Committee.

9. Health Benefits for Maintenance of Way Supervisors. The unit of Maintenance of Way Supervisors is presently in the same health benefit plan as the Carrier's management, though they may not have received all of the health related benefits given to unrepresented management over time. The Carrier would change their status and require their participation in the single health benefit plan for all other UTU-represented employees, and in the Joint Benefit Trust. The Organization proposes that the unit remain in the management plan but retain the present level of benefits, even if management reduces benefit levels for unrepresented managers. For reasons discussed below, we are persuaded that the Maintenance of Way Supervisors enjoy a closer community of interest with management, for purposes of benefits, than with other UTU-represented employees. We recommend that those employees continue to share health and welfare plans with management, including any changes in those plans, rather than being placed in the new plan.

10. Health Care For Retirees. The Organization proposed that retirees receive health insurance pursuant to the management plan.

The Board recommends no change in the status quo regarding retirees' health insurance.

F. WORK RULES AND OTHER ISSUES

In their presentations to the Board, the parties reduced the number of proposals for new and modified work rules and benefits to those that they deemed most important. Some of these affect two or more crafts. Others are limited to a single group. Our decision to recommend certain proposals is based on a number of factors including those that: (a) foster job security and uniformity in rules affecting the constituent locals of the UTU; (b) improve efficiency of operation, which is in the best interest of all parties; and (c) provide a reasonable level of benefits to employees of the LIRR. The Board also considered the parties' negotiating history and the Carrier's financial status.

Our rejection of other proposals is based in part on the lack of sufficient evidence to support what, in some instances, would result in a major shift in the current wage structure. At the same time, we are not convinced that the parties have engaged in sufficient, meaningful negotiations on many of the issues placed before this Board. It is the Board's belief that some of these issues are best left to the parties for direct negotiations. The Board hopes that these recommendations will form the basis for a new Agreement that will find mutual acceptance.

G. WORK RULES FOR TWO OR MORE CRAFTS

1. Stabilization of Force. All five crafts are covered by Stabilization of Force Agreements. The Organization asks that the cut-off date be moved forward from January 1, 1984, to the present. (The Carmen now have guaranteed employment for pre-1987 members on the property.) The assurance that one's employment will be secure is an important benefit for members of the UTU. This Board recommends a new cut-off date of January 1, 1987, thereby recognizing the important contribution of long-term employees to the LIRR's operation. (Nothing in this recommendation otherwise changes Carmen Rule 60.)

2. Discipline. This proposal affects four of the five crafts. (Maintenance of Way Supervisors are excluded.) Contracts for the Trainmen and Special Service Attendants currently include a provision expunging reprimands and suspensions from the employee's disciplinary record after 3, 5, or 8 years, depending on the type of offense. The Board recommends that this clause be extended to Carmen and Trackmen. This ensures a uniformity of treatment and enables those who have responded to corrective action to put poor disciplinary records behind them. At the same time, the discipline remains in the file long enough to be part of a rational progressive discipline program.

3. Incidental Work Rule. The Carrier seeks to have employees in any craft perform all work incidental to the main task being performed without violation of any scope clause or previous work practice. The proposed rule would apply to both inter- and intra-craft work. This Board finds precedent for such a rule in Presidential Emergency Board No. 219 in the intra-craft context. As in that instance, we recommend that employees perform incidental tasks within their craft at the rate applicable to the employee performing the incidental work. We also note, however, that this recommendation is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope, and classification rules. This change will not reduce the amount of work to be performed by a craft, but it will increase managerial efficiency. At the same time, the Carrier will save the time and expense involved in responding to claims within the craft over this issue. These savings will go toward supporting the wage increase that is endorsed here.

The question of an inter-craft incidental work rule raises far more complex issues for both parties. Even though an effort was made to address this major alteration in operating procedures in PEB No. 222, this Board believes that extensive discussion is required on this property to minimize the impact of such a change, and to arrive at a meeting of the minds in regard to a definition of "incidental" work in conjunction with a wide variety of tasks. Further study and analysis are required since crafts other than those represented by the UTU are involved. For all of these reasons, the Board declines to recommend an incidental work rule for inter-craft disputes.

4. Meal Allowance. Three crafts -- the Maintenance of Way Employees, Maintenance of Way Supervisors, and Carmen -- receive a meal allowance under special circumstances. An employee's first meal is currently paid at the rate of \$5. The Board recommends that this be raised to \$8 in recognition of increased costs within the region. No other changes in meal allowances are recommended.

5. Safety Shoe Allowance. Metal tip safety shoes are required of both Carmen and Maintenance of Way Employees. An annual allowance of \$82 per employee currently is paid by the Carrier for this purpose. The Organization has alleged that this sum is inadequate to cover the cost of one pair of shoes, and most employees need at least two pair in the course of a year. Accepting that these shoes are subject to a great deal of wear and tear, we recommend this sum be raised to \$100 annually. By shopping at the store suggested by the LIRR, the employee can realize savings, which leave more money available toward a second pair.

6. Americans With Disabilities Act. The parties recognize an employer's obligation under this federal statute. Their

Agreements should reflect the fact that the Carrier will take all steps necessary to comply with the Law and to act in conformance with the negotiated Agreements.

7. Longevity. The Organization proposed longevity payments for all crafts or classes after 5, 10, 15, 20, 25 and 30 years of service. It proposed that each longevity payment be an additional 5 percent above the base rate. The Carrier responded that this proposal was far too costly.

The record reveals that no represented employees on the LIRR, except police, have a longevity benefit, nor do other crafts on MTA properties. For this reason, as well as the considerable expense involved, the Board does not recommend a longevity benefit.

8. Holidays. The Organization asked for two new holidays, while the Carrier sought to exchange one of the holidays currently provided, such as Election Day or Good Friday, for Martin Luther King Day. The Organization asserts a dilemma: while acknowledging the desirability of honoring an important American figure, it recognizes that this exchange would have an adverse economic impact on the earnings of some of its members. In light of the entire package discussed herein, the Board declines to recommend these proposed changes in the listed holidays.

9. Vacations. The Organization had asked that employees earn their full vacation entitlement if they worked only one day in the preceding year. The Organization suggested that unrepresented employees have this right. However, the Board is not persuaded that the Organization's proposal is comparable to that of other groups of employees, nor do we find sufficient basis for its adoption.

10. Part-time Employees. The Carrier urges that part-time employees are needed as a flexible workforce, while the Organization is properly concerned over the future of the crafts' work. The Carrier's request for part-time employees would clearly constitute a major restructuring of the workforce. Although we are aware that the New York State Office of Comptroller has endorsed the notion of either shorter shifts or part-time positions to effectuate greater flexibility in train crew assignments, we note that it was its suggestion that this change be negotiated with the UTU. We decline to recommend the Carrier's proposal, and recommend that the parties negotiate this matter directly.

11. Sick Leave. The Organization proposed changes to the sick leave benefits for all employees at issue in this proceeding. Since it would entail significant expense to increase from 12 to 24 the number of sick leave days available for all unit employees, the Board declines to recommend this change. Similarly, the Board declines to remove the current limit on the number of days of accrued and unused sick leave (half the days up to \$5000) that the

Carrier must pay out upon an employee's retirement from service. Similarly, the Board recommends no change from the current practice regarding the Trackmen and Carmen units, who receive their sick leave payout in increments, rather than a lump sum payment.

The situation regarding the Maintenance of Way Supervisors is somewhat different. Their agreement provides that employees are granted sick leave allowance at the discretion of the department head, and that no employee will be granted more than six months of sick leave allowance during any calendar year. The Organization has requested that the Maintenance of Way Supervisors be granted the same sick leave bank and sick leave buyout that the unrepresented management employees receive. The Board is persuaded that the Maintenance of Way Supervisors are more akin to management than to represented employees, and should receive the same benefits as other managers in many respects. Therefore, the Board recommends that Maintenance of Way Supervisors be granted a sick leave bank and sick leave buyout as are given to unrepresented managers.

12. On-duty Injury. The Carrier has urged this Board to modify the sick leave benefits for on-duty injury which, according to the Carrier, serve as a disincentive for any injured employee to return to work. The Board has very carefully considered this proposal, and finds that limited parts of the Carrier's demand should be implemented.

First, the Carrier has proposed that the unlimited sick leave bank be eliminated, and replaced with a workers' compensation benefit, followed by exhaustion of the employee's sick leave, and then leave without pay. The Board declines to recommend this change. The Carrier has at its disposal the ability to discipline employees for sick leave abuse, should that be proven. Therefore, the Carrier's proposed change would have the improper impact of severely penalizing an employee who is seriously and legitimately hurt on the job. Thus, no change in the sick leave bank is recommended.

The Carrier next proposed that it have the right to assign an employee to light or restricted duty if the employee is able to return to work, but unable to perform the regular duties of his position. The Carrier maintains that it has this right in all UTU-represented crafts except Maintenance of Way Employees and Trainmen. The Board finds that limited duty may be an appropriate way to accommodate an employee who is fit for some duty but, due to on-the-job injury, can no longer perform the work of his prior assignment.

The ability to make such accommodations is at least tangentially related to the Carrier's request to be able to accommodate employees as required under the Americans With Disabilities Act, and is appropriate. The Board recommends this

change, because it should be everyone's goal (the Carrier, the Organization and the employee) to return the employee to gainful employment as soon as the employee is physically able. In no way should this be construed as a tool to return employees to work if they are unfit for duty. To the contrary, it is a recognition that after an employee is seriously injured on the job, there may come a time when the employee can do something, but not the employee's prior job duties. This Board believes that it is far better for an employee to be gainfully employed than to be out of work indefinitely due to injury. To the extent necessary, any clauses that permitted the Carrier to assign an employee to limited duty, but which clauses sunset at a certain date, should be extended for the duration of the new Agreement (e.g., Carmen's agreement (Rule 83d)). This recommendation should be construed and implemented so as not to impair the rights of any current or furloughed employee, or of any organization, under existing agreements.

In a related proposal, the Carrier asked that disputes regarding an employee's fitness for duty be decided by a panel of doctors whose expenses are shared by the parties. The Board endorses the concept of a neutral physician casting the deciding vote when an employee's treating physician and the Carrier-appointed doctor disagree on an employee's fitness to return to duty. To the extent that any agreements in issue herein do not provide for the "tie-breaking" physician, such a board or panel of doctors should be instituted. However, the Board hastens to add that the various agreements have different provisions and nomenclature regarding boards or panels of doctors. It is this Board's intention to make referral to the neutral doctor a right under the Agreement and an expense of the Carrier. In all other respects, the Board recommends no change in the medical review procedures in the various agreements.

Finally, the Carrier asked for various provisions that are entitled "Sick/Disability Verification." The Board declines to recommend these provisions because they entail "house arrest" arrangements or penalties for use of sick leave. If the Carrier believes an employee is abusing sick leave, it already has the authority to bring disciplinary action against such employee.

13. Trauma Leave. The Organization proposed granting trauma leave to all Trainmen and Vehicle Operators who are involved in a train-related fatality, a benefit currently extended to Engineers. The Board must take administrative notice of the tragic violence that occurred on one car of an LIRR rush-hour train on December 7, 1993, in which 21 passengers were shot, 5 fatally. This incident is somber proof that one cannot predict the timing or manner of train-related fatalities, or the LIRR personnel who may be traumatized by their role in the fatality or its aftermath. Accordingly, this Board is persuaded that the Carrier should grant trauma leave on an ad hoc basis to employees, as the Carrier deems necessary, based upon the level of their involvement in a train-

related fatality or its aftermath. Such leave should not be dictated by the craft of the employee but by the employee's role in the fatality or its aftermath.

H. WORK RULES FOR TRAINMEN

1. Runarounds. Trainmen on the list to work on their relief days who are improperly bypassed currently receive four hours of pay at the straight-time rate. The Organization proposes that they receive the pay they would have received, but for the runaround. The Board finds that employees should be made whole for such violations. We recommend that the Organization's proposal be adopted.

2. Guaranteed Extra List. Trainmen on the guaranteed extra list who are improperly bypassed currently receive the difference between their actual earnings and what they would have made, but for the improper runaround. The Organization argues that such payment does not compensate the employees for the possible extra waiting time and inconvenience which result from being improperly bypassed. It asserts they should receive an additional four hours at the straight-time rate, as a penalty to deter the Carrier from improperly bypassing employees.

The employee who suffers a runaround already receives the pay he would have received, but for the runaround. That payment is likely to be higher than the later run the employee actually works. Thus, the employee is "made whole" for the runaround. The request here is in the nature of a penalty. There is no showing of a pattern of abuse by the Carrier or its management. The Board declines to recommend a rule which would create a penalty payment in the absence of proof of abuse.

3. Vacation Blackout Periods. The current agreement precludes Trainmen from taking vacation during certain blackout periods. The Organization proposes to eliminate the blackout periods, so that Trainmen would be able to take their vacation at any time during the year. The Carrier responds that the Organization's proposal would increase scheduling difficulties which already exist.

The Trainmen agreement provides that vacations will be spread evenly over a calendar year through the periods they are allowed and are assigned on a seniority basis, so that no more than a given number of employees could be on vacation at any given time.

The Board is not persuaded that the record establishes either the extent of scheduling difficulties or the inequity of the existing rule. Clearly, there would be an impact on existing scheduling; and the Board believes the assessment and resolution of that impact is best determined by the parties in direct negotiations. We encourage the parties to explore whether the

flexibility of vacation scheduling can be increased, but we decline to recommend the Organization's proposal.

4. Day by Day Vacation Entitlement. Currently, only Trainmen with over 15 years of seniority are entitled to take vacation in increments less than one week. Such requests are subject to approval by management; and then only to a limit of 3 in passenger service and one each in road freight and yard freight. The Organization proposes to lower the service requirement to take such vacation from 15 years to 10 years and to increase the maximum numbers of Trainmen allowed to take such vacation to 10 in passenger service and 5 each in road freight and yard freight. The Carrier responds that the Organization's proposal would add to the existing scheduling difficulties.

As with the demand above regarding vacation blackout periods, the Board is not persuaded that the record establishes either the extent of scheduling difficulties or the inequity of the existing rule. The Board believes this matter is best resolved by the parties through direct negotiations, and we decline to recommend the Organization's proposal.

5. Elimination of Distinctions Between Road Freight and Yard Freight Assignments. The Carrier proposes to eliminate current distinctions between road freight and yard freight operations. Its stated rationale is to increase efficiency and thereby increase freight business on the LIRR. The Organization asserts that the effect will be to eliminate the yard trainmen positions, including 19 yard trainmen not presently qualified for road assignments.

The Carrier's proposal would effectively negate the distinction made between yard and road assignments which is common to all, or virtually all, railroad industry agreements covering freight operations, and which have been in effect throughout the history of the Carrier's operations. Elimination of the distinction would represent a major change in the rules, the impact of which is not possible to ascertain from the record. While the Carrier made general assertions that the change was not made for the purpose of reducing positions, no specific job protections are included in the Carrier's proposal.

The Board is persuaded that the changes proposed by the Carrier are best accomplished through direct negotiation and agreement between the parties, which can take into account more fully the implications of the proposals. In the absence of such agreement, the Board declines to recommend the change.

6. Flagging. The Carrier has acceded in the past to the Organization's preference in handling regular flagging positions. The Organization now asks that these positions be subject to the semi-annual pick. This request should be granted.

7. Availability for Relief Day Work. The current agreement contains a requirement that five consecutive days must be worked before a Trainman may be employed on a relief day. The Organization asks that vacation days be included in this calculation in order to eliminate a perceived inequity between employees with weekend relief days and those with weekday relief days. The Carrier argues that the purpose of the rule is to discourage employees from taking sick leave on scheduled work days preceding their vacations, and then making up the time at overtime rates, by working their next scheduled, post-vacation relief day. This Board is not convinced that a major inequity exists, nor do we find that the present requirement is unreasonable, limiting, as it does, overtime opportunities to those who have worked their jobs for five consecutive days at the straight-time rate. This proposal is therefore rejected.

8. Meal Periods. The Organization proposed an increase in the meal period (now 20 or 40 minutes) to one hour, plus pay at the punitive rate if a meal period is missed, and restrictions on the locations where meals may be taken. The Organization asked that a table, chair and washroom be provided at all facilities for the purpose of a lunchroom. The Board declines to recommend this proposal, finding the meal provisions of the Trainmen's agreement to be, for the most part, comparable to those within the industry.

9. Personal Leave. The Organization proposed the elimination of restrictions on personal leave days for the days before and after Thanksgiving and the day after New Year's Day. This Board is not convinced of the desirability of this change, given the high rate of traffic on those dates. Accordingly, no change is recommended.

I. WORK RULES FOR MAINTENANCE OF WAY SUPERVISORS

1. Overtime. The Organization proposed that the Maintenance of Way Supervisors receive overtime pay for hours in excess of their regular workday. The Organization asked, in the alternative, that these supervisory employees receive compensatory time when they perform scheduled overtime.

For the most part, the Board supports the retention of the status quo in regard to the Supervisors' Agreement. As managerial personnel, it is inappropriate to distinguish these employees from other managers of the LIRR who do not receive overtime pay. If excessive planned and emergency overtime work is being assigned to Supervisors, rather than Assistant Supervisors, this issue should be addressed in a different forum.

The Board intends to treat the Maintenance of Way Supervisors as the Carrier treats its unrepresented supervisors when issues arise. The record in this proceeding does not reveal whether unrepresented supervisors receive compensatory time when performing

overtime work. We recommend that if other supervisors receive compensatory time, so should the Maintenance of Way Supervisors.

2. Promotions. The demand that promotions to Supervisor be drawn solely from the ranks of UTU Local 645B members is unduly restrictive, limiting the Carrier in its ability to secure the best individual for a job at a managerial level. Certain skills are required to direct the workforce, and while members of the Local may be qualified in many areas, the determination whether they possess the needed leadership skills must rest with the Carrier.

3. Assistant Supervisors' Rate When Filling Vacancies. The Organization next contends that the Carrier is misinterpreting the Sick Leave Agreement in regard to its discretion in determining the rate that is to be paid to Assistant Supervisors who fill vacant Supervisors' positions. It urges that the phrase "at the discretion of management" be removed from the agreement. The Board finds this to be a contract interpretation issue, one that is better settled through the parties' grievance procedure, rather than through the impasse procedures of the Railway Labor Act.

4. Management Rights Clause. Finally, given that we do not endorse widespread additions to the Maintenance of Way Supervisors' agreement, we also do not recommend the deletion of its terms. Thus, the Carrier's demand that Article 3 of this Agreement, the Management Rights clause, be eliminated is also rejected. As managerial personnel, it is not inappropriate for Carrier officers to consult with Supervisors and seek their agreement prior to making changes in "headquarters, time, position and work assignments."

J. WORK RULES FOR CARMEN

1. Washington Job Protection Agreement. A request is made by the Carrier to delete that portion of the Carmen's agreement that extends the protection of the Washington Job Protection Agreement to those affected by technological changes and any changes in work assignments or in operations, other than those caused by a decline in Carrier's business. The Carrier argues that routine displacements and employee movements due to schedule or other operational changes are beyond the intended scope of the Washington Job Protection Agreement.

This Board has no doubt that a strong argument may be made for Carrier's position, but the Organization has persuasively argued that this addition to the Carmen agreement came about as the result of other tradeoffs in the past. Under the circumstances, we believe that the parties are in the best position to determine what value they place on this benefit and what will be required in order to eliminate it from this Agreement. Accordingly, we recommend no change in the language in the Carmen's contract regarding the Washington Job Protection Agreement.

2. Skill Differential. The Carmen's agreement provides a 13 cents per hour skill differential for mechanics regularly assigned as Welders and for Federal Inspectors. The Organization has alleged that an inequity resulted when the Carrier failed to include this skill differential into the base hourly rate for these employees, while including a similar differential in the base hourly rate for electrical workers and sheet metal workers. The Organization also asked for an increase in this skill differential to 25 cents per hour.

The Board finds that the instant proposal affects a very limited number of employees (perhaps 50), and that there is no valid explanation for the different treatment of the Carmen relative to other LIRR employee groups who have a skill differential included in their base wages. Therefore, the Board recommends that the skill differential be increased to 18 cents per hour, and be included in the base rate. The Organization offered to give the Carrier the same "understanding" that the electrical workers and sheet metal workers gave the Carrier in a letter dated September 13, 1983, in which they agreed "...the skills differentials [would be incorporated] into the base rate in exchange for an understanding with the Organization that the affected positions would then be subject to a re-evaluation and up-grading of qualifications." The Organization should memorialize this understanding in a similar letter to the Carrier in exchange for this change in the skill differential.

3. Calculation of Vacation Pay. The Organization has requested that Carmen receive vacation pay calculated as 1/52nd of their prior year's salary, as contained in the Trainmen's agreement. The Board declines to recommend this proposal in view of the fact that among the employees in issue in this proceeding, only the Trainmen receive this benefit. At this time, the Board declines to add additional expense to the Carrier's current expense for vacations.

4. Carmen Rule 24. The Carrier proposed that Carmen Rule 24 be eliminated, thus enabling the Carrier not to be required to cover any vacant positions at Richmond Hill (a diesel car repair facility) and Yard A (not staffed at this time). The Board declines to recommend this Carrier-proposed change. The Board finds that Rule 24 currently gives the Carrier sufficient flexibility in assigning employees, since it need only cover Richmond Hill positions if more than two absences occur on Monday to Friday, and if notification of the absence is received by 2:00 PM on the day prior to the absence.

K. WORK RULES FOR MAINTENANCE OF WAY EMPLOYEES

1. Subcontracting. The Carrier currently has the right to subcontract the work of Trackmen for a number of specified reasons, including emergencies, unavailability of skills, personnel or

equipment, and cost. The Carrier must notify the Organization of subcontracting in advance. The Carrier's right is also subject to limitations.

The Organization proposes to eliminate the Carrier's right to subcontract, absent the Organization's consent. It cites the reduction in the size of the bargaining unit from 821 to 631 in 8 years, despite the existence of large capital improvement projects, and the Carrier's use of outside contractors to perform the work.

The Board finds there is no showing that the decline in the number of Trackmen is attributable to subcontracting, rather than to mechanization or other factors. The exception allowing the Carrier to subcontract where allowing Carrier employees to perform the work would result in significantly greater cost is certainly not unreasonable, particularly where, as a result of the nature of the Carrier's operations, much of the work can only be performed on evenings and weekends, at overtime rates.

Earlier Emergency Boards on this property have acknowledged the desirability of having employees perform work, the importance of limitations on subcontracting, and the potential for abuse by the Carrier of the subcontracting rule (see, e.g., PEB 212, Report at p. 17). The Board acknowledges the legitimacy of the Organization's concerns, but we find that the current rule adequately balances the Carrier's needs and the Organization's concerns in light of the scheduling presently required. This Board declines to recommend the Organization's proposal.

2. Payment for Less Than Eight Hours Rest. The Agreement provides that employees working overtime in emergency situations will receive double time for the time between their release and their next scheduled shift, if released less than 5 hours before that shift. Thus, in the usual sequence triggering that rule, employees work their regular shift, a full overtime shift, and more than 3 hours beyond. Such scheduling prevents employees from obtaining a full period of rest before resuming work on their next regular shift.

The Organization proposes that the 5 hour penalty period be increased to 8 hours, so that employees would receive double time for time between completion of their sixteenth hour of work and the start of their next shift. The proposal has both safety aspects - to discourage the Carrier from working employees extraordinarily long hours - and compensation aspects - to pay employees at double time if the Carrier does choose to work them longer than 16 hours. The Organization does not assert employee unwillingness to work the longer hours, when necessary. The Carrier disputes the safety implications of the Organization's position, and asserts that the proposal is simply to increase employee pay.

The Board is persuaded of the appropriateness of the Organization's position, not only because of the limited period of rest with which the employee must operate in such situations, but also because the short rest period must have been preceded by 16 hours of emergency work. The Board recommends adoption of the Organization's proposal.

3. Overtime For Seventh Consecutive Day of Work. Maintenance of Way Employees receive pay for their seventh consecutive day of work at the double time rate; however, the figure is frozen at the December 1984 rate. The result is that Local 29 employees receive less pay for their seventh consecutive day of work than for their sixth day. They are the only group of employees so affected. The Organization proposes to lift the freeze and pay double time at the prevailing rate. The Carrier opposes this change.

The Board finds that whatever justification there may have been for the freeze is lost in history. There is no rationale to pay employees less for their seventh consecutive day of work than for their sixth. Further, in light of the Carrier's stated commitment to consistent treatment for its "family" of employees, there is no proof that other members of the "MTA family" have their overtime wages frozen at 1984 rates. The Board therefore recommends the Organization's proposal.

4. Overtime for Travel at the Carrier's Direction Outside Normal Working Hours. The Maintenance of Way agreement allows the Carrier to pay employees travelling outside normal working hours at their regular rate, rather than overtime to which they would otherwise be entitled. The provision has been in the agreement for many years. According to the Organization, the Carrier has only recently been enforcing it. The Carrier points out that this proposal is simply a cost item, and that the same issue is the subject of a pending arbitration proceeding.

In light of the extended period of time the provision has been in the agreement and the pendency of the arbitration, the Board declines to recommend the Organization's proposal. However, the Board does not wish to invalidate the prospective effect of the arbitration award. We recommend that the parties incorporate into their Agreement the holding in the pending arbitration case.

5. Shift Starting Times and Relief Days. The regular shifts and relief days for Maintenance of Way Employees are Monday through Friday, with weekends off. Work performed outside those shifts or on relief days is paid at overtime rates.

The Carrier argues that the present restrictions on shifts and relief days limit the work employees can perform and lead to inefficiencies. It points out that major projects are usually performed on evenings and weekends; if performed by employees, such work must be at overtime rates. The Carrier asserts that allowing

employees to be scheduled for regular assignments, without overtime pay, would increase productivity and efficiency, while lowering costs.

The Organization responds that all Maintenance of Way Employees were hired with the understanding that they would have weekends off. It asserts that any attempt to change the starting times and relief days would be completely unacceptable. The Organization complains that the employees it represents are being confined to routine maintenance, while the Carrier contracts out capital improvement projects. It argues that extension of starting times and relief days would lead to the creation of a "generic maintenance force," in violation of craft lines.

The Board notes that the Organization complains of the Carrier's subcontracting, but insists that regular shift starting times and relief days not be changed. In light of the necessity to perform most major projects on evenings and weekends, the present scheduling restrictions would require that Carrier employees be paid for such projects at overtime rates. We believe that the current rule on scheduling and relief days has the effect of restricting the Carrier's use of Trackmen on capital projects. We encourage the parties to reexamine this issue in light of the Organization's desire to limit subcontracting. However, in the absence of agreement by the parties, we decline to change the status quo regarding shift starting times and relief days. Thus, the Carrier's proposal is not recommended.

L. WORK RULES FOR SPECIAL SERVICE ATTENDANTS

1. Scheduling and Overtime. The Organization proposed three changes in the way Special Service Attendants are scheduled and compensated for work. The Organization requested an 8 hour workday, overtime for all hours in excess of 8 in one day, and a rule that would require all assignments to start and end at the same location, thus eliminating much of the time "deadheading."

The Board has carefully considered the Organization's demand, and finds that, consistent with the Carrier's arguments on comparability across MTA agencies, the Special Service Attendants should have a workday similar to their counterparts on Metro-North. In this regard, the Service Attendants on Metro-North have the following provision in their agreement:

Employees will be paid eight (8) hours' pay for each complete tour of duty. "Tour of duty," as used herein, will mean the interval between initial reporting and final release. Time on duty in excess of eight (8) hours, excluding time released from duty for one (1) to two and one-half (2 1/2) hours during a tour of duty, will be paid at the rate of time and one-half on a minute basis.

The Board finds that the range of one to two and one-half hours per day for time released from work gives the Carrier sufficient leeway in scheduling the Special Service Attendants, but would compensate the employee appropriately for working time in excess of 8 hours in one day. The Board recommends that language similar to that quoted above from the Metro-North agreement be included for the Special Service Attendants on the LIRR. In all other respects, the Organization's proposals for the Special Service Attendants are not recommended.

V. SUMMARY OF RECOMMENDATIONS

When the parties commenced this impasse process, more than 100 work rules were in dispute, in addition to a number of wage, pension and health and welfare proposals. The parties voluntarily narrowed the scope of this impasse and agreed to submit to the Board a more manageable number of work rules. As discussed fully above, the rationale for the recommendations of the Board are based on a variety of factors: some recommendations are designed to provide a fair, yet affordable, increase in benefits over the life of the new Agreement; some work rule changes are recommended because they correct past inconsistencies across the various crafts and classes; some changes are intended to increase management flexibility and efficiency; and some are intended to promote compliance with legal obligations of the parties. Many of the changes proposed by the parties were not recommended, because they entailed too great a cost, or required major changes in work classifications which could not be justified in view of the total package of benefits.

The Board's Recommendations, in summary, are:

- **Wages:** Retroactive across-the-board wage increases as follows: on January 1, 1992 - 2.5 percent; on January 1, 1993 - 2.5 percent; on January 1, 1994 - 3.5 percent.
- **Pensions:** Prospective retirees should receive adequate explanation of their benefit options. The Organization and the Carrier should meet to discuss the application of the various actuarial assumptions to ensure that employees are receiving the negotiated benefits.
- **Health and Welfare:** A uniform health insurance plan should be implemented (for all crafts except the Maintenance of Way Supervisors) which contains "substantially comparable" benefits to the plans now in existence. Binding arbitration should be available to resolve disputes over the comparability of the plans. Co-payments and slightly increased deductibles are recommended, as is a fair form of utilization review. The use of the Joint Benefit Trust for supplemental benefits is also recommended. A Joint Study Committee is recommended for further discussion of certain aspects of the health insurance

plan, including psychiatric and chiropractic benefits.

Some of the work rules in issue before the Board applied to two or more crafts. Our recommendations for those rules are:

- **Stabilization of Force:** The new stabilization of force date should be January 1, 1987.
- **Discipline Rules:** Carmen and Trackmen Agreements should include the same provisions regarding the expungement of discipline from a file after a significant period of time as are contained in the agreements for the other crafts.
- **Incidental Work Rule:** Only for intra-craft work.
- **Meal Allowance:** The meal allowance for the first meal should be increased to \$8.00.
- **Safety Shoes:** The allowance for safety shoes should be increased to \$100 annually.
- **Americans With Disabilities Act:** The Agreements should reflect the parties' obligations pursuant to this law.
- **On-duty Injury:** The Carrier should be allowed to assign employees to light or limited duty without impairing rights under the existing agreements. Disputes regarding an employee's fitness for duty should be decided by a neutral physician.
- **Trauma Leave:** Employees should be granted trauma leave on an ad hoc basis by the Carrier as warranted based upon the employee's direct involvement in the train-related fatality or its aftermath.

Other work rules placed in issue before this Board involved the work of one craft or class. The changes recommended are listed below. In all other respects, no changes were recommended.

- **Trainmen:** (a) flagging positions should be subject to the semi-annual pick; and (b) employees should be made whole for wages lost due to runarounds.
- **Maintenance of Way Employees:** (a) overtime pay should apply if less than 8 hours rest is scheduled after 16 hours of work; (b) change the overtime rate for work on the seventh day to the current overtime rate, and (c) incorporate into the Agreement the result from the pending arbitration regarding overtime for travel.
- **Carmen:** Increase the skill differential to 18 cents per hour and include it in the base wages.

- **Special Service Attendants:** Apply the overtime provision from the Metro-North agreement (i.e., pay time and one-half after 8 hours worked in ten and one-half).

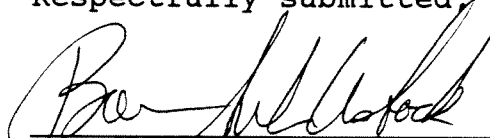
- **Maintenance of Way Supervisors:** (a) should be given the same sick leave bank and sick leave buyout as unrepresented managers; (b) should receive the same health insurance benefits as unrepresented managers; and (c) should receive compensatory time for overtime worked only if unrepresented managers receive this benefit.

VI. CONCLUSION

The parties would benefit from in-depth, meaningful negotiations over certain work rules that may have been in the various agreements for decades, but whose effect has been to prevent the Carrier from improving its operating efficiency. At the same time, the Carrier needs to find a way to reward its employees with work on the long-term capital improvement program in exchange for concessions in work rules which increase its efficiency.

The Board sincerely hopes that these Recommendations will form the basis for a new Agreement. Neither the parties' respective interests, nor the public interest would be served by protracting this impasse simply to exhaust the remainder of the Section 9a procedures.

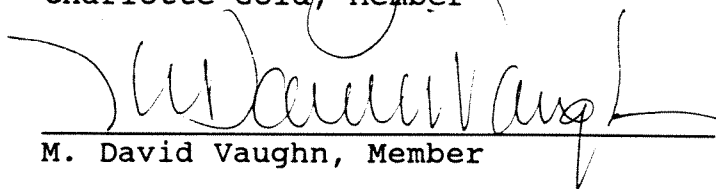
Respectfully submitted,



Bonnie Siber Weinstock, Chairperson



Charlotte Gold, Member



M. David Vaughn, Member

Executive Order 12874 of October 20, 1993

**Establishing an Emergency Board To Investigate a Dispute
Between The Long Island Rail Road and Certain of Its Em-
ployees Represented by the United Transportation Union**

A dispute exists between The Long Island Rail Road and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

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

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

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

Section 1. *Establishment of Board.* There is established, effective October 20, 1993, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report its findings to the President with respect to the dispute within 30 days after the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the Act, from the date of the creation of the board and for 120 days thereafter, no change, except by agreement of the parties, shall be made by the carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this order.



THE WHITE HOUSE,
October 20, 1993.

APPENDIX B

SETTLEMENTS

AGENCY	ORGANIZATION	DURATION	WAGE INCREASES		OTHER
NYC Transit Authority (MABSTOA)	TWU, Local 100	38 Months (5/1/91 through 6/30/94)	4/1/91 - 2% ¹ 9/1/92 - 2.5% 5/1/93 - 2% (5/1/93 - 6.5% increase in night differential)	- 5/1/91 - 10.7% increase in payments to welfare trust; 5/1/92 - 10% increase in payments to welfare trust; determined thereafter through negotiation, or binding arbitration. - reduction in TA contributions to pensions - 2/1/92 - \$7.80 per active employee contribution to Alcohol & Substance Rehabilitation Rider - Gainsharing Program 3 step wage structure for new employees	
Staten Island Bus ATU, Div. 726		Similar to MABSTOA/TWU			
Surface Transit, Queens	ATU, Div. 1056	Similar to MABSTOA/TWU			
NYC Transit Authority	Subway-Surface Supervisors Ass'n	41 Months (5/1/91 through 9/30/94)	5/1/91 - 2% 9/1/92 - 2.5% 5/1/93 - 3% (5/1/93 - 6.5% increase in night differential)	- 5/1/91 - \$55 per active employee contribution (not in base) to Health & Welfare Fund - 9/1/92 - \$110 per annum increase per employee to Health & Welfare Fund determined thereafter through negotiation or binding arbitration	
Metro-North	In mediation under Railway Labor Act				
TBTA	In binding interest arbitration under NYS Taylor Law				
SIRTOA	No information				
Metropolitan Suburban Bus Authority	TWU, Local 252	38 Months (8/1/91 through 9/30/94)	8/1/91 - \$1,000 lump sum payment 11/1/92 - 4.5% 8/1/93 - 2% (8/1/93 - \$0.10/hour increase in night differential)	- \$25 per employee contribution on welfare benefits	
LIRR	Unrepresented Management		1991 - 0% 1992 - 0% 1993 - 4% (a pool, divided)		
LIRR	Crafts or Classes not in this proceeding	In Mediation under Railway Labor Act			

This 2% salary increase was offered after the organization failed to ratify a \$1,000 lump sum, non-pensionable payment.