REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 244

SUBMITTED PURSUANT TO

EXECUTIVE ORDER DATED NOVEMBER 21, 2013 ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN LONG ISLAND RAIL ROAD COMPANY AND BROTHERHOOD OF RAILROAD SIGNALMEN; INDEPENDENT RAILWAY SUPERVISORS ASSOCIATION INTERNATIONAL; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; NATIONAL CONFERENCE OF FIREMEN & OILERS/SERVICE EMPLOYEES INTERNATIONAL UNION; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION; AND INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS

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

(National Mediation Board Case Nos. A-13577, A-13578, A-13579, A-13583, A-13584, A-13613, A-13614, A-13615, A-13616, A-13621, A-13622, A-13623, A-13624, A-13625, A-13701)

WASHINGTON, D.C.
December 21, 2013

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

Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order dated November 21, 2013, you established an Emergency Board, effective 12:01 a.m., Eastern Standard Time, November 22, 2013, to investigate a dispute between the Long Island Rail Road Company, and certain of its employees represented by certain labor organizations (collectively, the Organizations): Brotherhood of Railroad Signalmen; Independent Railway Supervisors Association International, International Association of Machinists and Aerospace Workers; National Conference of Firemen & Oilers/Service Employees International Union; International Brotherhood of Electrical Workers; Transportation Communications International Union; and International Association of Sheet Metal, Air, Rail and Transportation Workers.

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

The Board acknowledges with thanks the assistance of Maria-Kate Dowling, Esq. and Norman L. Graber, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

Respectfully submitted,

Ira F. Jaffe, Chairman

Roberta Golick, Member

Arnold M. Zack, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 244 ("PEB" or "Board") was established by the President pursuant to Section 9a of the Railway Labor Act ("RLA"), as amended, 45 U.S.C. §151 *et seq.* including §159a, and by Executive Order dated November 21, 2013. The Board was created to investigate and report its findings and recommendations regarding a dispute between the Long Island Rail Road Company ("LIRR" or "Carrier") and certain of its employees represented by several unions. A copy of the Executive Order is attached as Appendix A.

The President appointed Ira F. Jaffe, Esq., of Potomac, Maryland, as Chairman of the Board, and Roberta Golick, Esq., of Sudbury, Massachusetts, and Arnold M. Zack, Esq., of Boston, Massachusetts, as Members. The National Mediation Board ("NMB") designated Maria-Kate Dowling, Esq. and Norman L. Graber, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

Long Island Rail Road

The LIRR is the largest commuter railroad and the oldest railroad in the country, having been chartered in 1834. In 1966, the State of New York acquired all capital stock of the LIRR from the Pennsylvania Railroad. In 1980, the Metropolitan Transportation Authority ("MTA") converted the LIRR to a public benefit subsidiary pursuant to the New York State Public Authorities Law. The LIRR provides commuter rail service in Nassau and Suffolk counties and in New York City. Each weekday, the LIRR carries on average more than 285,000 passengers on 1,165 trains. The LIRR operates 594 miles of track covering eleven rail lines and 124 rail stations. It serves three main New York City terminals at Pennsylvania Station (Manhattan),

Flatbush Avenue (Brooklyn), and Hunterspoint (Long Island City), through a major hub at Jamaica (Queens) to the easternmost tip of Long Island.

In addition to the LIRR, the subsidiary and affiliate agencies governed by and funded through MTA are as follows: Metro-North Commuter Railroad Company ("MNCR" or "Metro-North"), New York City Transit ("NYCT"), Triborough Bridge and Tunnel Authority ("TBTA"), MTA Bus Company ("MTA Bus"), Staten Island Rapid Transit Operating Authority ("SIRTOA"), and MTA Capital Construction Company ("MTACCC"). Approximately half of MTA's operating revenues come from customer fares. The other half comes from taxes and fees. The MTA is governed by a 17 member Board ("MTA Board"). The MTA Board's approval is required for the LIRR to enter into any labor agreement.

The LIRR's 2013 total operating budget was $1.7 billion with a total ridership of over 83 million passengers. The LIRR employs approximately 6,400 employees, approximately 5,850 of whom are union-represented.

The Labor Organizations

Brotherhood of Railroad Signalmen ("BRS") represents Signal and Communication Workers; Independent Railway Supervisors Association International ("IRSA") represents Gang Foremen; International Association of Machinists and Aerospace Workers ("IAMAW") represents Machinists; International Brotherhood of Electrical Workers ("IBEW") represents Electrical Workers; National Conference of Firemen & Oilers/Service Employees International Union ("NCFO") represents Laborers; Transportation Communications International Union ("TCU") represents Clerks, Dispatchers, Block Operators, and "Exception 5" Employees; and International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART")

represents Trainmen, Maintenance of Way Employees, Maintenance of Way Supervisors, Carmen, Special Service Attendants, and Sheet Metal Workers.[1]

Since the outset of bargaining, BRS, IRSA, IAMAW, and IBEW have bargained as a coalition known as the LIRR Bargaining Coalition. More recently, NCFO, TCU, and SMART also formed a coalition. The seven Organizations presented a unified case to the PEB and will be referred to collectively hereinafter as the "Organizations." The Organizations represent approximately 5,500 LIRR employees.

III. HISTORY OF THE DISPUTE

On May 28, 2010, pursuant to Section 6 of the RLA, the LIRR served on the Organizations formal notices for changes in current rates of pay, rules, and working conditions. The parties were unable to resolve the issues in dispute through direct negotiations. Applications were filed with the NMB by the BRS, IRSA, IAM, NCFO, and IBEW in September and October 2010, by TCU and UTU in August and September 2011, and by SMART in March 2013.

Following the applications for mediation, representatives of all parties worked with the NMB mediators and with Board Members of the NMB in an effort to reach agreements. Various proposals for settlement were discussed, considered, and rejected. On October 18, 2013, the NMB, in accordance with Section 5, First, of the RLA, urged the LIRR and the Organizations to enter into agreements to submit their collective bargaining disputes to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). On October 18, 21, and 22, 2013, the

[1] SMART is the organization that resulted from the merger between the United Transportation Union ("UTU") and the Sheet Metal Workers' International Association ("SMWIA"). On March 5, 2013, SMART notified the NMB that the effective date of the merger had been amended according to the terms of the SMWIA-UTU Merger Agreement. The amended effective date is January 1, 2013. UTU filed applications for mediation covering five crafts or classes before the effective date of the merger and SMART filed an application for mediation covering one craft or class after the effective date of the merger. Based on the merger, the NMB addressed its releases from mediation for all six crafts or classes to SMART.

Organizations individually declined the NMB's proffer of arbitration, and on October 22, 2013, the LIRR also declined the NMB's proffer of arbitration.

On October 22, 2013, the NMB served notices that its services had been terminated under the provisions of Section 5, First, of the RLA. Accordingly, self-help became available at 12:01 a.m., Eastern Standard Time, on Friday, November 22, 2013.

On November 18, 2013, in accordance with Section 9a of the RLA, the LIRR requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President to establish an Emergency Board. Thereafter, on November 21, 2013, the President created an Emergency Board, effective November 22, 2013.

IV. ACTIVITIES OF THE EMERGENCY BOARD

The Board held an organizational meeting by conference call on November 22, 2013 and issued an organizational letter on November 25, 2013, in which the ground rules for the Board's procedures were set forth. All parties were requested to provide the Board with pre-hearing submissions on November 29, 2013. Hearings on the issues in dispute were held on December 2, 3, 4, 5, and 6, 2013, in New York City. All parties were represented by counsel and had a full and fair opportunity to present oral and documentary evidence and argument.

Thereafter, the Chair met informally with the Parties in New York City in an attempt to facilitate a settlement of the dispute.

The Board met in a series of telephonic Executive Sessions to reach consensus regarding our Recommendations and to finalize this Report.

V. DISCUSSION AND RECOMMENDATIONS

Issues in Dispute

The prior Agreements between the Carrier and the Organizations became amendable effective June 16, 2010. This impasse concerns the following terms of the successor Agreements: 1) general wage increases; 2) certification pay; 3) pensions; 4) health insurance contributions; 5) retiree health benefits; 6) work rules; and 7) term.

Proposals of the Organizations

The Organizations seek six-year Agreements that have identical general wage increases ("GWIs") in the following amounts, effective as of the following dates:

Effective Date	General Wage Increase
June 16, 2010	3.0%
June 16, 2011	3.0%
June 16, 2012	3.0%
June 16, 2013	3.0%
June 16, 2014	3.0%
June 16, 2015	3.5%

The total nominal (i.e., non-compounded) GWIs are 18.5%, representing compound GWIs of 19.98%, prior to considering the cost impact of the other matters in dispute.

The Organizations also seek to "monetize" certification pay they claim for conductors and to extend that pay to all employees. To accomplish this, the Organizations propose a "certification pay" general wage adjustment in the amount of 3.45% payable to all employees,

effective as of June 16, 2014.[2] The Organizations rely upon the settlements reached following PEB 243 between the freight railroads and the labor organizations representing their employees to extend the equivalent of certification pay to all members of all of the Organizations.

If one were to include the effect of certification pay and treat it as economically equivalent to a GWI of equal amount on the same date, the total nominal GWIs sought by the Organizations over the proposed six-year contract period would increase to 21.95% and the compounded GWI change would be 24.12%.

The Organizations seek receipt of back pay within fifteen days of the date of final approval of the Agreements by the MTA Board.

The Organizations urge that no changes be made with respect to pension benefits or the employee contributions that are currently required to help fund those plans. Thus, under the Organizations' Proposal, those employee contributions that were fixed at ten years' duration and are scheduled to end beginning in January 2014, would lapse on the basis of the existing schedule, effectively providing additional take-home pay beginning as of January 2014. No changes would be made to the existing benefit structure of the pension plans.

The Organizations seek to maintain the present provisions regarding the provision of retiree health benefits without retiree contribution.

With respect to health insurance, the Organizations propose no change to the existing provisions for individuals who are hired by the Carrier prior to ratification. At present, the Carrier pays for 100% of the cost of health benefit coverage. With respect to those employees hired after ratification, the Organizations propose that those employees be required to contribute

[2] The 3.45% was calculated, based upon the monetized equivalent of a $10 daily certification payment if one were to use as a base the current (2009) straight time hourly rate of conductors ($36.245) and assume that only eight hours were worked per day. Use of the higher wage rates in effect as of June 15, 2014 would result in a lower percentage of pay figure if one were to monetize the conductor certification pay.

an amount equal to 1.5% of 40 hours of straight time pay per week towards the overall premium cost of health insurance, with the contribution made pursuant to an Internal Revenue Code Section 125 plan. The 1.5% of pay up to 40 hours per week is the same employee contribution towards health benefit coverage required of all employees under the NYCT collective bargaining agreement with Transport Workers Union Local 100.

The Organizations are opposed to the Carrier's proposal that any wage increases during the contract period be funded by way of changes to or abandonment of various work rules or contractual provisions that have economic impact.

The Organizations propose a term of six years (72 months).

Proposals of the Carrier

The Carrier seeks five-year Agreements that have identical GWIs in the following amounts, effective as of the following dates:

Effective Date	General Wage Increase
June 16, 2010	0.0%
June 16, 2011	0.0%
June 16, 2012	0.0%
June 16, 2013	2.0%
June 16, 2014	2.0%

The total nominal GWIs are 4.0%, representing compound GWIs of 4.04%, prior to consideration of the proposed increases in employee contributions towards pensions and towards health benefit coverage.[3]

The Carrier supports certification pay for conductors, but proposes that the cost of such pay be fully funded by work rules or other contractual changes for the SMART conductors. The Carrier is opposed to monetizing and extending certification pay to other employee groups.

[3] The proposed new and increased pension and health benefit contributions exceed the 4.0% GWIs being proposed by the Carrier.

The Carrier also seeks that, effective upon full and final ratification, the following changes be implemented with respect to the pension plans: 1) employees begin to contribute 5% of all pensionable earnings; this represents an increase of one or two percent for most employees over current levels and would represent, beginning in January 2014, a full 5% increase for many employees whose current ten-year contribution obligations would end; and 2) the LIRR and MTA Defined Benefit Plans be amended to provide a new 100% offset from normal service retirement benefits for any Railroad Retirement Tax Act ("RRTA") disability pension benefits received, whether or not the employee first became eligible to receive those benefits at some date after the employee's normal service retirement date under the LIRR or MTA DB Plan. It proposes no change be made to the existing offset provisions for RRTA benefits, including RRTA disability retirement benefits, which apply in cases of individuals who obtain disability retirement benefits from the LIRR or MTA DB Plans.

With respect to health benefit coverage, the Carrier proposes that, effective June 16, 2013, all active employees and pre-Medicare retirees be required to pay 12% of their premiums as a condition of continuing to receive health insurance. Effective June 16, 2014, the Carrier proposes that this amount be increased to 14% of premiums.

In the area of work rules and other contractual changes, the Carrier provided a list of various changes that could be utilized to provide wage increases in the "net zero" increase years.[4] The Carrier noted that it was willing to provide wage increases during the first three years of the Agreement so long as the cost amounted to "net zero" for those years.

[4] The "net zero" concept is one in which the starting point is zero GWI, but one can fund GWIs from agreements to eliminate or modify various work rules or other contractual provisions of economic value. This is distinguished from what the Parties refer to as "hard zero" agreements, which do not provide for the ability to create a GWI from work rules or other contractual modifications.

The potential "work rule" changes identified by the Carrier were: 1) eliminate shift differential payments; 2) eliminate double-time pay for certain overtime and replace it with overtime at the rate of time and one-half; 3) eliminate meal allowance penalty payments; 4) reduce paid leave time by two days (reduce personal leave by one day and vacation leave by one day); 5) eliminate pay for the first day of each sick leave occurrence; 6) change the process by which overtime is offered from a seniority-based system to one that equalizes overtime among eligible employees, where eligibility criteria will include both attendance in the workweek and overtime worked; 7) create split shifts for 20% of the collector assignments within the Conductor job title (excluding a proposed new "scoot" service that could utilize split shifts without limitation); 8) create new lower wage rates, different pension coverage, and various new work rules for "scoot" service between lines – i.e., from Jamaica to Brooklyn and from Mineola to Oyster Bay and Greenport; 9) eliminate mandatory staffing requirements at Richmond Hill (Rule 24); 10) change the calculation of vacation payments to Conductors and Assistant Conductors from the existing formula of 1/52 of the previous year's earnings equaling one week of vacation pay to a formula based upon current crew book earnings for bid regular employees and average crew book earnings for those on extra lists; 11) eliminate penalty payments to Conductors who work in multiple classes of service in a single tour of duty; and 12) remove restrictions on the reassignment of Trackworkers who are not fully engaged in the winter months to work as Helpers assisting with the maintenance work being performed by the Bridges and Buildings workforce.

Historical Comparators

The Parties agreed that there are no tandem pay relationships that bear upon the establishment of wage and benefit rates at the Carrier. No other entity's wage and benefit

bargain has historically dictated the wage and benefit bargains negotiated between the Organizations and the Carrier.

Nor does the record reflect a pattern whereby the amount and timing of pay adjustments elsewhere were followed closely at the Carrier or vice-versa. The record does indicate, however, and the Parties agreed that wage and benefit adjustments bargained at other agencies within the MTA have been given significant weight in the bargaining at the Carrier in recent years. While there has been some variation from year to year, the record evidence also established a correlation between wage and benefit adjustments for similar job titles at other commuter rail carriers and, to a lesser degree at Amtrak, and wage and benefit adjustments at the LIRR.

These relationships are reflected in both an economic analysis of the bargains of the Parties and those of other MTA entities and other commuter rail carriers, but also in the discussion of these items in numerous PEBs over the past 30 years in disputes involving the LIRR and Metro-North and various organizations.

The economic comparisons reveal that the Long Island Rail Road employees are and historically have been the highest compensated in the industry and that the amount of the differential by which their wages and benefits have exceeded those of other commuter rail carriers has shrunk slightly in recent years. The Organizations argue from that shrinkage that some additional "make-up" GWI is due. The Carrier argues from that shrinkage that there is a recognition that the differential is either too large or should not exist and that this would support a recommendation of smaller GWIs.

Wage Comparators

The Parties referenced a number of different sources as indicators in support of their respective wage proposals.

Internal Comparators within the MTA

Internal comparisons within the MTA were cited by both Parties. The most recent agreements between the MTA and TWU Local 100 covering the subway employees were the result of a Public Employment Relations Board ("PERB") arbitration award under the New York State Taylor Law issued by a Board of Arbitration chaired by Neutral Arbitrator John E. Zuccotti. The Zuccotti Award, which addressed the TWU Local 100 bargaining units with the NYCT, the Manhattan and Bronx Surface Transit Operating Authority, and MTA Bus, was issued on August 11, 2009, and provided for increases of 2.0% in wages, effective April 16, 2009, October 16, 2009, April 16, 2010, October 16, 2010, and a final wage increase of 3.0%, effective January 16, 2011. The NYCT-TWU Local 100 Agreement was amendable January 16, 2009 and had a three year term. The Zuccotti Award continued the existing employee contribution towards health insurance of 1.5% of pay, which had been in effect since 2005, but capped that contribution at 40 hours a week, effective August 15, 2009. The MTA appealed the Zuccotti Award. The Award was affirmed by the Supreme Court, the Appellate Division, and finally by the Court of Appeals.

With one exception, the Zuccotti Award was followed by the PERB interest arbitration panels that addressed contract disputes between MTA affiliates and other organizations. On December 13, 2011, a Board of Arbitration chaired by Neutral Arbitrator Stanley Aiges issued an award involving the Metropolitan Suburban Bus Authority and ATU Local 252 that followed the Zuccotti Award for the time until the work in question was scheduled to be transferred to another employer. On May 12, 2012, a Board of Arbitration chaired by Neutral Arbitrator George Nicolau issued an award involving the NYCT and ATU Locals 1056 and 726 that followed the Zuccotti Award. The Nicolau Board rejected MTA's ability to pay argument, describing it as a

lack of desire to pay, rather than an inability to pay, and rejected an MTA request for three years of net zero. The one exception, a July 27, 2012 award issued by a Board of Arbitration chaired by Neutral Arbitrator Howard C. Edelman involving SIRTOA and UTU Local 1440, directed a three and one-half year collective bargaining agreement (January 1, 2007 through June 15, 2010) that mirrored the terms of the 2007-10 LIRR Agreements. The Edelman Board declined to recommend terms beyond June 15, 2010, based upon the fact that there was no LIRR agreement in place beyond that date and the Board's findings that the LIRR agreement was a more appropriate comparator for the SIRTOA bargaining unit than the NYCT arbitration awards.

The Organizations point to the Zuccotti Award as supportive of their proposal, at least through 2011. They reference specifically the 4% increase in wages in 2010 (year two) and the 3% in wages in 2011 (year three), as well as the overall value of the agreement, which the Organizations calculate at 3.6% per year. They note that the wage increases negotiated between the MTA and TWU Local 100 have traditionally been given significant weight by the Parties in their bargaining.

The Carrier opposes giving the Zuccotti Award significant weight for many reasons. First, it asserts that the more appropriate comparator should be the agreements reached between the State of New York and two of its large unions – the Civil Service Employees Association ("CSEA") and the Public Employees Federation ("PEF"), representing scientific, technical, and professional employees. Second, if the Zuccotti Award is to be considered by the Board in this case, then the Carrier urges that reliance be placed only on those increases that took place during the amendable period of the Agreements in this case – i.e., the 2% increase that was effective in October 2010 and the 3% increase that was effective in January 2011. Third, the Carrier notes that the MTA has opposed the extension of the Zuccotti Award to other MTA units. When a

tentative agreement was reached at Metro-North with the Association of Commuter Rail Employees ("ACRE"), the terms did not mirror in any respect the Zuccotti Award. Fourth, to the extent that the MTA NYCT and related bargaining units are viewed as comparators, the Carrier urges that consideration also be given to the Tier VI/Tier 6 pension changes that were enacted by legislation and made effective in 2012[5]. While pensions are bargained at the Carrier, rather than being legislated as is the case at the State, the Carrier urged that the cost of those pension reductions be factored into the terms of the recommended agreements in this case. Fifth, the Carrier asserts that the Zuccotti Award is an inappropriate comparator because it failed, in the Carrier's view, to properly reflect the dire economic circumstances that the MTA confronted in 2009 (when the effects of its significantly diminished tax base as well as decreased ridership and losses in its pension plan investments combined to create significant reductions in budgeted revenues and some increases in costs). Sixth, the Carrier contends that the employees of the MTA should "share" in the sacrifices needed to return the MTA to a state of financial stability and health. The MTA pointed to the fact that the State, in 2009, created a variety of new taxes and other revenue sources to provide a more stable and broader based stream of revenue to fund the MTA's operations, including those of the Carrier.[6] The Carrier asserted that the taxpayers and riders also had contributed towards those organizational goals and that it was now

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[5] Tier VI changes to the New York State Employee Retirement System were made with respect to individuals who first became state or local government employees after April 1, 2012. Tier 6 changes were made to the New York City Employees Retirement System for employees who first became a NYCERS member on or after April 1, 2012. These changes create a lower tier of benefits and require increased member contributions (the amounts required range from 3% to 6% depending upon annual wages earned during the plan year), permits transit authority employees to retire based upon 25 years of allowable transit authority service and attainment of age 55, adopts a lower pension multiplier formula, limits the amount of overtime that may be credited for purposes of calculating final average salary, excludes certain types of earnings from the calculation of FAS, and makes several changes to death benefits and disability retirement benefits. Many of these features were negotiated by the MTA into the MTA Defined Benefit Plan in the last round of bargaining.

[6] These included a new Payroll Mobility Tax, as well as new fees and taxes known as MTA Aid that are associated with automobile registrations, licenses, taxicab fees, and taxes on rental vehicles. At the same time, MTA embarked on severe cost cutting measures to permit it to meet its statutory obligation to balance its budgets annually.

appropriate for the employees represented by the Organizations to do so by accepting three years of net zero GWIs, increases in pension contributions and health insurance contributions, cuts in pension and retiree health benefits, and modest wage increases in the final two years of the Agreements. According to the Carrier, Agreements that are patterned upon the Zuccotti Award would fail to include sufficient "shared sacrifice" by the employees of the Carrier to be a fair and appropriate settlement.

In addition to the PERB arbitration awards discussed above, the Carrier urged that weight be afforded to two other situations internal to the MTA. The first relates to the unrepresented management employees at both headquarters and at the various MTA agencies, including the Carrier. With respect to this group of employees, the record established that: 1) for the past five years, no across-the-board wage increases were scheduled for this group; 2) there have, however, been ad hoc increases, including Promotions in Place in the employees' same job title and promotional activity between job titles, that have increased the pay for a substantial number of management personnel;[7] 3) there were reductions in the size of the unrepresented workforce, both at MTA headquarters and at each of the operational components; and 4) there is no indication of any historical linkage between the pay levels or pay adjustments made to management salaries and those negotiated by the Organizations. The Carrier cited this group largely in connection with its argument that each of the various interested groups at the MTA must appropriately shoulder the sacrifices needed to enable the MTA to fulfill its mission.

Finally, the Carrier referenced a Tentative Agreement ("TA") reached between Metro-North and ACRE in January 2013 for a six-year Agreement (July 16, 2010 through July 15, 2016). The TA was rejected by a significant margin in each of a series of ratification votes. The

[7] The record evidence did not allow a precise calculation to be made concerning the percentage pay increases provided to unrepresented personnel at the LIRR or any of the other MTA agencies during that period.

relevant terms of the rejected TA included the following: 1) GWIs of 0% (2010), 0% (2011), 3% (2012), 2% (2013), 2% (2014) and 3% (2015), all GWIs to be effective on the first day of the contract years; thus, there were nominal GWIs of 10% (average annual increase on a non-compounded basis of 1.7%); 2) the introduction of employee contributions towards health insurance, beginning at 1% of gross straight time wages calculated based upon a maximum of 40 hours a week times the base hourly rate, effective July 16, 2013, and increasing to 2%, effective July 16, 2014; 3) the imposition of a new 10% premium contribution for pre-Medicare eligible retiree health benefits as of mid-2013; 4) modifications to the pension plan to provide for increased contributions from employees and changes in the retirement formula and eligibility age and increased offsets in the case of employees receiving RRTA disability pension benefits; 5) certification allowances and productivity allowances for conductors; 6) lower entry rates for the conductor training program; and 7) a number of other work rule changes. The costs associated with those pension and rules changes were not set forth in the record. Finally, the TA included a side letter that provided that, in the event that the value of a negotiated settlement with TWU Local 100 during the current round of bargaining with the MTA exceeded the value of the TA, supplemental meetings would take place to negotiate economic terms to remedy the disparity between the two agreements.

The Agreements between the State of New York and CSEA and PEF

The Carrier referenced the five-year agreement (Fiscal Years 2011-12 through Fiscal Year 2015-16) between the State of New York and CSEA which provided for, among other things: 1) three years of no general wage increase (although step increases continued to be provided and "retention payments" of $1,000 were payable in the third year); 2) 2% general wage increases for Fiscal Years 2014-15 and 2015-16, with continued step increases being

provided; 3) increased employee contributions to health care resulting in employees Grade 10 and above paying 31% of premium cost for family coverage and 16% for individual coverage; employees Grade 9 and below had lower increases and paid overall lower contributions towards health care coverage; 4) provisions for mandatory deficit reduction leave (i.e., unpaid time off) with employees repaid the value of the four days of mandatory deficit reduction leave for Fiscal Year 2012-13 in equal installments starting at the end of the contract term; and 5) broad protections against layoffs. There was no dispute that this five-year agreement was reached in the context of proposed major reductions in force for CSEA unit members. The CSEA Agreement was ratified in August 2011, with an effective date of April 2, 2011. The proposed layoffs were rescinded upon ratification.

The compensation terms of the PEF agreement were described as being similar.

Other Commuter Rail Settlements

Information was introduced regarding the wage and benefit provisions of a number of other commuter rail settlements. While all of that information was carefully reviewed by the Board, the following summaries of their relevant terms are as follows:

Southeastern Pennsylvania Transportation Authority (SEPTA Commuter Rail)

July 1, 2009 through June 30, 2014 (five-year term)

No wage increases in the first two years, but a signing bonus of $1,250 for all bargaining unit members upon execution of the agreement; 12.4% nominal increases over the term of the contract (average annual non-compound increase of 2.5% over term); split increase in 2012 and increases of 3.5% in 2012 and 2013 and 3.0% in 2014. The amount of employee contribution towards health insurance is 1% of straight time pay (40 hours a week).

Massachusetts Bay Commuter Railroad (MBCR)

July 1, 2008 through June 30, 2013 (five-year term)

No wage increase in the first year, but a signing bonus of $2,000 for all bargaining unit members upon execution of the agreement; then anniversary date (July 1st) increases of 2% (2009), 2% (2010), 2.5% (2011), 2.5% (2012) and 2.8% (2013) and mid-year increases of 1% (2012) and 2% (2013); agreement also provides for Safety Training Allowance and retained cost of living adjustment ("COLA") payments; total nominal increases of 14.8% (average annual non-compounded GWIs of 2.5%) plus bonus and training allowance and COLA for a total increase, net of health insurance contributions (which increased) of 3.4% per year (2.7% without the training allowance). The amount of employee contribution towards health insurance is $100 per month.

METRA (Chicago)

January 1, 2013 through December 31, 2018 (six-year term)

No wage increase for the first six months, but a lump sum signing bonus of $3,000 for all bargaining unit members upon execution of the agreement. Mid-year pay adjustments of 3.2% (2013), 2.5% (2014), 3.0% (2015), 3.0% (2016), 3.5% (2017) and 3.5% (2018), with total nominal increases of 18.7% (average 3.1% per year) and increased health insurance contributions (resulting in "net" increases over term of 16.7% compounded and 2.6% annually). The amount of employee contributions to health insurance is $100 per month.

Other Rail (Non-Commuter) Settlements

In addition to the commuter rail settlements noted above, the record contained summaries of the most recent collective bargaining agreements reached between the Class I freight railroads

and its organizations in national handling following PEB 243 and by Amtrak and a number of its organizations.

The Freight Rail settlements of late 2011 and early 2012 provided for a six year term (January 1, 2010 through December 31, 2015) and the following mid-year GWIs: 2.0% (2010) plus a 1% signing bonus; 2.5% (2011); 4.3% (2012); 3.0% (2013); 3.8% (2014); and 3.0% (2015); for total 18.6% nominal increases (3.1% per year) plus the bonus. Additionally, changes were made in the plan design of the health plan that increased employee cost sharing, while employee premiums were frozen at 15% of premiums/$200 per month maximum levels until mid-2016 and 15%/$230 per month maximum thereafter.

Negotiations between Amtrak and its organizations have not yet concluded. The average settlements, to date, as reported by the Organizations, provide for GWIs during the five-year term from January 1, 2010 through December 31, 2014 of: 1.5% (mid-year 2010); 3.0% (2011 – 1.5% on January 1 and the other 1.5% on July 1); 2.5% (2012 – 1.0% on January 1 and 1.5% on July 1); 3.0% (2013) (1.5% on January 1 and the other 1.5% on July 1); 2.5% (2014) (1.0% on January 1 and 1.5% on July 1); and 1.5% (January 1, 2015,the first date that the Agreement is amendable). The nominal increases over the 5-year period are 12.5% (2.5% per year) if one excludes the increase that occurs on the amendable date, or 14.0% (2.7% per year) if one includes that increase. The amount of employee contribution towards health insurance is set at 15% of per capita cost ($206.62 in 2013) subject to a maximum during the contract period of $230 per month.

Changes in the Cost of Living

The presentations focused upon a variety of measures regarding changes in the cost of living, as determined historically, presently, and in future projections. Without detailing the

various changes in the Consumer Price and Employment Cost Indices, it is sufficient for purposes of this Report to note that increases in wages during the last Agreement (2007-10) exceeded slightly changes in the CPI or ECI, resulting in some "real" wage growth; that projections for the future for the New York City area and nationally suggest increases annually in the cost of living at or about 2% (national figures at or slightly above 2% and New York City figures at or slightly below 2%); and that if one examines the period from June 2010 to date, the cost of living has increased at rates between 1.5% and 3% annually.

The Financial Condition of the MTA

The record contained significant budgetary and related information regarding the MTA as well as expert testimony from witnesses offered by the Carrier and the Organizations with respect to whether the MTA can afford to enter into Agreements that contain real wage increases during the first three years and subsequently. Although we have elected not to summarize that voluminous evidence in this Report, it should be noted that the entirety of that evidence has been carefully scrutinized and considered by the Board prior to making its recommendations in this matter.

It is sufficient, for purposes of this Report and Recommendations, to address three issues that arose from the record evidence regarding the financial condition of the MTA. First, the record evidence viewed as a whole established an ability on the part of the MTA to pay for the recommendations contained in this Report (whether limited to the employees of the Carrier or referenced in negotiations with other agencies within the MTA). The record evidence revealed multiple potential sources for funding the net wage increases recommended by this Report should the MTA be unable to do so wholly out of budgeted operating funds. At least as to future years, the MTA's Operating Budgets contain reserves for increases in wage costs reflective of

projected increases in the cost of living that should be largely, if not totally, sufficient to fund the recommended pay increases. At one point, the prior years' Operating Budgets contained similar reserves. The precise projections for cost of living increases were not identified in the record, but appear to be in the 2% range per year. Additionally, the record revealed that there were planned fare increases of 7.5% in 2015 and 7.5% in 2017, which the MTA has recently announced might be limited to only 4.0% in each of those two years based upon a number of circumstances, including whether the collective bargaining agreements with the organizations representing its employees at each of its various agencies contain three years of zero net wage increase. The recommendations made in this case already reflect our assessment of the historical economic environment, as well as the MTA's existing and projected future financial picture.

In addition to the significantly improved financial condition of the MTA, as compared to the period immediately preceding 2010, and in addition to the potential for reinstating the originally announced fare increases,[8] the record revealed that there are additional expenditures that are discretionary relative to significant Pay As You Go ("PAYGO") funding beginning in 2015 and going forward. Further, the MTA has the authority to utilize some or all of its budgeted general reserve monies to augment the costs that may exceed the budgeted cost of living "placeholder" wage costs, to borrow several billion additional dollars in the event that it is needed, and as a last resort to alter contributions to the MTA's various pension plans and alter its

[8] The MTA's exhibits suggest that the difference between a 4.0% fare increase and a 7.5% fare increase in 2015 is approximately $200 million and that figure is projected to increase further in 2016 and further in 2017 if a second such 7.5% increase occurs.

contributions towards Other Post-Employment Benefits ("OPEB").[9]

The Board is not suggesting that all of these potential sources of additional resources to fund collective bargaining agreements need be utilized and recognizes there may be a variety of consequences if some of these asset sources are utilized to fund wage increases. Nevertheless, it simply cannot be concluded that the MTA's current financial position is one in which it is unable to pay for wage adjustments that are otherwise warranted based upon the application of traditional collective bargaining and wage-setting principles, particularly where the net cost of the recommended GWIs is close to the budgeted amounts for wage increases set aside for wage increases.[10]

What follows next is a discussion of our view of a fair and appropriate recommendation for resolution of this dispute in light of the record as a whole.

The Board's Recommendations

General Wage Increases

After consideration of the relevant record evidence, including the evidence regarding the most recent PERB interest arbitration settlements at other MTA operations and the recent wage settlements at other relevant commuter rail properties, the Board recommends the following GWIs and term as a fair and reasonable basis for the Parties' Agreements:

[9] The MTA has a significant liability for OPEB, which consists largely of commitments relative to retiree health benefit coverage. The current estimated OPEB liability for the MTA is $17.8 billion. The MTA pays those costs on an ongoing basis and has begun modest funding of those projected liabilities. Not only is this prudent, but it demonstrates the type of discipline and responsibility that may well contribute towards the MTA's excellent bond rating status. Thus, while one would not ordinarily expect or recommend that these reserves be used for ongoing wage costs, the funds are without legal restriction as to their use.

[10] The Board recognizes that the testimony at the hearings suggested that the prior placeholder amounts in prior years may have been spent. MTA's decision to do so, however, cannot inhibit our responsibility to recommend the wage increases and health cost sharing otherwise shown to be fair and appropriate.

Effective Date	General Wage Increase	Compounded Increase
6/16/10	0.0%	
12/16/10	2.0%	2.00%
6/16/11	1.5%	3.53%
12/16/11	1.5%	5.08%
6/16/12	1.5%	6.66%
12/16/12	1.5%	8.26%
6/16/13	1.5%	9.88%
12/16/13	1.5%	11.53%
6/16/14	1.5%	13.20%
12/16/14	1.5%	14.90%
6/16/15	1.5%	16.63%
12/16/15	1.5%	18.37%

This proposal has a six-year term and would increase wages over its term by 17.0% uncompounded (an average uncompounded annual rate of increase of 2.83%). After compounding, the recommended settlement provides for a compounded rate of increase of 18.37% (2.85% per year) before adjustments for the increased health insurance contributions and before accounting for certification pay.

After taking into account the new contributions towards health insurance, the nominal increase will be 14.75% over six years (an average uncompounded annual rate of 2.46% per year). On a compounded basis, the increases in GWI after taking into account the effects of the new health insurance premiums will be at or about 15.78%[11] over the life of the Agreement for an average annual compound GWI increase of 2.47%.

[11] This amount may increase slightly depending upon the amount of overtime worked since the health insurance contribution is only calculated based upon 40 hours a week of straight time as opposed to all hours worked.

Effective Date	General Wage Increase After Considering Health Contributions	Compounded Increase
6/16/10	(1.0%)	
12/16/10	2.0%	1.00%
6/16/11	1.25%	2.26%
12/16/11	1.5%	3.80%
6/16/12	1.25%	5.09%
12/16/12	1.5%	6.67%
6/16/13	1.25%	8.00%
12/16/13	1.5%	9.62%
6/16/14	1.25%	10.99%
12/16/14	1.5%	12.66%
6/16/15	1.25%	14.07%
12/16/15	1.5%	15.78%

Historically, prior PEBs and the parties in bargaining have focused upon a number of comparators when determining the wage and benefit terms of successor collective bargaining agreements. Primary among the more recent historical comparators are internal negotiated settlements at other MTA agencies. Secondary among the more recent historical comparators are settlements at other large commuter railroads. Third, consideration has been given to both changes in the cost of living and to the financial condition of the MTA.

Neither the New York State settlements nor the treatment of unrepresented employees at the Carrier constitute appropriate comparators or justify being accorded significant weight in the determination of the wage and benefit package to be recommended in this case. The record contains no evidence of any historical linkage between the wage and benefit adjustments or the absolute levels of pay and benefits granted to New York State employees, on the one hand, and those represented by the Organizations at the Carrier, on the other. No reason was shown as to

why this Board should place significant weight upon a claimed comparator that the Parties have not used for that purpose in the past (when those settlements oftentimes included pay and benefits adjustments very different in kind from those bargained at the Carrier). Moreover, the New York State settlements were negotiated in a context of threatened major reductions in force – a situation not present in this case – and they did not provide for true zero wage increases that the Carrier here seeks since those collective bargaining agreements provided for continued step increases, promotions, bonus payments, and for pay at a later date for a number of the furlough days.[12] The reliance on the treatment of unrepresented MTA employees is similarly misplaced in our view. Those wages are not set by arms length collective bargaining. Additionally, the record evidence raises some questions as to whether wage enhancements were nonetheless occurring for substantial numbers of unrepresented employees in the form of promotions, including "promotions in place" (in which the employees stay in the same job title, but receive pay increases). Further, pay adjustments to unrepresented employees have not historically been deemed significant to the Parties in their negotiations or to PEBs in connection with the making of their recommendations as to fair and appropriate wage and benefit terms.

With respect to internal MTA settlements described above, which must perforce include not only any negotiated agreements (and there are none in the relevant time period), but also any binding PERB interest arbitration awards, the guidance in this case is highly instructive, but only with respect to a limited period of time. The only overlap between those Awards and the term of the Agreements in this case concerns part of 2010 and 2011. The Board's recommendation mirrors to a large extent these Awards for the portion of 2010 that post-dates the amendable date

[12] While the value of ongoing wage increases under these collective bargaining agreements was not clear, Thomas R. Roth testified that the per capita pay reported for FY 2010 was $64,907 and the per capita pay reported for FY 2013 was $68,600 – an increase of 5.7% over this three-year period, notwithstanding the scheduling of furlough days in FY 2013. The vast majority of Carrier-represented employees (on the order of 90%) are at the top rate in their respective progressions.

of the Agreements at issue here (for which a 2% GWI was awarded) and for 2011 (for which a 3% GWI was awarded). Appropriate modifications, however, have been made to reflect two matters. First, if the MTA wage and benefits are comparators, then the comparison must account for the fact that employees in the comparator bargaining units contribute 1.5% of pay (up to 40 hours) towards the cost of health insurance. To ignore that fact would result in an unbalanced comparison in our view. Second, for reasons noted later in connection with the discussion of the health insurance contribution, the Board deems it appropriate that the new contribution be phased in on a gradual basis and that contributions at higher levels than those contained in the prior MTA agreements be implemented as part of an overall adoption of more appropriate shared contribution levels. Our formulation of the 2% and 3% wage adjustments, in terms of their timing and the split nature of the 3% adjustment, afforded due weight to the interplay between the wage and benefit adjustments, as well as to the impact that our recommended package will have on the Carrier's back pay liability. Additionally, the recommendations for 2010 and 2011 are consistent with the changes in wage and benefits negotiated for those years at comparator passenger rail operations.

Focusing next on the period June 16, 2012 through June 15, 2016, the most appropriate references in formulating our recommendation are the commuter rail carriers and, to a lesser degree, the wages negotiated for Amtrak (and to an even lesser degree, the increases negotiated with the freight carriers). The nominal increases in annual pay for this group of agreements ranged from approximately 2.5% to 3.1%. The individual annual adjustments during these years were typically between 3.0% and 3.5%, but there were a few years in which the comparator agreements provided for wage adjustments as low as 2.5% or as high as 4.8%. Many of the wage adjustments were split and/or deferred to the midpoint of the years in question to lessen

their out of pocket dollar impact while giving the affected employees the full effect of those wage increases in the long-term. The Board views its recommendations, after taking into account the additional health insurance contributions that are an integral part of our recommendations, as consistent generally with the other rail settlements in the relevant time periods.

The Board recognizes that the Carrier's employees have historically been the highest paid commuter rail employees in the nation and, as noted earlier, that the differential that the Carrier's employees have enjoyed over the wages provided to other commuter rail operations has diminished in recent years. This change does not, in our view, provide a basis to recommend either an above market wage and benefit package that would restore the prior differential, or a below market wage and benefit package to further erode the differential over similar commuter rail carriers. The recommended package is, overall, one of modest net wage gain that is in line, albeit at or near the lower end of the comparator commuter rail settlements, and one that should maintain the current wage standing of the Carrier. Further, there are reasons that explain the historical fact that the Carrier's employees are the highest paid in the commuter rail industry, such as the high cost of living associated with living and working in the New York City metropolitan area and some of the unique job challenges attendant to commuter rail work on Long Island and New York City.

The evidence regarding the changes and proposed changes in the cost of living also suggests that the recommended wage and benefit adjustments are fair and appropriate. The recommended package provides for just modest growth in real wages. The Board views its recommended package as affordable by the MTA. The recommendations are not significantly in excess of the projected rate of inflation that the MTA apparently has included in its budget as a

placeholder until actual negotiated wage and benefit provisions are finalized. While there are always significant demands on the MTA budget in order for it to fulfill its important public service mission, we are persuaded that this "net" package is one that can be funded without impairing the ability of the MTA to provide safe, quality service or to appropriately complete its planned capital and maintenance projects. The MTA has acknowledged that its present financial situation is significantly improved from the situation that it faced in the 2008 and 2009 time period and that there are various revenue and funding options, including PAYGO beginning in 2015, the potential of implementing fare increases at or closer to the initially announced levels in 2015 and 2017, and utilizing flexibility in the making of pension and OPEB contributions, to allow implementation of the recommended package without significant adverse effect.

The Carrier's assertion that three "net zero" adjustments are appropriate based upon the concept of "shared sacrifice" is not supportable in our view. Passenger rail service in the United States is not a profitable endeavor. Contributions towards the operations come from a variety of sources in addition to fares. Fares, including any increases, are not typically viewed as "sacrifices" by the traveling public, but rather as the cost of obtaining the service (which actually costs the Carrier significantly more to provide than is recovered from the fare box). The variety of taxes used to help fund both the Carrier's operations and other MTA operations following the 2009 bailout are also a cost of ensuring that the rail and transit and bus services are provided to the public at what is deemed to be an affordable cost, and there are a myriad of economic and other benefits that flow from the provision by the MTA of these vital services to the public. It is not reasonable to expect employees, as the "price" of employment, to subsidize the underlying operation through acceptance of one or more years of substandard wage adjustments.[13] This is

[13] The Organizations persuasively demonstrated that, in any event, the proposed three years of net zeros represented a grossly disproportionate "contribution" from employees.

not to say that the MTA's financial picture is not relevant. It is. We have considered the record information in that regard in detail and are persuaded that our recommended wage and benefit adjustments are affordable given that picture.

The Carrier's reliance upon the strained economic environment is also misplaced. The effects of the recession of 2007, 2008, and 2009 are reflected in the GWIs of the comparator settlements themselves. Those reflected in the Zuccotti and other Awards take into consideration both the general economic climate and that affecting the MTA specifically. Those collective bargaining agreements negotiated elsewhere were not bargained in a vacuum. Rather, they reflect the joint consideration by those bargaining parties as to all relevant matters, including the strains resulting from the recession. Moreover, the current economic forecast with respect to the New York City metropolitan area is positive overall.

In sum, our wage recommendation is made in the context of the settlements applicable to other MTA agencies, the settlements negotiated at other commuter rail and non-commuter rail properties, the evidence regarding the cost of living, appropriate consideration of the MTA's finances, and appropriate consideration of general economic factors reflected in the present climate. We hope that our recommendation on compensation will lead to Agreements that can be ratified both by the membership of the Organizations and the MTA Board.

Certification Pay

With respect to certification pay, we recommend that, effective June 16, 2014, the Carrier pay $10 per full shift worked to conductors upon attainment of FRA certification. The rationale for granting certification pay is twofold. First, it has customarily been provided throughout the railroad industry following the recent adoption of certification requirements by the Federal Railroad Administration. Second, there are reasons that certification should result in increases in

pay. Conductors who are certified in accord with the requirements of the Rail Safety Improvement Act of 2008 will have received additional formal training and be subject to more stringent monitoring and performance standards, greater responsibilities, and potential adverse effects if the certification lapses or is revoked. In this regard, it is not dissimilar from the recommended grant of a certification allowance to Engineers in PEB 226 and PEB 227 involving Metro-North and a number of organizations.

We decline to recommend, as requested by the Organizations, that the equivalent of this certification pay be extended to all other employees who are not subject to similar new job requirements. The situation in this case is materially different from that which PEB 243 considered, and we thus adopt a different approach here. In PEB 243, the lead UTU Agreement that first provided certification pay for conductors extended analogous payments to non-conductor members represented by the UTU. The Report and Recommendations of the Board in PEB 243 found it appropriate to recommend a similar approach with respect to the members of the other organizations in that dispute. No similar basis was shown in this case to monetize and extend to non-certified employees the pay provided in recognition of the additional requirements associated with becoming and remaining certified. We decline to adopt the proposal to monetize the certification pay differential and include it as a part of the GWI for conductors. At present, it seems more appropriate to treat the differential as one of a fixed dollar amount per shift worked, rather than one to be incorporated into the base straight time wage rate.

Health Insurance Contributions

As noted earlier, for many years the represented employees of the LIRR have received generous health benefits without any required employee contributions towards the costs thereof.

There is a trend nationally, however, for employers to require employee contributions towards their health insurance. Relevant comparator employee groups are included in this trend.

Beginning in 2005, the NYCT employees represented by TWU Local 100 have paid 1.5% of compensation towards the cost of health insurance. The Zuccotti Award continued that obligation, but limited the employee contribution to a calculation of pay based upon 40 hours of straight time base pay each week. The settlements of the freight railroads following PEB 243, the settlements of Amtrak with its labor organizations, the settlements of relevant commuter rail operations (SEPTA, MBCR, METRA, and New Jersey Transit) provided for increases in employee contributions towards the cost of their health insurance benefits package. None of the comparators continues to provide health insurance at no cost to employees.

A number of other characteristics can be inferred from those negotiated settlements. First, all of the relevant commuter rail carriers, as well as the freight railroads and Amtrak, have provisions for employee premium cost sharing. The expense of providing those benefits in recent years, as well as changes reflected in collective bargaining agreements and in benefits provided by employers to unrepresented employees, has led to an almost universal sharing of those premium costs. Second, the amount of cost sharing, while less in the railroad industry than in many other areas, is growing with each collective bargaining agreement. Third, the employee contributions recommended in this Report are significantly lower than those presently required of employees of the freight railroads and Amtrak, but are comparable to those required at many of the relevant commuter rail carriers.

After careful consideration of the record, we recommend that health insurance contributions to offset the cost of health care premiums be made based upon a percentage of pay,

based upon a maximum of forty (40) hours per week times the base hourly rate, in the following amounts:

Effective Date	Health Insurance Contribution As a Percentage of Pay
6/16/10	1.00%
6/16/11	1.25%
6/16/12	1.50%
6/16/13	1.75%
6/16/14	2.00%
6/16/15	2.25%

Commencing the contributions as of June 16, 2010 will serve as a partial offset to back pay. We find this to be appropriate given the fact that the recommended wage increases are comparable to those provided for in the Zuccotti Award and the fact that the members of TWU Local 100 as well as the other MTA comparator groups and the comparator commuter rail groups all had negotiated premium cost sharing of even greater amounts as of that date.

Based upon an average straight time rate of pay for 2009 of $32.78 per hour for the bargaining unit (a figure utilized by the Organizations and not challenged by the Carrier), the average monthly employee contributions for health insurance required under this formula, after also applying the proposed general wage increases noted above, would be as follows:

Date	Contribution Rate	Wage Rate	Monthly Contributions
6/16/10	1.00%	$32.78	$56.82
12/16/10	1.00%	$33.44	$57.96
6/16/11	1.25%	$33.94	$73.54
12/16/11	1.25%	$34.45	$74.64
6/16/12	1.50%	$34.96	$90.90
12/16/12	1.50%	$35.49	$92.27
6/16/13	1.75%	$36.02	$109.26
12/16/13	1.75%	$36.56	$110.90
6/16/14	2.00%	$37.11	$128.65

12/16/14	2.00%	$37.66	$130.55
6/16/15	2.25%	$38.22	$149.05
12/16/15	2.25%	$38.98	$152.02

Based upon the current mix of single and family plan participants among active employees, the record indicates that the average annual premium for health insurance benefits for active bargaining unit employees for 2013 is approximately $15,374 per year, or $1,281.17 per month. Using the 2013 average employee contribution numbers set forth above, this would equate approximately to an employee contribution of 7.2% of premium for the period January 1, 2013 through June 15, 2013; 8.5% for the period June 16, 2013 through December 15, 2013; and 8.7% for the period December 16, 2013 through December 31, 2013. These numbers are projected to escalate as the amount of required employee contributions increases (due to the combination of the increased percentages of pay used to calculate the employee contributions and the increases in the amount of pay), but would be offset to some degree by the fact that the total health insurance premium rates are also expected to increase during the post-2013 period. If one projects the average premium cost to rise by 7% in each of 2014, 2015 and 2016, then average total monthly premiums will increase to $1,371 (2014), $1,467 (2015), and $1,569 (2016), and average employee contributions, expressed as a percentage of total premium contributions, would be approximately as follows: 9.5% (2014), 10.2% (2015), and 9.7% (2016).

This proposal will result in significant employee cost sharing for health insurance – but to a level similar to the arrangements negotiated at commuter rail and similar operations and far

less than those commonly found in both the public and private sectors generally[14] – and achieve those results gradually. As employee contribution obligations grow, they will occur in an environment in which wage rates also will have increased and in which pension contributions presently required will disappear for the vast majority of the represented employees presently employed by the Carrier. (The record reflects that, effective January 1, 2014, the present pension employee contribution requirement of 3% and 4% will end for approximately 70% of the employees represented by the Organizations.) The present internal inequity between NYCT-represented employees and LIRR-represented employees relative to contributing towards the cost of health insurance coverage will also be eliminated.

While one often sees health insurance employee contributions determined as a percentage of overall premiums, for several reasons the Board recommends that the employee contribution be set in the form of a percentage of pay up to 40 hours, rather than a percentage of health insurance premiums. First, we endorse the Organizations' expressed preference for a measure of employee health insurance premiums that required lower dollar contributions from the lower paid employees than from those who are more highly compensated. Second, that same percent of pay model for employee health insurance contributions is contained in the NYCT Agreements with TWU Local 100 and other organizations. Third, whether framed in terms of a percentage of pay or a percentage of employee contributions, what is most significant is the amount of overall employee contribution towards the cost of employer-provided health coverage. Fourth, the Organizations expressed concern about the potentially open-ended nature of employee

[14] According to the 2013 Annual Survey of Employer Health Benefits conducted by the Kaiser Family Foundation and Health Research and Education Trust, employee contributions towards total premium average 29% (single) and 28% (family) nationally and 31% (single) and 19% (family) in the Northeast. The same survey noted that employee contributions (in dollars) have increased 39% (single) and 36% (family) in the period 2008 to 2013. Total insurance costs are also higher in the Northeast than other areas of the country and contributions for higher wage workers are higher on average than those for lower wage workers.

contributions linked to premium costs when the Organizations have no direct control over the overall amount of premiums and do not bargain over the design of the plan. Thus, under this recommended approach, the risks regarding premium fluctuations remain largely with the Carrier.[15]

For these reasons, the Board recommends adoption of a health care premium cost-sharing model that is measured as a percentage of straight time wages up to 40 hours a week and that gradually phases in that obligation.

Retiree Health Coverage

The Carrier proposed that retirees who are not yet Medicare-eligible contribute towards the cost of their retiree health care by providing contributions, effective June 16, 2013, of 12% of the premium and, effective June 16, 2014, of 14% of the premium – the same proposal that it makes with respect to actively employed bargaining unit members. We decline to adopt this proposal.

The record does not contain precise costing information as to the amount of money that the Carrier projects will be saved annually if this proposal is incorporated as part of the successor Agreements. The information regarding the cost of providing retiree health benefits is not disaggregated for the Carrier, as opposed to the MTA as a whole. No other retiree group at the MTA, including the unrepresented group of employees for whom the MTA could make changes without a need for prior bargaining, has been subjected to premium cost sharing.

Our recommending for the first time premium contribution sharing for health insurance for active employees does not justify extending this obligation to the pool of retired employees.

[15] It should be noted that the proposal to have the employees in this matter contribute towards their health insurance coverage does not mean that they are paying for the benefits provided to other employee groups, including, specifically, the management employees at the Carrier or the retirees. Their contributions are fixed based upon wages regardless of the actual premiums or experience of the plan for a given year.

The contributions towards health care by active NYCT employees of the MTA has been in effect for some time without the need for extending those contribution requirements to the retiree group.

The record lacks justification for abandoning the longstanding practice of providing retirees with health care benefits without requiring a premium contribution. While the OPEB liabilities for the MTA as a whole, including that portion attributable to the former employees of the Carrier, may be large, the MTA has both budgeted sufficiently to pay for those amounts in full on an ongoing basis and to responsibly begin to fund those obligations. While we are persuaded that a change with respect to the funding of active employee health care is warranted and have not hesitated to recommend significant changes in that regard, we are not persuaded that the Carrier has demonstrated that a similar change is warranted with respect to the provision of retiree health care.

Pension Contributions

The Carrier's employees are covered by an overlay of pension programs. Together, those programs provide an integrated set of retirement benefits. For employees hired by the Carrier prior to 1988, retirement coverage is provided by a combination of Railroad Retirement Tax Act benefits ("RRTA") and the Long Island Rail Road Plan for Additional Pensions ("LIRR Plan"). Employee contributions must be made under the RRTA for both Tier I and Tier II benefits. Those statutory contributions for 2014 are 7.65% of pay for Tier I (6.2% of pay up to $117,000 for Tier I benefits and 1.45% for all pay without limit for Medicare) and 4.4% of pay up to $87,000 for Tier II benefits. In addition to those contributions, which for most employees total 12.05% of pay, employees who are participating in the LIRR Plan make additional contributions of 3% of earnings.

Employees hired after 1987 are covered by the MTA Defined Benefit Plan ("MTA Plan"). Employees covered by the MTA Plan who were hired after 1987, but on or before January 31, 2008, make employee contributions to the MTA Plan of 3% of earnings for 10 years from the date that contributions were first required by the MTA Plan (i.e., January 1, 2004 or their date of coverage, whichever is later). Employees covered by the MTA Plan who were hired after January 31, 2008, are required to make employee contributions to the MTA Plan of 4% of earnings for 10 years from the date that their contributions were first required to be made to the Plan. After that period of contributions, pursuant to the existing plan provisions, no further employee contributions are required. Approximately 70% of the employees here represented began making contributions effective January 1, 2004, and will no longer have a contribution obligation to the MTA Plan as of January 1, 2014.

Copies of the relevant plan documents and the Actuarial Valuations for 2010, 2011, and 2012 were introduced into evidence. They make clear that: 1) the LIRR Plan is far more expensive for MTA to fund each year than the portion of the MTA Plan attributable to service by LIRR employees; 2) the LIRR Plan, which was frozen in terms of preventing new employees from entering after 1987, is largely unfunded. While all of the reasons for this situation were not set forth in the record, it would appear that the underfunding is largely attributable to inadequate funding in prior years; the exacerbation of that prior underfunding as a result of the passage of time and the absence of growth in those "assets"; and 3) the MTA Plan is well funded despite the loss of significant assets in 2008. It has done well since that time and, although the record does not contain specific information concerning the upcoming 2013 Actuarial Valuation, it is likely that there will be significant gains in assets, both in market terms and actuarially, in 2013.

The larger financial problem for the MTA in connection with the provision of retirement benefits to represented LIRR employees relates to the continued funding obligations relative to the LIRR Plan; the great majority of present LIRR employees receive no benefits from the LIRR Plan. No valid basis was shown, in our view, to revisit the agreements reached regarding employee contributions to the MTA Plan that were bargained in recent years. As noted, that Plan is in excellent funding status. There is no proposal to change benefits and many of the Tier VI changes were incorporated into the design of the Plan through bargaining in 2008. The overall level of required employee contributions towards retirement remains higher under the RRTA than under Social Security. There is no valid reason to either increase the 3% contribution rate being paid by the small and rapidly shrinking number of active employees who are still participating in the LIRR Plan or to increase the previously agreed-upon 10-year contribution rates for other employees. It would be inequitable to require increased contributions from the participants to the MTA Plan to compensate for the underfunding of the LIRR Plan from which they obtain no benefits.

For these reasons, we decline to recommend a change in the amount of employee contributions to either the LIRR Plan or the MTA Plan.

Proposed Changes in Offsets for RRTA Disability Retirement Benefits

The Board declines to recommend adoption of the Carrier's proposed changes to the defined benefit pension plans covering LIRR employees to provide for new offsets from service pensions for RRTA disability retirement benefits. No cost information was provided regarding this proposed change, which appears to have been an outgrowth of the well-publicized charges of fraud in connection with disability retirement benefit claims involving both represented and unrepresented employees of the Carrier. While the Board understands the motivation for the

proposed change, we are unpersuaded that the proposed solution is reasonable or that it is an effective fraud-prevention measure.

The Carrier's claim that this is an inadvertent plan design defect is unpersuasive. No evidence was introduced to establish any error in the initial negotiation and drafting of these plan documents. (In fact, the offset provisions of the LIRR Retirement Plan were the subject of considerable discussion in PEB 223 and the Board declined to recommend any changes to those provisions. Review of the language of that Plan suggests further that additional changes were made after PEB 223 that did not include the change requested by the Carrier in this matter.) The existing offset provisions are detailed and have been in place for a significant period without any showing that they are unreasonable or led to improper results in terms of applicant behavior.

Accordingly, the Board declines to recommend adoption of the Carrier's proposed change to the offset provisions of the service retirement provisions of its defined benefit plans.

Proposed Work Rules Changes

The Carrier has proposed a number of work rule changes to be monetized and converted into wage increases. The Board declines to recommend any of those proposed work rule changes for adoption. There are a number of both general and rule-specific reasons for this.

Starting first with the general reasons, no persuasive basis was shown to eliminate and monetize these work rules. They were cited as a means of providing some GWIs without any wage cost to the Carrier. But to the extent that the Carrier's proposals are intended to provide value to the affected Organizations in the same amounts as the monetary value of the rule changes in question, they will not translate to a uniform GWI for the Organizations. This is undesirable and inconsistent with the stated overall goal of all Parties to negotiate uniform GWIs. Moreover, such an approach would do nothing to eliminate the intra-craft inequities

resulting from changing work rules that benefit certain individuals in different ways and substituting for their elimination a uniform GWI in their place.

One example should suffice. The Carrier proposes elimination of shift differential pay. According to the Carrier's costing of that benefit, the annual cost of shift differential payments was slightly over $5.0 million, which was approximately equivalent in value to a 0.85% GWI. Shift differential payments, however, are provided in different amounts to different crafts and classes of employees. The 634 IBEW members received $705,300 in shift differential pay, whereas the 210 IRSA members received $454,600 in shift differential pay. If the shift differential payments were monetized and provided to all of the Organizations equally in the form of a GWI, then the IRSA members would be giving up more creditable pay than the IBEW members. The Car Repairmen represented by the UTU receive $1,300,000 in shift differential pay and would be contributing towards a GWI differently than either the IBEW or IRSA group on a per capita basis. To complicate matters further, not all of the employees in the same job title may qualify for or work equal portions of shifts that qualify for shift differential payments. Thus, any elimination of shift differential payments and monetization of those payments to produce a GWI equivalent, even if done differently on an Organization by Organization basis, would produce internal equity by producing "winners" and "losers" and creating a situation where some Organizations received greater GWIs than others – an outcome that would deviate from all Parties' bargaining objectives in this case and from prior negotiating history at the Carrier. On a more fundamental level, the intent of a shift differential to compensate for the inconvenience of working odd hours would be thwarted if the funds for that differential were spread over all employees in that classification, benefiting those working preferred hours and disadvantaging those seeking additional compensation for working less acceptable shifts.

No credible reason was shown to disrupt the previously negotiated contractual provisions and practices contained in the Carrier's "work rules" proposals in order to redistribute those annual wage expenditures in a different form to different employees.

Turning to the specific, the Board finds that the Carrier has not established persuasive grounds for us to recommend adoption of any of the work rule changes. No grounds were shown to justify eliminating shift differential payments, the practice and contractual language regarding the payment of double time overtime, meal allowance penalty payments (which induce providing timely promised meal periods), reduced paid leave time (personal leave and vacation days), or payment for the first day of each sick leave occurrence. To the extent that sick leave is being abused, there are other ways to control that situation. The proposal to change the manner in which overtime is distributed was not shown to be necessary or appropriate. If the Carrier is concerned about the effects of overtime on pension benefits, there are plan provisions negotiated and in place that limit the impact of overtime on pension benefit amounts. To the extent that those provisions are not adequately effective, consideration should be given to negotiating modifications to those provisions rather than changing the role of seniority in the assignment of overtime.

Nor did the Carrier establish persuasive grounds to recommend adoption in this proceeding of the SMART Conductor-specific work rule changes, including its proposal for split shifts; the creation of new wage rates, benefits, job duties, schedules, and other contractual provisions applicable to scoot service; elimination of Rule 24 (a proposal made to PEB 223, which recommended against its adoption); changing the method by which vacation pay is calculated so that it would no longer include overtime (including overtime regularly and routinely worked); eliminating class of service penalty payments (also discussed and not

recommended by PEB 223); and cross-utilization of Trackworkers and Mechanics in the winter months. These proposals each have a history and require far more intensive discussion between the Parties and a fuller opportunity for analysis before concluding that these bargained for provisions should be modified or abandoned. The solution to any problems underlying the Carrier's proposal may be better achieved by some negotiated modification short of total elimination of the particular work rules or contract provisions in question. While the Organizations oppose the proposed elimination of these work rules and monetization of their values in this process, they indicated that they would not be opposed to a recommendation that each Organization negotiate with the Carrier over any mutually identified rule changes and that the respective Organization(s) receive appropriate value for any agreed-upon changes. The Board finds that this comports with the historical manner in which rule changes have been addressed on the property and generally in the industry. We recommend a continuation of that approach in this case.

Term

We recommend a six-year term proposed by the Organizations, rather than the five-year term proposed by the Carrier. Both five and six-year terms are common among recent commuter rail settlements. There is no evidence that internal MTA settlements have followed a pattern as to their duration. A six-year term will provide a longer period of budgetary certainty and also provide a more reasonable period of time for implementation before commencement of bargaining for successor Agreements.

VI. SUMMARY OF RECOMMENDATIONS

General Wage Increases

December 16, 2010: 2.0%

June 16, 2011: 1.5%

December 16, 2011: 1.5%

June 16, 2012: 1.5%

December 16, 2012: 1.5%

June 16, 2013: 1.5%

December 16, 2013: 1.5%

June 16, 2014: 1.5%

December 16, 2014: 1.5%

June 16, 2015: 1.5%

December 16, 2015: 1.5%

The Parties are to meet and agree upon appropriate procedures for the calculation and payment of back pay.

Certification Pay

Effective June 16, 2014, the Carrier is to pay $10 per full shift worked to conductors upon attainment of FRA certification.

Health Insurance Contributions for Active Employees

June 16, 2010: 1.0% of straight time pay for 40 hours per week

June 16, 2011: 1.25% of straight time pay for 40 hours per week

June 16, 2012: 1.50% of straight time pay for 40 hours per week

June 16, 2013: 1.75% of straight time pay for 40 hours per week

June 16, 2014: 2.00% of straight time pay for 40 hours per week

June 16, 2015: 2.25% of straight time pay for 40 hours per week

Pensions and Work Rules

No changes are recommended in contributions for retiree health coverage, for pension benefits, or in any work rules.

We recommend that each Organization negotiate with the Carrier over any mutually identified rule changes and that the respective Organization(s) receive appropriate value for any agreed-upon changes.

Term

Six (6) years, with the new Agreements amendable as of June 16, 2016.

VII. CONCLUSION

This report is submitted by the Emergency Board in the hope that it will be viewed by the parties as a fair and reasonable basis for resolution of all issues remaining in dispute.

Respectfully submitted,

Ira F. Jaffe, Chairman

Roberta Golick, Member

Arnold M. Zack, Member

APPENDIX A

Presidential Documents

Executive Order 13654 of November 21, 2013

Establishing an Emergency Board To Investigate Disputes Between the Long Island Rail Road Company and Certain of Its Employees Represented by Certain Labor Organizations

Disputes exist between the Long Island Rail Road Company (LIRR) and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

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

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

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

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the RLA, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern standard time on November 22, 2013, a Board of three members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

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

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the RLA, for 120 days from the date of the creation of the Board, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,
November 21, 2013.

Billing code 3295–F4–P

LABOR ORGANIZATIONS

Brotherhood of Railroad Signalmen
Independent Railway Supervisors Association International
International Association of Machinists & Aerospace Workers
National Conference of Firemen & Oilers/Service Employees International Union
International Brotherhood of Electrical Workers
Transportation Communications International Union
International Association of Sheet Metal, Air, Rail and Transportation Workers

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