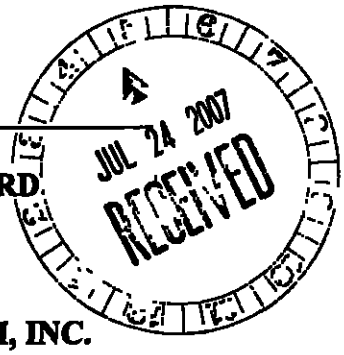
STB Finance Docket No. 28905 (Sub-No. 29)



BEFORE THE SURFACE TRANSPORTATION BOARD

CSX CORPORATION—CONTROL—CHESSIE SYSTEM, INC. AND SEABOARD COAST LINE INDUSTRIES, INC.

(Arbitration Review)

219840

REPLY OF RESPONDENT CSX TRANSPORTATION, INC. TO THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION'S PETITION FOR REVIEW

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Dated: July 24, 2007

I. INTRODUCTION

The Sheet Metal Workers International Association ("SMWIA") has appealed the arbitration decision issued by Arbitrator Lynette Ross on behalf of a New York Dock Section 11 Committee. SMWIA argues that the Arbitrator committed two errors. First, SMWIA contends that her decision exceeded her jurisdiction as a Section 11 arbitrator, and invaded the province of the National Mediation Board ("NMB"), by allegedly stripping from certain employees their right to be represented by the SMWIA for purposes of contract negotiation as well as contract administration. Second, SMWIA argues that her interpretation of the parties' New York Dock implementing agreement constitutes egregious error. Contrary to the SMWIA's arguments, however, its appeal does not, however, present an issue of general transportation importance or egregious error justifying Board review under the narrow standard of review applied to New York Dock decisions.

The issues presented by the parties to Arbitrator Ross did not involve union representation disputes within the jurisdiction of the NMB, despite SMWIA's attempts to mischaracterize them. Rather, the dispute was a routine dispute over whether approximately seven roadway mechanics should receive wage increases provided in agreements to which CSX Transportation, Inc. ("CSXT") and SMWIA were party, or wage increases provided in agreements to which CSXT and the International Association of Mechanics ("IAM") were party. This dispute admittedly turned on the proper interpretation of a New York Dock implementing agreement to which CSXT, SMWIA, IAM and the Brotherhood of Maintenance of Way Employes ("BMWE") were party. Specifically, the issues presented by CSXT and SMWIA to the Section 11 Committee were as follows:

> Carrier's question presented: Is CSXT correct that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA?
>
> Organization's question presented: Is the Carrier correct in denying the Sheet Metal Workers employed under the CSXT Labor Agreement No. 12-126-92 their negotiated wage increases that were negotiated under the Sheet Metal Workers International Associations' [sic] National Agreement through negotiations with the National Carriers Conference Committee signed on May 4, 2005?

Carrier's Arb. Exh. J.[1]

CSXT contended that, as part of a New York Dock coordination, this New York Dock agreement placed all roadway mechanics under its collective bargaining agreements with IAM, a proposition with which SMWIA did not disagree. The SMWIA contended, however, that other language in that implementing agreement preserved its right to negotiate changes in the rates of pay, rules and working conditions of roadway mechanics who were SMWIA members, even though they were otherwise working under IAM agreements. Thus, the dispute before Arbitrator Ross was over the proper interpretation of terms in a New York Dock implementing agreement, a matter well within her jurisdiction and expertise.

The SMWIA mischaracterizes the arbitration decision in order to try and manufacture a basis for Board review. But, contrary to its arguments, the arbitration decision did not strip any employees of their union representation rights. The parties agreed that, since eighty-five percent of CSXT's roadway mechanics were IAM members, all roadway mechanics would be placed

[1] CSXT's arbitration submissions and the exhibits thereto are contained in the Appendix filed concurrently herewith.

under and subject to CSXT's agreements with IAM. The role that SMWIA and BMWE would play going forward was also addressed in the New York Dock implementing agreement. Each union was limited to handling grievances for roadway mechanics who were, respectively, SMWIA or BMWE members. Indeed, but for the implementing agreement, SMWIA would have had no role at all in the representation of roadway mechanics post-consolidation, because representation under the Railway Labor Act ("RLA") is on a system-wide basis, and IAM represented the vast majority of the coordinated roadway mechanics. While CSXT and SMWIA disagree on the scope of SMWIA's role under the Implementing Agreement, that disagreement turns on the interpretation or application of terms in the agreement itself. The Arbitrator merely interpreted the New York Dock implementing agreement relating to the coordination of work. Thus, this dispute does not involve any representation issues within the jurisdiction of the NMB. In addition to the fact that the NMB has no jurisdiction to interpret terms in New York Dock implementing agreements, the NMB does not involve itself in voluntary arrangements concerning union membership.

As for the SMWIA's argument that Arbitrator Ross committed egregious error, the SMWIA simply disagrees with her interpretation of the New York Dock implementing agreement and rehashes the same arguments it presented to the Arbitrator. However, under Board precedent, that is not a basis for review. Moreover, Arbitrator Ross's decision is based in the language of and draws its essence from the New York Dock Agreement. CSXT notes that neither BMWE nor IAM intervened in the arbitration to support SMWIA's interpretation. SMWIA's petition should be denied.

II. BACKGROUND

A. 1988 Coordination of Roadway Equipment Repair Work

As the Board knows, CSXT is the product of several railroad consolidations over the years. In 1980, the Interstate Commerce Commission ("ICC") approved the common control of two railroad systems by CSX Corporation. CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., Finance Docket No. 28905 (Sub-No. 1), 363 ICC 521, 1980 ICC LEXIS 46 (hereinafter "CSX Control Decision"). The Chessie System included the former Baltimore and Ohio Railroad Company ("B&O"), Chesapeake and Ohio Railway Company ("C&O"), Western Maryland Railroad Company ("WM"), and other smaller carriers. The Seaboard System Railroads included the former Seaboard Coast Line Railroad ("SCL"), Louisville and Nashville Railroad Company ("L&N") and other smaller carriers. CSX Corporation also gained control of the former Richmond, Fredericksburg and Potomac Railroad Company ("RF&P") at that time. The ICC imposed the New York Dock conditions as a condition of its 1980 CSX Control Decision.

CSXT and its predecessors have coordinated facilities and operations over the years in order to realize efficiencies from the common control of formerly separate railroads.[2] One such coordination was of roadway equipment repair work, equipment, and facilities. Roadway equipment mechanics, as their name indicates, repair equipment needed to repair and rehabilitate track. Roadway mechanics may work either in a shop or repairing equipment out in the field.

Prior to its coordination, roadway equipment repair was performed by each former railroad using its roadway equipment mechanics. Each carrier also had one or more repair shops

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[2] See CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., ICC Finance Docket No. 28905 (Sub-No. 27) (Nov. 22, 1995).

where it repaired roadway equipment. Contrary to SMWIA's implication (SMWIA Petition for Review ("SMWIA Pet.") at 2), roadway mechanics are a separate and distinct craft or class of employees on CSXT.[3] Prior to the coordination of work, roadway mechanics were variously represented by the SMWIA, IAM, or BMWE on the different properties. CSXT was party to collective bargaining agreements with each of these unions covering roadway mechanics.

While the present dispute arose from the 1993 Implementing Agreement, as the SMWIA points out, CSXT first coordinated roadway equipment repair on the former Chessie System Railroads in 1987. Prior to this coordination, CSXT could only use roadway equipment mechanics on the former railroad where they had seniority, even though the equipment that they serviced could travel over more than one former railroad. CSXT also did not need all of the roadway equipment shops that it had, and, accordingly, decided to consolidate the work into only two such shops. CSXT also decided that it would be more efficient if all roadway mechanics were on a single seniority roster and worked under one union's collective bargaining agreements. That way, CSXT could use this coordinated workforce anywhere on the former Chessie System railroads. Such a coordination was a "transaction" within the meaning of Article I, Section 4 of the New York Dock conditions, because it involved the combination of operations and facilities from more than one carrier, required the "rearrangement of forces" from more than one carrier, and was related to the 1980 Control Decision.

Accordingly, CSXT served a New York Dock notice on August 3, 1987 to coordinate such work on the former C&O, B&O, B&O Chicago Terminal ("B&OCT") and WM. Roadway mechanics on the former Chessie System carriers were represented either by the IAM or

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[3] Whether employees are deemed to be members of a particular craft or class turns on whether they share a community of interest. See, e.g., Dakota, Minnesota & Eastern R.R., 29 N.M.B. 105, 2001 WL 1601560 (N.M.B. 2001).

SMWIA, with the vast majority represented by the IAM.[4] CSXT, IAM and SMWIA reached a New York Dock implementing agreement dated December 9, 1987. (CSXT Labor Agreement No. 1-229-87, SMWIA Exh. 5.) The 1987 New York Dock Agreement placed all roadway mechanics under CSXT's collective bargaining agreements with the IAM applicable on the former C&O. Article V.A provided that "[a]ll agreements currently in effect covering the Engineering Department (MofW) Mechanics employed upon the former Chessie System (B&O and B&OCT) are hereby abrogated and upon the effective date of this agreement all such Mechanics will be subject to the former C&O Chesapeake District Agreement, including all amendments thereto, and all other agreements, understandings, practices, and other contractual arrangements currently in effect for those C&O Chesapeake District Engineering Department (MofW) Mechanics." Side Letter No. 11 to the 1987 Implementing Agreement stated as follows:

> This will confirm our understanding that all IAM/SMW represented employees currently holding positions (and those subsequently filling positions) in the Maintenance of Way (Engineering) Department on the former C&O, B&O, and B&OCT carriers will, as a result of this agreement, become employees of the former C&O Railway Company and be subject to all agreements, including amendments thereto, in effect between IAM and the former C&O as of the date of the coordination.

(Id.) In other words, all roadway mechanics on the former Chessie System carriers were placed under the IAM agreements, and the SMWIA agreements were "abrogated" with respect to any application to roadway mechanics as of January 4, 1988, the effective date of that Implementing Agreement.

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[4] This can be seen by reviewing Consolidated Chessie System seniority roster, which was created by the 1988 coordination. When an employee was a SMWIA member, "(SMW)" appears next to his name. (Carrier's Arb. Exh. XX, p. 23.)

While the 1987 Implementing Agreement placed all roadway mechanics under the IAM collective bargaining agreements, Side Letter No. 12 provided that "[t]he incumbent mechanic will continue his present union affiliation and representation status should he be awarded a position in the consolidated operation." (Carrier's Arb. Exh. XX, p.42.)

B. The 1993 New York Dock Implementing Agreement

In 1993, CSXT decided to coordinate roadway equipment repair on a system-wide basis, by coordinating such work and facilities on the former Chessie System Railroads with such work on the Seaboard System Railroads. This time, CSXT served a New York Dock notice on the BMWE, as well as SMWIA and IAM, because the BMWE also represented some roadway mechanics on portions of the former Seaboard System carriers. CSXT proposed to consolidate all roadway equipment shop repair into a single shop at Richmond, Virginia, and to place all roadway mechanics on a single system-wide seniority roster. CSXT, SMWIA, IAM, and BMWE reached an implementing agreement through negotiation, which became effective January 23, 1993. (See Carrier's Arb. Exh. O; SMWIA Exh. 6.)

The Implementing Agreement stated that the seniority rosters for all roadway mechanics would be consolidated by "dovetailing the existing seniority of the employees as it appears on their respective seniority rosters onto a 'Consolidated System Roster.'" As relevant to the instant dispute, like the 1987 Implementing Agreement, the 1993 Implementing Agreement also placed all roadway mechanics under CSXT's collective bargaining agreements with a single union, the IAM, because the IAM represented the vast majority of roadway mechanics. Article I, Sec. A of the 1993 Implementing Agreement provided as follows:

> Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided ***and will be performed, except as specifically provided herein, under the IAM&AW and former***

C&O Railway Agreement (Chesapeake District, reprinted June 1, 1969).

(emphasis added). Thus, the 1993 Implementing Agreement placed all roadway mechanics throughout CSXT's system under the 1969 IAM-C&O Agreement, the same collective bargaining agreement under which all roadway mechanics working on the former Chessie System carriers had been placed by the 1987 Implementing Agreement.

Similar to Side Letter No. 12 of the 1987 Implementing Agreement, Article X.A of the 1993 Implementing Agreement also provided that roadway mechanics could continue to be members of the same union as before, stating that "[t]he incumbent Roadway Mechanics represented by the IAM&AW, BMWE and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable Law."[5] As the consolidated seniority roster submitted by CSXT shows (Carrier's Arb. Exh. YY), the overwhelming majority of roadway mechanics are IAM members. Of the approximately 330 total roadway mechanics, only seven were SMWIA members.

At the time the parties negotiated the 1993 Implementing Agreement, CSXT and IAM had negotiated a new system-wide collective bargaining agreement, but it had not yet become effective. The IAM agreed in Side Letter No. 8 to the 1993 Implementing Agreement that, in the event that this new system-wide agreement became effective, it would replace the 1969 IAM-

[5] Ancillary to the 1993 Implementing Agreement, CSXT, SMWIA, IAM and BMWE agreed "to maintain the 'same percentages' to the extent possible relative to Union affiliation when filling permanent vacancies and new positions in the coordinated equipment repair work operation." This was intended to maintain each union's membership level relative to each other for purposes of dues payment. At the time, 76% of roadway mechanics were IAM members, 19% were BMWE members, and 5% were SMWIA members. (See Side Letter No. 1 to the 1993 Implementing Agreement, SMWIA Exh. 6.) As of July 7, 2005, over 70% of roadway mechanic were IAM members, approximately 23% were BMWE members, and less than 5% were SMWIA members. (See Consolidated Seniority Roster (Roadway Mechanics), Carrier's Arb. Exh. YY.)

C&O Agreement for purposes of Article III.A of the 1993 Implementing Agreement as the applicable agreement for roadway mechanics who were IAM members. In fact, CSXT and IAM reached a new such agreement ("The 1994 IAM-CSXT Agreement"). Consequently, as of 1994, all roadway mechanics worked under CSXT's agreements with the IAM, with roadway mechanics who were BMWE or SMWIA members working under the 1969 IAM-C&O Agreement, and roadway mechanics who were IAM members working under the 1994 IAM-CSXT Agreement.

Subsequently, SMWIA (in 2001) and BMWE (in 2006) entered into agreements with CSXT replacing the 1969 IAM-C&O Agreement with the 1994 IAM-CSXT Agreement for purposes of Article III.A of the 1993 Implementing Agreement.

C. The Present Dispute Between SMWIA And CSXT

Over the years, because all roadway mechanics had been placed under CSXT's collective bargaining agreements with IAM, CSXT has consistently applied the wage rates in those agreements, as they have been amended from time to time by subsequent agreements with the IAM, to all roadway mechanics regardless of union affiliation. As explained, roadway mechanics who continue to have membership in the SMWIA have been paid in accordance with the IAM agreements since 1988.

In the railroad industry, changes to wage rates are typically made in national agreements to which the major carriers and a union are party. National bargaining refers to multiemployer bargaining between the major carriers who bargain as a group with one or more unions.[6] In 2005, SMWIA began contending for the first time that CSXT should apply the wages and benefit

[6] See, e.g., Gen'l Comm. of Adjustment v. Burlington N. & Santa Fe Ry., 295 F.3d 1337, 1339 (D.C. Cir. 2002).

package contained in an April 4, 2005 national collective bargaining agreement to which CSXT and SMWIA are party, to roadway mechanics who are SMWIA members, rather than continuing to apply the wage adjustments made in national agreements to which CSXT and the IAM are party. CSXT responded that wage increases negotiated between CSXT and IAM and reflected in the IAM national agreements, and not the newly entered SMWIA national agreement, applied to roadway mechanics, including SMWIA members, under the terms of the 1993 Implementing Agreement. The parties subsequently agreed to arbitrate this dispute before a New York Dock Section 11 Committee. The parties further agreed to create a public law board ("PLB") pursuant to Section 3, Second of the RLA to resolve any issues remaining after the Section 11 arbitration.[7]

The parties further agreed to appoint Arbitrator Lynette Ross as the neutral referee for purposes of both the Section 11 and RLA Section 3, Second arbitration. Contrary to SMWIA's contention, the parties did not agree that Arbitration Ross would issue a "joint" decision. The parties understood that she would issue two separate decisions, an arbitration decision pursuant to Section 11 and, if necessary, an arbitration award pursuant to Section 3, Second of the RLA.[8] (Carrier's Arb. Exhs. J-K.)

The parties exchanged written submissions, and the case was heard on March 13, 2007. On May 17, 2007, Arbitrator Ross issued the Committee's award, which ruled in favor of CSXT and concluded that the parties intended in the 1993 Implementing Agreement that the wage and

[7] Specifically, had the Committee ruled in favor of SMWIA, disputed issues under the CSWXT-SMWIA agreements regarding the calculation of wages for SMWIA-represented roadway mechanics for the relevant period would have been appropriate for resolution by the PLB. As the Committee ruled in favor of CSXT, however, there were no issues remaining for resolution by the PLB.

[8] The other two unions party to the 1993 New York Dock Agreement, IAM and BMWE, were given notice of the arbitration, but elected not to participate.

related adjustments to be applied to all roadway mechanics, including those who are SMWIA members, are those agreed to by CSXT and IAM.

III. ARGUMENT

A. The Board Employs A Narrow Standard of Review

Under the Board's Lace Curtain standard of review of arbitration awards, review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of [the] labor protective conditions;" the Board may "treat summarily" petitions that do not meet that standard. Chicago & N.W. Transp. Co. – Abandonment, 3 I.C.C.2d 729, 736 (1987), aff'd sub nom IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Review is not available on "factual questions," save in exceptional cases involving "egregious error." Id. at 735-36; see also Union R.R. Co. and Bessemer and Lake Erie R.R. Co.—Arbitration Review—United Steel Workers of Am., Service Date December 17, 1998, Finance Docket No. 31363 (Sub-No. 3), at *6 ("Union R.R.") (citation omitted) ("[The Board] accord[s] deference to arbitrators' decisions and will not review 'issues of causation, calculation of benefits, or the resolution of factual questions' in the absence of egregious error.").

Under the Lace Curtain standard of review, an arbitrator's interpretation of a New York Dock implementing agreement or collective bargaining agreement is afforded deference and does not constitute a "significant issue of general importance." See, e.g., USX Corp.—Control Exemption—Transtar, Inc., 2002 STB LEXIS 560, at *13 (Sept. 19, 2002) (declining to disturb arbitration award where arbitrator simply interpreted the parties' implementing agreement); Union Pac. Corp., Union Pac. R.R. Co., & Missouri Pac. R.R. Co.—Control and Merger—Southern Pac. Rail Corp., Southern Pac. Transp. Co., St. Louis S.W. Ry. Co., SPCSL Corp., & The Denver & Rio Grande W. Ry. Co., STB Finance Docket No. 32760 (Sub-No. 37), 2000 STB

LEXIS 464 at *4-5 (Aug. 11, 2000) ("This case does not present an issue of general importance regarding the interpretation of our labor conditions, but rather the interpretation of a specific labor agreement, a matter which is well within the expertise of arbitrators.")

As CSXT will explain, SMWIA's Petition does not meet the Board's standards for review. Rather, SMWIA's Petition raises a solely factual question regarding the Arbitrator's factual findings and interpretation of the parties' implementing agreement, which are committed to the Committee's discretion, and do not constitute an "issue of general importance" or "egregious error."

B. The Arbitrator's Decision Is Based In The Language Of The Implementing Agreement

CSXT will first address what the Arbitrator did (interpret the 1993 New York Dock Implementing Agreement), rather than what she did not do (take away the SMWIA's representation rights as the SMWIA contends). As a review of Arbitrator Ross's decision shows, she performed the job of a Section 11 arbitrator, interpreting or applying terms in a New York Dock agreement, and her interpretation of that Agreement was based upon a thoughtful analysis of its terms, has a basis in the language and structure of that Agreement, and cannot be said to constitute "egregious" error.

As explained above, the 1993 Implementing Agreement consolidated all roadway repair mechanics on one seniority roster and all roadway mechanic work under one union's agreements, the applicable IAM agreement, and provided:

> Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided ***and will be performed, except as specifically provided herein, under the IAM&AW and former C&O Railway Agreement*** (Chesapeake District, reprinted June 1, 1969).

Implementing Agreement at Article III, Section A (emphasis added).

With respect to wages, the Implementing Agreement amended the wage rates contained in the 1969 IAM-C&O Agreement, but issues relating to wages otherwise continued to be governed by the applicable IAM agreements and subsequent changes thereto. For example Article V, Section C of the 1993 Implementing Agreement specifically states as follows (emphasis added):

> Shop Mechanics will be paid on an hourly basis, straight time for straight time hours and overtime for overtime hours, ***in accordance with the schedule Agreement.*** The rate of pay for hourly Mechanics will be $14.55, ***adjusted to reflect any subsequent rate increases.***

Article VI, Section A (emphasis added) provided as follows.

> "Field" designated Mechanics will be paid on a monthly basis, $3,443.56 (***adjusted to reflect any subsequent wage increases***) contemplated on 232 2/3 hours per month. Records will be kept and all "Field" Mechanics will be paid at the applicable overtime rates for all work in excess of 232 2/3 hours per month and for routine maintenance and repair work performed on the first rest day, and for all work performed on the second (and subsequent rest days).

As explained, generally, base rates of pay are set in a union's local agreement, such as the 1969 IAM-C&O Agreement, and increases are negotiated through national bargaining with that union.

Thus, the Arbitrator's conclusion that the Implementing Agreement contemplated that wages and wage increases for all roadway mechanics are to be determined by reference to the applicable IAM national agreement was based in the express language of the 1993 Implementing Agreement. She found that the reference to "the schedule Agreement" was intended, in context, to refer to the IAM agreement, stating "[w]hen Article III(A), specifying the implementation of the 1969 IAM-C&O Agreement, is read in conjunction with Article V(C), there is clear support for the Carrier's position that the 1993 Implementing Agreement unequivocally unified the

mechanics under a single collective bargaining agreement." (Award at 22-23.) And, the interpretation of the phrase "adjusted to reflect any subsequent wage increases" as meaning adjustments in subsequent agreements with the IAM, which amended the local IAM agreement, cannot be said to be egregious error, when the 1993 Agreement clearly contemplates that all roadway mechanics will work under the same wage rates and work rules (a common goal in workforce consolidations). Indeed, the purpose of the Implementing Agreement was to improve CSXT's roadway mechanic operations by consolidating a formerly fractured workforce under one union's agreements and applying the same rates of pay and working conditions to the entire roadway mechanics workforce. If SMWIA can now negotiate separately and bargain different wages and work rules for roadway mechanics who are SMWIA members, the effectiveness of the consolidated workforce would be destroyed, as roadway mechanics performing the same job at the same locations could potentially have different pay, start times, hours, eligibility for overtime, and grievance procedures, among other things, depending upon whether they were IAM, SMWIA, or BMWE members.[9]

The SMWIA relied upon different provisions of the Implementing Agreement for its contention that it could still bargain for the minority of roadway mechanics who are SMWIA members. SMWIA primarily relied upon Article X, Section A's language stating that employees could "continue their present union affiliation and representation status." The SMWIA contended that this language meant that previously SMWIA-represented employees continue to be SMWIA-represented for all purposes even after the Implementing Agreement took effect, and

[9] Further evidence that the Implementing Agreement was intended to place all roadway mechanics under the IAM agreement for purposes of wages and related adjustments is CSXT's 13-year practice of consistently applying the wage and related adjustments negotiated between CSXT and IAM to all roadway mechanics, regardless of union affiliation.

to hold otherwise would "deprive[] the contractual phrase 'representation status' of universally-accepted meaning." (SMWIA Pet. at 17.) The Arbitrator agreed with CSXT that the SMWIA took this language out of context. (Award at 23.) In its entirety, Article X states:

> A. The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable Law.
>
> B. Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.

As the Arbitrator correctly found, the intent of Article X, therefore, was simply to provide that each union would handle grievances or claims arising under the IAM Agreement for its own members, and continue to collect dues from those employees, and "delineates the General Chairmen's roles with respect to progressing claims and grievances under the C&O (Chesapeake District Agreement Rule." (Award at 23.) Article X does not speak to the status or role of, or even mention the SMWIA at all. Article X speaks of the "union affiliation" of the employee, not the role of the union. In addition, if Article X.A were read to mean that wages for SMWIA-member roadway mechanics are negotiated by agreement between CSXT and SMWIA, Article X.B would make no sense. Article X.B clearly contemplates that the BMWE or SMWIA can handle grievances arising under the IAM Agreement on behalf of their members. This is why Section B provides that, if a SMWIA or BMWE General Chairman handles such a grievance, the resolution is not binding on the IAM (as the applicable IAM agreement would be interpreted in the grievance-handling process). The IAM did not want the handling of grievances by the BMWE or SMWIA under the IAM Agreement to set a precedent binding the IAM. The

Arbitrator's interpretation of Article X as simply addressing union affiliation does not constitute egregious error.

As the Arbitrator also correctly concluded after a thorough review of the 1993 Implementing Agreement language, CSXT's interpretation of the 1993 Agreement to require that only the wage rates in IAM agreements be applied to all roadway mechanics is also made clear by a review of the Implementing Agreement in its entirety. To read Article X in isolation as urged by SMWIA would completely negate the statement in Article III(A), that all of the coordinated work, regardless of union affiliation, "will be performed . . . under the IAM&AW and former C&O Railway Company Agreement." Implementing Agreement, Article III(A). The SMWIA nowhere explains how these two provisions could both be given effect if Article X has the meaning it claims. Nor can SMWIA do so, since if Article X meant that SMWIA and BMWE remained the collective bargaining representatives, and not just the grievance-handling representatives, for employees formerly represented by those unions for both purposes, Article III(A) would have no meaning, as immediately after the Implementing Agreement took effect, SMWIA and BMWE could have begun negotiating changes to the IAM Agreement for their members. Such a finding would frustrate the purpose of achieving efficiencies by consolidating all roadway mechanic work under a single collective bargaining agreement. Nothing in Article X gives either Organization the ability to pick and choose from among the provisions of the IAM Agreement those it wishes to apply to its members. As the New York Dock Committee recognized, doing so would destroy the entire point of the Implementing Agreement: achieving efficiencies through the consolidation of work.

SMWIA also makes much of the fact that when the BMWE agreed to replace the 1969 IAM Agreement with the 1994 IAM Agreement, it explicitly recognized that it "will not be a

party to any future negotiations" regarding the 1994 IAM Agreement, arguing that SMWIA's failure to enter into a similar agreement supports its interpretation that Article X is not limited solely to representation for purposes of affiliation and grievance handling. This too is unavailing. BMWE did not agree to replace the 1969 IAM Agreement with the 1994 IAM Agreement until 2006, at which point CSXT was already embroiled in the present dispute with SMWIA. Out of an abundance of caution, therefore, CSXT included specific language confirming that wage and related adjustments for BMWE-member roadway mechanics would be negotiated pursuant to the applicable IAM agreement. There is no significance to the fact that the SMWIA letter agreement replacing the 1969 IAM Agreement with the 1994 IAM Agreement, entered into in 2001, does not contain such language, and indeed, at no point after the 1993 Implementing Agreement took affect did BMWE attempt to negotiate wages and related benefits for its roadway mechanic members.

SMWIA further attempts to rely upon letters it obtained from two former and one current IAM General Chairman, which contend that IAM never intended for SMWIA-represented roadway mechanics to be covered by subsequent IAM national agreements relating to wages and benefits. (SMWIA Pet. at 7.) These General Chairmen instead contend that each Organization was expected to continue to negotiate changes to wages and benefits for their respective members. (Carrier's Arb Exh. X-Z.) As CSXT explained in the declarations of Noel Nihoul and Rick Hiel, however, those General Chairmen were not involved in negotiating the Implementing Agreement, and such after-the-fact interpretations cannot vary the plain language of the 1993 Implementing Agreement itself. (Carrier's Arb. Exh. AA-BB.) Moreover, Mr. Nihoul stated that, as the BMWE General Chairman at the time the 1993 Implementing Agreement was negotiated, his understanding was that the purpose of that Agreement was to consolidate all

roadway mechanics under the applicable CSXT-IAM collective bargaining agreement for all purposes, with the individual unions retaining representation rights for retention of dues and membership purposes. (Carrier's Arb. Exh. AA.) Thus, of the three unions that are parties to the 1993 Implementing Agreement, only SMWIA has taken the position that, under the terms of the 1993 Implementing Agreement, each union is free to negotiate separate rates of pay, work rules and working conditions for its roadway mechanic members. Accordingly, the Arbitrator properly based her decision upon her analysis of the language of the Implementing Agreement itself, rather than such extrinsic evidence and conjecture by SMWIA

C. The Arbitrator Did Not Take Away The SWMIA's Representation Rights

In an effort to manufacture a basis for review, the SMWIA spends most of its Petition contending variously that the Arbitrator's decision stripped the SMWIA of its status as the representative of certain roadway mechanics, deprived employees of the right to select their bargaining representative, bound "SMWIA-represented members to agreements negotiated by another employee organization," and invaded the jurisdiction of the NMB. (SMWIA Pet. At 11.) None of the SMWIA's contentions have any merit. Indeed, the Arbitrator only addressed the issues presented by SMWIA and CSXT. SMWIA cannot now complain that the Arbitrator addressed an issue presented to her by SMWIA itself.

The SMWIA argues that "[t]he only way for an organization's status as statutory representative to be changed is through an NMB representation proceeding or for the organization to surrender its status voluntarily." (SMWIA Pet at 14.) This is not true. It is not uncommon for a union to lose its status as exclusive collective bargaining representative as a result of a merger of consolidation of carrier operations. While the STB does not become

involved in union representation issues, changes that result from STB-authorized consolidations can and do impact a union's representative status.

The SMWIA's status with respect to its roadway mechanic members was initially redefined with the 1988 consolidation of roadway mechanic work and facilities. As explained, prior to that time, SMWIA was the representative of roadway mechanics only on smaller former Chessie System properties. When they were combined with the much larger group of IAM-represented roadway mechanics, and placed under the IAM collective bargaining agreements on the former C&O, the SMWIA's status became defined by the 1988 Implementing Agreement. Indeed, as explained, the 1988 Implementing Agreement terminated the application of any SMWIA agreements to roadway mechanics.

As a result of the 1993 system-wide coordination of roadway mechanic work and facilities, roadway mechanics who are SMWIA members became an even less significant percentage of the roadway mechanic bargaining unit, 7 out of 330. So, it is sophistry for the SMWIA to argue that the Arbitrator's decision deprived these seven employees of the right to choose their bargaining representative. As a result of the STB-authorized coordination of roadway mechanic work, they are in a much larger bargaining unit, a majority of whom are represented by the IAM. Under the RLA, union representation is normally system-wide. See, e.g., Summit Airlines v. Teamsters Local No. 295, 628 F.2d 787 (2d Cir. 1980); Northern Ill. Regional Commuter R.R., 16 N.M.B. 175, 179 (1989).

It is not unusual for the consequences of STB-authorized combinations to affect union status. A principal purpose of an implementing agreement is to provide the mechanism for combining workforces of railroads involved in an STB-approved transaction, which necessarily implicates representation issues as to achieve efficiencies, employees working at the same

location would need to be placed under the same agreements, work rules and rates of pay, regardless of union affiliation.

For example, when CSXT consolidated train operations on the former B&O, C&O, WM, and RF&P, the Brotherhood of Locomotive Engineers ("BLE") and the United Transportation Union ("UTU") refused to negotiate New York Dock implementing agreements. When the parties subsequently arbitrated the creation of implementing agreements pursuant to Article I, Section 4 of New York Dock, the arbitrator agreed with CSXT that, in order to achieve merger efficiencies, CSXT needed to be able to place all train and engine employees who would be working together after the consolidation, under the same agreements, those applicable on the former B&O. The unions appealed the arbitration decision for a number of reasons, including its impact on union status. On the former WM, locomotive engineers were represented by the UTU. On the much larger former B&O, engineers were represented by the BLE. So, by being coordinated into the larger BLE-represented group and by being placed under CSXT's agreements with BLE applicable on the former B&O, the former WM engineers became represented by the BLE instead of the UTU. The arbitrator concluded that "those employees now working under the C&O, WM and RF&P schedule agreements will be placed under B&O schedule agreements. ***Additionally, some employees will have their representation changed from the UTU to BLE.***" Arbitration Board Established Pursuant to Article I, Section 4 of the New York Dock Conditions as Imposed by the ICC in Finance Docket No. 31875, United Transp. Union, Bhd. of Locomotive Eng'rs and CSX Transp., Inc., Decision at 11 (O'Brien, Arb. April 24, 1995) (emphasis added). The arbitrator went on to note that while these changes were not insignificant, they were "not uncommon in many New York Dock implementing agreements." Id. This decision was upheld by the ICC and the D.C. Circuit. See CSX Corp.—

Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., ICC Finance Docket No. 28905 (Sub-No. 27) (Nov. 22, 1995); United Transp. Union v. Surface Transp. Bd., 108 F.3d 1425, 1431 (D.C. Cir. 1997). Thus the implementing agreement was imposed despite the fact that it impacted union representation. Cf. American Ry. & Airway Supervisors Ass'n v. Soo Line R.R. Co., 891 F 2d 675 (8th Cir. 1989) (rejecting argument that interpretation of ICC protective agreement raises representation dispute).

Similarly, after the ICC approved the common control of the Bessemer and Lake Erie and Union Railroads, an arbitrator imposed a New York Dock implementing agreement transferring clerical employees from the smaller Union Railroad to the Bessemer and placing them all under the Bessemer's collective bargaining agreement with the Transportation Communications Union ("TCU"). which represented clerks on the Bessemer. The United Steel Workers ("USW"), which represented the clerical employees on the Union Railroad, opposed the transaction, because, after they came under the TCU agreement, it would lose members. The arbitrator found that placing all clerical work under one collective bargaining agreement would help realize the benefits of the ICC approval of the common control of the two railroads, finding that "[t]he efficiencies which can flow from specialization of accounting and clerical functions, non-duplication of effort and supervision, and centralization of activity are many and obvious as shown in the record." Before a Neutral Referee Appointed Under Article I, Section 4 of the New York Dock Conditions, Union Railroad Co. and United Steelworkers of America, Decision at 12 (Witt, Arb. Oct. 21, 1997). The arbitrator's decision was affirmed by the STB and Third Circuit. See Union R.R. Co. and Bessemer & Lake Erie R.R. Co.—Arbitration Review—United Steel Workers of Am., STB Finance Docket No. 31363 (Sub-No. 3), 1998 WL 877620, *6 (I.C.C.), aff'd, Union R R. Co. v. United Steelworkers, 242 F.3d 458 (3d Cir. 2001).

In this case, the parties to the 1993 Implementing Agreement addressed the limited role that the SMWIA and BMWE would have after the system-wide coordination of work and employees under the IAM agreements in Article X of the 1993 Implementing Agreement. As explained infra in Part C, that role was limited by Article X to continuing to have members in the same relative proportion to each other and the ability to represent their members in the handling of grievances that arose under the IAM collective bargaining agreements. But for Article X, like the UTU representation of engineers on the former WM, the SMWIA would have had no role even with respect to handling grievances.

Thus, the issue presented was not, as the SMWIA would frame it, whether the SMWIA had been stripped of its representation rights or status, but, rather, what role the parties intended that the SMWIA have, after the roadway mechanic work and employees were placed under CSXT's agreements with the IAM. Just like any other dispute over the meaning of terms in an implementing agreement, this issue, which was presented by the SMWIA in the arbitration, turned on the arbitrator's interpretation of language in the 1993 New York Dock implementing agreement. There is no basis, therefore, for concluding that the Arbitrator lacked jurisdiction to interpret the 1993 Implementing Agreement.

Similarly, contrary to the SMWIA's contentions, its role under the terms of the Implementing Agreement, or a dispute over the scope of that role, did not raise any representation issue within the jurisdiction of the NMB under Section 2, Ninth of the RLA, 45 U.S.C. § 152, Ninth. (SMWIA Pet. at 13-14.) From the beginning of the RLA, the NMB has not exercised jurisdiction over voluntary agreements concerning less than the entire craft or class of employees on a carrier. See, e.g., Pennsylvania Ry. Co., 1 NMB Det. 23, 24 (1937) ("The Railway Labor Act does not authorize the National Mediation Board to certify representatives for small groups of employees arbitrarily selected. Representatives may be designated and

authorized only for the *whole* of a craft or class employed by a carrier.") (emphasis in original). The NMB also does not recognize voluntary agreements based on union membership. See, e.g., Northern Ind. Commuter Transp. Dist., 27 NMB 512, 518, 2000 NMB LEXIS 56 (2000) ("A carrier is free to recognize a particular union as the representative of a group of employees which may or may not constitute a craft or class . . . . But, when a dispute has been brought before the Board, it must determine whether the group constitutes a proper craft or class."); Seaboard Coast Line R.R. Co., 6 NMB 63, 1976 NMB LEXIS 48, at * 5 (1976) ("Consideration of such private arrangements has likewise been consistently rejected as not conducive to the objectives of Section 2, Ninth, of the Act.").

The Union Pacific decision cited by SMWIA is similarly unavailing. The Union Pacific decision did not involve the interpretation of an implementing agreement provision touching on representation, but rather, a statement made by the arbitrator regarding the collective bargaining representative for purposes of future negotiations in the implementing agreement process. See Union Pac. Corp., Union Pac. R.R. Co. & Missouri Pac. R.R. Co.—Control and Merger—Southern Pac. Transp. Co., St. Louis S.W. Ry. Co., SPCSL Corp., and The Denver & Rio Grande W. R.R. Co., Finance Docket No. 32760 (Sub-No. 22), 1997 WL 351468 (June 26, 1997).

Finally, while the SMWIA claims that its roadway mechanic members are being "bound" to agreements negotiated between CSXT and IAM (SMWIA Pet. at 11), in reality, those individuals are "bound" merely to the terms of the 1993 New York Dock Implementing Agreement negotiated and agreed to by SMWIA.

IV. CONCLUSION

SMWIA's Petition for Review should be denied. SMWIA has not met the standards for review of New York Dock awards. The Committee's conclusion that the wages and related adjustments for roadway mechanics, including those who are SMWIA members are, under the

Implementing Agreement, those which have been agreed to be CSXT and IAM, was based on the extensive record in this case and was consistent with Board and judicial precedents and should be affirmed.

Respectfully submitted,

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Dated: July 24, 2007

CERTIFICATE OF SERVICE

I, Heidi L. Gunst, hereby certify that I caused to be served a true and correct copy of the Reply of Respondent CSX Transportation, Inc. to the Sheet Metal Workers' International Association's Petition for Review and Appendix thereto, via hand delivery, upon the following.

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Heidi L. Gunst

Dated: July 24, 2007

STB Finance Docket No. 28905 (Sub-No. 29)

BEFORE THE SURFACE TRANSPORTATION BOARD

CSX CORPORATION—CONTROL—CHESSIE SYSTEM, INC. AND SEABOARD COAST LINE INDUSTRIES, INC.

(Arbitration Review)

APPENDIX
TO THE REPLY OF RESPONDENT CSX TRANSPORTATION, INC. TO THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION'S PETITION FOR REVIEW

ENTERED
Office of Proceedings
JUL 24 2007
Part of
Public Record

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Dated: July 24, 2007

Volume I:

Prehearing Arbitration Submission of CSX Transportation, Inc.

Prehearing Rebuttal Submission of CSX Transportation, Inc.

Carrier's Arbitration Exhibits A – DD

Volume II:

Carrier's Arbitration Exhibits EE – ZZ

BEFORE A
NEW YORK DOCK ARBITRATION COMMITTEE
AND
PUBLIC LAW BOARD
APPOINTED PURSUANT TO SECTION 11 OF THE NEW YORK DOCK
EMPLOYEE PROTECTIVE CONDITIONS
AND
SECTION 3 SECOND OF THE RAILWAY LABOR ACT

JUL 24 2007

CSX TRANSPORTATION, INC.,

and

SHEET METAL WORKERS'
INTERNATIONAL ASSOCIATION

Neutral Member
Lynette Ross

ENTERED
Office of Proceedings
JUL 2 2007
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Public Record

PREHEARING SUBMISSION OF CSX TRANSPORTATION, INC.

INTRODUCTION

This arbitration involves a dispute over the meaning and application of terms in a 1993 New York Dock Implementing agreement negotiated between CSX Transportation, Inc. ("CSXT"), the Sheet Metal Workers' International Association ("SMWIA"), the International Association of Machinists and Aerospace Workers ("IAM"), and the Brotherhood of Maintenance of Way Employes ("BMWE") (hereinafter the "Implementing Agreement").[1]

This New York Dock agreement arises from the decision of CSXT to centralize its roadway equipment repair shop work at its Richmond, Virginia location, and consolidate its field roadway equipment repair work, approximately thirteen years ago. Prior to this consolidation, on the various former properties that then made up CSXT, roadway mechanics were represented

[1] Both IAM and BMWE were given notice of this arbitration and provided an opportunity to participate pursuant to Article I, Section 11 of the New York Dock conditions. Both have declined to do so.

by three different unions – SMWIA, BMWE, and IAM – and thus performed work under three different collective bargaining agreements. The bulk of CSXT's roadway mechanics, approximately seventy-six percent, were represented by IAM, nineteen percent were represented by BMWE, and five percent were represented by SMWIA. CSXT accomplished the consolidation of its roadway equipment repair work pursuant to the 1993 New York Dock Implementing Agreement.

The Implementing Agreement provided that the roadway mechanics from all former properties would be placed on a consolidated seniority roster and would work under the collective bargaining agreement between CSXT and IAM, applicable on the former Chesapeake and Ohio Railway, the 1969 IAM-C&O Agreement, subject only to exceptions set forth in the Implementing Agreement itself. Subsequently, a 1994 IAM-CSXT Agreement replaced the 1969 IAM-C&O Agreement as the agreement made applicable to roadway mechanics by the 1993 Implementing Agreement. In 2001, the SMWIA entered into an agreement reaffirming the IAM agreement as the governing agreement for all roadway mechanics coordinated as a result of the 1993 Implementing Agreement.

Accordingly, in the thirteen years since the Implementing Agreement went into effect, CSXT has applied the wage and related adjustments negotiated between it and the IAM to all roadway mechanics, including SMWIA members. SMWIA is now claiming, for the first time, that the subsequent wage and related adjustments negotiated between it and CSXT, rather than those negotiated between CSXT and IAM, apply to roadway mechanics who are SMWIA members. This, however, would defeat the entire purpose of consolidating the roadway mechanic work under one agreement.

The Organization cannot meet its burden of showing that the clear language of the 1993 Implementing Agreement does not apply the terms of the applicable IAM agreement, including wage and related adjustments negotiated in national bargaining between CSXT and IAM, to all roadway mechanics, including those represented by SMWIA. Moreover, CSXT's interpretation of the 1993 Implementing Agreement is supported by its thirteen-year consistent practice under that agreement of applying the terms and condition of CSXT's agreements with IAM, as amended from time to time, to all roadway mechanics. Finally, SMWIA's interpretation is contrary to the essential purpose of the New York Dock coordination of roadway equipment repair work, which was to improve efficiencies by using the roadway equipment repair workforce as a single, unified workforce. For these reasons, the Neutral should deny the Organization's claim.

JURISDICTION

This dispute is within the exclusive jurisdiction of the Surface Transportation Board ("STB"), because it involves a New York Dock Implementing Agreement and can be resolved solely by reference to that Agreement.

On November 10, 2006, CSXT and SMWIA agreed to (1) present individual questions to arbitration in accordance with the dispute resolution provisions of Article I, Section 11 of the "New York Dock Conditions," New York Dock Ry. – Control; - Brooklyn E. Dist., 360 I.C.C. 60 (1979); and (2) create a public law board ("PLB") pursuant to Section 3, Second of the Railway Labor Act ("RLA") to resolve any issues remaining after the Section 11 arbitration (the "PLB Agreement"). Section 6 of the parties' PLB agreement specifically provides that:

> The Board shall hold hearings jointly with an arbitration committee established pursuant to Article I, Section 11 of the New York Dock conditions (the "Section 11 Committee'), as set forth in the Agreement dated November 10, 2006.

The SMWIA is claiming that CSXT has violated the SMWIA collective bargaining agreement by failing to apply the wage increases in the 2005 national SMWIA agreements to roadway mechanics who are SMWIA members. Resolution of this dispute turns on the proper application of the 1993 Implementing Agreement, because it is that Agreement that determines which collective bargaining agreements apply to roadway mechanics (including those who are SMWIA members). CSXT contends that the Implementing Agreement put all roadway mechanics under its agreements with IAM for all purposes, including the IAM national agreements with respect to changes in wages. SMWIA disputes CSXT's application of the Implementing Agreement.

It is well settled that the STB has exclusive jurisdiction over disputes relating to its employee protective conditions or implementing agreements reached in satisfaction of those conditions. See, e.g., Black v. Surface Transp. Bd., No. 06-3045, 2007 U.S. App. LEXIS 2892, at *10-11 (6th Cir. Feb. 9, 2007) **(Carrier's Exhibit A)**; Spaulding v. United Transp. Union, 279 F.3d 901, 913 (10th Cir. 2002) **(Carrier's Exhibit B)**. The STB, really its predecessor agency, the Interstate Commerce Commission ("ICC"), delegated the first level consideration of such disputes to arbitration committees established pursuant to Article I, Section 11 of the New York Dock conditions. See, e.g., Black 2007 U.S. App. LEXIS 2892, at *10. Section 11 of the New York Dock conditions requires that disputes "with respect to the interpretation, application or enforcement of any provision" of the New York Dock conditions or a New York Dock implementing agreement must be first submitted to an arbitration committee established pursuant to Section 11. New York Dock Ry.—Control—Brooklyn Eastern Dist. Term., 360 I.C.C. 60, 84-90 **(Carrier's Exhibit C)**, aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979) **(Carrier's Exhibit D)**; see also, e.g., Del. & Hudson Ry. Co. -- Lease & Trackage

Rights Exemption -- Springfield Term. Ry. Co., 8 I.C.C. 2d 839, 846 (1992) ("[A]ny dispute concerning the proper interpretation of the effect of these critical terms [in the implementing agreement] must be resolved within the framework of the labor conditions we imposed, that is, under the authority of the ICA and not the RLA.") **(Carrier's Exhibit E).**[2]

A Section 11 Committee is composed of a representative appointed by the carrier, a representative appointed by the involved organization and a neutral referee. An arbitrator sitting pursuant to Section 11 of the New York Dock conditions as the neutral referee is considered a delegate of the STB and arbitration decisions rendered are considered decisions of the STB. See, e.g., Int'l Bhd. of Elec. Workers v. ICC, 862 F.2d 330, 335-38 (D.C. Cir. 1988) **(Carrier's Exhibit F).** Arbitration decisions under Section 11 are subject to review by the STB. See, e.g., 49 C.F.R. § 1115.8 **(Carrier's Exhibit G).** STB decisions reviewing arbitration decisions are, in turn, subject to review in the federal circuit courts of appeal. See, e.g., Norfolk & W. Ry. Co. & New York, Chicago & St. Louis R.R. Co. -- Merger, 9 I.C.C.2d 1021, 1026 (1993) ("Arbitral awards issued pursuant to those conditions are therefore 'orders of the Commission' [now STB] within 28 U.S.C. § 2321(a), vesting review jurisdiction first in the Commission . . . and then in the United States courts of appeals.") **(Carrier's Exhibit H).**

RLA arbitration boards have recognized that they do not have jurisdiction to hear disputes involving New York Dock implementing agreements, in part because the STB has established a separate dispute resolution mechanism for such disputes. See, e.g., Bhd. of Locomotive Eng'rs and Gateway Western Ry., Award No. 25981, NRAB Fourth Div. at 2

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[2] Delaware & Hudson involved a dispute arising under a set of protective conditions known as the Mendocino Coast conditions, which apply to lease and trackage rights transactions and contain the same dispute resolution procedures (also in Section 11) found in New York Dock.

(1993) (Dennis, Arb.) (**Carrier's Exhibit I**). Accordingly, the parties have agreed to the establishment of the instant Section 11 Committee to resolve their dispute relating to the 1993 Implementing Agreement.

If the Committee rules in favor of CSXT and concludes that the Implementing Agreement placed all roadway mechanics, including SMWIA members, under the IAM agreements for the purposes of wage and other adjustments, then CSXT believes that there will be no issue left for the PLB to decide. However, if the Section 11 Committee decides that the Implementing Agreement did not place roadway mechanics who are SMWIA members under the IAM national agreement for purpose of adjustment to wages, then there may be disputed issues under the CSXT-SMWIA agreements as to the calculation of wages for SMWIA-represented roadway mechanics for the relevant period. If there are such issues, they alone would be appropriate for resolution by the PLB.

The parties further agreed to appoint Arbitrator Lynette Ross as the neutral for purposes of both the Section 11 and RLA Section 3, Second arbitration. A copy of a letter confirming this with respect to the Section 11 arbitration is attached hereto as **Carrier's Exhibit J.** A copy of the PLB Agreement is attached hereto as **Carrier's Exhibit K.**

ISSUES PRESENTED

Section 11 Committee:

1. Carrier's question presented: Is CSXT correct that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA?

2. Organization's question presented: Is the Carrier correct in denying the Sheet Metal Workers employed under the CSXT Labor Agreement No. 12-126-92 their negotiated wage increases that were negotiated under the Sheet Metal Workers International Associations' [sic] National Agreement through negotiations with the National Carriers Conference Committee signed on May 4, 2005?

PLB Agreement:

1. Has the Carrier violated the April 4, 2005 national agreement between SMWIA and the National Carrier's Conference Committee, including CSXT, by not applying the wage increases and benefit changes contained therein to Roadway Mechanics employed by CSXT and represented by SMWIA? In deciding this question, the Board shall have jurisdiction to interpret and apply the 1993 New York Dock implementing agreement known as CSXT Labor Agreement No. 12-126-92 insofar as it applies to employees represented by SMWIA.[3]

BACKGROUND

A. CSXT's System

CSXT is the product of railroad consolidations and mergers. The predecessor railroads which now make up CSXT came under common control by CSXT's parent, CSX Corporation, in 1980. Subsequent control decisions also authorized the consolidation of operations on the various carriers into CSXT. CSXT's predecessor railroads include the former Seaboard Coast Line Railroad ("SCL"), Chesapeake & Ohio Railway ("C&O"), Baltimore and Ohio Chicago

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[3] CSXT believes that the second sentence in the issue presented in the PLB Agreement was intended to be deleted, because, as explained, any issue relating to the interpretation and application of the Implementing Agreement must be resolved by the Section 11 Committee. A PLB is without jurisdiction over such disputes, and the parties cannot confer such jurisdiction on a PLB. Indeed, the PLB Agreement itself recognizes that the PLB has no jurisdiction to interpret or apply the Implementing Agreement. See PLB Agreement at ¶ 2(B).

Terminal Railroad ("B&OCT"), and Richmond, Fredericksburg, and Potomac Railroad ("RF&P"), among others.

B. Representation of CSXT's Roadway Mechanics

Roadway mechanics are a craft or class of employees who repair equipment needed to repair and rehabilitate track. Roadway mechanics may work either in a shop or repairing equipment out in the field. Historically, three different unions – IAM, SMWIA, and BMWE – represented the craft or class of roadway mechanics on the various former properties making up CSXT's system.

C. Coordination of Roadway Equipment Repair Work

CSXT's process of coordinating roadway equipment repair work, equipment, and facilities began several years ago. Before the early 1990s, the entire CSXT system was divided into regions for purposes of equipment repair, and equipment for each former railroad was sent to that railroad's shop, while field roadway mechanics performed work only on their former railroad's territory. Roadway mechanics were represented by different unions on each property. For the most part, the repair facilities were antiquated and not designed for complete rebuilds of equipment.

To achieve efficiencies from common control of formerly separate railroads, CSXT decided to consolidate roadway mechanic work, employees, and facilities. This coordination included the consolidation of roadway equipment repair to the Richmond shop, and placing all roadway mechanics on a consolidated roster, working under the same collective bargaining agreement. The Richmond facility was upgraded and converted to its present-day status, containing modern, state-of-the-art equipment that is used to repair, overhaul and maintain

roadway equipment. Mechanics at the shop repair much of the equipment used by the system production gangs ("SPGs"), such as tampers, ballast regulators, rail lifts, and burrow cranes.

D. The New York Dock Conditions

Before CSXT could implement this consolidation, however, it was required to comply with the so-called New York Dock conditions.

As explained, CSXT is the product of mergers and consolidations of railroads over the years. The Interstate Commerce Act ("ICA") granted the former Interstate Commerce Commission ("ICC"), now the STB,[4] exclusive jurisdiction over the approval of railroad consolidations. CSX Corporation and its railroad subsidiaries obtained ICC approval in 1980 for these railroads to be under common control. CSX Corp.—Control—Chessie Sys., Inc. and Seaboard Coast Line Indus., Inc., Finance Docket No. 28905 (Sub-No. 1), 363 ICC 521, 1980 ICC LEXIS 46 (hereinafter "CSX Control Decision") **(Carrier's Exhibit L)**.

The ICA requires the ICC (now STB) to impose employee protective conditions on its approval of railroad mergers and consolidations. Congress was aware that to achieve efficiencies from a railroad merger or consolidation, the railroad would combine operations, facilities, and workforces, and these changes in operation could have adverse impacts on railroad employees. The New York Dock conditions are the conditions that the ICC developed to satisfy the requirements of the ICA in railroad mergers and consolidations. They are set out in New York Dock Ry.—Control—Brooklyn Eastern Dist. Term., 360 I.C.C. 60, 84-90 **(Carrier's Exhibit**

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[4] The STB replaced the ICC effective January 1, 1996. The STB continues to follow decisions, regulations, and precedents of the ICC.

C), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979) **(Carrier's Exhibit D)**. These conditions provide protective benefits for employees of railroads who may be adversely affected by a change in operations resulting from an STB-authorized transaction. Among other benefits, the New York Dock conditions protect the income and benefits of eligible employees for up to six years. See, e.g., CSX Transp., Inc. v. United Transp. Union, 86 F.3d 346, 349 (4th Cir. 1996) **(Carrier's Exhibit M)**.

Article I, Section 4 of the New York Dock conditions also requires that, before a railroad can implement a "transaction," it must first enter into an implementing agreement with the involved unions. A transaction is a change in operations that is taken as a result of the STB's approval of a railroad consolidation. Section 4 specifies that "[n]o change in operations, services, or equipment shall occur until after an agreement is reached . . ." through negotiation or arbitration. The railroad initiates the implementing agreement process by serving at least ninety days' written notice of the proposed transaction to its employees. See 360 ICC at 84-90. A principal purpose of an implementing agreement is to provide the mechanism for combining workforces of railroads involved in an STB-approved transaction. Thus, Section 4 specifies that "[e]ach transaction which may result in the dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all of the employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees shall be made on the basis of an agreement or decision under this section."

The ICC imposed the New York Dock conditions as a condition of its 1980 CSX Control Decision.

E. The 1993 New York Dock Implementing Agreement

After the 1980 CSX Control Decision, CSXT began to take a number of steps to realize efficiencies from the common control of formerly separate railroads. One such action was to coordinate the work of repairing of roadway equipment, which was then being performed by separate workforces and at redundant roadway equipment repair facilities. The coordination of roadway equipment work, employees, and facilities from former railroads was a "transaction" within the meaning of the New York Dock conditions, because this coordination resulted from the ICC's approval of the common control of various railroads in the 1980 Control Decision. Therefore, CSXT served a New York Dock notice on the organizations that represented roadway mechanics on the former railroads, BMWE, SMWIA and IAM, in satisfaction of the New York Dock conditions. A copy of CSXT's New York Dock notice with respect to the coordination of its roadway mechanics is attached as **Carrier's Exhibit N.**

CSXT, SMWIA, IAM, and BMWE reached an implementing agreement through negotiation, which became effective January 23, 1993. A copy of the New York Dock implementing agreement (the "Implementing Agreement") is attached as **Carrier's Exhibit O.**

The Implementing Agreement provided labor protective benefits for roadway mechanics affected by the transaction, and stated that the seniority rosters for all roadway mechanics would be consolidated by "dovetailing the existing seniority of the employees as it appears on their respective seniority rosters onto a 'Consolidated System Roster.'" Most importantly for present purposes, however, the Implementing Agreement also provided:

> Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided ***and will be performed, except as specifically provided herein, under the IAM&AW and former C&O Railway Agreement*** (Chesapeake District, reprinted June 1, 1969).

Implementing Agreement at Article III, Section A (emphasis added). The Implementing Agreement went on to state:

> The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable Law.

Implementing Agreement at Article X, Section A. The effective date of the Implementing Agreement was January 29, 1993.

F. The IAM Former C&O Agreement

As stated above, the Implementing Agreement provided that all roadway mechanic work, once consolidated, would be performed under the 1969 IAM collective bargaining agreement for the former C&O (the "1969 IAM-C&O Agreement"), regardless of whether the employees were represented by the IAM, BMWE, or SMWIA. The 1969 IAM-C&O Agreement was selected because the vast majority of the consolidated roadway mechanic workforce were IAM members.

At the time the parties negotiated the Implementing Agreement, CSXT and IAM were also in the process of negotiating a new system-wide collective bargaining agreement. By a letter of understanding to the Implementing Agreement dated January 27, 1993, IAM agreed that the new IAM system agreement, when ratified, would replace the 1969 IAM-C&O Agreement for purposes of the Implementing Agreement for IAM-represented roadway mechanics. A copy of the January 27, 1993 Side Letter is attached as **Carrier's Exhibit P.** In fact, in 1994, CSXT and IAM reached a new system agreement ("The 1994 IAM-CSXT Agreement") **(Carrier's Exhibit Q).** Pursuant to the Side Letter, it replaced the 1969 IAM-C&O Agreement as the applicable agreement for IAM-represented roadway mechanics. Subsequently in 2001, the SMWIA also entered into an agreement that the 1994 IAM-CSXT Agreement would also replace the 1969 IAM-C&O Agreement for roadway mechanics who were SMWIA members and

reaffirmed the application of the IAM agreement as the governing agreement for all roadway mechanics coordinated pursuant to the 1993 Implementing Agreement.[5] **(Carrier's Exhibit R.)**

With respect to wages and wage increases, the 1994 IAM-CSXT Agreement contains specific provisions regarding rates of pay, and states that the rates of pay under the Agreement are to be set by representatives of CSXT and IAM. See 1994 IAM-CSXT Agreement, Rule 32. Moreover, the Scope Rule of the 1994 IAM-CSXT Agreement states that:

> [T]his agreement shall apply to those who perform the work specified in this Agreement in the Maintenance of Equipment, Maintenance of Way, and all other Departments of the Company wherein work covered by this Agreement is performed.

1994 IAM-CSXT Agreement, Scope Rule.

G. The Pay Dispute Between SMWIA And CSXT

In 2005, SMWIA began complaining that CSXT should have applied the wages and benefit package contained in an April 4, 2005 national collective bargaining agreement, to which CSXT and SMWIA are party, to roadway mechanics who are SMWIA members. A copy of a January 31, 2006 letter from SMWIA General Chairman Larry Crawford to CSXT Director Labor Relations Jim Wilson is attached as **Carrier's Exhibit T.** CSXT responded that wage increases negotiated between CSXT and IAM and reflected in the IAM national agreements, and not the newly entered SMWIA national agreement, applied to roadway mechanics, including SMWIA members, under the terms of the Implementing Agreement. A copy of a February 16, 2006 letter from CSXT Director Labor Relations Jim Wilson to SMWIA General Chairman Larry Crawford is attached as **Carrier's Exhibit U.** The parties subsequently agreed to arbitrate this dispute before these arbitration tribunals.

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[5] At that time, roadway mechanics who were BMWE members remained subject to the 1969 IAM-C&O Agreement. The BMWE has also since agreed that the 1994 IAM-CSXT Agreement can replace the 1969 IAM-C&O Agreement. **(Carrier's Exhibit S.)**

ARGUMENT

I. THE PLAIN LANGUAGE OF THE IMPLEMENTING AGREEMENT ESTABLISHES THAT WAGES FOR SMWIA-REPRESENTED EMPLOYEES ARE DETERMINED BY REFERENCE TO THE IAM-CSXT AGREEMENT

The Organization apparently is contending that the Implementing Agreement was not intended to place SMWIA members under CSXT's agreements with IAM for purposes of wage and other adjustments. The plain language of the Implementing Agreement, however, establishes that it was intended to do just that. As explained above, the Implementing Agreement consolidated all roadway repair mechanics on one seniority roster and all roadway mechanic work under one union's agreement, the applicable IAM agreement, and provided:

> Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided ***and will be performed, except as specifically provided herein, under the IAM&AW and former C&O Railway Agreement*** (Chesapeake District, reprinted June 1, 1969).

Implementing Agreement at Article III, Section A (emphasis added). Accordingly, unless the Implementing Agreement explicitly exempts wages from its scope, the wage and other adjustments applied to SMWIA-represented employees, and, indeed, all roadway mechanics, are those set by the IAM national agreements.

With respect to wages, the Implementing Agreement specifically states as follows:

> Shop Mechanics will be paid on an hourly basis, straight time for straight time hours and overtime for overtime hours, ***in accordance with the schedule Agreement.*** The rate of pay for hourly Mechanics will be $14.55, ***adjusted to reflect any subsequent rate increases.***

Implementing Agreement, Article V, Section C (emphasis added).

> "Field" designated Mechanics will be paid on a monthly basis, $3,443.56 (***adjusted to reflect any subsequent wage increases***) contemplated on 232 2/3 hours per month. Records will be kept and all "Field" Mechanics will be paid at the applicable overtime rates for all work in excess of 232 2/3 hours per month and for routine maintenance and repair work performed on the first rest day, and for all work performed on the second (and subsequent rest days).

Id., Article VI, Section A (emphasis added). Generally, base rates of pay are set in a union's schedule Agreement, and increases are negotiated through national bargaining with that union.

Thus the Implementing Agreement clearly contemplates that wages and wage increases are to be determined by reference to the applicable IAM national agreement as the topic of wages is not excepted elsewhere in the Implementing Agreement from coverage by CSXT's agreements with IAM. Moreover, the purpose of the Implementing Agreement was to streamline CSXT's roadway mechanics operations by consolidating a formerly fractured workforce under one union's agreements and applying the same rates of pay and working conditions to the entire roadway mechanics workforce. If SMWIA and BMWE can now negotiate separately and bargain changes to that Agreement, the effectiveness of the consolidated workforce would be destroyed, as roadway mechanics performing the same job at the same locations could potentially have different pay, start times, hours, eligibility for overtime, and grievance procedures, among other things, depending upon whether they were IAM, SMWIA, or BMWE members.

By contrast, the exception to the Implementing Agreement's provision with respect to all employees being covered by the applicable IAM Agreement that the Organization apparently is relying on addresses union affiliation. The Organization apparently presumes that "continue their present union affiliation and representation status" means that previously SMWIA-represented employees continue to be SMWIA-represented for all purposes even after the Implementing Agreement went into effect. The language of the Implementing Agreement clearly demonstrates that this is incorrect.[6]

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[6] SMWIA has certainly never argued that its roadway mechanic members are not covered by the work rules contained in the IAM agreements, and other exceptions to the Implementing

First, the language of the representation section of the Implementing Agreement itself indicates that no such result is intended. In its entirety, the representation section states:

> A. The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable Law.
>
> B. Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.

Implementing Agreement, Article X. The intent of Article X, therefore, was simply to provide that each union would handle grievances or claims arising under the IAM Agreement for its own members and continue to collect dues from those employees.

The intent of the above provisions is also clearly evinced by reading the agreement in its entirety. To read in isolation the provisions as urged by SMWIA would completely negate the statement in Article III(A), that all of the coordinated work, regardless of union affiliation, "will be performed . . . under the IAM&AW and former C&O Railway Company Agreement." Implementing Agreement, Article III(A). If Article X meant that SMWIA and BMWE remained the collective bargaining representatives, and not just the grievance-handling representatives, for employees formerly represented by those unions for both purposes, Article III(A) would have no meaning, as immediately after the Implementing Agreement took effect, SMWIA and BMWE

Agreement are equally clear. For example, Letter of Understanding No. 2 verifies that there is a specific exception under Article VII, Section F providing that the past practice on the former Clinchfield Railroad of reimbursing mechanics for meals will be maintained. A copy of Letter of Understanding No. 2 is attached as **Carrier's Exhibit V.** Letter of Understanding No. 3 waives the fifty-mile restriction regarding eligibility for relocation benefits "for any former RF&P Mechanic who is presently assigned to the shop at Fredericksburg, Virginia and who bids and is awarded a position at Richmond, Virginia." A copy of Letter of Understanding No. 3 is attached as **Carrier's Exhibit W.**

could have begun negotiating changes to the IAM Agreement. Nothing in Article X gives either Organization the ability to pick and choose from among the provisions of the IAM Agreement those it wishes to apply to its members.

Indeed, reading the two sections of Article X together, it is clear that the "present union affiliation and representation status" is to be continued in the coordinated operation solely with respect to representation for grievance-handling purposes and dues. To hold otherwise would render Article III(A) completely redundant.

SMWIA also secured letters for this arbitration from two former and one current IAM General Chairman, which contend that it was never the intent of IAM that SMWIA-represented roadway mechanics be covered by subsequent IAM national agreements relating to wages and benefits. Rather, they contend that each Organization would continue to negotiate changes to wages and benefits for their respective members. These letters are attached as **Carrier's Exhibits X-Z.** As explained in the accompanying Declarations of Noel Nihoul and Rick Hiel, **Carrier Exhibits AA-BB,** those General Chairmen were not involved in negotiating the Implementing Agreement. The principal IAM negotiator was Milton Jolly, who was a General Chairman on the former SCL for IAM at the time. In addition, these after-the-fact interpretations are not contemporaneous and are contrary to, and cannot vary, the express language of the Implementing Agreement and its purpose that all roadway mechanics work under the same agreement.

II. CSXT HAS CONSISTENTLY APPLIED WAGE AND RELATED ADJUSTMENTS NEGOTIATED BY CSXT AND IAM TO ALL ROADWAY MECHANICS

In addition to the clear language of the Implementing Agreement itself, CSXT's consistent practice in the thirteen years since the Implementing Agreement took effect has been to apply the wage and related adjustments negotiated between CSXT and IAM to all roadway

mechanics, including those who belong to SMWIA and BMWE, pursuant to Article III(A) of the Implementing Agreement. This same consistent practice also refutes any argument that CSXT violated the SMWIA National Agreement by paying roadway mechanics who are SMWIA members wage increases pursuant to the IAM national agreement.

Wage adjustments are negotiated for IAM, SMWIA, and BMWE on a national basis between the National Carrier's Conference Committee, which represents a number of railroads, including CSXT, and the individual unions. For example, at the time the Implementing Agreement went into effect in 1993, the scheduled wage increases under each union's most recent national agreement (negotiated in 1991 or 1992) were the same: a three percent increase as of July 1, 1993, and a four percent increase as of July 1, 1994. Excerpts reflecting these wage adjustments are attached as **Carrier's Exhibits CC-EE.**

Although the scheduled increases were originally the same under the IAM, SMWIA, and BMWE agreements, they began to diverge in the next round of national bargaining in 1996. For IAM and SMWIA, this round of bargaining produced increases retroactive to December 1, 1995, and prospective to July 1, 1999, in the same amounts under both agreements. **(Carrier's Exhibits FF-GG.)** The BMWE agreement, however, provided for an increase of 3 ½ percent retroactive to December 1, 1995, an increase of 3 ½ percent as of July 1, 1997, and an increase of 3 ½ percent as of July 1, 1999. **(Carrier's Exhibit HH.)** The BMWE agreement also provided for certain lump sum payments.

Despite the now difference between the BMWE and IAM/SMWIA wage increases, CSXT continued paying all roadway mechanics, regardless of union affiliation, pursuant to the scheduled increases negotiated with the IAM. Neither BMWE or SMWIA complained about this practice.

The next round of national bargaining commenced in 2000. The first union to reach agreement in this round of bargaining was BMWE, in 2001, which negotiated a 3 ½ percent increase retroactive to January 1, 2001, as well as four cost-of-living based adjustments to take effect July 1, 2001, 2002, 2003, and 2004. **(Carrier's Exhibit II.)** Again, CSXT continued to pay all roadway mechanics, regardless of union affiliation, pursuant to the IAM agreement, and did not apply these increases to roadway mechanics who were BMWE members.[7]

Accordingly, CSXT's consistent practice every year since the 1993 Implementing Agreement of applying the wage and related adjustments negotiated between CSXT and IAM to all roadway mechanics, pursuant to the applicable IAM national agreement, confirms that the language of the Implementing Agreement placed all roadway mechanics under the IAM Agreement for wage adjustment purposes, and cannot be ignored at SMWIA's whim in an attempt to get a "better deal."

III. THE IMPLEMENTING AGREEMENT MUST BE INTERPRETED IN LIGHT OF THE PURPOSE OF THE CONSOLIDATION OF ROADWAY MECHANIC WORK, EMPLOYEES AND FACILITIES

While the language and application of the Implementing Agreement make clear that the IAM agreements govern the wages of all roadway mechanics, regardless of union affiliation, this interpretation is also required to give effect to the New York Dock transaction, whose purpose was to realize efficiencies from combining disparate workforces into one workforce at the merged carrier. A New York Dock agreement is not interpreted in a vacuum. The purpose of the transaction to which it is related must also be taken into account. The interpretation of the Implementing Agreement advocated by SMWIA is not only contrary to the language and

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[7] SMWIA and IAM did not reach agreement until 2005 – SMWIA in April, and IAM in September. **(Carrier's Exhibits JJ-KK.)**

historical application of that Agreement, it would frustrate the purpose of the original New York Dock transaction, to have a combined roadway mechanic workforce working under one agreement.

The ICC, STB, New York Dock arbitrators, and courts have all recognized that, if a railroad is to be able to realize the efficiencies that flow from the consolidation of formerly separate railroads, employees working at the same location must be working under the same wages, work rules, and working conditions. Otherwise, if employees working at the same location are working under different agreements, the railroad will not be able effectively to utilize a combined workforce. This is why a New York Dock implementing agreement typically specifies which railroad's collective bargaining agreement will be applied to a location or area where work from formerly separate railroads has been coordinated. For a while, unions contested the authority of the ICC, and later the STB, and arbitrators appointed pursuant to the New York Dock conditions to place employees under a single agreement over a union's objections. The ICC and STB held that they, and arbitrators sitting under the New York Dock conditions, had the authority to override the Railway Labor Act and place employees under one set of collective bargaining agreements. The authority of the ICC and STB to do so was upheld by the courts.[8]

For example, Arbitrator Peterson adopted Conrail's proposed New York Dock implementing agreement in connection with the assimilation into Conrail of the employees and operations of a smaller carrier, the Monongahela Railway. The IAM represented machinists and roadway mechanics at both Conrail and Monongahela. Conrail's proposed New York Dock

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[8] See, e.g., United Transp. Union v. Surface Transp. Bd., 108 F.3d 1425 (D.C. Cir. 1997) **(Carrier's Exhibit LL).**

implementing agreement would have put the former Monongahela IAM-represented employees under the Conrail-IAM agreement. Heavy repair of roadway equipment was to be transferred to Conrail's roadway equipment repair shop. The IAM was agreeable in part to placing Monongahela work and employees under the Conrail agreement. However, IAM wanted to preserve some work rules in the IAM-Monogahela agreement for former Monongahela employees. Arbitrator Peterson rejected the IAM proposal stating as follows:

> In the opinion of the Arbitration Board, to modify or amend the Conrail-IAM&AW Schedule of Rules Agreement to extend or preserve certain rights to former MGA employees would be to debase the principles of the basic merger understanding as to which agreement would survive the merger, and tend to impede, rather than foster the economies and efficiencies of the merger, even if it was to be held, which it is not, that there was merit to the aforementioned desires of the IAM&AW.

Arbitration Board Established Pursuant to Article I, Section 4 of the New York Dock Conditions as Imposed by the ICC in Finance Docket no. 31875, Consolidated Rail Corp. and Int'l Ass'n of Machinists, Decision at 13 (June 21, 1993) **(Carrier's Exhibit MM)**.

When CSXT coordinated train operations on former railroads into large seniority districts, it served New York Dock notices on BLE and UTU. After they refused to negotiate implementing agreements, CSXT invoked arbitration. The New York Dock arbitrator, Arbitrator Robert O'Brien, agreed that to achieve merger efficiencies, CSXT needed to be able to place all train and engine employees, who would be working together in the new coordinated territory, under one former railroad's agreements. Under the terms of his decision, which adopted CSXT's proposed implementing agreements, "those employees now working under the C&O, WM and RF&P schedule agreements will be placed under B&O schedule agreements. Additionally, some employees will have their representation changed from the UTU to BLE." Decision at 11 **(Carrier's Exhibit NN)**. When the unions appealed the New York Dock decision to the ICC,

the ICC upheld the decision, finding that CSXT had shown that having all employees work under one railroad's agreements was necessary to realize merger efficiencies. **(Carrier's Exhibit OO.)** The D.C. Circuit subsequently agreed, stating as follows:

> CSXT argued, and the ICC accepted, that a consolidation of seniority rosters was necessary to effectuate the merger of the rail lines. This is both obvious on its face and demonstrated by CSXT. . . . It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of the consolidation.

United Transp. Union v. Surface Transp. Bd., 108 F.3d 1425, 1431 (D.C.Cir. 1997).

After the 1980 Control Decision, CSXT had two freight car heavy repair shops, one at Waycross, Georgia, on the former SCL, and one at Raceland, Kentucky, on the former C&O. Pursuant to an arbitrated New York Dock agreement, CSXT transferred employees and work from the Waycross shop to Raceland, when it coordinated heavy freight car repair into the Raceland location. All employees working at Raceland were placed under the agreements applicable on the former C&O. **(Carrier's Exhibit PP.)**

Most New York Dock implementing agreements are reached through negotiation. Negotiated New York Dock implementing agreements also recognize that to achieve merger efficiencies, employees working at the same location must work under the same agreements, with the same work rules and same rates of pay. For example, when CSXT consolidated customer service work and employees from former railroads into a consolidated customer service center in Jacksonville, all employees were placed under CSXT's agreements with the Transportation Communications International Union ("TCU") that apply on the former SCL, because Jacksonville is on the former SCL. Previously, these employees worked under agreements applicable on the former C&O, B&O, RF&P, and other properties. This was accomplished pursuant to a New York Dock agreement dated January 29, 1991.

When CSXT consolidated dispatching work from various former properties into the dispatching facility in Jacksonville, the New York Dock agreement provided that all work and employees coordinated into Jacksonville would work under the American Train Dispatcher Association-SCL Agreement, which applied at that location.

Similarly, when CSXT consolidated its signal shop repair work from multiple locations to a single signal shop in Savannah, Georgia, employees who previously worked under several different agreements with the Brotherhood of Railroad Signalmen ("BRS") were consolidated under one agreement, the BRS agreement applicable on the former SCL. (See **Carrier's Exhibit VV.**)

These are only a few examples of the New York Dock coordination on CSXT, where employees from former properties who worked under different agreements were placed under one agreement.

CSXT coordinated roadway equipment repair work, facilities, and employees under its agreement with one union, the IAM, to achieve similar efficiencies. The only difference here is that, in the above examples, employees were coordinated from several agreements with the same union, where here, employees were coordinated from several agreements with different union representation. However, the reason for placing employees under one set of work rules and pay rates was the same as in other New York Dock coordinations.

This is not the only circumstance, moreover, where coordinated work and employees have involved agreements with more than one union. Arbitrator Witt imposed a New York Dock implementing agreement, which transferred clerical employees of the Union Railroad to the Bessemer and Lake Erie Railroad and placed all clerical employees under the Bessemer's collective bargaining agreement with the TCU. The ICC had approved the common control of

the Bessemer and Union Railroad. To realize merger efficiencies, the Bessemer wanted to consolidate all clerical work at one location on the Bessemer. While the clerical employees of Bessemer were represented by TCU, those on the Union Railroad were working under a collective bargaining agreement with the United Steel Workers ("USW"). The USW opposed the transaction, because it would lose members. Arbitrator Witt found that placing all clerical work under one collective bargaining agreement would help realize the benefits of the ICC approval of the common control of the two railroads, finding that "[t]he efficiencies which can flow from specialization of accounting and clerical functions, non-duplication of effort and supervision, and centralization of activity are many and obvious as shown in the record." Before a Neutral Referee Appointed Under Article I, Section 4 of the New York Dock Conditions, Union Railroad Co. and United Steelworkers of America, Decision at 12 (Oct. 21, 1997) **(Carrier's Exhibit QQ).**

Arbitrator Witt's decision was affirmed by the STB, which found that her decision drew "its essence from the imposed labor conditions," since it allowed realization of merger efficiencies. Union R.R. Co. and Bessemer & Lake Erie R.R. Co.—Arbitration Review—United Steel Workers of Am., STB Finance Docket No. 31363 (Sub-No. 3), 1998 WL 877620, *6 (I.C.C.) **(Carrier's Exhibit RR),** aff'd, Union R.R. Co. v. United Steelworkers, 242 F.3d 458 (3d Cir. 2001) **(Carrier's Exhibit SS).**

Another circumstance on CSXT where work and employees in the same craft, but represented by two different unions, were coordinated pursuant to a New York Dock agreement involved work of the carmen craft. As a result of the Conrail transaction, CSXT coordinated part of the former Conrail into CSXT's rail system. One such coordination was the work of car repair. On Conrail, representation of the carmen craft was split between the Brotherhood of

Railway Carmen ("BRC") and the Transport Workers Union ("TWU"). On CSXT, the carmen craft is represented exclusively by BRC. The New York Dock implementing agreement to which CSXT, BRC and TWU are party placed all carmen on CSXT, including those who came over from Conrail, under the CSXT collective bargaining agreements with BRC applicable to a particular point (either the agreement applicable on the former B&O or on the former C&O). See Conrail Transaction Implementing Agreement, Art. II, Sec.1 (**Carrier's Exhibit TT**). BRC and TWU entered into an agreement under which TWU is allowed to represent carmen who are TWU members in grievance handling and collect dues from those carmen. However, as CSXT made clear to BRC and TWU, employees at any given location work under one agreement – the BRC agreement applicable at that location. See, Carrier's Exhibit TT at 16-17.

The common denominator in all of the above-described coordinations is that where work, operations or facilities are coordinated at a common location, the work and employees are placed under one collective bargaining agreement applicable at that location. This is because it is obvious that, for a workforce to be combined on an efficient basis, they must work under the same rates of pay and work rules. It is contrary to the intent of a New York Dock transaction such as the coordination of the roadway equipment repair work to have employees working side by side under different agreements. This is true even if one is only talking about different rates of pay. In Norfolk & Western Ry. Co., Southern Ry. Co. and Interstate R.R. Co.—Exemption—Contract to Operate and Trackage Rights (Arbitration Review), Finance Docket No. 30582 (Sub-No. 2), 1989 ICC LEXIS 174 (**Carrier's Exhibit UU**), the arbitrator found that if employees from two railroads, who had come under common control and whose work was being coordinated were not placed under the same agreement, differences between the two agreements,

including on rates of pay, "could cause friction between the two groups."[9] In affirming the arbitrator's decision, the ICC agreed that placing all employees under the same agreement was necessary to realize the efficiencies of the ICC-authorized transaction.

Clearly, efforts to meld employees from former properties into one work force will be hampered if employees working next to each other are paid different rates of pay based on which union agreement that had previously worked under. Yet, that is the result the SMWIA argues for here.

IV. EVEN IF CSXT SHOULD HAVE APPLIED THE RATE CHANGES IN THE SMWIA NATIONAL AGREEMENT TO ROADWAY MECHANICS WHO ARE SMWIA MEMBERS, ANY ALLEGED DAMAGES ARE MINIMAL

At this point, it is not clear to CSXT exactly what the Organization is seeking in the way of a remedy in the event this arbitrator concludes that CSXT did not properly apply the Implementing Agreement and, consequently, the wage and related adjustments in the national SMWIA agreements rather than those in the national IAM agreements should have been applied to roadway mechanics who are SMWIA members. Presumably, the SMWIA will address its proposed remedy in its opening submission.

However, even if the wage and related adjustments in the national SMWIA agreements should have been applied to such roadway mechanics who are SMWIA members (which they should not have been), it does not necessarily follow that any or all such roadway mechanics suffered any loss. Because of differences in the terms of the national IAM and national SMWIA agreements and in the timing of when those agreements took effect, it may well be that there are

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[9] N&W and Southern obtained approval to coordinate the operations of the Interstate Railroad with their own. As a result of this coordination, the N&W took over operation of the track of the Interstate. The arbitrated implementing agreement placed all train service employees, including those of the Interstate, under the agreements of the N&W.

periods of time when the value of the wage and related adjustments in the IAM agreements exceeded those in the SMWIA agreements. For example, in the 2000 round of national bargaining, the SMWIA national agreement, reached in April 2005, provided for retroactive pay. **(Carrier's Exhibit JJ.)** That national agreement also provided for increased sharing of health care costs by employees. The national IAM agreement was reached some time later, in September 2005. That IAM agreement did not provide for retroactive wage payments. However, the IAM agreement provided that health care cost sharing will take effect later than when it did under the SMWIA national agreement. Thus, even though employees covered by the national SMWIA agreement received wage adjustments sooner than employees covered by the national IAM agreement, the value of those wage adjustments are reduced by the increased cost sharing adjustment. When the impact of the wage and related adjustments in the national IAM agreements are offset against those in the national SMWIA agreements, it may be for some employees and for some time periods, roadway mechanics who are SMWIA members may have suffered no harm or may have received excessive net pay, which might have to be recouped by CSXT.

CONCLUSION

In light of the foregoing, the record clearly demonstrates that CSXT's agreements with IAM govern the wages and related conditions of employment for roadway mechanics who happen to be SMWIA members. Accordingly, this Board should conclude that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA. Moreover, since SMWIA agreed in the

Implementing Agreement that the wage rates of the IAM agreement would apply, CSXT did not violate any SMWIA agreement by paying roadway mechanics who are SMWIA members the wage and related adjustments provided under the IAM Agreement, and not under the SMWIA agreement.

Dated: February 21, 2007.

Respectfully submitted,

By: _____

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For CSX Transportation, Inc.

BEFORE A
NEW YORK DOCK ARBITRATION COMMITTEE
AND
PUBLIC LAW BOARD
APPOINTED PURSUANT TO SECTION 11 OF THE NEW YORK DOCK
EMPLOYEE PROTECTIVE CONDITIONS
AND
SECTION 3 SECOND OF THE RAILWAY LABOR ACT

CSX TRANSPORTATION, INC., and SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION	Neutral Member Lynette Ross

PREHEARING REBUTTAL SUBMISSION OF CSX TRANSPORTATION, INC.

INTRODUCTION

The Sheet Metal Workers International Association ("SMWIA") argues in its opening submission that CSX Transportation, Inc. ("CSXT") violated the 2005 National SMWIA Agreement covering sheet metal workers when CSXT refused to apply the Agreement's wage and benefit increases to its roadway mechanics who were subject to a 1993 New York Dock Implementing Agreement. As explained earlier, this Implementing Agreement consolidated the work of roadway mechanics who were represented by three separate unions under separate bargaining agreements into one uniform agreement. Nevertheless, SMWIA contends that it retained the right under the Implementing Agreement to independently bargain with CSXT future changes in rates of pay, work rules and benefits for its roadway mechanics, and that it did just that when it reached an agreement with CSXT covering its sheet metal workers during national bargaining. SMWIA's arguments, however, are contrary to the fundamental purpose of the 1993 Implementing Agreement, which is to place all roadway mechanics under the same rates of pay,

rules and benefits. Further, such an outcome would result in employees in the same craft and performing the same work working under different rates of pay, which is the very antithesis of the 1993 New York Dock coordination.

As a threshold matter, SMWIA is mistaken that this Section 11 Committee and Public Law Board ("PLB") are sitting as a combined board which can issue a combined decision. The Committee and PLB are separate and distinct, each with its own jurisdiction. The PLB does not have jurisdiction to interpret the 1993 New York Dock Implementing Agreement which is at the heart of the parties' dispute.

There is also no merit to SMWIA's arguments regarding the alleged application of the 2005 National Agreement.

First, the language of the 1993 New York Dock Implementing Agreement, and the 1987 implementing agreement which preceded it, do not support SMWIA's arguments that it retained the ability to bargain future changes in rates of pay, rules and working conditions for roadway mechanics who are SMWIA members. Indeed, the 1987 agreement shows that the few roadway mechanics who are SMWIA members have not been covered by agreements with the SMWIA since 1987.

Second, the SMWIA cannot reconcile its interpretation of the 1993 Implementing Agreement with the purpose of that Agreement to achieve a consolidated work force working under the same rates of pay, work rules and working conditions. SMWIA's attempt to carve out an exception for twelve of the 353 roadway mechanics who are SMWIA members is contrary to that purpose.

Third, CSXT's 1999 Section 6 notice and the 2005 national SMWIA agreement do not support SMWIA's argument that the wage adjustments in that agreement apply to roadway

mechanics who are SMWIA members, because CSXT did not carve out roadway mechanics from the scope of that bargaining. CSXT did not need to do so because the entire craft of roadway mechanics on CSXT had been placed under CSXT's agreements with the International Association of Machinists ("IAM") by the 1993 New York Dock Implementing Agreement. As a matter of law, the parties could not change the basic terms of the 1993 Implementing Agreement by a collective bargaining agreement reached under the Railway Labor Act ("RLA"). Under SMWIA's logic, a union could seek to undo a New York Dock coordination by RLA bargaining. However, a modification to a New York Dock coordination must be done pursuant to procedures of the Surface Transportation Board ("STB"), not RLA Section 6 bargaining.

Fourth, the SMWIA's interpretation is not supported by past practice.

For the reasons set forth in CSXT's Opening Submission and in this Rebuttal, the Section 11 Committee should find that the 1993 Implementing Agreement placed all roadway mechanics, including those who are members of SMWIA, under CSXT's collective bargaining agreements with the IAM for all purposes, including rates of pay and benefits, and therefore nothing remains for the PLB to decide.

ARGUMENT

I. THE SECTION 11 COMMITTEE AND PLB ARE SEPARATE AND DISTINCT TRIBUNALS

SMWIA tries to muddy the jurisdictional boundaries between the Section 11 Committee and PLB. For example, SMWIA states that whether the issues are resolved by the Section 11 Committee or the PLB, "The Relevant Determinations Remain The Same." (SMWIA Submission at 11.) The SMWIA also refers to the "Board/Committee." This is not correct.

As explained in CSXT's opening submission, although the parties agreed, for reasons of convenience, to appoint the same arbitrator as the neutral member of both the PLB and Section

11 Committee and conduct a joint hearing, the Section 11 Committee and PLB are separate and distinct tribunals, created under different statutory schemes and with different jurisdiction. SMWIA erroneously claims that the PLB and Section 11 Committee are to "issue a combined award." This is not so. Each tribunal will issue its own decision. The Section 11 Committee will issue a "decision," pursuant to Article I, Section 11 of the New York Dock conditions. SMWIA does not deny that this decision is a decision of the STB. If there is anything left for the PLB to decide, it will issue an award within the meaning of Section 3 of the RLA.

SMWIA implies that the PLB has jurisdiction to decide the parties' disagreement over the proper interpretation of the 1993 New York Dock Implementing Agreement, because CSXT's assertion of the Implementing Agreement is a "defense" to SMWIA's argument that CSXT violated the 2005 national SMWIA collective bargaining agreement. (SMWIA Submission at 11.) SMWIA cannot bootstrap jurisdiction into the PLB by characterizing CSXT's argument as simply a defense to a claim that it violated an RLA agreement. The language of Section 11 is clear that "any" disagreement "with respect to the "interpretation, application or enforcement of any provision of . . . ." a New York Dock agreement must be decided by a Section 11 Committee. New York Dock Ry.—Control—Brooklyn Eastern Dist. Term., 360 I.C.C. 60, 84-90 **(Carrier's Exhibit C)**, aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979) **(Carrier's Exhibit D)**. SMWIA does not deny that resolution of the parties' dispute over the wages of roadway mechanics requires interpretation of the 1993 New York Dock Implementing Agreement. Indeed, SMWIA makes arguments based on its interpretation of Articles IX and X of the 1993 Agreement. (SMWIA Submission at 9.) SMWIA also does not deny that this is a threshold question and that if CSXT prevails on this issue, the parties' dispute is resolved.

SMWIA cites Brotherhood of Railway Carmen Division, Transportation Communications International Union and Grand Trunk Western Railroad, Inc., NRAB 2d Div., Award No. 13505 (Conway, Arb. 2000) **(SMWIA Exhibit 15)**, in support of an argument that, because the 1993 Agreement is supposedly intertwined with the 2005 Agreement, a PLB would have jurisdiction to interpret the 1993 New York Dock Agreement. In that case, the carrier argued that the NRAB lacked jurisdiction, because the parties' dispute allegedly implicated the New York Dock conditions. SMWIA states that Arbitrator Conway "found this argument was 'somewhat extreme' and decided it did have jurisdiction to resolve the dispute." (SMWIA Submission at 20.) However, Arbitrator Conway, referring generally to all of the parties' arguments, actually said that "[u]pon review of the record and the arguments of the parties, we conclude that both positions are somewhat extreme." Award at 4. Whether a dispute requires the interpretation of a New York Dock agreement depends on the facts of the particular case. A review of that Award shows there was no issue regarding the interpretation of a New York Dock agreement. Thus, it was not surprising that Arbitrator Conway found that "[i]n no event do these questions order such an interpretation of the protective Agreements as might arguably impose upon the jurisdiction of a New York Dock arbitration." Award at 5. CSXT notes that in other cases, when Arbitrator Conway, sitting with the Third Division of the NRAB, found that a New York Dock issue was involved, he dismissed the case for lack of jurisdiction in the NRAB, because the matter was committed to the jurisdiction of the STB. See CSX Transp., Inc. and Transp. Communications Int'l Union, NRAB, Third Div., Award No. 37749 (Conway, Arb. 2006). **(Carrier's Exhibit WW.)** It is important to note that SMWIA never explains how the issues of the 1993 Agreement and 2005 SMWIA agreement are so intertwined that they must be resolved by the PLB. SMWIA actually contradicts its intertwined argument elsewhere in its submission

when it contends that "the rights of Claimants under the 2005 SMWIA Agreement are 'complete, self contained . . . .'" (SMWIA Submission at 22.) Contrary to SMWIA's unsupported, and inconsistent, argument, as CSXT has explained, the issue of which union's agreements apply to roadway mechanics who are SMWIA members requires only interpretation of the 1993 Agreement and side letters amending that Agreement. The 2005 Agreement cannot answer that question.

The STB, ICC and New York Dock and NRAB precedents cited by CSXT all recognize that only a Section 11 Committee, and not a RLA arbitration board, has jurisdiction over disputes over the interpretation of a New York Dock agreement. SMWIA fails to take issue with the language of Section 11 or the holdings of these precedents.

Because RLA arbitration boards do not have jurisdiction to hear disputes involving New York Dock implementing agreements, it is for the Committee alone to first determine whether, under the 1993 Implementing Agreement, the wage and related adjustments to be applied to SMWIA roadway mechanics are those adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM, instead of such changes agreed to by CSXT and SMWIA. If, and only if, the Committee rules in favor of SMWIA and decides that the Implementing Agreement did not place roadway mechanics who are SMWIA members under CSXT's agreements with the IAM would there be issues for the PLB to consider. If, on the other hand, the Committee rules in favor of CSXT, there will be no issues left for consideration by the PLB.

II. THE LANGUAGE OF THE 1993 AND 1987 IMPLEMENTING AGREEMENTS AND JANUARY 26, 2006 AGREEMENT WITH BMWE DO NOT SUPPORT SMWIA

The SMWIA points to language, first in a 1987 New York Dock implementing agreement and then in the 1993 Implementing Agreement, to argue that roadway mechanics who are

SMWIA members are covered by the changes in wages and benefits in the 2005 national SMWIA agreement. SMWIA also relies on the January 26, 2006 agreement between CSXT and the Brotherhood of Maintenance of Way Employes ("BMWE"). The agreement language cited by SMWIA does not support its position. The language of the two implementing agreements, as well as the letter agreement with BMWE, show that the parties' intent has always been that all roadway mechanics work under the rates of pay, work rules, and benefits in CSXT's agreements with the IAM. This was essential to achieve the efficiencies of coordination of roadway equipment repair.

A. The 1987 Implementing Agreement

SMWIA begins its argument with the 1987 implementing agreement. (SMWIA Submission at 14.) As explained in CSXT's opening submission, many of the railroads that make up CSXT came under common control by virtue of the ICC's 1980 Control Decision. **(Carrier's Exhibit L.)** That decision allowed the railroads controlled by Chessie Systems, Inc. and Seaboard Coast Line Industries, Inc. to be under common control. As also explained, CSXT progressively coordinated operations and facilities over the years. In 1987, CSXT decided to coordinate the work of roadway equipment repair of the railroads controlled by the Chessie System, including the former Chesapeake and Ohio Railway ("C&O"), Baltimore and Ohio Railroad ("B&O"), and B&O Chicago Terminal Railroad ("B&OCT").

In 1987, CSXT proposed to consolidate all roadway mechanics on the former Chessie System railroads on a single consolidated roster and place them under CSXT's agreement with the IAM applicable on the former C&O administered by the IAM Chesapeake District. Of the 212 roadway mechanics to be consolidated, only 26 were represented by the SMWIA, while the

remaining 186 were represented by the IAM. **(Carrier's Exhibit XX** at Attachment "B".)[1] CSXT, IAM and SMWIA reached an implementing agreement on December 9, 1987, which is CSXT Labor Agreement No. I-229-87. **(Carrier's Exhibit XX.)**[2]

The 1987 Agreement is similar in approach to the 1993 Agreement. The 1987 Agreement specified some new terms for roadway mechanics, such as new base rates of pay and expenses, but otherwise placed all roadway mechanics under the "C&O Chesapeake District Agreement," i.e., the 1969 IAM-C&O Agreement. Article V.A specified as follows:

> All agreements currently in effect covering the Engineering Department (MofW) Mechanics employed upon the former Chessie System (B&O and B&OCT) Carriers are hereby abrogated and upon the effective date of this agreement all such Mechanics will be subject to the former C&O Chesapeake District Agreement, including all amendments thereto, and all other agreements, understandings, practices, and other contractual arrangements currently in effect for those C&O Chesapeake District Engineering Department (MofW) Mechanics.

In other words, all roadway mechanics, whether IAM or SMWIA members, were placed under the IAM-C&O Agreement, and all other agreements, including SMWIA agreements, applicable to roadway mechanics were "abrogated."

The 1987 Agreement also provided that the changes in wage rates that would result from the 1987 IAM national agreement, which was then out for ratification, would apply to all roadway mechanics, including SMWIA members. Article III.A stated that "[s]hould the 1987 Tentative IAM&AW National Agreement be consummated prior to implementation of this

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[1] With respect to the 1993 Implementing Agreement, of the approximately 353 current roadway mechanics, 12 are SMWIA members, 82 are BMWE members, and 259 are IAM members. **(Carrier's Exhibit YY.)**

[2] The complete 1987 Agreement is found in **Carrier's Exhibit XX.** SMWIA included the agreement, but not all of its side letters, as its Exhibit 5.

agreement, the wage adjustments contained therein will be applied to this agreement and the monthly salary increased accordingly upon the effective date of this agreement."

Side Letter No. 11 also made clear that all roadway mechanics would work under the same agreement terms, those in the 1969 IAM-C&O Agreement, as amended from time to time.

> This will confirm our understanding that all IAM/SMW represented employees currently holding positions (and those subsequently filling positions) in the Maintenance of Way (Engineering) Department on the former C&O, B&O, and B&OCT carriers will, as a result of this agreement, become employees of the former C&O Railway Company and be subject to all agreements, including amendments thereto, in effect between the IAM and the former C&O as of the date of the coordination.

Nothing in the 1987 Agreement stated or suggested that the parties intended that roadway mechanics would have different rates of pay or work rules. To the contrary, as a result of the 1987 Implementing Agreement, all roadway mechanics in the coordinated territory, including SMWIA members, were placed under the 1969 IAM-C&O Agreement and amendments, including future changes to wages made by national IAM agreements, and CSXT's agreements with the SMWIA ceased to have any application to roadway mechanics.

SMWIA focuses in on the language in Side Letter Nos. 11 and 12 as support for its position that, even though all roadway mechanics were placed under the agreements of one union, the IAM, each union retained its full representation rights, including the right to amend the agreements applicable to roadway mechanics who belonged to that union. SMWIA relies on the language in the Side Letter No. 11 that roadway mechanics would "be subject to all agreements, including amendments thereto, in effect between the IAM and the former C&O as of the date of the coordination." (SMWIA Submission at 14 (emphasis added by SMWIA).) SMWIA contends that the underlined language meant that all roadway mechanics only had to be covered by the same IAM agreement as of the date of the coordination, but after that date, the

terms and conditions in that IAM agreement could be amended. SMWIA then argues that the language in Side Letter No. 12 that each roadway mechanic "will continue his present union affiliation and representation status should he be awarded a position in the coordinated operation," meant that SMWIA remained the collective bargaining representative of the roadway mechanics who were SMWIA members and was free to propose amendments to the IAM-C&O Agreement any time after the date of the coordination. This interpretation is contrary to the language of the 1987 Agreement would frustrate the purpose of a New York Dock consolidation.

The 1987 Agreement did not contemplate that roadway mechanics would only be covered by the terms and conditions in the IAM-C&O Agreement as they existed on the date of the coordination. The 1987 Agreement clearly envisioned that subsequent amendments to that IAM agreement would apply to roadway mechanics. For example, Article III.A.1 provided that changes to wage rates that took effect after the effective date of the coordination would apply. Article V.A provided that all roadway mechanics would be subject not only to the IAM-C&O Agreement as it existed in 1987, but with respect to "all amendments thereto," not just amendments that had been made as of 1987. Moreover, the language "including amendments thereto" in Side Letter No. 11 was not limited to amendments that had been made as of the date of the coordination. Such a construction does not make sense. The reference to amendments was meant to apply to future amendments to the IAM-C&O Agreement to all roadway mechanics. Furthermore, the 1987 Agreement abrogated the SMWIA agreements as they applied to roadway mechanics. Thus, looking at the 1987 Agreement as a whole, it is clear that future amendments to the IAM-C&O Agreement would be applied to all roadway mechanics covered by that Agreement.

The reference to representation in Side Letter No. 12 was simply so the SMWIA could represent roadway mechanics who were SMWIA members in grievance handling that arose under the IAM-C&O Agreement, and could continue to collect dues from these employees.

B. The 1993 Implementing Agreement

As explained in CSXT's Opening Submission, in 1993, CSXT decided to coordinate roadway mechanic work and facilities that had been coordinated under the 1987 Agreement with such work and facilities on the former Richmond, Fredericksburg & Potomac, Louisville & Nashville, and Seaboard Coast Line Railroads. Roadway mechanics on these former properties were represented for the most part by IAM. None were represented by SMWIA. As has also been previously explained, the 1993 Agreement placed all roadway mechanics under the 1969 IAM-C&O Agreement, except that IAM members were placed under the 1994 IAM Agreement by virtue of a Side Letter to the 1993 Agreement. No roadway mechanics who were SMWIA members were moved from a SMWIA agreement to the 1969 IAM-C&O Agreement by the 1993 Agreement, because such mechanics had already been under the 1969 IAM-C&O Agreement since 1987 by virtue of the 1987 Implementing Agreement.

SMWIA does not dispute that, pursuant to the 1993 Agreement, its members continued to be covered by the 1969 IAM-C&O Agreement. SMWIA also admits that the 2001 agreement between it and CSXT provided that the 1994 IAM-CSXT Agreement would replace the 1969 IAM-C&O Agreement as the applicable IAM agreement for purposes of the 1993 Implementing Agreement. The terms of the two IAM property agreements were very similar, and identical for purposes of wages, except that the 1994 Agreement provided for a 50 cent rather than a 25 cent skill differential for qualified journeymen.

SMWIA points to Article X of the 1993 Implementing Agreement, which discusses union affiliation and representation status. This provision is similar to language in Article 12 of the 1987 Agreement. As CSXT explained in its opening submission, the intent of Article X was simply to provide that each union would handle grievances or claims arising under the IAM Agreement for its own members and continue to collect dues from those employees, and not that each union would continue as the collective bargaining representative for its members. In fact, this has been the past practice under the 1993 Agreement. Until now, neither the BMWE nor SMWIA ever asserted that it could bargain rates of pay for roadway mechanics who were their members different from those in the applicable IAM agreement.

Article XI.G of the 1993 Implementing Agreement also does not support SMWIA. Subpart G states that the Implementing Agreement "shall be construed, for all intent and purposes, as a separate Agreement between CSX Transportation, the B&OCT, the RF&P, and each of the Organizations signatory hereto." The statement that the Agreement was with each of the organizations simply acknowledges the requirement of the New York Dock Conditions that all unions involved in the transaction must be party to the New York Dock Implementing Agreement.

Moreover, as explained infra, as a matter of law, the terms of a New York Dock agreement cannot be amended pursuant to collective bargaining under the RLA. Otherwise, a union could undue a STB-authorized transaction through the RLA Section 6 bargaining process, as SMWIA is attempting to do here.

C. The 2001 Agreement With SMWIA

As has been explained, in an agreement dated August 9, 2001, SMWIA agreed that the 1994 IAM Agreement instead of the 1969 IAM-C&O Agreement would be the controlling

agreement for roadway mechanics who were SMWIA members for purposes of Article III.A of the 1993 Implementing Agreement. SMWIA cites an arbitration award for the proposition that roadway mechanics who were SMWIA members would not come under the 1994 IAM Agreement until SMWIA agreed. (SMWIA Submission at 17 (citing Sheet Metal Workers' Int'l Ass'n and CSX Transportation, Inc., PLB No. 6387, Award No. 1 (Muessig, Arb.)) (**SMWIA Exhibit 6**).) Prior to the 2001 agreement, CSXT had mistakenly applied a term in the 1994 IAM Agreement instead of the comparable term in the 1969 IAM-C&O Agreement in a dismissal case involving a roadway mechanic who was a SMWIA member. This award supports CSXT's position that the 1993 New York Dock Implementing Agreement placed all roadway mechanics, including SMWIA members, under IAM collective bargaining agreements. The issue in the arbitration was simply which IAM agreement applied. Notably, SMWIA did not argue that a SMWIA agreement provided the applicable probationary period, only that it had never agreed to replace 1969 IAM-C&O Agreement with the 1994 IAM Agreement. Nothing in that award held or intimated that SMWIA had the right to bargain changes in the rates of pay, rules or working conditions in the 1994 IAM-CSXT Agreement as they applied to roadway mechanics who were SMWIA members.

D. The 2006 Agreement With BMWE

SMWIA also contends that there is significance in the fact that there is a difference in the language used in the August 9, 2001 agreement with SMWIA and a similar January 16, 2006 agreement with BMWE. This argument is also unavailing.

The 2006 agreement with BMWE stated that "The [BMWE] recognizes that it will not be party to any future negotiations concerning the IAM&AW Agreement (District No. 19) dated October 1, 1994." SMWIA argues that this language shows that "BMWE relinquished the right

to propose changes in the future." (SMWIA Submission at 18.) SMWIA argues that it has never agreed to such a requirement, because no such language appears in the August 9, 2001 agreement. The language in the 2006 agreement does not have the meaning that SMWIA would give it. By 2006, when the BMWE agreed to replace the 1969 IAM-C&O Agreement with the 1994 IAM Agreement as the controlling IAM agreement for roadway mechanics who are BMWE members, CSXT was already embroiled in the present dispute with the SMWIA. Accordingly to head off any possible similar dispute with BMWE, CSXT included specific language confirming the past practice of applying wage and related adjustments negotiated with IAM. **(Carrier's Exhibit S.)** BMWE did not "relinquish" the right to bargain changes in rates of pay, rules and working conditions for roadway mechanics, because after the 1993 Implementing Agreement had placed all roadway mechanics under the IAM agreements, it never had such rights.

CSXT notes that the fact that SMWIA entered into the 2001 agreement, and BMWE entered into the 2006 agreement, agreeing to put their respective members under the 1994 IAM Agreement instead of the 1969 IAM-C&O Agreement, contradicts SMWIA's contention that it can bargain for improvements to the rates or pay for roadway mechanics who are SMWIA members. A reason to go under the 1994 Agreement was that it provided for a more generous skill differential than the 1969 Agreement. If SMWIA had the right to bargain, it could have served a Section 6 notice on CSXT to bargain such an improvement. Instead, it properly agreed to an amendment to the 1993 Implementing Agreement to place these mechanics under the 1994 IAM Agreement.

SMWIA has tried to pick language out of two sections in the 1987 and 1993 implementing agreements and the 2006 BMWE letter agreement to construct its argument that it

can bargain to put SMWIA-member roadway mechanics under its agreements with CSXT, rather than CSXT's agreements with IAM. As shown above, the bits of language relied upon by SMWIA do not support its position. Moreover, SMWIA is asking the Arbitrator/Committee to consider this language outside the context of the New York Dock coordination of roadway equipment repair. Looking at the 1993 Implementing Agreement as a whole, it is clear that all roadway mechanics were to be consolidated to work under only one union's agreements in order to achieve the efficiencies of the coordination.

III. THE FAILURE TO SPECIFICALLY EXCLUDE ROADWAY MECHANICS WHO ARE SMWIA MEMBERS FROM 1999 SECTION 6 NOTICES AND THE 2005 SMWIA NATIONAL AGREEMENT DOES NOT SUPPORT SMWIA

SMWIA claims that, because CSXT failed to exclude roadway mechanics from the Section 6 notice it served in SMWIA in 1999 and the failure to carve out such roadway mechanics from the resulting 2005 national agreement means that they are covered by that agreement and the changes in wages and benefits contained therein. (SMWIA Submission at 12-13.) These arguments have no merit.

SMWIA argues that "[i]t is clear that the 2005 Agreement was intended to and did raise the wages of all sheet metal workers SMWIA represents, regardless of what rules agreement they work under." (SMWIA Submission at 22-23 (emphasis in original).) CSXT does not disagree as it pertains to the craft of sheet metal workers, however, the claimants all work in the craft of roadway mechanics, which is a separate and distinct craft from sheet metal workers. As explained, the 1987 and 1993 Implementing Agreements placed all employees working in the roadway mechanic craft under CSXT's agreements with the IAM. Thus, CSXT did not need to carve out roadway mechanics who are SMWIA members from the 1999 notice or 2005 Agreement.

Moreover, SMWIA has not previously asserted that roadway mechanics who are SMWIA members became covered by a national SMWIA agreement because CSXT's Section 6 notice and the resulting national SMWIA agreement did not expressly exempt them from that agreement's coverage. Indeed, SMWIA reached a national agreement with CSXT on September 12, 1996. **(Carrier's Exhibit GG.)** Under the logic of SMWIA's argument, roadway mechanics who are SMWIA members would have been made subject to the wage changes in the 1996 SMWIA agreement. Yet, SMWIA never made such a claim.

SMWIA cites two awards as support for its argument that the 2005 national SMWIA Agreement applies to roadway mechanics who are SMWIA members because nothing in the 2005 agreement expressly exempts such mechanics from the wage increases provided therein. Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employes and Kansas City Terminal Railway Co., NRAB 3d Div., Award No. 6344 (Smith, Arb. 1953) **(SMWIA Exhibit 16)** and Brotherhood of Ry. & Steamship Clerks, Freight Handlers, Express & Station Employees v. Great Northern Ry. Co., NRAB, Third Div., Award No. 5905 (Daugherty, Arb. 1952) **(SMWIA Exhibit 17).** These awards are easily distinguishable and have nothing to do with any issue in this case.

In both awards, the carrier had reached an agreement with the clerical union in national bargaining that increased wages. Each carrier argued, however, that these wage increases did not apply to employees in "excepted positions." Award No. 6344 at 569. The awards found that the wage increases applied because the carrier did not seek any limitation in the scope of the negotiations to exclude these positions from the resulting agreement. Unlike the instant case, the excepted positions were clerical positions covered by the collective bargaining agreement with the clerical union. In this context, the "excepted" positions were covered by the scope of the

clerical agreement, but were excluded by the agreement from certain provisions of the agreement. In contrast, here the roadway mechanic positions were not covered by CSXT's agreements with SMWIA prior to the bargaining of the 2005 agreement and were not in the same craft as sheet metal workers.

In addition, SMWIA's argument is contrary to law. SMWIA admits that the 1993 Implementing Agreement placed all roadway mechanics under CSXT's agreements with the IAM. SMWIA is in effect contending that it can modify the 1993 Agreement through the RLA bargaining process and place roadway mechanics who are SMWIA members under SMWIA collective bargaining agreements. But, it is well settled that the STB's jurisdiction over railroad consolidations supersedes the bargaining requirements of the RLA. See, e.g., Norfolk & Western Ry. Co. v. Am. Train Dispatchers Ass'n, 499 U.S.117, 133 (1991). **(Carrier's Exhibit ZZ.)** Describing the supremacy of the New York Dock conditions over RLA bargaining, the Supreme Court held that "Section 11341(a) [now 49 U.S.C.§ 11321(a)] guarantees that once those interests [of labor] are accounted for and once the consolidation is approved, obligations imposed by laws such as the RLA will not prevent the efficiencies from the consolidation from being achieved." The STB and ICC accordingly have held that the RLA bargaining process cannot be used to end run implementing agreements reached pursuant to their employee protective conditions. See, e.g., Delaware & Hudson Ry. Co.—Lease and Trackage Rights Exemption—Springfield Terminal Ry. Co., 8 I.C.C. 2d 839, 1992 ICC LEXIS 39 at * 12-13 ("Thus, rail labor must not be permitted by artful pleading to assert RLA jurisdiction over matters directly related to implementing a transaction approved by the Commission under section 11343 and, thereby, avoid the jurisdictional bar of section 11341 (a)." **(Carrier's Exhibit E).**

IV. SMWIA'S ARGUMENTS RUN CONTRARY TO THE PURPOSE AND INTENT OF THE IMPLEMENTING AGREEMENT

CSXT continued paying all roadway mechanics, regardless of union affiliation, pursuant to the scheduled increases negotiated with the IAM, and neither BMWE nor SMWIA complained about this practice.

CONCLUSION

For the reasons set forth above and in CSXT's opening submission, the Committee should conclude that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA. Moreover, since the wage rates of the IAM agreement apply, CSXT did not violate any SMWIA agreement by paying roadway mechanics who are SMWIA members the wage and related adjustments provided under the IAM Agreement, and not under the SMWIA agreement, and therefore nothing remains for the PLB to decide.

Dated: March 5, 2007.

Respectfully submitted,

By: _____
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1 of 1 DOCUMENT

TIMOTHY W. BLACK and THOMAS K. SORGE, Petitioners, v. SURFACE TRANSPORTATION BOARD and UNITED STATES OF AMERICA, Respondents, GRAND TRUNK WESTERN RAILROAD, Intervenor.

No. 06-3045

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

07a0058p.06;

2007 U.S. App. LEXIS 2892; 2007 FED App. 0058P (6th Cir.)

November 3, 2006, Argued
February 9, 2007, Decided
February 9, 2007, Filed

PRIOR HISTORY: [*1] On Petition for Review of an Order of the Surface Transportation Board. No. FD 28676 5.

COUNSEL: ARGUED: Mary S. O'Neill, MURRAY & MURRAY CO., L.P.A., Sandusky, Ohio, for Petitioners.

Erik Light, SURFACE TRANSPORTATION BOARD, Washington, D C., for Respondents.

Robert S. Hawkins, BUCHANAN INGERSOLL & ROONEY, Philadelphia, Pennsylvania, for Intervenor.

ON BRIEF: Mary S. O'Neill, Thomas J. Murray, Jr., MURRAY & MURRAY CO., L.P.A., Sandusky, Ohio, for Petitioners.

Craig M. Keats, SURFACE TRANSPORTATION BOARD, Washington, D.C , John J. Powers III, Robert J. Wiggers, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents.

Robert S Hawkins, BUCHANAN INGERSOLL & ROONEY, Philadelphia, Pennsylvania, for Intervenor.

JUDGES: Before: RYAN, BATCHELDER, and SUTTON, Circuit Judges.

OPINION BY: SUTTON

OPINION: [**1]

SUTTON, Circuit Judge. Timothy Black and Thomas Sorge challenge a decision of the Surface Transportation Board affirming an arbitration panel's ruling denying them relief under a railroad merger labor protection agreement We deny the petition. [**2]

I.

In 1979, the Interstate Commerce Commission (ICC) approved the Grand Trunk Western Railroad's acquisition [*2] of the Detroit, Toledo and Ironton Railroad Company and the Detroit and Toledo Shore Line Railroad Company. *See Norfolk & W Ry. Co.-Control-Detroit, Toledo & Ironton R.R. Co , 360 I.C C. 498 (1979)*. The ICC conditioned its approval of the merger on Grand Trunk's adoption of several labor -- protective conditions -- each of which Grand Trunk and the affected railroad unions eventually incorporated into a Master Agreement. JA 81-88; *see 49 U.S.C. § 11347 (1979), revised and recodified at 49 U.S.C. § 11326* (requiring the ICC to impose conditions on any railroad merger to ensure that the employees are guaranteed certain benefits for at least four years after the merger).

The Master Agreement. The Master Agreement incorporated what have come to be known as the *New York Dock* conditions -- by which railroads may "move employees from one work site to another in order to achieve the benefits of a merger transaction" so long as they guarantee workers certain employment protections, including at least six years of compensation. *Canadian Nat'l-Control-Ill. Cent., 4 S.T.B. 122, 164 (1999)*; *see New York Dock Ry.-Control-Brooklyn E Dist. Terminal, 360 I.C C. 60, 84 (1979)* [*3] (Appendix III). Disputes arising from application of the *New York Dock* conditions are subject to binding arbitration. *New York Dock Ry., 360 I C.C. at 87-88.*

In addition to incorporating the *New York Dock* conditions, the Master Agreement went a few labor -- protective steps further -- by granting each employee benefits "until [he or she] qualifies for early retiree major medical benefits," JA 82, and by providing that "no reduction in force of employment shall occur other than principally by death, retirement, discharge for cause, or resignation," *Norfolk & W. Ry., 360 I.C.C. at 531*. To accommodate then-furloughed employees of the smaller Detroit and Toledo Shore Line Railroad Company, the Agreement provided that such employees "shall be obligated to accept a reasonably comparable position . . . [,] which does not require a change in residence in order to maintain their protection hereunder." JA 83.

Agreement H of the 1981 Working Agreements. The Master Agreement was not self-executing. It required Grand Trunk to enter into separate working agreements with each of the unions before the Master Agreement became effective In 1981, [*4] Grand Trunk and the Brotherhood of Railway Carmen adopted the 1981 Working Agreements to implement the Master Agreement. Agreement H of the 1981 Working Agreements provided that "[i]t is the intent and purpose of this Agreement to provide for expedited changes in services, facilities and operations and for the orderly transfer of protected employees, work and positions between the G.T.W. and D.T. & I. Railroads and within the two Railroads" and that Grand Trunk "will not be required to hire a new employee at any point for a position that is subject to the G.T.W. – D.T. & I. – B.R.C. Working Agreement at a time that a B.R.C. protected employee who is qualified . . . for such position is receiving protection compensation as a furloughed employee." JA 183 (Agreement H, Section I(1)). Agreement H was intended only to "clarify conditions, responsibilities and obligations of protected employees," not to "eliminate or reduce any existing conditions, responsibilities or obligations as pertaining to protected employees." JA 190 (Agreement H, Section V(2)).

Agreement H obligated Grand Trunk to try to fill vacant positions with local employees. JA 187 (Agreement H, Section II(1)). If it [*5] could not do so, Grand Trunk had the option of offering the position to "furloughed protected employees at other points receiving compensation . . . in reverse order of seniority." *Id.* (Agreement H, Section II(2)). In the event transferred employees needed to change their residence, they could elect one of four options: (1) they could transfer to the position; (2) they could transfer to another available job in the system while maintaining their seniority at their original work site; (3) they could take a lump sum buyout; or (4) they could be furloughed without protective benefits but subject to recall. JA 188. [**3]

Agreement H likewise provided that "[w]ork, positions and/or employees may be transferred to another seniority point." JA 183 (Agreement H, Section I(2)). Under this agreement, then, Grand Trunk could transfer a position to another point in the system, though it had to try to fill the new position with local employees. JA 184 (Agreement H, Section I(2)(A)(a)). If it could not, Grand Trunk could "assign the junior protected employee at the point where the work is being transferred from to such position." *Id.* (Agreement H, Section I(2)(A)(b)) If that worker [*6] had to change his residence, he had the same four options outlined above. JA 184-85 (Agreement H, Section I(2)(A)(b)). By contrast, when the railroad abolished a position, Agreement H provided only that the displaced worker would maintain his seniority at his original work site. JA 186 (Agreement H, Section I(2)(B)).

The Extra Board Agreement. In 1983, Grand Trunk and the Brotherhood of Railway Carmen agreed to modify the method of compensating union members furloughed with compensation. The resulting Extra Board Agreement stated that all employees "who would otherwise stand to be furloughed as a result of a reduction in force will . . . be placed on an extra board" instead of receiving dismissal allowances, JA 89, which is to say they would stand ready to work in case of an unexpected personnel shortage at their local work site. The agreement, together with several side letters, clarified that all references to "furloughed protected employees receiving protection compensation" would now apply to "protected employees on an extra board." JA 98 (March 25, 1983 Side Letter to Extra Board Agreement).

Underlying Claim. In April 2004, Grand Trunk abolished seven carmen positions [*7] -- railroad employees who inspect and maintain the railway cars used in freight and passenger trains – at its Toledo, Ohio railyard. Because the rail system had carmen vacancies at the time, Grand Trunk offered each of the displaced carmen four options in accordance with the provisions of Agreement H: (1) filling one of the vacancies at a railyard in Flint, Michigan, (2) displacing a less-senior carman at another facility, (3) accepting a lump-sum buyout or (4) remaining in Toledo without compensation but eligible for recall.

Black and Sorge, two of the carmen, rejected these options, demanding instead that they be placed on an extra board at the Toledo railyard. The two carmen claimed that Section 7 of the Master Agreement prohibited Grand Trunk from transferring them to another location and that the Extra Board Agreement required Grand Trunk to place them on an extra board because their positions had been abolished. Grand Trunk responded that "carman positions are available at Flint, Michigan," freeing it of any obligation to create an extra board. JA 146.

Grand Trunk also construed their refusal to be transferred or bought out as choosing "furlough without protection," but it [*8] said that it would give the two men additional time to accept the vacant carman positions in Flint. *Id*

Black and Sorge first sought to resolve this dispute through their union, the Brotherhood of Railroad Carmen. The union refused to help, noting that because the two men had "declined [Grand Trunk's] offers of employment, there [were] no Agreement provisions[] to now pursue a claim." JA 51. When the union also refused to represent the two men in arbitration with Grand Trunk, they obtained their own counsel and pursued arbitration of their claim.

A divided three-member arbitration panel -- made up of a representative from Grand Trunk, a representative of the carmen and a neutral member -- denied the claim. In the panel's view, Agreement H "obligated Claimants to accept a transfer to fill an available vacancy or have their protective benefits suspended." JA 50. Not only was this interpretation "entirely consistent with the past practice on the Property," the panel concluded, JA 50-51, but it also was "consistent with *New York Dock* Awards that hold that employees must accept positions that would require them to move or else be placed on furloughed status without benefits, [*9] " JA 51. The panel also found that [**4] there was "no evidence that the Parties to the 1979 Agreement ever considered it to limit the Carrier's right to transfer protected employees." JA 52.

Black and Sorge appealed the arbitration award to the Surface Transportation Board, the successor agency to the ICC. *See* ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (1995). Applying the deferential *Lace Curtain* standard of review to arbitration awards, the Board denied their appeal. *See Chicago & N.W. Transp Co.-Abandonment, 3 I.C.C 2d 729 (1987)* (*Lace Curtain*), *aff'd sub nom. International Brotherhood of Electrical Workers v Interstate Commerce Com., 274 U.S. App. D.C. 103, 862 F 2d 330 (D.C. Cir. 1988).* The Board rejected their contention that Section 7 of the Master Agreement prevented Grand Trunk from transferring them under Agreement H, reasoning that at most the provision protected "those DTSL employees who were receiving dismissal allowances at the time the [Master] Agreement took effect." JA 13-14. The Board also held that Agreement H "clearly contemplated that an employee receiving protection will lose that protection if he refuses to accept a reasonably comparable [*10] position," JA 13, and that the Extra Board Agreement did not curtail Grand Trunk's right to transfer employees under Agreement H. Under these circumstances, the Board concluded, the arbitration panel's denial of petitioners' claim was "not irrational." JA 14.

II.

A.

Congress has delegated responsibility to the Surface Transportation Board (and the ICC before it) to impose labor-protective conditions on railroads that merge their operations. *49 U.S.C. § 11326* ("[T]he [Board's] order approving the [merger] transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board . . . ."); *Norfolk & W. Ry Co v Nemitz, 404 U.S. 37, 40-43, 92 S Ct. 185, 30 L. Ed. 2d 198 (1971).* The Board has jurisdiction to oversee disputes regarding the scope of these labor-protective conditions, and it customarily exercises this power by requiring parties initially to submit disputes to arbitration. *See International Brotherhood of Electrical Workers v. Interstate Commerce Com, 274 U.S. App. D.C 103, 862 F.2d 330, 336 (D.C. Cir. 1988)* [*11] (stating that absent the Board's delegation of authority to arbitration panels, "all disputes over employee protective conditions would have remained solely within the primary jurisdiction of the agency"); *Bhd of Locomotive Engineers v ICC, 257 U.S. App. D.C. 289, 808 F.2d 1570, 1579 n 75 (D.C. Cir 1987)* ("Arbitration is a legitimate method of resolving labor disputes and does not divest the Commission of its jurisdiction.").

"Nothing in the [the Board's organic statute] either requires or forecloses the agency's use of arbitration in employee disputes, or limits agency review of arbitration decisions." *International Brotherhood of Electrical Workers, 862 F.2d at 336*; *see also Employees of the Butte, Anaconda & Pac. Ry. Co. v. United States, 938 F 2d 1009, 1013-14 (9th Cir 1991).* The Board, accordingly, acts well within its authority, *see Chevron U.S.A., Inc. v. Natural Res Def. Council, Inc, 467 U.S 837, 842-43, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984),* in opting to require arbitration before considering disputes over labor-protective conditions stemming from railroad mergers. *See Bhd. of Locomotive Engineers, 808 F.2d at 1579 n.75*; [*12] *International Brotherhood of Electrical Workers, 862 F.2d at 336.*

Under what has come to be known as the *Lace Curtain* standard, the Board employs a "sliding scale of deference" in reviewing arbitration awards, *Ry. Labor Executives' Ass'n v. United States, 300 U.S App. D.C. 142, 987 F.2d 806, 812 (D.C. Cir 1993),* deferring to the arbitrator's findings on minor, factual disputes and exercising its own judgment over broader matters that implicate federal labor policy. The Board customarily limits its review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." *Chicago & N.W. Transp.*

Co -Abandonment, 3 I C C.2d at 736; *Ry Labor Executives' Ass'n, 987 F.2d at 812* ("An arbitrator's interpretations of Commission regulations and views regarding transportation policy are subject to more searching review"). Even aside from significant labor issues, however, the Board will overturn an arbitration [**5] award "when there is egregious error, when the award fails to draw its essence from the labor protective conditions, or when the arbitrator exceeds the specific limits on his authority. [*13] " *Am. Train Dispatchers Ass'n v. CSX Transp., Inc. (Arbitration Review), 9 I.C.C.2d 1127, 1130 (1993)*

Parties may petition the federal courts of appeals for relief from an order of the Board, including from the Board's review of an arbitration award. *28 U.S C. § 2342(5)*. Under the Administrative Procedure Act, a court may set aside an order of the Board if it is "arbitrary, capricious, an abuse of discretion, . . . otherwise not in accordance with law," *5 U S C. § 706(2)(A)*, or "unsupported by substantial evidence," *id. § 706(2)(E) See Film Transit, Inc. v. ICC, 699 F.2d 298, 300 (6th Cir 1983)* Applying this standard, the federal courts of appeals have upheld the Board's review of numerous arbitration awards under the *Lace Curtain* standard. *See Swonger v. Surface Transp. Bd , 265 F 3d 1135, 1139-41 (10th Cir. 2001)* (affirming a decision of the Board under *Lace Curtain*); *Augustus v. Surface Transp. Bd., No. 99-3014, 2000 U.S. App. LEXIS 33966, 2000 WL 1888805, at *3-4 (6th Cir. Dec. 22, 2000)* (same); *Employees of the Butte, Anaconda & Pac. Ry. Co., 938 F.2d at 1013-15 (9th Cir. 1991)* [*14] (same); *International Brotherhood of Electrical Workers, 862 F 2d at 336 (D C. Cir 1988)* (same); *see also Canadian Pac. Ry. Co v. Surface Transp. Bd , 339 U S. App. D C. 90, 197 F.3d 1165, 1167-68 (D.C. Cir. 1999)* (reviewing the Board's application of the *Lace Curtain* standard); *United Transp. Union v. Surface Transp. Bd., 325 U.S. App D.C. 34, 114 F.3d 1242, 1246-47 (D.C. Cir. 1997)* (same); *United Transp. Union v. ICC, 310 U.S. App D C. 46, 43 F.3d 697, 700-01 (D.C. Cir 1995)* (same); *Ry. Labor Executives' Ass'n, 987 F 2d at 812 (D.C. Cir. 1993)* (same), *Bhd. of Maint of Way Employees v. ICC, 287 U.S. App D.C. 109, 920 F 2d 40, 45 (D C Cir. 1990)* (same). B.

The Board's decision to uphold this arbitration award survives "arbitrary and capricious" review. *See Motor Vehicle Mfrs. Ass'n v State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42-43, 103 S. Ct. 2856, 77 L. Ed 2d 443 (1983)* Faced with an ambiguous provision in the labor-protective conditions, the arbitration panel properly referred to the past practice of the parties and the *New York Dock* principles in determining that Black and [*15] Sorge lost their benefits when they refused to fill vacancies in the rail system.

The ambiguity appears in Agreement H, which lies at the heart of this dispute. Because the railroad abolished, rather than transferred, petitioners' positions, Section I(2)(B) of Agreement H covers their claims. That section provides only that displaced workers will maintain their seniority at their original work site; it does not address whether such employees immediately may be transferred to a vacancy in the system without first being placed on an extra board.

To the extent other provisions of Agreement H clarify the picture, they do so in a way that favors Grand Trunk. Section I(2)(A) allows Grand Trunk to transfer an employee if the employee's position is itself transferred, regardless of whether there is another vacancy in the system. Section II(2) allows Grand Trunk to transfer an employee from an extra board to a different location if a vacancy arises within the system. These two provisions imply that Grand Trunk may transfer an employee whenever there is a vacancy in the system -- an implication reinforced by Section I(1)'s statement that "the intent and purpose of this Agreement [is] to [*16] provide for expedited changes in services, facilities and operations and for the orderly transfer of protected employees, work and positions." JA 183. The transfer of employees assuredly would be more "expedited" and "orderly" if Grand Trunk could transfer soon-to-be-displaced employees without first establishing an extra board, then transferring them

The Board also has consistently interpreted the *New York Dock* conditions to encompass the principle that railroads "are not required to make protective payments to [those] employees who are offered continued employment [elsewhere in the system], but decline to take advantage of it." *Canadian Nat'l, 4 S.T.B. at 164*; *see Norfolk and Western Railway Co., 9 I.C.C.2d 1021, 1027 (1993)* ("[E]mployees [who] exercise existing contractual rights (seniority) [must] take available work elsewhere in exchange for [**6] economic protections that would be afforded should they ultimately be displaced."). Because the Master Agreement specifically adopted the *New York Dock* conditions, these background principles also support the arbitration panel's [*17] reading of Agreement H.

Past practice and common sense point in the same direction. If Sections I(2)(A) and II(2) of Agreement H were read as the exclusive modes of transferring an employee, then Grand Trunk would be required to put displaced employees on an extra board, at least for an instant, before forcing them to be transferred. No rational party would bargain for such a mindless formality that offers no substantive benefits for protected employees but only procedure for its own sake and its own sake alone.

No less oddly, under petitioners' own interpretation, Grand Trunk could have abolished the vacant positions in Flint, Michigan, then transferred the two carmen's positions there. Doing so would have placed Grand Trunk's actions squarely within Section I(2)(A) of Agreement H, which unquestionably allows Grand Trunk to transfer employees without first establishing an extra board. Black and Sorge respond that "placement on an Extra Board is *automatic* under the Implementing Agreements" and that "one need not resort to interpretation of ambiguous terms to reach this conclusion." Br. at 25. They invoke a provision in the Extra Board Agreement stating that "[a]ll protected [*18] employees . . . who would otherwise stand to be furloughed as a result of a reduction in force will . . . be placed on an extra board," JA 89 (Extra Board Agreement, Section 1(a)(1)), and Section II(2) of Agreement H, which allows Grand Trunk to transfer employees already on an extra board. *See* Br. at 25-26. These passages, however, simply take the interpreter back to the central ambiguity in the case: whether employees whose positions are abolished while the system retains vacancies -- employees like Black and Sorge, in other words -- "would otherwise stand to be furloughed as a result of a reduction in force." The provisions of Agreement H, along with the *New York Dock* conditions, common sense and past practice, suggest that the petitioners were *not* otherwise eligible for compensated furlough: They breached their part of the bargain by rejecting available work.

Black and Sorge persist that Section 7 of the Master Agreement supports their reading of Agreement H, as it provides that employees of the Detroit and Toledo Shore Line Railroad Company "who are receiving dismissal allowances shall be obligated to accept a reasonably comparable position . . . which does not require [*19] a change in residence in order to maintain their protection hereunder." JA 83. Under petitioners' reading of the agreements, former employees of the Detroit and Toledo Shore Line Railroad Company (including Black and Sorge) are shielded from the application of Section II(2) of Agreement H because Grand Trunk could force them only to accept a position that "does not require a change in residence."

By its terms, however, the quoted language from the 1979 Master Agreement refers to employees "who *are receiving* dismissal allowances" -- namely, those employees receiving dismissal allowances before the 1979 merger, not all employees who happened to be dismissed after the merger. That is the interpretation the Brotherhood of Railway Carmen has given to the provision. That interpretation is consistent with past practice, as Section 7 "has never been interpreted as limiting [Grand Trunk's] right to 'force transfer' Carmen pursuant to Agreement H," JA 14, and Black and Sorge cannot point to a single example in which it has. And that interpretation is the only one that makes sense. As we have shown, a contrary reading of the provision comes to naught because, under Agreement H of the 1981 [*20] Working Agreements, Grand Trunk could have abolished the vacant positions in Flint and transferred the petitioners' positions from Toledo to Flint. Such an action would have invoked Section I(2)(A), not Section II(2), of Agreement H, so that Black and Sorge never would have had a right to be placed on an extra board and thus never would have been shielded from transfer under Section 7 of the Master Agreement. [**7]

Black and Sorge, lastly, argue that " *Lace Curtain* should not preclude this Court from reviewing the arbitral award (as well as the [Board] decision) in the instant case and its inquiry should not be limited to whether the [Board] acted arbitrarily and capriciously in its application of the *Lace Curtain* standard." Br at 18. Fearing that the Board might "finess[e] the litigant out of its statutory right to judicial review," Br. at 19 (internal quotation marks omitted), they question whether the "resulting layers of deference unlawfully place the arbitration result beyond judicial review," Br. at 18; *see Union Pac. R.R. Co. v. Surface Transp. Bd., 360 U.S. App. D.C 104, 358 F.3d 31, 35 (D.C. Cir. 2004)*, and therefore request that we [*21] "directly review the arbitrator's decisions" under the *Steelworkers Trilogy* test, Br. at 19; *see Ass'n of Am. R.Rs. v Surface Transp Bd., 333 U.S. App. D.C. 211, 162 F.3d 101, 112 (D.C. Cir 1998)* (Sentelle, J., concurring in part and dissenting in part).

It is useful to place this contention in the context of what the two carmen have not argued. They have not challenged the Board's authority to impose binding arbitration upon parties faced with disagreements about the meaning of a labor-protective condition. And they have not challenged the Board's decision to review arbitration awards under the *Lace Curtain* standard. As other courts have noted, there may be grounds for second-guessing either one of these decisions of the Board. *Cf. Ass'n of Am. R.Rs., 162 F 3d at 111-12* (Sentelle, J., concurring in part and dissenting in part) (noting that "when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor," but affirming the Board's delegation because "[c]ircuit precedent binds us unless and until it is overruled") (internal quotation marks omitted); *Union Pac. R R. Co , 358 F.3d at 35* [*22] ("[A]lthough this court has repeatedly rejected claims that the Board's *Lace Curtain* standard of review is too *broad* in scope . . . we have never before addressed the argument that the standard is too *narrow*."). The carmen, however, have not raised either argument here. Nor could they at this late stage in the case: They requested arbitration after their union refused to represent them, maintained that the arbi-

tration panel had jurisdiction over their claims and submitted that the Board should review the arbitration award without questioning the *Lace Curtain* standard

What this background leaves us with is the contention that arbitrary-and-capricious review of the Board's order may require us to affirm an arbitration award that we otherwise would strike down if we could review the award directly. Only a small subset of cases, it would appear, could be affected by this interposition of agency review. For as deferential as the arbitrary and capricious standard may be, judicial review is not non-existent. This standard still requires courts of appeals to vacate a Board order that "entirely fail[s] to consider an important aspect of the problem, offer[s] an explanation [*23] for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *State Farm Mut Auto. Ins. Co., 463 U.S. at 43.*

That leaves petitioners concerned about a case in which the Board properly considered every important aspect of the award and offered a reasoned explanation for it but in which the arbitrator nonetheless was not even "arguably construing or applying" the labor agreement. *Major League Baseball Players Ass'n v. Garvey, 532 U.S 504, 509, 121 S. Ct 1724, 149 L. Ed. 2d 740 (2001)*; *Mich Family Res , Inc. v. SEIU Local 517M, F 3d , No. 04-2564, 2007 U.S. App. LEXIS 1734, 2007 WL 188099, at *5-6 (6th Cir. 2007)* (en banc). While such cases may indeed exist, this is not one of them, and this case accordingly does not require us to venture into deciding the question, one that no court has squarely faced. *See, e.g., Union Pac. R.R. Co., 358 F.3d at 36* ("[W]e leave to another day the question of whether litigants are entitled to direct judicial review of such arbitration decisions "). It suffices [*24] for resolving this dispute that petitioners' standard-of-review concerns are of no moment here. As we have shown, the Board's order readily survives "arbitrary and capricious" review under *State Farm* . And even if we were required to review the arbitration award directly, it would survive scrutiny under the *Steelworkers Trilogy* because it rationally construes the relevant labor agreements. [**8]

III.

For these reasons, we deny the petition for review.

H

Briefs and Other Related Documents
Spaulding v. United Transp. UnionC.A.10 (Kan),2002

United States Court of Appeals,Tenth Circuit.
James SPAULDING, Lyn Swonger, Donald L. Inman, William N. Nance, and all others similarly situated, Plaintiffs-Appellants,
v.
UNITED TRANSPORTATION UNION and Union Pacific Railroad Company, Defendants-Appellees.
No. 01-3018.

Feb. 5, 2002.

Railroad employees who, prior to merger, were employees of predecessor railroad company brought putative class action against railroad and their union, alleging that union breached its duty of fair representation in negotiating implementation agreements associated with merger and that railroad colluded in that breach and wrongfully interfered with employees' contractual rights. The United States District Court for the District of Kansas, Wesley E. Brown, J., granted summary judgment for railroad and union. Employees appealed. The Court of Appeals, Shadur, District Judge, held that: (1) duty of fair representation claims were untimely as to implementation of merger with respect to two hubs; (2) equitable estoppel did not apply to toll running of statute of limitations on employees' claims; (3) statute of limitations on employees' claims was not tolled by pursuit of internal union appeals; and (4) district court lacked subject matter jurisdiction over claims pertaining to third hub.

Affirmed.

West Headnotes

[1] Limitation of Actions 241 ⇐95(14)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action
241k95 Ignorance of Cause of Action
241k95(14) k. Labor and Employment. Most Cited Cases

Duty-of-fair-representation claim against union accrues, and limitations period begins to run, when employee knows or in the exercise of reasonable diligence should have known or discovered the acts constituting union's alleged violations.

[2] Limitation of Actions 241 ⇐95(14)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(F) Ignorance, Mistake, Trust, Fraud, and Concealment or Discovery of Cause of Action
241k95 Ignorance of Cause of Action
241k95(14) k. Labor and Employment. Most Cited Cases

At the latest, accrual of railroad union employees' claims that union breached its duty of fair representation with respect to negotiating implementation agreements for two operational hubs following merger occurred when consolidated seniority rosters were constructed for hubs with use of allegedly incorrect seniority dates for employees and agreements were ratified by majority vote of local union chairmen.

[3] Estoppel 156 ⇐52(1)

156 Estoppel
156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k52 Nature and Application of Estoppel in Pais
156k52(1) k. In General. Most Cited Cases

"Equitable estoppel" prevents a party from taking a legal position inconsistent with an earlier statement or action that places his adversary at a disadvantage.

[4] Estoppel 156 ⇐52.15

156 Estoppel

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156III Equitable Estoppel
156III(A) Nature and Essentials in General
156k52 15 k. Essential Elements. Most Cited Cases
There are four elements of a traditional estoppel claim: (1) party to be estopped must know the facts, (2) party to be estopped must intend that his conduct will be acted upon or must so act that party asserting estoppel has right to believe that it was so intended, (3) party asserting estoppel must be ignorant of true facts, and (4) party asserting estoppel must rely on other party's conduct to his injury.

[5] Estoppel 156 ⇐87

156 Estoppel
156III Equitable Estoppel
156III(B) Grounds of Estoppel
156k82 Representations
156k87 k. Relying and Acting on Representations. Most Cited Cases
Mere reliance on adversary's misrepresentation is not enough to establish equitable estoppel; reliance must have been reasonable, in that party claiming estoppel did not know, nor should it have known, that its adversary's conduct was misleading.

[6] Limitation of Actions 241 ⇐13

241 Limitation of Actions
241I Statutes of Limitation
241I(A) Nature, Validity, and Construction in General
241k13 k. Estoppel to Rely on Limitation. Most Cited Cases
Statements of union officials that allegedly misled railroad union employees into believing either that their original seniority dates would be used when railroad merger was implemented at two hubs, or that issue was unresolved, did not support application of equitable estoppel to toll running of limitations period on employees' claims against union for breach of duty of fair representation, inasmuch as statements were made before consolidated seniority rosters using different seniority dates for employees were constructed, outside limitations period, and once rosters were put together using purportedly incorrect seniority dates, employees could not reasonably believe that implementation agreements allowed them to use original seniority dates.

[7] Limitation of Actions 241 ⇐13

241 Limitation of Actions
241I Statutes of Limitation
241I(A) Nature, Validity, and Construction in General
241k13 k. Estoppel to Rely on Limitation. Most Cited Cases
It was patently unreasonable for railroad union employees to rely on their union representative's repeated assurances that issue of employees' correct system seniority dates remained open issue after consolidated seniority rosters using purportedly incorrect seniority dates for employees were constructed as part of implementation of two hubs following railroad merger, and therefore such assurances did not support application of equitable estoppel to toll running of limitations period on employees' claims against union for breach of duty of fair representation.

[8] Limitation of Actions 241 ⇐13

241 Limitation of Actions
241I Statutes of Limitation
241I(A) Nature, Validity, and Construction in General
241k13 k. Estoppel to Rely on Limitation. Most Cited Cases
Even if, as alleged, railroad employees' union made representation that issue of correct system seniority date to use for certain employees in constructing consolidated seniority rosters as part of merger implementation would be resolved at meeting, union was not shown to have known that issue was conclusively resolved but nevertheless misled employees as to status of issue, nor was reliance on that purported representation shown to be reasonable in light of employees' knowledge that their position had been rejected by executed implementing agreements, precluding application of equitable estoppel to toll running of limitations period on employees' claims against union for breach of duty of fair representation

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[9] Federal Courts 170B ⇐813

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk813 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases
Court of Appeals reviews district court's refusal to apply the doctrine of equitable estoppel for abuse of discretion.

[10] Limitation of Actions 241 ⇐105(1)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k105 Pendency of Action or Other Proceeding
241k105(1) k. In General. Most Cited Cases
Pursuing internal union appeals can toll the statute of limitations for claim against union for breach of duty of fair representation, even if the appeals ultimately prove futile.

[11] Limitation of Actions 241 ⇐105(1)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k105 Pendency of Action or Other Proceeding
241k105(1) k. In General. Most Cited Cases
Rule that pursuit of internal union appeal could toll statute of limitations on claim against union did not apply to railroad union employees' claim for alleged breach of duty of fair representation, based on union's negotiation of implementing agreements for railroad merger, when employees' union representative failed to file formal appeal with union's general secretary and treasurer as union's constitution required; union representative's informal objections and correspondence with union and railroad officials could not serve as proxy for prescribed dispute resolution procedures.

[12] Limitation of Actions 241 ⇐105(1)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k105 Pendency of Action or Other Proceeding
241k105(1) k. In General. Most Cited Cases
Once a union has clearly responded negatively to an appeal, no continuing requests for review suffice to toll the statute of limitations on underlying claim.

[13] Limitation of Actions 241 ⇐105(1)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(G) Pendency of Legal Proceedings, Injunction, Stay, or War
241k105 Pendency of Action or Other Proceeding
241k105(1) k. In General. Most Cited Cases
Railroad employees' attempts to pursue formal union appeal with respect to determination that employees' original system seniority dates would not be used in implementing railroad merger did not toll statute of limitations so as to make timely employees' claims against union for alleged breach of duty of fair representation, when claims did not satisfy six-month limitations period even if limitations period were viewed as having been tolled during month in which employees' appeal was pending.

[14] Limitation of Actions 241 ⇐58(1)

241 Limitation of Actions
241II Computation of Period of Limitation
241II(A) Accrual of Right of Action or Defense
241k58 Liabilities Created by Statute
241k58(1) k. In General. Most Cited Cases
Viable duty-of-fair-representation claim against an employee's union is the jurisdictional predicate for a

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correlative claim against the employer, so that the interdependent nature of the claims triggers the same six-month limitations period.

[15] Federal Courts 170B ⇐776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial De Novo. Most Cited Cases
Court of Appeals reviews de novo dismissal of claim based on lack of subject matter jurisdiction.

[16] Federal Courts 170B ⇐206

170B Federal Courts
170BIII Federal Question Jurisdiction
170BIII(C) Cases Arising Under Laws of the United States
170Bk201 Labor Relations
170Bk206 k. Railway Labor and Employment. Most Cited Cases
District court lacked subject matter jurisdiction over duty-of-fair-representation claims asserted against union by railroad employees based on union's asserted failure to negotiate agreement that preserved their seniority rights during implementation of railroad merger. 28 U.S.C.A. §§ 2321(a), 2342(5); 49 U.S.C.A. §§ 11321(a), 11324(b)(4), 11326.

[17] Labor and Employment 231H ⇐1304

231H Labor and Employment
231HXII Labor Relations
231HXII(E) Labor Contracts
231Hk1303 Modification
231Hk1304 k. In General. Most Cited Cases
(Formerly 232Ak263 Labor Relations)

Railroads 320 ⇐9(1)

320 Railroads
320I Control and Regulation in General
320k9 Supervision by Public Officers
320k9(1) k. In General. Most Cited Cases

Railroads 320 ⇐140.1

320 Railroads
320VII Sales, Leases, Traffic Contracts, and Consolidation
320k140 Consolidation
320k140.1 k. In General. Most Cited Cases
Surface Transportation Board's (STB) exclusive authority to approve railroad mergers and consolidations extends to abrogating rights and obligations, including the modification of seniority rights, under existing collective bargaining agreements (CBAs) to the extent necessary to realize the public transportation benefits of a merger. 49 U.S.C.A. § 11321(a).

*903 Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, IA, for Plaintiffs-Appellants.
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Brenda J. Council of Kutak Rock LLP, Omaha, NE, for Defendant-Appellee Union Pacific Railroad Company.

Before EBEL and PORFILIO, Circuit Judges, and SHADUR, District Judge. [FN*]

FN* The Honorable Milton I. Shadur, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

*904 SHADUR, District Judge.
This appeal stems from the 1996 merger of the Union Pacific Railroad Company ("Union Pacific") with the Southern Pacific Rail Corporation and its subsidiaries (collectively "Southern Pacific"). Acting on behalf of themselves and all others similarly situated, James Spaulding ("Spaulding"), Lyn Swonger ("Swonger"), Donald Inman and William Nance have brought suit against their union, the United Transportation Union ("Union"), and Union Pacific. Plaintiffs (a collective term used here to embrace the entire putative class, not just the named plaintiffs) are former employees of Southern Pacific now employed by Union Pacific.

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They charge that Union breached its duty of fair representation in negotiating implementation agreements associated with the 1996 merger and that Union Pacific colluded in that breach and wrongfully interfered with plaintiffs' contractual rights.

After reviewing the parties' submissions on defendants' motions for summary judgment under Fed.R.Civ.P. ("Rule") 56, the district court granted those motions as to all claims. Plaintiffs now appeal, asserting two grounds for reversal.
1. Their claims as to the Kansas City and Saint Louis Hubs are not barred by the statute of limitations.
2. As to the Salinas Hub, the district court had, and we now have, subject matter jurisdiction to hear their claims.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. Because we find no error in the rulings of the district court, we AFFIRM its order in all respects.

Standard of Review

We review the grant of summary judgment de novo, applying the same standard as did the district court (*Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1175 (10th Cir.2001)). Under Rule 56(c) summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law" (*Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Thiessen v. Gen Elec. Capital Corp*, 267 F.3d 1095, 1108 (10th Cir.2001)). For that purpose, familiar Rule 56 principles impose on defendants as movants the initial burden of establishing the lack of a genuine issue of material fact (*Celotex*, 477 U.S. at 322-23, 106 S.Ct. 2548). If that burden is met, plaintiffs as nonmovants must then come forward with "specific facts showing that there is a *genuine issue for trial* " (*Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting Rule 56(e) but adding emphasis)). On that score an issue is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party" (*Anderson v. Liberty Lobby, Inc*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). Finally, in making our determination we, like the district court, are required to examine all of the evidence and draw all reasonable inferences in favor of plaintiffs as nonmovants (*Thiessen*, 267 F.3d at 1108).

Background

We begin by rehearsing the complex factual background, essential to a full understanding of the current dispute. This case has its factual beginnings in 1975 when the Chicago, Rock Island and Pacific *905 Railroad Company ("Rock Island") filed for bankruptcy. Plaintiffs were originally employed by Rock Island and later became employees of the St. Louis Southwestern Railway Company ("SSW") after it purchased a portion of Rock Island's trackage known as the Tucumcari Line in 1980. Currently plaintiffs are employees of Union Pacific as a result of its 1996 merger with Southern Pacific and its subsidiary SSW. They are also members of Union, their federally recognized collective bargaining organization.

Seniority, Prior Rights and the New York Dock Conditions

At the core of this action are the "system seniority dates" that railroad employees use to bid on particular jobs and schedules. Normally the date on which an employee took his or her first compensated trip for his or her current employer is the seniority date. If two employees bid on the same job, the one with the earlier seniority date normally wins the bid. But if a less senior employee retains a "prior right" at a particular job location, he or she could prevail at that location over a more senior bidder who has more seniority with the employer but who lacks such a locational prior right.

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Seniority dates and prior rights are a major source of contention in railroad mergers. To fulfill its statutory obligation of safeguarding affected workers while still facilitating implementation of beneficial mergers, the Surface Transportation Board ("Board") often imposes the *New York Dock* conditions as a condition of merger approval.[FN1] Those labor-protective provisions require carriers to provide affected employees with economic protections significant in both amount and duration.

FN1. Railroad mergers must be approved by the United States Department of Transportation, Surface Transportation Board (49 U.S.C. §§ 11323-11326). Approval may be granted only if the combination is "consistent with the public interest," and Board is statutorily obligated to "provide a fair arrangement" for the protection of affected employees (*id.* §§ 11324(c), 11326(a)). As for the *New York Dock* conditions, they are a comprehensive set of labor-protective conditions outlined by the Interstate Commerce Commission (" ICC") in *New York Dock Ry. ControlBrooklyn E. Dist Terminal,* 360 I C.C. 60, 84-90 (1979), aff'd. sub nom. *New York Dock Ry. v. United States,* 609 F.2d 83 (2d Cir.1979). Until 1995 ICC was responsible for the rail-related functions, at which time they were assumed by Board (ICC Termination Act of 1995, Pub.L. No 104-88, 109 Stat. 803 (1995))

Prior Litigation

SSW's purchase of Rock Island's Tucumcari line in 1980 was pursuant to an agreement executed on March 4, 1980 ("March 4 Agreement") that provided for preferential hiring of the Rock Island employees by SSW and other carriers taking over Rock Island's trackage. To effectuate the March 4 Agreement, SSW and Union entered into an implementing agreement in 1982 ("1982 Implementing Agreement"), which provided among other things that former Rock Island employees hired by SSW before that agreement would receive a system seniority date of March 24, 1980, while the seniority dates of those hired after the 1982 Implementing Agreement would coincide with their actual dates of hire by SSW

Federal litigation then ensued when a class of former Rock Island employees brought suit, alleging that the 1982 Implementing Agreement violated their preferential hiring rights and their rights to retain their Rock Island seniority dates as established in the March 4 Agreement. After protracted litigation and a court-approved settlement, *Volkman v. United Transp. Union,* 724 F.Supp. 1282 (D.Kan.1989), rev'd in part on other grounds, 73 F.3d 1047 (10th Cir.1996) established that *906 no entitlement to retain Rock Island seniority dates derived from the March 4 Agreement. Instead March 24, 1980 was confirmed as the system seniority date for former Rock Island employees, including plaintiffs, hired by SSW before the 1982 Implementing Agreement (724 F.Supp. at 1307, 1327-28). *Volkman* also established that the former Rock Island employees were entitled to prior rights at their SSW terminal of first hire (*id.* at 1335), but those prior rights would be subject to future modification through collective bargaining (*Volkman,* No. 83-6025-T (D Kan. July 22, 1993)).

1996 Merger

In 1996 Board approved a merger between Union Pacific and Southern Pacific/SSW. One consequence was that the former Rock Island employees on the Tucumcari Line would again be displaced. To protect those and other affected workers, Board required that Union Pacific comply with the *New York Dock* conditions in implementing the merger. Pursuant to *New York Dock* conditions Art. I, § 4, Union Pacific gave notice to Union on October 6, 1997, January 30, 1998 and June 4, 1998 of its intention to establish three operational hubs: in the same order as those notification dates, Saint Louis, Missouri; Kansas City, Kansas; and Salina, Kansas. Extensive negotiations were undertaken, seeking to design mutually satisfactory implementation plans for the three hubs, including the seniority systems to be used for commingling

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the Union Pacific and Southern Pacific workforces. Those negotiations are the genesis of the present action.

Union's Const. Art. 90 requires that in effectuating a merger "General Committees of Adjustment shall arrange for a fair and equitable division of the work" and that "[p]rior seniority rights of employees to service on their former seniority district or territory shall be preserved to the extent possible." Union maintains that the integration of seniority lists in the event of a railroad merger is best accomplished by " dovetailing," and it sought to use that method in creating a consolidated seniority roster at each of the three hubs. Dovetailing accomplishes consolidation by using the seniority date of each employee on the properties involved in the merger.

Throughout the extended negotiations Union held to the position that the former Rock Island employees would retain their prior rights on the Tucumcari line as to SSW employees, but that they would gain no prior rights with respect to Union Pacific employees. As for seniority, Union officials repeatedly asserted at a series of Local meetings and negotiation planning sessions that former Rock Island employees would be assigned their SSW seniority dates rather than their Rock Island dates for dovetailing purposes: That is, employees hired by SSW before the 1982 Implementing Agreement would receive a seniority date of March 24, 1980 rather than their earlier dates of hire by Rock Island. Plaintiffs' union representative, Associate General Chairman Don Hollis ("Hollis"), specifically inquired whether the Rock Island seniority date would be granted, and he was repeatedly told that it would *not*. Employees affected by that negative answer contend that the failure to make such assignment violated the provisions of *Volkman*

Implementing Agreements

After that series of negotiations, Union and Union Pacific executed implementing agreements on July 29 and 30, 1998 for the St. Louis and Kansas City Hubs. Those agreements provided (1) that dovetailing would be effected by using each employee's "current seniority date" on the line on which he or she was currently employed and (2) that each employee would be assigned*907 new prior rights in abrogation of all existing prior rights, although it was provided that the prior rights held by the former Rock Island employees on the Tucumcari line would be retained vis-a-vis other SSW employees. In accordance with Union's constitution, those agreements were put to a ratification vote and were approved by a majority of all the local chairmen.

Union Pacific and affected Union representatives conducted a week-long workshop between September 14 and 18, 1998 to consolidate the seniority rosters for the two hubs. Once again the issue of seniority dates for the former Rock Island employees was raised, and once again it was made clear that those employees would be assigned their SSW seniority date of March 24, 1980. Plaintiffs told Union Pacific and Union representatives at that time that they did not agree to that provision.

Meanwhile plaintiffs had continued objecting to the proposal that their seniority dates after merger implementation would correspond to their dates of hire by SSW rather than by Rock Island. In August 1998 Hollis again questioned that position with Union officials. Union President Little scheduled a September 23-24, 1998 meeting in Seattle, Washington to discuss the issue-and Union's position was once again reconfirmed.

On November 1, 1998 Union Pacific began to operate the Saint Louis Hub under the terms of the implementing agreement. Then on November 2 Union Pacific served notice of its intent to establish a negotiated implementing agreement for the Salina Hub with terms similar to those of the Kansas City and Saint Louis agreements. Another workshop to construct a consolidated seniority roster was conducted from November 16-20, 1998.

On December 2, 1998 Union and Union Pacific held a meeting to address Hollis' continuing concerns as well as other implementation issues in Kansas City and Saint Louis. There it was again reiterated that the former Rock Island employees would not be permitted to use their original Rock Island seniority dates for the dovetailed rosters and

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that they would retain prior rights on the Tucumcari line vis-a-vis other SSW employees. Despite the repeated rejection of his position, on December 28, 1998 Hollis refused to sign the Salina Implementing Agreement. Because Union's constitution requires the approval of all General Chairmen in affected jurisdictions before such agreements may be submitted for ratification, on January 5, 1999 Union Pacific invoked arbitration under *New York Dock* conditions Art. I, § 4 to procure an implementing agreement for the Salina Hub.

Next in the chronology, the Kansas City Hub was implemented on January 16, 1999. Arbitration as to the Salina Hub began shortly thereafter (on February 23, 1999). Despite plaintiffs' arguments that they were wrongfully being denied the right to use their Rock Island hire dates, on March 25, 1999 the arbitrator ruled to adopt the proposed Salina Implementing Agreement. Pursuant to the *New York Dock* conditions, Spaulding and Swonger appealed that decision to Board, and they moved to stay implementation of the Salina Hub pending resolution of the appeals process. Board denied that request for a stay, and the Salina Hub was implemented on May 1, 1999.

Plaintiffs had meanwhile written letters to various Union officials expressing their dissatisfaction with the negotiated seniority arrangement. On February 20, 1999 Spaulding sought to obtain a hearing before the Union Board of Appeals regarding plaintiffs' seniority rights by mailing a letter*908 to Union's General Secretary and Treasurer. That request was denied by Union's President on March 22, 1999.

On June 2, 1999 plaintiffs filed the present action, contending primarily that by accepting the Implementing Agreements both Union and Union Pacific had abandoned the seniority rights to which plaintiffs were entitled. More specifically, Union is charged with breaching its duty of fair representation and Union Pacific is accused of colluding in the breach and interfering with plaintiffs' contractual rights. As stated earlier, both defendants filed motions for summary judgment on all claims-motions that the district court granted on December 29, 2000 on the grounds that (1) claims regarding the Saint Louis and Kansas City Hubs were barred by the statute of limitations and (2) it lacked jurisdiction to hear claims regarding the Salina Hub.

While defendants' summary judgment motions were pending, Board declined plaintiffs' petition for review of the decision in the Salina arbitration on May 1, 2000. Plaintiffs sought judicial review of that decision in this court on June 16, 2000, and another panel of this court rejected their arguments in *Swonger v Surface Transp. Bd.*, 265 F.3d 1135 (10th Cir.2001).

Kansas City and Saint Louis Hub Claims-Statute of Limitations

Plaintiffs concede that a six-month statute of limitations applies to their duty-of-fair-representation claim under the Railway Labor Act, as well as to any directly linked breach of contract claim against Union Pacific, pursuant to *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 155, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983) and such *DelCostello* progeny as *Repstine v. Burlington N., Inc.*, 149 F.3d 1068, 1070-71 (10th Cir.1998). But they urge that such a limitations period was tolled by either (1) the doctrine of equitable estoppel or (2) their pursuit of internal union appeals. It will be recalled that plaintiffs filed this suit on June 2, 1999. Because we explain below that their claim accrued before December 2, 1998 and thus more than six months before they brought suit, their claim is time barred unless the statute of limitations was tolled.

[1][2] It has long been established that a duty-of-fair-representation claim accrues and "the limitation period begins to run when an employee ' knows or in the exercise of reasonable diligence should have known or discovered the acts constituting the union's alleged violations' " *(Edwards v. Int'l Union, United Plant Guard Workers of Am.*, 46 F.3d 1047, 1053 (10th Cir.1995) , quoting *Lucas v. Mountain States Tel & Tel.*, 909 F.2d 419, 420-21 (10th Cir.1990) (per curiam)). As for plaintiffs' claims regarding negotiation of the Saint Louis and Kansas City Implementing

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Agreements, they were clearly aware of any alleged Union malfeasance by July 29 and 30, 1998, when the agreements expressly rejecting their position were executed. And as the district court correctly held, plaintiffs were on notice of their claims at the latest by September 18, 1998, when the consolidated seniority rosters were constructed with the use of their SSW seniority dates. Moreover, the agreements were ratified by a majority vote of the local chairmen in September 1998,[FN2] with even Hollis signing the agreements. There is thus no question that *909 plaintiffs' duty-of-fair-representation claim as to those two hubs accrued well before December 2, 1998 and hence more than six months before suit was filed (*Rucker v St. Louis SW Ry. Co.*, 917 F.2d 1233, 1238 (10th Cir 1990); *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 411 (5th Cir 1990), *Zapp v United Transp. Union*, 879 F.2d 1439, 1441 (7th Cir.1989)).

FN2. We have held that employees' ratification of an agreement bars claims that a union breached its duty of fair representation in negotiating the agreement (*Gullickson v. SW Airlines Pilots' Ass'n*, 87 F 3d 1176 (10th Cir.1996), adopting and republishing the district court's analysis originally reported at 931 F.Supp. 1534, 1541-44 (D.Utah 1995)).

Equitable Estoppel

[3][4][5] But plaintiffs waited nearly a year after the implementing agreements were executed, and over eight months after the consolidated seniority roster was constructed, before they brought an action asserting their fair representation claim. They attempt to avert the bar of untimeliness by invoking the doctrine of equitable estoppel and arguing that Union's misrepresentations led them to delay filing. Equitable estoppel "prevent[s] a party from taking a legal position inconsistent with an earlier statement or action that places his adversary at a disadvantage" (*Penny v. Giuffrida*, 897 F.2d 1543, 1545 (10th Cir.1990)). There are four elements of a traditional estoppel claim (*id.* at 1545-46):
(1) the party to be estopped must know the facts; (2) the party to be estopped must intend that his conduct will be acted upon or must so act that the party asserting the estoppel has the right to believe that it was so intended; (3) the party asserting the estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the other party's conduct to his injury.

And mere reliance is not enough-such reliance on an adversary's misrepresentations "must have been reasonable in that the party claiming the estoppel did not know nor should it have known that its adversary's conduct was misleading" (*Heckler v. Cmty. Health Servs.*, 467 U.S. 51, 59, 104 S.Ct. 2218, 81 L.Ed.2d 42 (1984); *Emery Mining Corp. v. Sec'y of Labor*, 744 F 2d 1411, 1417 (10th Cir.1984)).

[6] Plaintiffs argue that the conduct of Union officials misled them into believing that their seniority was still an open issue. They cite several statements that assertedly indicated either that their Rock Island seniority dates would be used or that the issue was unresolved. For example, at least three plaintiffs declare that Hollis told them they would be granted their Rock Island seniority date when the hub implementing agreements went into effect, thereby inducing them to vote to approve the implementing agreements. Indeed, one plaintiff contends the Kansas City plaintiffs were initially told that the Implementing Agreements allowed them to use their Rock Island dates. But even when all of those claims are credited, they lose effect because all of the statements were made *before* the consolidated seniority rosters were constructed. Once the rosters were put together by using SSW dates, plaintiffs could not reasonably believe the agreements allowed them to use their Rock Island dates. So those claimed representations cannot toll the limitations period.

[7] Plaintiffs further assert that even after roster construction Hollis continued to represent that they would receive their Rock Island seniority dates. They claim they were told that the seniority issue would be resolved at the December 2, 1998 meeting in Cleveland. They also contend they were told that Union would use the arbitration regarding the Salina Hub "as a guise" to address Saint Louis and

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Kansas City seniority.

Even if it were assumed that those remarks amounted to misrepresentation and that Union officials had reason to believe plaintiffs would rely on the statements to *910 delay filing their claim, the district court correctly found that plaintiffs have failed to demonstrate such reliance was *reasonable*. Indeed, it was patently *unreasonable* for plaintiffs to rely on Hollis' repeated assurances that their seniority was still an open issue. They should have known they could not count on any suggestion by Hollis that he could singlehandedly alter previously executed Implementing Agreements (indeed, signed by Hollis himself as well as all other General Chairmen) and that Union had not settled on its position-surely that scenario could not justify their sitting back without taking the action required to advance their claim.

Nor did Hollis' later reversal of his own support for the Implementing Agreements in his October 3, 1998 letter to a Union Pacific vice-president at all indicate that *Union's* position had changed. To the contrary, Union unwaveringly held the same position it had held all along. In sum, any claimed reliance on Hollis' "lone wolf" promises made in defiance of Union's consistent rejection of his position-a rejection of which plaintiffs were admittedly aware-was simply not reasonable.

As for plaintiffs' awareness, Swonger and Spaulding have both declared that at the December 2, 1998 meeting Hollis "was not successful in dissuading the UTU and the UP from following the course they had previously set." That of course is an admission to having known that Union's position on the issue was settled *before* the December 2 meeting. As the district court aptly noted:
[P]laintiffs may have reasonably hoped that Hollis could convince the union to change its previous position, but they could not reasonably believe the union had not taken a position.

[8] As for plaintiffs' profoundly unspecific assertion that Union itself somehow represented that the December 2 meeting would resolve the seniority issue, even with the benefit of favorable inferences-which, we repeat, must be reasonable-it cannot be said that Union knew the seniority issue was conclusively resolved but nevertheless misled plaintiffs as to the status of the issue. Because plaintiffs have presented no evidence from which a reasonable jury could find that reliance on that purported Union representation was reasonable, summary judgment is appropriate (*Anderson*, 477 U.S. at 248, 106 S.Ct. 2505; *Richmond v ONEOK, Inc.*, 120 F.3d 205, 208 (10th Cir.1997)).

As plaintiffs would have it, Union-at some unspecified time and through some unspecified person-assertedly made a statement that seniority would be resolved at the December 2 meeting. It was to negate the use of just such amorphous claims to avert summary judgment that the Supreme Court said in the first of its 1986 trilogy of cases construing Rule 56, *Matsushita*, 475 U.S. at 586, 106 S.Ct. 1348:
Second, the issue of fact must be "genuine." Fed Rules Civ. Proc. 56(c), (e). When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.

In the face of the overwhelming abundance and consistency of Union statements and conduct confirming that the issue was already conclusively resolved to plaintiffs' detriment, no tenable support justifies plaintiffs' delay in filing a duty-of-fair-representation claim.

[9] Unwilling to acknowledge the compelling force of the wealth of evidence refuting their contention, plaintiffs urge that the district court improperly resolved disputed issues of material fact as to what representations were made and whether *911 plaintiffs' reliance was reasonable. That simply mischaracterizes the district court's reasoning. Instead of resolving disputed factual issues, it assumed all of plaintiffs' allegations to be true and found that their uncontroverted knowledge that the executed Implementing Agreements rejected the use of their Rock Island seniority dates rendered reliance on any contrary representations unreasonable. Without reasonable reliance there can be no estoppel (*Emery Mining*, 744 F.2d at 1417). We review the district court's refusal to

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apply the doctrine of equitable estoppel for abuse of discretion (*Arnold v Air Midwest, Inc*, 100 F.3d 857, 861 (10th Cir.1996)), and we find the district court's ruling an indisputably proper exercise of its sound discretion.

Internal Appeals

[10][11] Caselaw here (as elsewhere) teaches that pursuing internal union appeals can also toll the statute of limitations even if the appeals ultimately prove futile (*Volkman*, 73 F.3d at 1055-56). But plaintiffs' fatal difficulty in that respect is that no such appeal was taken in accordance with Union's constitution.

Union's Const. Art. 90 provides in relevant part.
Any local or member of a local affected by action or decision of a Chairperson, Sub General Committee or General Committee, or by the decision of the International President with respect to this Article may appeal such action or decision to the Board of Appeals, provided such appeal is filed with the General Secretary and Treasurer within ninety (90) days from the date of the action or decision. The Chairperson, Sub General Committee, General Committee, or International President, as the case may be, shall be allowed thirty (30) days from the date the appeal is filed in which to reply to the appeal. The parties involved in an appeal shall exchange copies of the appeal and reply to the appeal.

It is uncontroverted that Hollis failed to file a formal appeal with Union's General Secretary and Treasurer as Article 90 requires. And his informal objections and correspondence with Union and Union Pacific officials could not serve as proxy for the prescribed dispute resolution procedures (*Cohen v. Flushing Hosp. & Med Ctr.*, 68 F.3d 64, 68 (2d Cir.1995); *Pantoja v Holland Motor Express, Inc.*, 965 F.2d 323, 328-29 (7th Cir.1992)). As the Seventh Circuit has prudently noted (quoting *Pantoja* in part), if the rule were otherwise plaintiffs could toll the statute indefinitely by making repeated informal requests to different union officials for further review (*Christiansen v. APV Crepaco, Inc.*, 178 F.3d 910, 916 (7th Cir.1999)).

In an effort to overcome that fatal defect, plaintiffs argue on appeal that a General Chairman talking to and corresponding with union leaders actually constitutes an alternate method of pursuing a formal appeal under Union's constitution. They point to this earlier language in Const. Art. 90:
Disputes arising under this Article which cannot be resolved by the General Committee or General Committees shall be referred to the International President. The International President shall promptly assign an officer to assist the General Committee or General Committees involved in resolving the dispute. Failing to resolve the dispute the officer shall make a complete report and recommendation to the International President who, in turn, shall decide the dispute.

But that position is equally flawed, for it is plain that the quoted pre-appeal procedure was not involved in the situation at issue. It will be remembered that Hollis' further *912 effort sought instead to obtain reconsideration of a decision that had already been reached with his concurrence-a decision embodied in the fully executed St. Louis and Kansas City Hub Implementing Agreements (which Hollis, like all other affected General Chairmen, had signed).

What actually transpired as the result of Hollis' continued expression of dissatisfaction with the seniority arrangement after the Implementing Agreements were signed was that Union President Little held a meeting in Seattle, Washington on September 23-24, 1998. And it was there reiterated to the participants, including the affected General Chairmen, that Rock Island seniority dates would not be granted. That too preceded plaintiffs' lawsuit by more than six months, so plaintiffs can gain nothing by seeking to pursue that alternate route to avoid the limitations bar.

[12] Finally, Hollis' post-September requests for further review did not serve to toll the statute.
Once a union has clearly responded negatively to an appeal, no continuing requests for review suffice to toll the statute (*Stevens v. NW Ind. Dist. Council, United Bhd of Carpenters*, 20 F.3d 720, 730 (7th Cir.1994); *Fox v. Parker Hannifin Corp.*, 914 F.2d 795, 804 (6th Cir.1990)).

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[13] We also agree with the district court that plaintiffs' own belated attempts to obtain a formal Union appeal did not toll the statute of limitations so as to make their duty-of-fair-representation claims timely. Spaulding filed the first formal appeal in accordance with Union's constitution on February 20, 1999, and it was rejected by Union's president on March 22, 1999. Even if the statute were viewed as having been tolled during the month in which that appeal was pending, plaintiffs still fail to satisfy the six-month limitations period because their claim was not filed until at least eight months *after* it accrued.

[14] That also dooms the other branch of plaintiffs' hybrid claim, asserted against Union Pacific. Ever since *DelCostello,* 462 U.S. at 165, 103 S.Ct. 2281 it has been clear that a viable duty-of-fair-representation claim against an employee's union is the jurisdictional predicate for a correlative claim against the employer, so that the interdependent nature of the claims triggers the same six-month limitations period. We have consistently applied the same principle-see, e.g., *Repstine,* 149 F.3d at 1071.

Summary

We therefore AFFIRM the district court's holding that plaintiffs' claims regarding the Saint Louis and Kansas City Hubs are barred against both Union and Union Pacific by the statute of limitations. That makes it unnecessary to address the district court's alternative holding that plaintiffs' duty of fair representation claims as to the Saint Louis and Kansas City Hubs were beyond the court's jurisdiction because they were subject to mandatory arbitration under *New York Dock* conditions Art. I, § 11.

Salina Hub Claims-Lack of Subject Matter Jurisdiction

We now review the bidding on plaintiffs' remaining claim. After Hollis had torpedoed approval of the Salina Implementing Agreement by refusing to sign, Union Pacific invoked arbitration under *New York Dock*-and plaintiffs participated through counsel in both a written position statement and at oral argument. On March 25, 1999 the arbitrator ruled to adopt the proposed Salina Implementing Agreement. Next plaintiffs appealed to Board pursuant to the *New York Dock* conditions, but Board declined to review the arbitrator's decision. And finally plaintiffs then *913 sought judicial review, but their claims were rejected by this court in *Swonger,* 265 F.3d at 1135.

[15][16] As to the Salina Hub, the district court below held that plaintiffs' duty-of-fair-representation claim was within the exclusive jurisdiction of Board, so that the court was without subject matter jurisdiction over the claim. We review de novo such a dismissal of a claim based on lack of subject matter jurisdiction (*Robinson v Union Pac. R.R.,* 245 F.3d 1188, 1191 (10th Cir.2001)).

[17] Both statute and caselaw confirm Board's exclusive authority to approve railroad mergers and consolidations (49 U.S.C. § 11321(a); *Norfolk & W Ry. Co. v. Am. Train Dispatchers Ass'n,* 499 U.S. 117, 119-20, 111 S.Ct. 1156, 113 L.Ed.2d 95 (1991)). That authority extends to abrogating rights and obligations (including the modification of seniority rights) under existing collective bargaining agreements to the extent necessary to realize the public transportation benefits of a merger (*Norfolk & W., id.* at 127-28, 132-33, 111 S.Ct. 1156; *Swonger,* 265 F.3d at 1140-42). But in so doing, Board is bound to safeguard the rights of adversely affected employees (49 U.S.C. §§ 11324(b)(4), 11326; *Norfolk & W.,* 499 U.S. at 120, 111 S.Ct. 1156).

As stated earlier, Board satisfied that obligation in the 1996 merger by conditioning its approval on the parties' observance of the *New York Dock* labor-protective conditions, which outline procedures for negotiation and binding arbitration to resolve conflicts that arise in merger implementations (*New York Dock,* 360 I.C.C. at 77-78). Board has the exclusive authority to review those arbitration awards, subject only to review in a Court of Appeals (28 U.S.C. §§ 2321(a) , 2342(5)).

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Here it was the district court's view that although a duty-of-fair-representation claim may sometimes be separate and distinct from the issues involved in an arbitration, the "vast majority" of plaintiffs' allegations were necessarily dependent upon issues squarely within the scope of the dispute presented to the *New York Dock* arbitrator. We agree, for the gravamen of the allegations in the complaint relates to Union's failure to negotiate an Implementing Agreement that preserved plaintiffs' seniority rights-see, e.g., Complaint ¶¶ 23 and 27(f):

The Implementing Agreements at the St. Louis Hub, the Kansas City Hub and Expanded Salina Hub failed to provide for these Plaintiffs and class members to maintain their prior right and other seniority and/or the equivalent of their prior and other seniority and equity rights vis-a-vis other members of the UTU, all in violation of their rights under the law, the pre-merger agreement, the constitution of the UTU and the Orders and Settlement Agreement of the previous litigation.

* * * * * *

[Union] either did not utilize the right under the contract with [Union Pacific] for it to establish the seniority and/or it abused or unfairly used said right to abridge the rights of these Plaintiffs and class members.

As we have indicated, whether a merger implementing agreement fairly blends the rights of plaintiffs with those of other affected employees and whether particular changes in seniority are necessary to effectuate a merger are matters within the exclusive jurisdiction of the arbitrator and Board (49 U.S.C. § 11321(a)). During the Salina Hub arbitration hearing, plaintiffs (who were allowed to participate through counsel) had argued in a written submission and orally that the agreement was not fair and the seniority changes were not necessary-that they had been wrongfully *914 denied the right to use their Rock Island hire dates in constructing consolidated seniority rosters. After a full hearing and consideration the arbitrator decided against them, ruling that the Salina Hub represents "an obvious public transportation benefit and that considerations of efficiency of that operation warrant the modification and elimination of existing seniority rights as set forth in the proposed implementing agreement" and that the proposed agreement "represent[ed] a fair and equitable method of blending the rights of those employees with those of other Carrier affected employees." Because the *Volkman* orders specifically provided that the seniority rights of the former Rock Island employees were subject to modification through future collective bargaining, the arbitrator rejected plaintiffs' claim that the proposed Salina agreement contradicted those orders.

Plaintiffs presented their fairness and necessity arguments again in their appeal to Board and once again before this court in *Swonger*, 265 F.3d at 1141-43. Those appeals, resolved against plaintiffs, were their exclusive avenues of relief-they may not attack the arbitrator's ruling collaterally by seeking recourse in this proceeding (28 U.S.C. §§ 2321(a), 2342(5); *United Transp. Union v. Norfolk & W. Ry. Co.*, 822 F.2d 1114, 1120-21 (D.C.Cir.1987)). Because 28 U.S.C. § 2342(5) expressly vests exclusive jurisdiction to review Board determinations in Courts of Appeals, the district court correctly held that it lacked subject matter jurisdiction over plaintiffs' duty-of-fair-representation claim based on Union's asserted failure to negotiate an agreement that preserved their seniority rights (*Ry. Labor Executives' Ass'n v. S. Pac. Transp. Co.*, 7 F.3d 902, 906-07 (9th Cir.1993); *Bhd. of Ry. Carmen v. CSX Transp., Inc.*, 855 F.2d 745, 748-49 (11th Cir.1988)(per curiam)).

This case is unlike the usual duty-of-fair-representation challenge to a union's handling of an arbitration in that here the employees were also participants in the arbitration and thus, it would seem, would have had the opportunity to question the union's handling in the arbitration proceeding itself and in the direct review of the arbitration award to and including *Swonger*. But we need not decide whether that opportunity existed (something that could preclude a collateral attack here), for as *United Parcel Serv. v. Mitchell*, 451 U.S. 56, 61, 101 S.Ct. 1559, 67 L.Ed.2d 732 (1981) , quoting *Hines v. Anchor Motor Freight, Inc.*, 424

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U S. 554, 567, 96 S.Ct. 1048, 47 L.Ed.2d 231 (1976), teaches:
As *Hines* makes clear, an employee may go behind a final and binding award under a collective-bargaining agreement and seek relief against his employer and union only when he demonstrates that his union's breach of its duty " seriously undermine[d] the integrity of the arbitral process."

Accord, *Webb v. ABF Freight Sys, Inc*, 155 F.3d 1230, 1242 (10th Cir.1998).

We have applied the factors outlined in *Mitchell* to the situation before us, and we conclude that plaintiffs have failed to adduce facts that could be said to "seriously undermine[ ] the integrity of the arbitral process." Their substantively deficient allegations as to Union's asserted violation of its constitution, its asserted failure to advance particular arguments, its claimed selection of a biased administrator and its purported failure to adopt a unified position fail to meet that test. And that is fatal to plaintiffs' claim against both Union and Union Pacific.

Conclusion

As we have shown at considerable length, both defendants have carried their *915 burden of showing the absence of any genuine issue of material (that is, outcome-determinative) fact. For their part, plaintiffs have failed to come forward with evidence establishing a genuine issue for trial. Because the district court correctly applied the substantive law, we AFFIRM the district court's order granting both defendants summary judgment and dismissing this action. Finally, this resolution of the substantive issues in the case moots plaintiffs' argument that the district court erred in determining not to certify this matter as a class action.

C.A.10 (Kan.),2002.
Spaulding v. United Transp. Union
279 F.3d 901, 169 L.R.R.M. (BNA) 2530, 145 Lab.Cas. P 11,249

Briefs and Other Related Documents (Back to top)

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360 I.C.C. 60, 1979 WL 11091 (I.C.C.)

SURFACE TRANSPORTATION BOARD (S.T.B)
NEW YORK DOCK RAILWAY*-CONTROL-
BROOKLYN EASTERN DISTRICT TERMINAL
Decided February 9, 1979

The proceeding is reopened and, on further consideration, the employee protective conditions imposed in our prior decision and order in this proceeding are modified. The imposition of employee protective conditions appropriate in certain rail transactions for which approval is sought under 49 U.S C 11343 *et seq.* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act] is discussed These transactions include all rail transactions covered in those sections except trackage rights and lease situations.

FINANCE DOCKET NO. 28250[FN[FN1]]

**60 *Stuart H. Johnson, Jr*, and *Walter M. King* for applicants New York Dock Railway and Brooklyn Eastern District Terminal.

John S. Shannon, Donald M Tolmie, and *William G. Wooldridge* for intervenor Norfolk and Western Railway Company.

John O'B Clarke and *William G. Mahoney* for intervenor Railway Labor Executives' Association.

Harold A. Ross for intervenor Brotherhood of Locomotive Engineers.

DECISION OF THE COMMISSION ON FURTHER CONSIDERATION

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown absent and not participating. Commissioner Gresham concurring in the result.

BY THE COMMISSION:

**1 Pursuant to a petition for administrative review filed October 18, 1977, and supplemented May 22, 1978, by the Railway Labor Executives' Association (RLEA), we issued a decision dated July 17, 1978, finding that the entitled proceeding involves a matter of general transportation importance and reopening the proceeding for further consideration of the appropriate level of employee protection to be imposed when approval for certain rail transactions is sought under 49 U.S.C 11343, *et seq* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act].[FN[FN2]]

*61 PROCEDURAL HISTORY

By initial decision dated May 13, 1977, the Administrative Law Judge recommended that control of Brooklyn Eastern District Terminal (BEDT) of New York, NY by New York Dock Railway (Dock), also of New York, NY, be approved subject to certain conditions including ones imposed for the protection of employees. More specifically, the Administrative Law Judge imposed the 'New Orleans' labor protective conditions[FN[FN3]] set forth in appendix II of *Southern Ry Co -Control-Central of Georgia Ry Co*, 317 I.C.C 557, 588 (1962), augmented by the Appendix C-1 conditions of the National Railroad Passenger Corporation Agreement (Appendix C-1) with some modifications Exceptions were filed by the Minority Shareholders of BEDT and Phelps Dodge Products Corporation, individually, and intervenors RLEA and The Brotherhood of Railway and Airline Clerks (BRAC), jointly. Applicant Dock replied

Inasmuch as Dock's tender offer was to expire on September 30, 1977, the Commission, Division 3, issued an emergency order on September 26, 1977, affirming the initial decision in all respects except as to the appropriate labor protection conditions to be imposed. In that decision the employee protective conditions recommended by the Administrative Law Judge were modified so as to substitute the Appendix C-1 conditions (referred to in that order as the 'Amtrak Conditions'). The division noted that a subsequent report would be issued in the proceeding which would contain a detailed discussion of the issues raised on exceptions and that said report would become a part of the September 26 order by reference. Pursuant to a petition filed by RLEA, division 3 issued a supplemental order on September 29, 1977, which modified the prior order by allowing the parties to consummate the transaction authorized but prohibiting them from taking any action that would affect employee rights until the Commission could act on a petition to be filed by RLEA seeking

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discretionary review of the labor protective conditions imposed in the September 26 order. On October 18, 1977, RLEA filed the described petition under rule 98(e) of the Commission's General Rules of Practice, 49 CFR 1100.98(e), seeking a determination that the question of appropriate employee protective provisions involves a matter of general transportation importance and that the case should be reopened for further consideration. Dock replied on November 25, 1977, *62 opposing the relief sought in the petition In a 'Notice to the Parties' dated March 2, 1978, the parties were notified that action on the above petition and reply would be held in abeyance pending the issuance of the full report of division 3 in this proceeding, upon which issuance the petition and reply could be supplemented to address more fully the issues discussed in the report. The decision of the Commission, Division 3, Acting as an Appellate Division, dated April 11, 1978, was published at 354 I.C.C. 399 (1978). In this decision the basis for the findings made in the emergency order of September 16, 1977, as supplemented by order of September 19, 1977, were detailed; however, the labor protective conditions were modified by combining a version of sections 4 and 5 of the Washington Job Protection Agreement (WJPA) with the provisions of Appendix C-1, with inapplicable references eliminated. See appendix III of *New York Dock Ry.-Control-Brooklyn Eastern Dist*, 354 I.C C. 399 (1978). Certain arrangements were made for the equitable application of the conditions in this proceeding as strict adherance to the provisions of article I, section 4 were impossible because the parties had already been authorized to consummate the transaction, albeit without affecting employee rights, by the order of September 29, 1977. As authorized by the 'Notice to the Parties' dated March 2, 1978, RLEA filed its supplemental petition on May 22, 1978, reiterating that the appropriate labor protective conditions to be imposed in cases of this type is a matter of general transportation importance. Dock filed its supplemental reply on May 19, 1978. By decision dated July 17, 1978, the Commission granted RLEA's petition and reopened the proceeding for further consideration of appropriate employee protective conditions.[FN[FN4]]

**2 In addition to the pleadings, as supplemented, of RLEA and Dock, several other statements have been filed in this proceeding More specifically, in a 'Notice to the Parties' in Finance Docket No. 28643 (Sub-No 1), *Norfolk and Western Railway Company-Acquire Branch Track-Detroit, Toledo, and Ironton Railroad Company*, dated July 24, 1978, it was stated that the labor protective conditions finally adopted in the *New York Dock* proceeding would be imposed in that proceeding. Therefore, the employee organization opposing that proceeding, the Brotherhood of Locomotive Engineers (BLE), was authorized to submit its views concerning appropriate employee protective conditions here. Parties both to this proceeding and to the *Norfolk and Western* *63 proceeding were authorized to respond to BLE's comments. BLE filed its comments on September 11, 1978, and Dock and BEDT, jointly, and Norfolk and Western Railway Company (NW) and RLEA, individually, responded to these comments in pleadings all filed September 26, 1978

PRELIMINARY MATTERS

Embraced in the respective pleadings of BLE and RLEA are requests that we reopen this proceeding and hold an evidentiary hearing[FN[FN5]] to develop additional factual support assertedly necessary to enable this Commission to comply with the requirements of 49 U.S.C 11347 [formerly section 5(2)(f) of the Interstate Commerce Act].[FN[FN6]] We note that the parties have been given ample opportunity to supplement the record in this proceeding as to appropriate employee protective conditions, and, in light of the detailed pleadings and appendixes so filed, an oral hearing would result in no substantive enhancement of the record. For this reason, and to avoid further delay in disposition of this matter, we will deny the requests.

*64 THE EVIDENCE

RLEA and BLE challenge the labor protective conditions previously developed in this proceeding These conditions were found to be appropriate for imposition in certain cases involving coordination of separate rail carrier facilities and seniority rosters and similar situations requiring Commission approval under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the act]

Generally, RLEA offers a two-pronged objection to the conditions. First, it asserts that the conditions are in violation of that portion of section 5(2)(f) of the act which requires that conditions be imposed that are 'no less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act * * *.' See 49 U.S.C. 11347 for current language. Second, RLEA argues that by allegedly imposing the minimum level of protection without examining each provision, the Commission abused its discretion and failed to require a fair and equitable arrangement.

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Specifically, as to its first charge, RLEA states that by not including the full protections of sections 4 and 5 of WJPA, which protections were previously imposed in cases of this type, the Commission failed to meet the minimum level of protection mandated by the statute. RLEA complains that though the Commission assertedly did include the protection of those sections, essential portions thereof were omitted. RLEA points to three segments in article I of the conditions previously imposed which RLEA feels cuts back on the rights afforded under sections 4 and 5 of WJPA. The first of these is the final sentence in article 1, section 4, which reads: 'At the completion (of) the ninety (90) day notice period, (the) railroad may proceed with the transaction.' RLEA argues that this sentence would allow consummation of a transaction *65 prior to agreement between the railroad and its employees which consummation is contrary to sections 4 and 5 of WJPA. Second, RLEA states that the term 'transaction' as defined in article I, section 1, must be redefined so as to encompass not only the initial transaction which requires Commission approval but also future related actions made pursuant to that approval. Assertedly, this change is necessary to insure that the notice provisions of article I, section 4 (which provisions are set in motion 'when a railroad contemplates a transaction * * *') are triggered in the same situations as they were in sections 4 and 5 of WJPA, those situations being when the carrier contemplated a coordination.[FN7] Finally, RLEA seeks to delete the ban in article I, section 4, on negotiations while the arbitration provisions are being invoked. RLEA feels this is violative of our policy in support of negotiated changes. The modifications sought by RLEA in these matters can be found in appendix I to this decision which sets forth RLEA's proposed employee protective conditions in full.

**3 As to the second general challenge to the proposed conditions, RLEA argues that the adoption of the Appendix C-1 conditions, without individual examination of each provision therein, resulted in the imposition of certain inequitable conditions. RLEA directs attention to article I, section 3, which section it contends must be rephrased as it has been interpreted, contrary to the intent of its drafters, to require forfeiture of all other existing protective provisions.[FN8] RLEA also objects to article I, section 7, as it allegedly requires an employee to make an irreversible choice without knowledge of options. RLEA seeks modification of article II to add incentives for retraining of employees and modification of the method of calculating the employees' displacement or dismissal allowances under article I, sections 5 and 6, so as to avoid problems such as those in *66*Norfolk & Western R. Co. v. Nemitz*, 404 U.S. 37 (1971).[FN9] RLEA also finds fault with article I, section 11 and wants it rephrased to clarify the proper decisionmaking process of the arbitration panel and the proper burden of proof. Finally, RLEA requests more equitable relocation provisions than those contained in article I, section 9.

As noted above, RLEA presents alternative provisions which it feels are fair and equitable and these are set forth in appendix I to this decision. We note, however, that despite RLEA's criticism, some of the proposed revisions do not differ in the areas of expressed concern from the provisions we developed in the prior decision in this proceeding. For example, RLEA would modify article II to suggest incentives for retraining of employees. Yet, the proposed conditions also contain numerous modifications other than those enumerated above for which no explanation is offered.

BLE contends that the conditions imposed fail to (1) recognize the particular seniority problems applicable to engineers and firemen, (2) provide a means to reach an equitable agreement on the rearrangement of work forces, and (3) adequately protect the earnings of operating employees. Generally, BLE seeks attrition-type protection; but, acknowledging our past refusal to impose such conditions, it directs comments to the specific provisions imposed. Like RLEA, BLE would redefine the term 'transaction' in article I, section 1(a), so that it would be as broad as the term 'coordination' in sections 4 and 5 of WJPA. Next, it submits that the 'protective period,' as defined in article I, section 1(d), has been improperly limited with respect to displaced employees. It argues that section 6(a) of WJPA provides that every displaced employee, regardless of the length of service, is entitled to protection for 5 years and that the instant conditions would limit the displacement allowance protection to the length of the employee's prior service if less than 6 years. Next, BLE seeks to add a specific definition in article I, section 1, of the phrase 'change of residence,' similar to the definition of that phrase proposed by RLEA in appendix I to this decision.

**4 Also, BLE agrees with RLEA that (1) article I, section 3, must be modified so as to assure that an employee will not forfeit his protections under another protective agreement as a condition of accepting any benefit of Appendix C-1, and (2) the

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last sentence of article I, section 4, should be deleted as it would allegedly permit a railroad to proceed with the transaction at the end of the 90-day *67 notice period and prior to completion of arbitration. BLE would further delete article I, section 4(d) and section 11(d), on the basis that requiring the parties to bear the involved expenses equally makes it prohibitive for an individual or small labor representative to arbitrate a dispute.

Additional comments of BLE are summarized as follows There are objections to article I, sections 5 and 6, on the grounds that traditional concepts of displacement and dismissal allowances are not adequate for operating employees; to article I, section 7, on the grounds that the carrier should be compelled to make the employees knowledgeable of options prior to election; to article I, section 9, on the grounds that the moving expenses now are inequitable and should read as set forth in appendix II to this decision; to article I, section 11, on the grounds that it fails to recognize that the dispute may involve more than one railroad, and to article I, section 12, on the grounds that section 11(a)(2) of WJPA, which protects an employee from loss arising out of a contract to purchase, should also be included.[FN[FN10]]

As noted in the procedural history set forth above, Dock, individually and jointly with BEDT, and NW, individually, filed replies to the labor organizations' proposed modifications.

Stressing the limited and local operations of the involved carriers, Dock argues that this proceeding is not an appropriate forum for the Commission to determine the level of employee protective conditions to be imposed in all usual proceedings of this type; but, in light of our decision to consider the matter further, it generally argues that section 5(2)(f) of the act (now 49 U.S.C. 11347) does not require the imposition of Appendix C-1 conditions. It cites *Missouri Pac R Co.-Merger-T&P and C&EI*, 348 I.C.C. 414 (1976) for the proposition that Congress did not intend a significant policy change when it amended section 5(2)(f) of the act (now 49 U.S.C. 11347) and that the 'New Orleans' conditions are appropriate here. In their joint reply to BLE's comments, Dock and BEDT (carriers) offer the following specific objections. The carriers again point to the specialized and limited nature of their waterfront operations to counter any need for modifications in the conditions to accommodate a territorial seniority system. They also oppose attrition-type conditions and cite our decision in *Oregon Short Line R. Co.-Abandonment-Goshen*, 354 I.C.C. 584 (1978), to support their contention that Congress did not intend such conditions. As to the labor organizations' complaints concerning the manner article I, *68 section 4, incorporates sections 4 and 5 of WJPA, the carriers state that the principles of those sections (i.e., notice, opportunity to negotiate, and the right to arbitrate) have been properly and sufficiently adopted. They fear that deletion of the authority to consummate after the 90-day period would enable a union to block a transaction already found by the Commission to be in the public interest. They also allege that *Southern Ry. Co.-Control-Central of Georgia Ry. Co.*, 331 I.C.C. 151 (1967), did not require an agreement prior to consummation, but merely arbitration.[FN[FN11]]

**5 The carriers' objections to the various other modifications proposed follow. As to article I, section 1, they oppose redefinition of the term 'transaction,' stating that it is not necessary; oppose insertion of the term 'change of residence,' stating that the facts do not warrant it; and support our prior definition of 'protective period' to the extent it limits protection to the length of previous service As to article I, section 3, the carriers do not feel rephrasing is necessary, though they do not elaborate on the concerns expressed by the organizations BLE's suggestions to delete article I, section 4(d) and section 11(d) are attacked as being in violation of the equitable principle that each party bear its own expenses in arbitration. The carriers submit that any deviation from the long-established principles of article I, sections 5 and 6, is not warranted here. They feel article I, section 7 is sufficient and that it is the duty of the organizations to advise their members of the various options. Since this proceeding does not involve potential residence changes, the carriers oppose modifications of article I, section 9 and section 12, which involve moving expenses and losses from home removal, respectively Next, they question BLE's criticism of the traditional arbitration provisions set forth in article I, section 11. Finally, the carriers discuss the appropriate length of the 'protective period ' They allege that section 5(2)(f) expressly limits the term to 4 years or less from the effective date of the order of the Commission approving the transaction and that we cannot ignore this plain language.

In its pleadings, NW generally opposes the adoption of any conditions requiring agreement before implementation of a transaction. NW adopts by reference the comments of the *69 Association of American Railroad (AAR) filed in AB-36 (Sub-No. 2), *Oregon Short Line, supra*, which basically reflects the view that Appendix C-1 exceeds the statutory minimum required by section 5(2)(f) of the act (now

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49 U.S.C. 11347).

DISCUSSION AND CONCLUSIONS

We are concerned here with the level of labor protective conditions required by 49 U.S.C. 11347 [formerly section 5(2)(f) of the act] in transactions involving rail carriers for which approval is sought under 49 U.S.C. 11343 *et seq* [formerly sections 5(2) and 5(3) of the act] with the exception of trackage rights and lease proceedings.[FN[FN12]] Despite the carriers' protestations, we feel that this is an appropriate proceeding in which to make such a determination. While each labor protective provision may not be invoked in the situation arising from the transaction approved here (i.e., provisions regarding moving expenses, et cetera), there is ample evidence of record upon which to base a determination of the appropriate conditions to be applied in the usual case.

The statute (49 U.S.C. 11347) requires that, as a condition to approving certain proceedings, the Commission must provide for a fair arrangement to protect employees. This arrangement, at a minimum, must contain provisions at least as protective as (1) the terms imposed under the section prior to February 5, 1976, and (2) the terms established under section 565 of title 49. In our prior decision in this proceeding we concluded that imposition of a version of the protections of sections 4 and 5 of WJPA in combination with the Appendix C-1 conditions was required by the act. See *New York Dock, supra* at 411, 412. For the reasons discussed in that decision we reaffirm our general conclusions as to this minimum level of protection.[FN[FN13]] However, the parties raise several matters which warrant further discussion and, in some instances, modifications of our prior findings so that the conditions imposed are commensurate with our statutory obligation. The *70 discussion below will be twofold. First, we will address the arguments that the conditions previously imposed do not meet the minimum requirements of the statute as they do not incorporate the full protections of sections 4 and 5 of WJPA. Next, we will analyze the conditions previously imposed in order to assure that they not only meet the statutory minimum but also constitute a fair arrangement.

**6 The labor organization intervenors correctly point out that though we stated we were imposing a version of the protections of sections 4 and 5 of WJPA (as modified to require compulsory arbitration), the conditions actually imposed are not as protective as those sections in several respects. First, the final sentence of article I, section 4, would conceivably permit consummation of a transaction prior to agreement or decision of the referee if the deadlines prescribed therein could for some reason not be met. Though Dock argues that article I, section 4 sufficiently encompasses the pertinent sections of WJPA, we cannot overlook the significance of the shortcoming attacked by the organizations. Therefore, to insure that the requirement of a preconsummation agreement as contained in sections 4 and 5 of WJPA be incorporated, we will modify article I, section 4, by deleting the final sentence and substituting in lieu thereof the language proposed by RLEA in article I, section 4(b), of appendix I, which language is appropriate for that purpose.

The labor organizations also request that the definition of the term 'transaction' in article I, section 1(a), be modified to encompass the same situations as the complementary term 'coordination' does in WJPA. These terms are the triggering mechanisms of article I, section 4 and sections 4 and 5 of WJPA, respectively. Since article I, section 4 here is intended to incorporate the full protections of sections 4 and 5 of WJPA, the term 'transaction' should be redefined to set the notice, negotiation, and arbitration provisions in motion in the same situations as does the term 'coordination.' We also note that the broad definition is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343 *et seq*, because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (consolidation of employee rosters, et cetera). In all these situations, employees should be given notice and the right to negotiation and arbitration; therefore, we will modify the term 'transaction' so that it will apply to any action taken pursuant to a Commission authorization upon which these conditions are imposed. Also, in order to clarify exactly when article I, section 4, is triggered, it is necessary to rephrase that section in several minor *71 negotiation following a 30-day period will be deleted. We point out, however, that subsequent to the set period either party may submit the matter for arbitration, therefore, the deletion, while in accord with our long-established policy supporting negotiated agreements, will not allow the process to be prolonged contrary to the interests of the parties.

We note here that article I, section 4, embodies a highly structured plan with specified time limits for notice, negotiation, arbitration, and decision. This is so, to assure that the parties reach the necessary agreement prior to consummation but within a reasonable period so as not to delay unduly consummation of the transaction. The parties offer no objection to the time limits set for the various

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stages and we feel that they are reasonable for imposition in the usual case. If, in future proceedings, however, it becomes apparent that these deadlines are not susceptible of being met, we will then consider modification of the time deadlines of article I, section 4.

**7 Next, we will consider the petitioner's argument that by adopting the Appendix C-1 conditions *in toto*, we have incorporated certain inequitable provisions and that individual examination of each condition is, therefore, necessary. In the past we have discussed at length the increased level of protection afforded by the Appendix C-1 conditions, as well as the fact that those conditions were developed pursuant to a statutory mandate requiring 'fair and equitable arrangements to protect the interests of employees.' See *Oregon Short Line R. Co.-Abandonment-Goshen*, 354 I.C.C. 76, 84-86 (1977). We have not changed this view that the Appendix C-1 conditions generally conform to the requirement for imposition of a 'fair arrangement' as mandated by 49 U.S.C. 11347 [formerly section 5(2)(f) of the act]. However, some confusion has resulted from the application of the specific language of the Appendix C-1 conditions to different types of transactions other than those for which they were originally developed. Moreover, certain additional problems concerning various interpretations of these conditions have been raised by the parties. Therefore, we feel it is necessary here for us to clarify and modify the conditions to insure that they constitute a fair arrangement suitable for imposition in the usual transactions involving rail carriers for which approval is sought under 49 U.S.C. 11343 *et seq.* [formerly sections 5(2) and 5(3) of the act], with the exception of trackage rights and lease situations which are being considered elsewhere. In this regard, we will generally discuss the provisions in light of the various comments of the *72 parties. Except as discussed and modified herein, we find that the conditions previously imposed satisfy the statutory requirements of 49 U.S.C. 11347 [formerly section 5(2)(f) of the act.] We will not discuss at any length the various modifications we made above to insure that the conditions incorporate the full protections of sections 4 and 5 of WJPA.

First, we will discuss the various criticisms of article I, section 1. The term 'protective period' is the subject of some dispute. Dock argues that the period set in our definition should be shortened as the statute explicitly limits the term to 4 years or less from the effective date of the order of the Commission approving the transaction, while BLE asserts that the period set should be modified as WJPA provides 5 years of protection for displaced employees even if he/she has been employed for a lesser period. We do not agree with either argument. First, as to the 4-year limit espoused by Dock, we point to the decision of the U.S. Supreme Court in *Railway Labor Executives' Association v. United States*, 339 U.S. 142 (1950), where it was stated that section 5(2)(f) of the act is a statutory *minimum* and that we are not required to limit employee protection to 4 years from the effective date of the order, but can provide for a longer period. As to the modifications suggested by BLE, we point out that section 6(a) of WJPA does not provide a 5-year across-the-board protective period. While an employee continued in service might receive up to that length of protection, dismissed employees receive significantly less (see section 7 of WJPA). The up to 6-year protective period depending on length of service provided by Appendix C-1 is the same for both types of employees and in several ways is more protective of all employees than the provisions of WJPA. Therefore, since the Appendix C-1 protective period is generally more beneficial and equitable than the period allocated under WJPA, we will not modify our prior decision in this respect.

**8 Next, both RLEA and BLE suggest the addition of the term 'change of residence' to the definitions. This term is utilized in several of the provisions yet we do not feel that establishing a strict definition is advisable. The facts surrounding different proceedings will vary significantly. For example, in some areas of the country employees generally travel much greater distances from home to work than in other areas; therefore, different computations may be warranted. We feel the possible variations prevent the equitable imposition of a set definition, and determine that negotiation and/or *73 arbitration between the parties will be the best mode for resolving this matter.

Article I, section 2, appears acceptable to all parties. RLEA does propose an additional sentence dealing with the effectiveness of subcontracting agreements subsequent to a transaction; however, the section, as now written, preserves all existing agreements and, therefore, the suggested language is redundant and unnecessary.

Both RLEA and BLE express concern over the interpretation of article I, section 3 as it is now written. We agree that a fair and equitable arrangement usually should not require a complete forfeiture of other existing labor protective conditions. Because the section as now written has been interpreted in such a manner, we feel it is

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necessary to rephrase the conditions so as to preclude the possibility of such a reading. Our study of the provision suggested by RLEA indicates that it preserves existing protections yet with the required prohibitions against duplication of benefits (see the first proviso) and against pyramiding (see the latter portion of the final proviso). We will adopt the proposed provision as we feel it is an appropriate clarification of the intent of that section.

We have discussed the major employee objections to article I, section 4, and provided for some modifications thereof. BLE also requests the deletion of section 4(d) [as well as a similar provision in article I, section 11(d)] which section provides that the salary and expenses of the referee shall be borne equally by the salary and all other expenses shall be paid by the party incurring them. BLE argues that these sections render the costs of arbitration prohibitive for small organizations and individuals. Contrary to these unsubstantiated charges, we feel that such a provision is the only fair and equitable manner in which to approach the question of costs. Such a condition helps to promote good faith utilization of the available procedures, and we will not depart from this traditional approach.

Article I, sections 5 and 6 cover displacement and dismissal allowances respectively. Generally, the sections delineate at what point and for how long an employee is eligible for the allowances, the method of computing the amounts of the allowances, and certain situations when the allowances shall be reduced or shall cease prior to the expiration of the protective period. BLE avers that the sections are inadequate for operating employees, since they have territorial rather than plant-type seniority. However, no explanation of just how the present, traditional approach is insufficient is offered, nor does BLE offer a proposal for modification. As *74 explained before, RLEA proposes certain modifications to the method of computing the average monthly compensation. The record here does not support such a provision. The problem cited by RLEA arose from the specific facts of a particular case. The evolution of article I, sections 5 and 6, is set forth in *Oregon Short Line R. Co.-Abandonment-Goshen*, 354 I.C.C. 76, 80-85 (1977). Our discussion there outlines the increase in protections afforded by the various revisions, including the Appendix C-1 conditions. In the absence of any evidence to the contrary, we reaffirm that these sections are fair and equitable for imposition in the usual case.

**9 Because of our redefinition of the term 'transaction' to encompass actions taken pursuant to our authorization but after the initial changes, we will modify article I, section 9, to delete that language which would automatically remove changes in residence which are made subsequent to the initial change from the purview of that section. The final phrase, 'which grow out of the normal exercise of seniority rights,' is unnecessary and will also be omitted. This modification will insure that the protections of the provision will be available to any employee who is required to move his place of residence within his protective period, as a result of action taken pursuant to our authorization.

We feel that the method for arbitration of disputes provided for in article I, section 11, sets forth a fair and equitable manner for the parties to settle disputes and controversies with respect to the interpretation, application, or enforcement of specific provisions. As to BLE's argument that the provision is insufficient in situations involving two railroads, we point out that generally a dispute will arise between employees and a single railroad. There are no facts here to indicate that this proceeding is other than the usual case and therefore no modification is warranted. In the event, however, that future proceedings involve more complex situations, we will then consider alternative provisions for application therein.

Both BLE and RLEA point out that, though article I, section 12, allegedly incorporated all the losses from home removal provisions of Appendix C-1, the paragraph therein covering losses arising from a contract to purchase was inadvertently omitted. We agree that this paragraph should have been included and will accordingly modify that provision. We will also make certain changes in paragraph (b) of that condition. This is done for the same reasons we modified article 1, section 9, as explained previously. The modification will assure that the protections afforded by sections 9 and 12 will be available in the same instances.

*75 Other modifications we find appropriate are as follows. Article V will be rephrased to reflect the recent redrafting and codification of section 5(2)(f) (now 49 U.S.C. 11347). Finally, we note that 'Article V' proposed in RLEA's provisions will not be included because it concerns matters more appropriate for settlement between the parties themselves than for strict determination here.

In conclusion, we note that we have considered all of the numerous modifications proposed (including additional modifications of those sections discussed above, as well as changes in article I, sections 7, 8, and 10, and articles II and IV). We find that, except

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as noted, said changes are either (1) unnecessary because they are redundant or consist of mere rewording or (2) inadvisable because they involve matters which are best left to negotiation and/or arbitration between the parties. We stress that it has long been Commission policy to encourage the parties to work out their own arrangement and here we are only establishing a fair, yet minimum, level of protection to be applied in certain proceedings. Particular problems arising from the varying facts of specific cases are best handled by the individual parties involved within the framework of negotiation and arbitration provided for here We feel that the level of protection developed here and set forth in appendix III to this decision represents a fair arrangement meeting the minimum requirements of 49 U.S.C 11347 [formerly section 5(2)(f) of the act], and appropriate for imposition in this proceeding as well as other proceedings involving rail carriers arising under 49 U S C 11343 *et seq.* [formerly section 5(2) and 5(3) of the act], excluding trackage rights and lease proceedings which are being considered elsewhere. Certain other minor modifications have been made which do not necessitate detailed explanation.

**10 Because Dock and BEDT have already consummated their control transaction, we must provide for an equitable rather than strictly literal application of the employee protective provisions developed here. In essence, this equitable application will only relieve the carriers from their duty to notify, negotiate, and arbitrate as to the control transaction already accomplished Since we prohibited the carriers from taking any action which would affect employees, such relief is not detrimental to the interests of employees. Due to our modification of the term 'transaction,' any future related action taken pursuant to our approval (i.e., consolidation of rosters as a result of the control) will require full and literal compliance with the conditions.

*76 *It is ordered*

(1) The conditions for the protection of employees set forth in our prior decision in this proceeding at 354 I.C C 399 (1978), are modified in the manner set forth in appendix III to this decision for the reasons stated above.

(2) Subject to these modified conditions, the prohibition in our order of September 29, 1977, against the parties taking any action which would affect employees' rights, is removed.

(3) Except as modified here and by our decision of September 8, 1978, the decision and order of April 11, 1978, shall remain in full force and effect.

(4) This decision shall be effective 30 days from the date it is served

APPENDIX I

The labor protective provisions suggested by RLEA are as follows:

The scope and purpose of this appendix is to provide for fair and equitable arrangements to protect the interests of employees of railroads affected by actions taken pursuant to authorizations or approvals of this Commission to which this appendix has been imposed. Therefore, fluctuations and changes in volume or character of employment brought about solely by other causes are not within the purview of this appendix.

ARTICLE I

1. *Definitions.*-

(a) 'Transaction' means any action taken pursuant to authorizations of this Commission to which these provisions have been imposed

(b) 'Displaced employee' means an employee of a railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) 'Dismissed employee' means an employee of a railroad who, as a result of a transaction is deprived of employment with a railroad because of the abolition of his position or the loss thereof as the result of a transaction.

(d) 'Protective period' means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, *provided, however*, that the protective period for benefits under section 6 of this article for any particular employee shall not continue for a longer period following *77 the date he was displaced or dismissed than the period during which such employee was in the employ of a railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provision of section 7(b) of the Washington Job Protection Agreement of May 1936.

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**11 (e) 'Change in place of residence' means transfer to a work location which is located either (A) outside a radius of 30 miles of the employee's former work location and farther from his residence than was his former work location or (B) is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former work location.

2. The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes The various agreements dealing with subcontracting, scope rules, and classification of work rules in effect at the time of a transaction, shall continue in effect unless and until changed by agreement between the railroads and labor organizations involved in such transaction, and work performed on such properties shall not be subcontracted except as may be expressly, or by reasonable necessary implication, permitted by said agreements. Disputes concerning subcontracting of work shall be disposed of on the basis of existing collective bargaining agreements between the parties.

3. Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; *provided, however*, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect, *provided further*, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, *provided further*, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of his protective period under that arrangement.

4. (a) Each railroad contemplating a change or changes in its operations, services, facilities, or equipment as a result of a transaction which may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days' written notice of such intended change or changes by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees Such notice shall contain a full and adequate statement of the proposed changes to be effected by such transaction, including an estimate of the number of employees of each class affected by the intended changes.

**12 At the request of any party interested in such intended change or changes, a place shall be selected within five (5) days from the date of receipt of notice to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence *78 immediately thereafter. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the change or changes shall be made on the basis of an agreement or decision under section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration, the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee, then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding, all other expenses shall be paid by the party incurring them.

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(b) If a notice of intended changes is served pursuant to this section 4, no change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5 *Displacement allowances* -

(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position, which does not require a change in his place of residence, producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed compensated service more than fifty (50%) percentum of each such months immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period); *provided, however*, that the 'total compensation' and the 'total time for which he was paid' shall be adjusted to reflect on an annual basis the reduction, if any, which would have occurred during the test period had a Public Law amending the Hours of Service Act of 1907, enacted subsequent thereto, been in effect throughout the test period; and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

**13 If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to *79 his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position

(b) If a displaced employees fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause

6. *Dismissal allowances.*-

(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he performed compensated service more than fifty (50%) percentum for each such month prior to the date he is first deprived of employment as a result of a transaction. Such allowance shall be adjusted to reflect subsequent general wage increases; such allowance shall also be adjusted to reflect on an annual basis the reduction, if any, which would have occurred during the applicable test period had a Public Law amending the Hours of Service Act of 1907, inacted subsequent thereto, been in effect throughout the test period.

(b) The dismissal allowance of any dismissed employee who returns to service with a railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employees in employment other than with a railroad, and the benefits received

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**14 (d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, or failure without good cause to accept a regular, bulletined, comparable position which does not require a change in his place of residence, for which he is qualified and eligible with the railroad from which he was dismissed after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. *Separation allowance.*-A dismissed employee entitled to protection under this appendix, may, at his option, within thirty (30) days of his dismissal or of an arbitration award establishing that he is a dismissed employee, resign and (in lieu of all other benefits and protections provided in this appendix) accept at that time a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936. Until such lump sum payment is received, the dismissed employee shall receive a dismissal allowance in accordance with section 6 of this appendix

*80 8. *Fringe benefits.*-No employee of a railroad who is affected by a transaction shall be deprived of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. *Moving expenses* -Any employee retained in the service of a railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of a transaction, and is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days. The exact extent of the responsibility of the railroad during the time necessary for such transfer and for a reasonable time thereafter, and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent as provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

**15 10. Should a railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply retroactively to such employee as of the date when he is so affected

11 *Arbitration of disputes.*-

(a) In the event a railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 30 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroad, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree unanimously upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree unanimously to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose

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designation will be binding upon the parties

*81 (b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives; provided, however, that the decision in said case shall be made by the neutral member

(c) The decision, by majority vote (except as provided for in paragraph (b) of this section), of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee. The claiming employee shall prevail on this issue if it is established that the transaction had an effect upon the employee even if other factors also may have affected the employee.

**16 12. *Losses from home removal.*-

(a) The following conditions shall apply to the extent they are applicable in each instances to any employee who is retained in the service of a railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of a transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the railroad for any loss, including real estate commissions, loan placement fees, et cetera, suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) The employee may elect to waive the provisions of paragraph (a)(i) of this section and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for and assumed by a seller of real estate in jurisdiction in which the residence is located Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 percentum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage.

(iii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iv) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction, which are made subsequent to the initial changes caused by a transaction and which grow out *82 of the normal exercise of seniority rights, shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, the loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employees, or their representatives, and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A

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decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

**17 1. Any employee whose employment is terminated or who is furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on any railroad involved in the transaction which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2 In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under sections 1 or 2 of this article II fails without good cause within 10 calendar days after actual receipt of notice to accept an offer of a position comparable to that which he held when his employment was terminated or he was furloughed, which does not require a change in residence, and for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Employees of a railroad whose position is not within the scope of a collective bargaining agreement shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee whose employment is not within the scope of a collective bargaining agreement with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to this Commission for resolution.

*83 ARTICLE IV

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established pursuant to section 5(2)(f) of the Interstate Commerce Act, and to section 405 of the Rail Passenger Service Act, and which are now required as a minimum by section 5(2)(f) of the Interstate Commerce Act. In so doing, changes in wording and organization from arrangements earlier developed under sections 5(2)(f) and 405 have been necessary to make such benefits applicable to transactions as defined in article I of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Moreover, it is the intent of this appendix to provide protections which are fair and equitable. Thus, the terms of this appendix are to be interpreted in a fair and equitable manner, and are to be construed in favor of this intent to provide employee protections and benefits no less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act and pursuant to section 405 of the Rail Passenger Service Act.

**18 2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected, and such unenforceable provision shall be resubmitted to this Commission for modification or other appropriate actions.

ARTICLE V

1. The protections and benefits of this appendix shall be applicable to any railroad employee who is affected by the transaction to which these provisions have been imposed regardless of whether such employee is employed by a railroad who was an applicant before this Commission in the proceeding in which these provisions were imposed

2. The carrier, or the owners thereof in the event of the dissolution of said carrier, who employed an employee who is affected by the transaction shall be responsible for the actual payment of all allowances, expenses, and costs provided to such affected employee pursuant to the provisions of this appendix unless expressly provided for otherwise by the carriers and the representative of such employee, or by the provisions of this appendix.

3. The carriers who were applicants before this Commission, or who derived a substantial benefit

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from the transaction, shall bear the ultimate responsibility for the payment of benefits to affected employees, and shall reimburse any other carrier who provides benefits under this appendix as a result of the transactions covered herein for the actual amounts paid to affected employees. The formula for the sharing of ultimate responsibility shall be agreed to by the carriers bearing the ultimate responsibility, and upon failure to agree, the carriers may seek the aid of this Commission to resolve such disagreement upon the basis of percentage of benefit derived from the transaction.

APPENDIX II

The labor protective provision covering moving expenses suggested by BLE for imposition here is as follows·

Moving expenses.-Any employee retained in service by the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of a transaction, and is *84 required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss during the time necessary for such move, and for a reasonable time thereafter not to exceed 5 working days. The extent of the responsibility of the railroad under this provision and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives; *provided, however*, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this section; *provided further*, that the railroad shall, to the same extent as provided above, assume the expenses, et cetera, for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

APPENDIX III

**19 Labor protective conditions to be imposed in railroad transactions pursuant to 49 U S C 11343 *et seq.* [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows.

1 *Definitions.*-(a) 'Transaction' means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) 'Dismissed employee' means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction

(d) 'Protective period' means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under *85 any existing job security or other protective conditions or arrangements; *provided*, that if an employee otherwise is eligible for protection under both this appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this appendix

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and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; *provided further*, that the benefits under this appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, *provided further*, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

**20 4. *Notice and agreement or decision.*-(a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

*86 5. *Displacement allowances.*-(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

**21 Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and *provided further*, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less

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compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. *Dismissal allowances* -(a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

**22 *87 (d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. *Separation allowance.*-A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. *Fringe benefits.*-No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. *Moving expenses* -Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not to exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; *provided, however*, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; *provided further*, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for

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any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad within 90 days after the date on which the expenses were incurred.

**23 10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. *Arbitration of disputes.*-(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall *88 serve as chairman. If any party fails to selects its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12 *Losses from home removal.*-(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence·

**24 (i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

(b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the

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provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move

*89 (d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

**25 2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprises within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses, except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprises for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept *90 comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide

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employee protections which are not less than the benefits established under 49 U.S.C 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article I of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 U S C. 11347 before February 5, 1976 and under section 565 of title 45.

**26 2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

1 This decision embraces Finance Docket No. 28297, New York Dock Railway-Securities.

2 By decision of November 13, 1978, we extended the deadline for our final decision in this proceeding to February 12, 1979. This action was taken pursuant to 49 U S C. 10327(i) [formerly section 17(9)(d) of the act].

3 The Commission initially promulgated the 'New Orleans' conditions in *New Orleans Union Passenger Terminal Case*, 282 I.C C 271 (1952).

4 By decision of September 8, 1978, Division 3, Acting as an Appellate Division, modified its prior decision of April 11, 1978 in certain respects none of which are relevant to the issues involved here.

5 In a decision dated August 30, 1978, the Commission denied a petition in which RLEA sought to consolidate this proceeding with AB-36 (Sub-No. 2), *Oregon Short Line Railroad and the Union Pacific Railroad Company-Abandonment Portion Goshen Branch Between Firth and Ammon in Bingham and Bonneville Counties, Idaho*, and Finance Docket No 28387, *Norfolk and Western Railway Company-Trackage Rights-Burlington Northern, Inc.*, and to reopen the records therein for the purpose of receiving additional submissions from the parties on proposed employee protective conditions

6 The Interstate Commerce Act (act) was recently revised, codified, and enacted without substantive change as subtitle IV of Title 49, United States Code, 'Transportation' section 5(2)(f) of the act is now codified at 49 U S C. 11347 and has been revised without substantive change to read as follows:

> When a rail carrier is involved in a transaction for which approval is sought under sections 11344 and 11345 or section 11346 of this title, the Interstate Commerce Commission shall require the carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under this section before February 5, 1976, and the terms established under section 565 of title 45. Notwithstanding this subtitle, the arrangement may be made by the rail carrier and the authorized representative of its employees The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Commission (or if an employee was employed for a lesser period of time by the carrier before the action became effective, for that lesser period).For purposes of reference, *section 5(2)(f) of the act reads as follows:*
>
> As a condition of its approval, under this paragraph (2) or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. *Such arrangement shall contain provisions no* less protective of the interests of employees than those heretofore imposed pursuant to this subdivision and those established pursuant to section 405 of the Rail Passenger Service Act (45 U S.C 565). Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its

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or their employees.

7 In section 2(a) of WJPA, the term 'coordination' is defined as a 'joint action by two or more carriers whereby they unify, consolidate, merge, or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.'

8 RLEA cites the opinion and award of the arbitrator (H M. Weston, Referee) in *Arbitration of Penn Central Transportation Company and BRAC* (1972), which found that (1) article I, section 3 of Appendix C-1 requires an election of either all the benefits and obligations of Appendix C-1 or all the benefits and obligations of the preexisting agreement and (2) the election to take the benefits and obligations of Appendix C-1 obviates any future application of the preexisting agreement RLEA then quotes pp. 8-9 of the affidavit of the Secretary of Labor Hodgson, which was placed in evidence in *Congress of Railway Unions, et al.* v. *J. D. Hodgson, et al*, civil action No. 825-71, in support of its contention that the intent of article I, section 3 is to preserve the rights of employees under other protective arrangements.

9 The problem in that case arose from a protective condition limiting the allowances solely to the amount paid employees for seasonal work Accordingly, this resulted in deflated average monthly compensation. RLEA proposes to avoid such potential problems by computing the average monthly compensation utilizing only months in which the employee performed compensated service more than 50 percent of the time.

10 Article I, section 12(a)(ii) of the Appendix C-1 conditions also provides for this type of protection. Since we intended to incorporate those conditions, the omission of that paragraph was inadvertent.

11 We do not agree with this conclusion It was in that decision that the Commission clarified that sections 4 and 5 of WJPA were indispensible prerequisites to a valid order of approval. That case also recognized that, had those provisions been adhered to by the parties, a preconsummation agreement would have resulted; however, as explained in that decision, consummation had already been accomplished without compliance with those sections For this reason, it was impossible to require a preconsumamtion agreement, but equitable compliance with sections 4 and 5 was mandated.

12 Appropriate labor protective conditions for imposition (a) in trackage rights proceedings have been developed in Finance Docket No 28387, *Norfolk and Western Railway Company-Trackage Rights-Burlington Northern, Inc*, and (b) in lease proceedings have been formulated in Finance Docket , No. 28256, *Mendocino Coast Railway, Inc.-Lease and Operate-California Western Railroad.*

13 Therefore, contrary to the carriers' arguments, we remain of the view that the appendix C-1 conditions, which conditions were developed pursuant to section 405 of RPSA, are required by the statute This does not conflict with what we said in *Missouri Pac R. Co.-Merger-T&P and C&EI, supra.* While we stated in that case that Congress did not intend to have the Commission significantly change its policy in the employee protection area, this was meant to indicate that Congress did not intend a change requiring imposition of attrition conditions. *See Oregon Short Line, supra* at 589.

I.C.C

360 I.C.C 60, 1979 WL 11091 (I C.C.)
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New York Dock Ry. v. U. S C A.2, 1979
United States Court of Appeals,Second Circuit
NEW YORK DOCK RAILWAY and Brooklyn Eastern District Terminal, Petitioners,
v.
UNITED STATES of America and Interstate Commerce Commission, Respondents.
No. 61, Docket 79-4086.

Argued Sept 19, 1979.
Decided Nov. 7, 1979.

Proceeding was instituted on petition to review an order of the Interstate Commerce Commission on establishing labor protective conditions as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification transactions The Court of Appeals, Waterman, Circuit Judge, held that. (1) labor protective conditions established by Interstate Commerce Commission as a matter of general transportation importance were directly traceable to either the "New Orleans conditions" as clarified in Southern Control II or the Appendix C-1 conditions and were not in excess of that required by statute because they contained a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward consummation of a proposed transaction, and a binding arbitration requirement, and (2) prohibition on pyramiding of benefits did not preclude an employee from electing to be covered by rehiring priority provision and other arrangement at same time and did not prevent him from continuing to be covered by rehiring priority provision for remainder of term albeit expiration of principal benefit package originally elected by him.

Petition denied, and order affirmed.
West Headnotes
[1] **Commerce 83 ⚿85.7**

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85 1 Regulation of Carriers in General, Railroads and Pipe Lines
83k85 7 k. Combinations and Consolidations of Carriers, Agreements. Most Cited Cases

Interstate Commerce Commission may fashion employee protective conditions that are tailored to special circumstances present in individual cases and, in fulfilling its statutory duty to require a fair and equitable arrangement to protect employee interests and certain types of rail carrier transactions, may require a greater degree of employee protection than that required as statutory minimum. Revised Interstate Commerce Act, 49 U S C.A § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S C. (1976 Ed) § 5(2)(f).

[2] **Commerce 83 ⚿85.7**

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General, Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases

Reference in Interstate Commerce Act to "those provisions * * * heretofore imposed pursuant to [section 5(2)(f) of the I.C. Act]" is to the "New Orleans conditions" as clarified in *Southern Control II*, and reference in Revised Interstate Commerce Act to "those [provisions] established pursuant to section 565 of Title 45 [section 405 of the Amtrak Act]" is to the Appendix C-1 conditions. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

[3] **Commerce 83 ⚿85.7**

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85 1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85 7 k. Combinations and Consolidations of Carriers; Agreements Most Cited Cases

Interstate Commerce Commission in formulating a new set of employee protective conditions in railroad merger, control, consolidation, coordination and unification of proceedings, must combine those benefits provided under both the "New Orleans conditions" as clarified in *Southern Control II* and the Appendix C-1 conditions and, if conflicting

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benefits are provided under each of the two sets, must select the more beneficial of the two for inclusion in the new set. Revised Interstate Commerce Act, 49 U S C.A § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C (1976 Ed.) § 5(2)(f).

[4] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85 1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Imposition by Interstate Commerce Commission in railroad merger proceedings of any employee protected provision which can be traced directly to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C-1 conditions should be unobjectionable as embodying minimum degree of protection contemplated. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed) § 5(2)(f).

[5] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General, Railroads and Pipe Lines
83k85 7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Employee protective conditions formulated by Interstate Commerce Commission in railroad merger proceedings, combining those benefits provided under both the "New Orleans conditions" as clarified in *Southern Control II* and the Appendix C-1 conditions, include a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward confirmation of a proposed transaction, and binding arbitration. Revised Interstate Commerce Act, 49 U.S.C A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f).

[6] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General, Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Labor protective conditions established by Interstate Commerce Commission as a matter of general transportation important in railroad merger, control, consolidation, coordination and unification proceedings were directly traceable to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C-1 conditions and were not in excess of that required by statute because they contained a 90-day advance notice requirement, requirement of an implementation agreement as a precondition to initiation of any action directed toward consummation of a proposed transaction, and binding arbitration. Revised Interstate Commerce Act, 49 U S.C A. § 11347.

[7] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Provisions of labor protective conditions, "New York Dock conditions," established by Interstate Commerce Commission as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings were not subject to being stricken because they were only a matter of general transportation importance and were not particularly applicable to fact situation presented as long as they could be traced directly to either the "New Orleans conditions" as clarified in *Southern Control II* or the Appendix C-1 conditions. Revised Interstate Commerce Act, 49 U.S.C.A § 11347; Interstate Commerce Act, § 5(2)(f), 49 U S.C. (1976 Ed.) § 5(2)(f).

[8] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General;

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Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Term "transaction," contained in labor protective conditions established by Interstate Commerce Commission as a matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings, was not subject to being redefined judicially, even though it had no precise ancestor in either the "New Orleans conditions" as clarified in *Southern Control II* or in the Appendix C-1 conditions, where goal which the ICC had in mind was to encompass the same situations as were within the parallel term "coordination" employed in the admitted blueprint for all current employee protective packages. Revised Interstate Commerce Act, 49 U.S.C.A. § 11347; Interstate Commerce Act, § 5(2)(f), 49 U S.C. (1976 Ed) § 5(2)(f).

[9] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85 1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
Labor protective conditions established by Interstate Commerce Commission as matter of general transportation importance in railroad merger, control, consolidation, coordination and unification proceedings were to be interpreted as meaning that full benefits in retaining rights package originally elected by employee expired at end of a six-year period, and that if employee had not yet reached normal retirement age, prohibition against pyramiding of benefits did not prevent him from continuing to be covered by rehiring priority provision for remainder of term albeit expiration of principal benefit package originally elected by him. Revised Interstate Commerce Act, 49 U S.C A. § 11347, Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed.) § 5(2)(f)

[10] Commerce 83 ⚿85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85 7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases
When component benefits are provided under different sets of employee protective conditions established as a matter of general transportation importance in railroad merger proceedings, and those benefits differ only as to duration and amount, and not as to type or kinds, an employee, in electing coverage under one set of conditions, receives such benefits provided under other sets, but when different sets of employee protective conditions contain component benefits that differ as to type or kind between sets, an employee, in electing coverage under one set of conditions, should not be rendered ineligible to receive benefits contained in other sets that have no counterpart in set he elected Revised Interstate Commerce Act, 49 U.S.C.A § 11347, Interstate Commerce Act, § 5(2)(f), 49 U.S.C. (1976 Ed) § 5(2)(f)

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Harold A. Ross, Ross & Kraushaar Co., L.P.A., Cleveland, Ohio, for intervenor-respondent Brotherhood of Locomotive Engineers.
Harry J. Breithaupt, Jr., James I Collier, Jr., Richard T. Conway, Shea & Gardner, Washington, D. C., for amicus curiae, Ass'n of American Railroads.

Before WATERMAN, FEINBERG and TIMBERS, Circuit Judges.
WATERMAN, Circuit Judge:
Petitioners seek judicial review of an order of the Interstate Commerce Commission [FN1] ("ICC"), establishing as a matter of general transportation importance the labor protective conditions the challenged order imposed under section 5(2)(f) of the Interstate Commerce Act (the "I.C. Act"), as amended by section 402(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4R Act"), recently recodified as 49 U S.C. s 11347, in railroad merger, control, consolidation, coordination and unification transactions as defined

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in sections 5(2) and (3) of the I.C. Act, 49 U.S.C. ss 11343-11346 The petition for review is denied.

FN1. New York Dock Railway Control Brooklyn Eastern District Terminal, Finance Docket No. 28250 (February 9, 1979). The ICC's decision is attached as Exhibit A to the Petition for Review in this case

Before setting forth the factual situation involved in the present case and the substantive positions of the parties to this action, a brief outline of the history of railway labor protective conditions relevant to consolidations, mergers, acquisitions and other similar transactions will be detailed. Such an historical outline is able in placing the present case in context, and in describing more accurately the positions advanced by the parties in response to the ICC's imposition of the labor protective conditions here at issue

Historical Background

It long ago was recognized that consolidations of railroad operations, although beneficial to the industry as a whole and to the particular carriers involved, could have devastating effects on the employees of those carriers. Accordingly, Congress in 1933 enacted the Emergency Railroad Transportation Act, which sought to protect the employees of railroads engaging in consolidation of operations by mandating a "job freeze" approach so as to guarantee the continued employment for the entire labor force of the railroads involved.

Due to the effects a "job freeze" approach to employee protection could have on operational efficiency, representatives of approximately 85% Of the railroad mileage in the country agreed with 20 of the 21 national labor organizations representing railroad workers in 1936 to a form of job security arrangement that provided bargaining and compensation protection to employees but left employers free to alter the size of their work force. That agreement, the Washington Job Protection Agreement of 1936 ("WJPA"), generally is conceded to be the blueprint for all subsequent job protection arrangements.

The pertinent provisions of the Agreement, applicable to any "coordination," defined as "joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities," (s 2(a)), were as follows:

Employees of the carriers involved in a particular coordination were entitled to various compensatory protections.
*87 i any employee displaced into a lower paying position was entitled to an allowance to equalize his new rate of pay with his previous rate of pay for a period of up to five years following the effective date of the coordination (s 6)
ii. any employee deprived of employment as a result of a coordination was entitled to receive a "coordination allowance" for a period, depending on his length of service, of up to five years following the effective date of the coordination, with the amount of the allowance equivalent to 60% Of his most recent average annual compensation; in the alternative, the employee could resign and accept a "lump sum separation allowance" (ss 7, 9)
iii. accumulated employee benefits were protected (s 8)
iv. any employee required to change his residence as a result of the coordination was entitled to reimbursement from his employer for his moving expenses and for any loss incurred on the sale of his previous residence (ss 10, 11)

And in addition to these compensatory protections, the WJPA also required:v. advance notice to all employees of the affected carriers, at least 90 days prior to the effective date of the proposed coordination, this 90 day advance notice period to be used to negotiate an implementing agreement to provide for the assignment and selection of a combined work force; and the successful negotiation of such an agreement was an implicit precondition to the consummation of the proposed coordination (ss 4, 5) [FN2]

FN2 In a subsequent case discussing the purposes and operation of sections 4 and 5 of the WJPA, the ICC concluded that
The inclusion of provisions of the type contained in sections 4 and 5 of the (WJPA) was required, in our opinion, in order to provide the employees the protection to which they were entitled under the statute. . . . The inclusion of conditions insuring the right of the employees here involved to notice and the negotiation of implementing agreements were indispensable prerequisites

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in effectuating a valid order of approval in the proceeding.
Southern Ry -Control-Central of Ga Ry., 331 I.C.C. 151, 166 (1967).

vi. the submission of disputes concerning the operation of particular provisions of the WJPA, or of particular provisions of agreements reached pursuant to the terms of the WJPA, to a process of resolution employing binding arbitration (ss 11, 13).

A few years later, in a proceeding concerning the approval of a lease of railroad property, Chicago, R. I. & G. Ry. Trustees Lease, 230 I.C C. 181 (1938), Modified, 233 I C C 21 (1939), the ICC prescribed employee protective conditions similar to those found in the WJPA, although there was no specific statutory language authorizing this action; and in United States v Lowden, 308 U.S. 225, 60 S.Ct 248, 84 L Ed. 208 (1939), the Supreme Court upheld the imposition of these labor protective conditions, finding such action to be within the ICC's authority pursuant to its mandate to act in the "public interest "

Soon after this decision, in the Transportation Act of 1940, Congress enacted various amendments to the I.C Act, including the original labor protective provisions contained in section 5(2)(f), 49 U S C s 5(2)(f), which provided as follows:
As a condition of its approval, under this paragraph, of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the *88 employ of such carrier or carriers prior to the effective date of such order Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Later, in a subsequent case involving both a carrier abandonment and purchase application, Oklahoma Ry. Trustees-Abandonment of Operations, 257 I.C.C 177 (1944), the ICC developed, pursuant to the statutory authority granted in section 5(2)(f) of the I C. Act, the so-called "Oklahoma conditions." These conditions essentially paralleled the provisions of the WJPA, with two principal exceptions (i) the maximum prescribed protective period was four years following the effective date of the ICC's order, as contrasted to the five years following the effective date of the coordination provided in the WJPA; and (ii) there were no express provisions dealing with required advance notice to affected employees, nor with the prior negotiation of an agreement concerning the reassignment of employees

As a result of these exceptions, an employees' union challenged the ICC's imposition of the standard "Oklahoma conditions" in New Orleans Union Passenger Terminal Case, 267 I.C C. 763 (1948) In its review of the ICC's decision in that case, the Supreme Court, after examining the legislative history of section 5(2)(f), concluded that the explicit reference to a four year period in the second sentence of that section was intended to establish the minimum period of protection only, and should not have been construed as also setting the statutory maximum period. Consequently, the Court reversed the ICC's decision and remanded the case to the ICC for further consideration Railway Labor Executives' Ass'n v United States, 339 U.S. 142, 70 S.Ct 530, 94 L.Ed 721 (1950). Upon its reconsideration of the case, the ICC then devised the so-called "New Orleans conditions." Essentially, these conditions consisted of the "Oklahoma conditions" supplemented by the additional protections afforded by the WJPA. New Orleans Union Passenger Terminal Case, 282 I.C.C. 271 (1952).

Nearly 10 years later, the U. S. Supreme Court rejected the contention of an employees' union that the "New Orleans conditions" provided inadequate employee protection and should be supplemented by modified "job freeze" provisions. The Court concluded that the clear intent of section 5(2)(f) was to provide affected employees with compensation, not guaranteed jobs. Brotherhood of Maintenance of Way Employes v. United States, 366 U.S. 169, 81 S.Ct. 913, 6 L Ed.2d 206 (1961). The next year, labor again renewed its request for "job freeze" protective provisions The ICC rejected this new request, and, in doing so, set forth the "New Orleans conditions" as the standard of employee protection.

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Southern Ry -Control-Central of Ga. Ry., 317 I.C.C 557 (1962), Modified, 317 I.C.C. 729 (1963) (Southern Control I). However, the ICC's decision did not explicitly set out as components of the standard "New Orleans conditions" the prior notice and negotiation and the mandatory arbitration provisions which were contained in ss 4 and 5 of the WJPA Hence, because of the uncertainty surrounding this matter, the case reached the Supreme Court on review. The Court, Railway Labor Executives' Ass'n v United States, 379 U.S 199, 85 S.Ct 307, 13 L Ed 2d 338 (1964), chose to remand the case to the ICC for clarification of the conditions it had intended to impose in its Southern Control I decision On remand, the ICC declared its intent to include in the "New Orleans conditions" all of the substantive protections provided under the WJPA, including the prior notice and negotiation and mandatory arbitration provisions found in ss 4 and 5. Southern Ry.-Control-Central of Ga. Ry., 331 I.C.C. 151 (1967) (Southern Control II).

Then, more recently, in the course of laying the foundation for a national rail passenger system, Congress enacted the Rail Passenger Service Act of 1970 (the "Amtrak Act") Section 405 of that statute,*89 codified as 45 U.S.C. s 565, provides as follows.

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees, including employees of terminal companies, affected by a discontinuance of intercity rail passenger service . . . A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 545 and 562 of this title pursuant to any modification or termination thereof or an assumption of operations by the Corporation (Amtrak).

(b) Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) to such employees under existing collective-bargaining agreements or otherwise; (2) the continuation of collective-bargaining rights; (3) the protection of such individual employees against a worsening of their positions with respect to their employment; (4) assurances of priority of reemployment of employees terminated or laid off, and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of (the Interstate Commerce Act) Any contract entered into pursuant to the provisions of this subchapter shall specify the terms and conditions of such protective arrangements. No contract under section 561(a)(1) of this title between a railroad and (Amtrak) may be made unless the Secretary of Labor has certified to (Amtrak) that the labor protective provisions of such contract afford affected employees, including affected terminal employees, fair and equitable protection by the railroad.

Shortly thereafter, in 1971, pursuant to the statutory authority contained in the above quoted section 405 of the Amtrak Act, Secretary of Labor Hodgson certified a labor protective arrangement that became known as "Appendix C-1." Appendix C-1 basically adopted the core benefits originally provided under the WJPA However, Appendix C-1 differed materially from the WJPA in several respects: (i) the benefits provided under Appendix C-1 are not static, but may be adjusted upward as wages increase (Art. I, s 5(a)); (ii) the protective period is increased to six years from the date an employee actually is dismissed or displaced from his former position as a result of the discontinuance of his employer's rail passenger service (Art. I, s 1(d)), and such employees are eligible for priority as to reemployment and for paid retraining rights (Art. II, ss 1 & 2); (iii) all protective benefits are extended to employees of separately incorporated terminal companies who are affected by the transaction (Art. III); and (iv) the prior notice and negotiation and the mandatory arbitration provisions are modified so that only 20 days advance notice is required, and the railroads involved are authorized expressly to proceed with the transaction before any agreement concerning the selection and assignment of a work force is reached (Art. I, s 4). Also, there is a provision that specifically prohibits "duplication or pyramiding of benefits" (Art. I, s 3). And, finally, there is a provision specifying the allocation of the burden of proof between the respective parties in dispute arising under these labor protective provisions, which provision first requires the employee to identify the transaction and indicate the factors he relies upon to support his claim of entitlement to benefits, whereupon the burden shifts to his employer who must prove that factors other than those the employee indicated are actually responsible for any adverse effects to the employee (Art. I, s 11(e)).

In 1971, the District Court for the District of Columbia rejected the contention of various labor

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unions that the certification of the Appendix C-1 conditions by the Secretary of Labor was invalid for having failed to satisfy the minimum requirements *90 of section 405 of the Amtrak Act. Congress of Railway Unions v. Hodgson, 326 F Supp. 68 (D D.C.1971). The district court, although holding as an initial matter that the Secretary's certification was an unreviewable agency action committed to his sole discretion, proceeded to assume reviewability and found that the protective conditions "not only meet the requirements of Section 405 of the (Amtrak) Act and of Section 5(2)(f) of the Interstate Commerce Act but they in fact exceed these requirements in significant respects." Id at 76 (footnote omitted).

Lastly, in 1976, Congress substantially revised Part I of the I.C. Act when it adopted the 4R Act. By section 402(a) of the 4R Act, Congress amended section 5(2)(f) of the I.C. Act, then codified at 49 U.S C s 5(2)(f), as follows (new material italicized):
As a condition of its approval, under this paragraph ((2)) or paragraph (3), of any transaction involving a carrier or carriers by railroad subject to the provisions of this chapter, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Such arrangement shall contain provisions no less *protective of the interests of employees than those* heretofore imposed pursuant to this subdivision and those established pursuant to section 565 of Title 45 (section 405 of the Rail Passenger Service Act). Notwithstanding any other provisions of this chapter and chapters 8 and 12 of this title, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

This amendment to section 5(2)(f) of the I.C. Act, effected by section 402(a) of the 4R Act, provided the impetus for the ICC to adopt the newer and more beneficial labor protective arrangement at issue in the present case. [FN3] These labor protective provisions, hereinafter referred to as the "New York Dock conditions," comprise the subject matter of this petition for review.

FN3 Since the inception of this litigation, Congress has recodified 49 U.S.C. s 5(2)(f) as 49 U S.C s 11347. Although this recent recodification involved an almost total rewording of "old" s 5(2)(f), Congress did not intend to effect any substantive changes. Moreover, the language that s 402(a) of the 4R Act added to "old" s 5(2)(f) has been carried forward largely intact. Therefore, for purposes of simplicity, this opinion will employ the language of 49 U S C. s 5(2)(f) as it appeared prior to its recodification as 49 U.S.C s 11347 in all subsequent discussions pertaining to either 49 U.S C. s 5(2)(f) or 49 U.S.C. s 11347

Factual Summary

Petitioners, New York Dock Railway ("NYD") and Brooklyn Eastern District Terminal ("BEDT"), are two small Class III terminal railways, each engaging in rail-marine operations in the New York City harbor zone. To carry out a plan to consolidate these two operations, NYD sought approval from the ICC pursuant to 49 U.S C. ss 11343-11346 (sections 5(2) and (3) of the I C. Act) to acquire control of BEDT through a tender offer for BEDT stock, and to issue additional NYD securities for that purpose.

After holding oral hearings on the matter, Administrative Law Judge Robert M Glennon, by an Initial Decision dated May 13, 1977, approved *NYD's application to acquire control of BEDT and* granted NYD authority to issue securities for that purpose.*91 [FN4] However, as a condition of this approval, certain labor protective provisions were imposed. These consisted of the "New Orleans conditions" (as clarified in Southern Control II i e., including the 90 day advance notice and negotiation and the mandatory arbitration provisions contained in ss 4 and 5 of the WJPA) augmented by various components of the Appendix C-1 conditions (specifically, the extension of the protective period to six years, and the allocation of burden of proof between the parties).

FN4. New York Dock Railway-Control-

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Brooklyn Eastern District Terminal, Finance Docket No. 28250 (May 13, 1977). The ALJ's Initial Decision is attached as Exhibit B to the Petition for Review in this case.

Upon the parties' filing of exceptions to the ALJ's decision, Division 3 of the ICC, by an Order dated September 26, 1977, approved and adopted the ALJ's Initial Decision, except that the Appendix C-1 conditions were substituted for those that originally had been imposed by the ALJ. Intervenor-respondent Railway Labor Executives' Association ("RLEA") petitioned for a stay of this decision. By a further Order dated September 29, 1977, Division 3 of the ICC denied RLEA's request for a stay to permit NYD and BEDT to consummate the tender offer (NYD has acquired 92% Of BEDT's capital stock pursuant to this tender offer), but prohibited NYD and BEDT from taking any action that would affect employees' rights, pending further ICC review of the protective conditions imposed.

On April 11, 1978, Division 3 of the ICC, acting as an appellate division, reviewed the entire record and rendered its decision in this case, once again approving the acquisition of control of BEDT by NYD and further modifying the labor protective provisions that were required to be imposed [FN5] Essentially, the net effect of these modifications to the set of labor protective conditions returned matters full circle to the labor protective conditions originally imposed by the ALJ. However, due to the fact that some of the parties had acted in reliance on prior agency pronouncements in this case, the Division's order did not require strict compliance with the advance notice and negotiation provisions.

FN5 New York Dock Railway-Control-Brooklyn Eastern District Terminal, 354 I C.C. 399 (1978).

Throughout these proceedings, RLEA had had a petition on file with the ICC seeking a determination that the proceeding involved a matter of "general transportation importance" such that review by the full ICC was warranted. Upon the issuance of Division 3's final decision in this case, RLEA renewed its petition, which the ICC granted by a decision dated July 17, 1978.

The ICC thus reopened the case for further consideration, and, in a unanimous [FN6] decision dated February 9, 1979, formulated a definitive set of employee protective conditions, which it conceived to be "commensurate with our statutory (49 U.S.C. s 11347) obligation." [FN7] Briefly, the ICC, in formulating the "New York Dock conditions" selected the most favorable of the labor protective provisions contained in both the "New Orleans conditions" (as clarified in Southern Control II) and the Appendix C-1 conditions In addition, the ICC made certain modifications to the definitions of several key terms, thereby delineating more precisely the extent and nature of the intended coverage of the "New York Dock conditions."

FN6. Vice Chairman Brown was absent and did not participate; Commissioner Graham concurred in the result only.

FN7. New York Dock Railway, supra note 1, at 16.

Introduction

[1] In overall effect, the "New York Dock conditions" can be fairly characterized as significantly more protective of the interests of railway labor than any previously imposed single set of employee protective conditions Of course, it is beyond challenge that within its discretion the ICC may fashion employee protective conditions that *92 are tailored to the special circumstances present in individual cases. Moreover, in fulfilling its statutory duty to "require a fair and equitable arrangement" to protect employee interests in certain types of rail carrier transactions, the case law clearly establishes that the ICC has the discretion to require a greater degree of employee protection than that required as the statutory minimum. See Railway Labor Executives' Ass'n v. United States, 339 U.S 142, 70 S Ct. 530, 94 L.Ed 721 (1950).[FN8]

FN8 However, when an agency chooses to exercise such discretion, rather than adhering to the precise statutory mandate, the case law also clearly establishes that the agency "must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it.' " Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168, 83 S Ct 239, 245, 9 L.Ed.2d 207 (1962) (quoting Phelps Dodge Corp. v NLRB, 313 U.S 177, 197, 61 S Ct. 845, 85 L.Ed.2d 1271 (1941)). Moreover, when an agency chooses to exercise such discretion,

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it "must make findings that support its decision, and those findings must be supported by substantial evidence." Burlington Truck Lines, supra, 371 U S. at 168, 83 S.Ct. at 245 (citations omitted). In light of our assumption that the ICC did not exercise such discretion in formulating the "New York Dock conditions," See text at footnotes 9 and 10, Infra, we of course express no opinion as to whether the ICC's decision contains those elements required under Burlington Truck Lines to sustain the imposition of the "New York Dock conditions" as an exercise of agency discretion.

Nevertheless, for several reasons, we do not believe that the ICC was exercising this type of discretion in formulating the employee protective conditions at issue here. For example, the ICC readily acknowledges the possibility that several of the provisions contained in the "New York Dock conditions" may have no application to the particular factual situation presented by the transaction involving NYD and BEDT. In explaining the inclusion of these provisions the ICC asserts that the presence of such seemingly irrelevant provisions is at least partially attributable to a conscious decision to employ this case as a vehicle for the formulation of a new set of employee protective conditions of general applicability.[FN9] In addition, language in the ICC's decision suggests that it regarded the formulation of the "New York Dock conditions" to be required in order to satisfy the statutory minimum degree of employee protection mandated by 49 U.S.C s 11347.[FN10] Accordingly, we will assume, for purposes of our review of that decision, that the ICC intended the "New York Dock conditions" to satisfy only the baseline level of employee protection mandated by 49 U.S C s 11347.

FN9. The ICC's decision characterized the "New York Dock conditions" as "appropriate for imposition in this proceeding as well as (in) other proceedings involving rail carriers arising under 49 U.S.C. s 11343 Et seq. . . ." New York Dock Railway, supra note 1, at 25. The ICC further noted that "(w)hile each labor protective provision may not be invoked in the situation arising from the transaction approved here (i. e , provisions regarding moving expenses, etc.), there is ample evidence of record upon which to base a determination of the appropriate conditions to be applied in the usual case." Id. at 15 Certainly, if, pursuant to its authority to respond to the peculiarities of a specific rail carrier transaction, the ICC had intended to exercise its discretion by formulating the "New York Dock conditions" as a special set of employee protective conditions, it would have realized that it would be most inappropriate to extend such a special set of employee protective conditions to a wide range of factually dissimilar rail carrier transactions in the future.

FN10 At various points in its decision, the ICC stated: that it was "concerned here with the level of labor protective conditions required by 49 U.S.C. s 11347" New York Dock Railway, supra note 1, at 15; that "the level of protection developed here and set forth in Appendix III to this decision represents a fair arrangement meeting the minimum requirements of 49 U.S.C. s 11347" Id. at 25; that in deciding as it did the Commission "reaffirmed our general conclusions as to this minimum level of protection" Id. at 16 (footnote omitted); and, finally, that "here we are only establishing a fair, yet minimum, level of protection to be applied in certain proceedings." Id. at 25. See also text at note 7, Supra.

We now turn to a discussion of the merits of the conflicting positions of the parties. We point out at once that all the parties to this proceeding are in substantial agreement in two important particulars. All parties appear willing to concede that when amended section 5(2)(f) of the I.C. Act speaks of "(those) provisions . heretofore imposed pursuant to this subdivision"*93 the intended reference is to the "New Orleans conditions" (as clarified in Southern Control II) All parties also appear to agree that the amendment to section 5(2)(f) of the I.C. Act by section 402(a) of the 4R Act was intended to require that some level of employee protection, in addition to the level provided by the standard "New Orleans conditions," should be imposed in subsequent rail carrier transactions subject to sections 5(2) and (3) of the I.C. Act, recently recodified as 49 U.S.C ss 11343-11346.

The parties disagree over the correct interpretation of the phrase "those (provisions) established pursuant to section 565 of Title 45 (section 405 of the Rail Passenger Service (Amtrak) Act)." Petitioners NYD

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and BEDT, as well as amicus curiae, Association of American Railroads ("AAR"), insist that the unambiguous intent of this passage only requires that any set of employee protective conditions adopted pursuant to 49 U S C s 11347 explicitly address each of the five factors enumerated in section 405(b) of the Amtrak Act. Consequently, they allege that the ICC seriously misconstrued the statutory mandate of 49 U.S C. s 11347, and incorrectly imposed employee protective provisions that are far in excess of the minimum required by statute. Respondent ICC, on the other hand, maintains that this passage is an unambiguous command to incorporate the Appendix C-1 conditions into any set of employee protective conditions imposed pursuant to 49 U.S.C. s 11347. Accordingly, the ICC contends that its formulation of the "New York Dock conditions" comports precisely with the statutory mandate. Based upon our understanding of the "New York Dock conditions," an understanding we explain hereafter, we agree with the position taken by the ICC.

As noted above, both sides in this case are confident that the express language of the involved statute provides unambiguous support for their respective positions. The parties, however, apparently recognizing that this may not be the typical case where there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes," United States v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543, 60 S Ct. 1059, 1063, 84 L Ed. 1345 (1940), have attempted to resort to the legislative history of the 4R Act to bolster their positions Unfortunately, section 402(a) of the 4R Act, the source of the eventual amendment to section 5(2)(f) of the I.C. Act, was a last-minute addition, appearing only in the final version of the 4R Act. Consequently, there is no legislative history that deals specifically with this particular section. [FN11] Thus we must move beyond an examination of the statutory language and legislative history [FN12]

FN11. We do, however, find the legislative history concerning the general treatment of labor protective arrangements in the 4R Act advanced by intervenor respondent RLEA in support of the ICC's position to be more persuasive than the legislative history concerning a similar passage of the 4R Act advanced by amicus AAR in support of the petitioners' position. Nevertheless, our holding is not based solely on an examination of the language of section 402(a) of the 4R Act and the Act's legislative history.

FN12 Indeed, the only evidence of congressional intent relative to the meaning of amended section 5(2)(f) that petitioners advance is contained in an earlier decision of the ICC, which also dealt with a related question concerning the meaning of the language added to section 5(2)(f) by section 402(a) of the 4R Act. Missouri P. R. R.-Merger-Texas & P Ry. and Chicago & E. Ill. R. R., 348 I C.A. 414 (1976) ("Mo-Pac Merger"), rev'd in part on other grounds sub nom. City of Palestine v United States, 559 F 2d 408 (5th Cir. 1977), Cert. denied, 435 U S 950, 98 S.Ct. 1576, 55 L Ed 2d 800 (1978)
Petitioners place great reliance on the following statement, which appears in the ICC's opinion in that case: "Congress did not intend to have the Commission significantly change its policy in this area." Mo-Pac Merger, supra, 348 I.C.C at 427. Although facially supportive of petitioners' contention that the amendment to section 5(2)(f) of the I.C. Act was not intended to produce any dramatic changes in the substance of the employee protective conditions imposed pursuant to that section, an examination of the context in which this statement was made undercuts any inference favorable to petitioners. In the relevant portion of its Mo-Pac Merger opinion, the ICC was addressing the argument of various labor groups that the amendment to section 5(2)(f) of the I.C. Act indicated Congress's belief that compensatory protective provisions were insufficient, and that future labor protective arrangements imposed under that section should contain some sort of "job freeze" provisions as well Because the ICC's statement was made in refuting that argument, it seems clear that the "policy" spoken of refers to a compensation based approach to labor protection rather than to a job freeze approach, and does not refer to the particular elements comprising the compensation based approach. Furthermore, the ICC's opinion in this case, New York Dock Railway, supra note 1, at 16 n 13, indicates that this was the meaning its prior statement in Mo-Pac Merger was intended to convey.

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*94 In so doing, we perceive the most telling evidence against the correctness of petitioners' interpretation of amended section 5(2)(f) of the I.C Act to be the inherent inconsistency in the argument they advance in support of their position. Petitioners concede that when amended section 5(2)(f) mentions "(those) provisions . . . heretofore imposed pursuant to (section 5(2)(f) of the I.C. Act)," it is referring to the "New Orleans conditions" (presumably, although petitioners do not so state, as clarified in Southern Control II). However, petitioners contend that when amended section 5(2)(f) mentions "those (provisions) established pursuant to section 565 of Title 45 (section 405 of the Amtrak Act)," it is referring only to the statutory minima explicitly set forth in section 405(b) of the Amtrak Act. Thus, petitioners would have us believe that these two passages, employing nearly identical language, are intended to have two very different meanings, one permitting reference to provisions promulgated pursuant to the authority of section 5(2) (f) of the I.C. Act, and the other forbidding reference to anything beyond the express statutory language of section 405(b) of the Amtrak Act. Such a curious construction of the amendment to section 5(2)(f) of the I.C.Act effected by section 402(a) of the 4R Act is untenable for several reasons.

Most importantly, the very language of section 405(b) of the Amtrak Act refutes such a construction. Indeed, that section begins by stating that "(s) uch protective arrangements shall include, Without being limited to, (the five factors subsequently enumerated)." Therefore, it is clear that even the express statutory language which petitioners rely upon would require (or, at least, permit the imposition of) employee protective provisions in addition to the five factors specifically enumerated to meet the statutory minima.

[2] Accordingly, in light of the language of the statute, a survey of the legislative history, and the inconsistencies that attach to petitioners' interpretation, we agree with the ICC's interpretation of amended section 5(2) (f) of the I.C Act, namely that "(those) provisions . . heretofore imposed pursuant to (section 5(2)(f) of the I.C. Act)" means the "New Orleans conditions" (as clarified in Southern Control II), and that "those (provisions) established pursuant to section 565 of Title 45 (section 405 of the Amtrak Act)" means the Appendix C-1 conditions. Accepting this interpretation of the relevant statute, the bulk of petitioners' challenges to the ICC's decision in this case can be disposed of rather succinctly

[3][4][5][6] As so interpreted, the plain language of 49 U.S.C. s 11347 requires that the ICC, in formulating a new set of employee protective conditions, combine those benefits provided under both the "New Orleans conditions" (as clarified in Southern Control II) and the Appendix C-1 conditions. Obviously, where conflicting benefits are provided under each of the two sets, the ICC is to select the more beneficial of the two for inclusion in the new set. Accordingly, the imposition of any employee protective provision which can be traced directly to either the "New Orleans conditions" (as clarified in Southern Control II) or the Appendix C-1 conditions clearly should be unobjectionable as embodying the minimum degree of protection contemplated by 49 U.S.C. s 11347. Such provisions include the 90 day advance notice requirement (Art. I, s 4(a)), the requirement of an implementation agreement as a precondition to the initiation of any action directed toward the consummation of a proposed transaction (Art. I, s 4(b)), and the binding arbitration requirements (Art. I, s 11), all of which are drawn from related provisions contained in the "New Orleans conditions" (as clarified *95 in Southern Control II); [FN13] and the extension of the protective period to six years (Art. I, s 1(d)) together with the express allocation of the burden of proof between the parties (Art. I, s 11(e)) both of which are drawn directly from identical provisions contained in the Appendix C-1 conditions [FN14]

FN13. As previously noted, the ICC, in Southern Control II, clarified its intention that the "New Orleans conditions" contain *all the substantive protections afforded by* the WJPA. Thus, the 90 day advance notice requirement can be traced through the "New Orleans conditions" directly to s 4 of the WJPA; the requirement of an implementation agreement to language in s 5 of the WJPA and language in the ICC's opinion in Southern Control II (See note 2, Supra); and the binding arbitration requirements to ss 5 and 13 of the WJPA.

FN14. The six year protective period is drawn directly from Art I, s 1(d) of Appendix C-1, and the burden of proof allocation is drawn directly from Art. I, s 11(e) of Appendix C-1.

[7] Before next proceeding to discuss petitioners' remaining challenges to other provisions contained in

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the "New York Dock conditions," we shall treat briefly their arguments that all provisions contained in the "New York Dock conditions" that are not applicable to the present transaction should be stricken from the ICC's decision Petitioners contend that because the present transaction is purely local in nature, certain provisions contained in the "New York Dock conditions" (E. g., the provisions requiring employer reimbursement for the moving expenses and losses on sales of homes incurred by employees as a result of the transaction) are irrelevant, and consequently should not have been imposed. Although petitioners' premise may or may not be correct, we do not agree with their conclusion First, if as claimed, these provisions have no application to the present transaction, they cannot result in any adverse consequences to NYD or BEDT. For, as surplusage, these parties have no grounds for complaint about their inclusion. Second, the ICC explicitly recognized that in selecting this case as a vehicle for the formulation of a new set of generally applicable protective conditions, certain provisions of necessity would be included that would have no particular relevance to the fact situation presented by the NYD/BEDT transaction [FN15] Finally, as counsel for RLEA noted at oral argument, the harm suffered by petitioners as a result of being subject to seemingly irrelevant provisions is far outweighed by the harm that would be suffered by affected employees if these provisions were to be deleted and the events which they are designed to protect against were, by some presently unexpected circumstance, actually to occur.

FN15 See note 9 Supra.

[8] The definitional provisions contained in the "New York Dock conditions" remain to be discussed. Petitioners' objections to the ICC's definition of the term "transaction" are without merit.[FN16] Although this definition has no precise ancestor in either the "New Orleans conditions" (as clarified in Southern Control II) or in the Appendix C-1 conditions, it is clear from the definition itself, as well as from the ICC's expressed intention in formulating this definition, that the goal which the ICC had in mind was to encompass in its definition of "transaction" the same situations that were within the parallel term "coordination" employed in the admitted blueprint for all current employee protective packages, the WJPA. We do not believe that this goal is beyond the statutory authority conferred on the ICC in formulating employee protective conditions pursuant to 49 U.S.C. s 11347. Nor do we believe that the ICC's attempt to achieve this goal strays so far from the mark that the term "transaction" needs any redefinition by us.

FN16 Article I, s 1(a) of the "New York Dock conditions" defines the term "transaction" as "any action taken pursuant to authorizations by the Commission on which these provisions have been imposed."

Petitioners' objections to the ICC's rephrasing of the prohibition against duplication or pyramiding of benefits, an essential element of the original Appendix C-1 conditions, do, however, appear to raise some serious difficulties. In the ALJ's Initial Decision in this case, the provision from Appendix C-1 that prohibits duplication or *96 pyramiding of benefits was adopted verbatim.[FN17] Upon its review of the ALJ's decision, the ICC, after analyzing the wording, history and subsequent interpretations of this provision, concluded that a rephrasing was necessary. Accordingly, in the ICC's final decision, the following language is intended to carry forward the original intent of the prohibition against duplication or pyramiding of benefits first contained in the Appendix C-1 conditions:

FN17. This provision was contained in Appendix C-1 as Art. I, s 3, and read as follows:
Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that there shall be no duplication or pyramiding of benefits to any employees, and, provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; Provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix

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and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; Provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits; and, Provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.[FN18]

FN18 New York Dock Railway, supra note 1, Appendix III at 1-2.

The ICC went on to explain that

Both RLEA and BLE express concern over the interpretation of Article I, section 3 as it is now written (I e., as a verbatim copy of Art. I, s 3 of Appendix C-1) We agree that a fair and equitable arrangement usually should not require a complete forfeiture of other existing labor protective conditions. Because the section as now written has been interpreted in such a manner, we feel it is necessary to rephrase the condition so as to preclude the possibility of such a reading. Our study of the provision . . indicates that it preserves existing protections yet with the required prohibitions against duplication of benefits (see the first proviso) and against pyramiding (see the latter portion of the final proviso) We will adopt the proposed provision as we feel it is an appropriate clarification of the intent of (the original provision prohibiting pyramiding and duplication of benefits contained in Appendix C-1).[FN19]

FN19. Id at 21-22.

We have no doubt that the language adopted by the ICC preserves intact the original intent underlying Appendix C-1's prohibition against duplication of benefits. Surely the plain meaning of the first proviso is that an employee who is covered by more than one set of protective conditions cannot receive the same type of benefit under each plan at the same time (E. g., an employee covered by wage protective provisions contained in a collective bargaining agreement, and also covered by the wage protective provisions contained in the "New York Dock conditions," could not receive two compensatory payments for lost wages in the same period, but would have to choose between the compensatory payment provided under one plan and the compensatory payment provided under the other). *97 The language employed by the ICC in the first proviso appears both to capture the concept of duplication of benefits and to prohibit it effectively.

Unfortunately, the language employed by the ICC in the final proviso's latter portion, which is intended to carry forward the prohibition against pyramiding of benefits, is capable of several interpretations, not all of which we believe to be consistent with the intent underlying the original prohibition against pyramiding of benefits contained in Appendix C-1. At this point, therefore, it may be helpful to survey the history of this Appendix C-1 provision and to examine subsequent interpretations of its language in an attempt to discover the ICC's purpose in rephrasing this prohibition.

In its original form as part of Article I, s 3 of Appendix C-1, this provision rather tersely stated that "there shall be no duplication or pyramiding of benefits to any employees." Not until litigation commenced over the sufficiency of the Appendix C-1 conditions was an explanation of the purposes and intended effects of these prohibitions offered. In that litigation, Congress of Railway Unions v Hodgson, 326 F Supp. 68 (D.D.C.1971), Secretary of Labor Hodgson submitted an affidavit detailing his intentions in certifying the Appendix C-1 conditions. The following portion of that affidavit relates to the provisions prohibiting duplication or pyramiding of benefits

Plaintiffs raise a question concerning the proviso to section 3, alleging it would deprive employees of benefits governed by other protective agreements.

On the contrary section 3 specifically preserves the rights of an employee under other protective arrangements, although it does prohibit the pyramiding and duplication of benefits The proviso simply recognizes that there may be certain obligations related to a particular benefit which an employee may not ignore if he chooses to take advantage of that benefit as opposed to another contained in a different protective agreement. Thus, each benefit carries with it the obligations which accompany that benefit. No other requirement could be deemed "fair and equitable."

As is apparent, Secretary Hodgson's explanation does little to clarify the types of situations that the

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prohibition against pyramiding of benefits is intended to encompass

The most definitive pronouncement on the meaning of the prohibition against duplication or pyramiding of benefits is not contained in any agency communication but in an arbitration award handed down by a three-man split arbitration panel [FN20] The so-called "Weston award," named after the neutral swing member of the arbitration panel, placed the following interpretation on the prohibitions against duplication or pyramiding of benefits contained in Appendix C-1:

> FN20. The arbitration proceeding was instituted to resolve a dispute between Penn Central Transportation Co. and the Brotherhood of Railway, Airline and Steamship Clerks. A copy of the arbitration panel's opinions and award is attached as Exhibit D to the Brief for Petitioners NYD and BEDT.

1. The provisions of Article I Section 3 of Appendix C-1 require an employe (sic) who is covered by (the set of employee protective conditions contained in a collective bargaining agreement involved in the case), and who is affected by the discontinuance of intercity rail passenger service to elect either all of the benefits and obligations of Appendix C-1 or all of the benefits and obligations of (the employee protective conditions contained in the collective bargaining agreement).

Thus, the "Weston award" interprets the prohibition against duplication or pyramiding of benefits contained in Appendix C-1 to require an employee to elect an all or nothing choice. an employee covered by two sets of employee protective conditions must choose to accept all of one set or all of the other set, and, in so choosing, is precluded from ever receiving any of the benefits contained in the set not chosen.

The third member of the arbitration panel found this interpretation of the prohibitions*98 against duplication or pyramiding of benefits to be wholly unsupported by either the language of Appendix C-1 or the expressed intent of Secretary Hodgson, and detailed his objections to the award in a "vigorous" dissent. The basic position advanced in this dissent, and amply supported by citations to testimony given by Secretary Hodgson before Congress, is that the prohibitions against duplication or pyramiding of benefits were not intended to supersede the provisions of other existing employee protective arrangements that might be involved in particular cases [FN21]

> FN21 The dissenting member's opinion reproduces the following portions of Secretary Hodgson's testimony given on April 28, 1971 before the U. S. House of Representatives Committee on Interstate and Foreign Commerce, Subcommittee on Transportation and Aeronautics:
> Mr. Metcalfe. There are some carriers who have an arrangement worked out between management and labor in which they give protection for life. . . . (H)ow do you respect the arrangements that some of these carriers have made on the attritional basis that already are in existence? Do you recognize them or does your order supersede them?
> Secretary Hodgson. It does not supersede them, those arrangements and agreements remain in effect.
> Mr. Dingell. . . . On Section 3, Article I, the conditions you certified included language which said as follows. "Provided further, that the benefits under this or any other arrangement shall be construed to include (the) conditions, responsibilities and obligations accompanying such benefits."
> Does this mean, for example, that your certified arrangements supersedes (sic) in any fashion existing protective agreements?
> Secretary Hodgson. This does not supersede either protective agreements or collective bargaining agreements of any kind.
> While Secretary Hodgson's testimony clearly indicates that the Appendix C-1 conditions were not intended to supersede other existing employee protective arrangements, we think this proves no more than the correct interpretation of the first sentence of Art I, s 3 of Appendix C-1 (See footnote 17, Supra). However, a fair reading of the prohibitions against duplication or pyramiding of benefits qualifies this "no superseding of benefits" language. That is to say, choosing to receive the benefits provided under Appendix C-1 will not preclude an employee from receiving benefits provided under other existing employee protective arrangements, except to the extent that receiving such other benefits would run afoul of the prohibitions against duplication or pyramiding of

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benefits

We think it a fair characterization that the ICC's principal purpose in rephrasing the prohibition against pyramiding of benefits was to circumvent the unnecessarily harsh "all or nothing" interpretation of that prohibition contained in the "Weston award," and that the ICC's position on this issue basically parallels the approach taken by the dissenting member of the arbitration panel. However, in its rephrasing the ICC uses language that is interpretable as completely nullifying any real substance in the prohibition against pyramiding

The common understanding of the term "pyramiding" calls to mind a process in which things are stacked or piled, one on top of the other. We have not uncovered, nor has the ICC brought to our attention, any evidence indicating that the term "pyramiding," as employed in Appendix C-1, is intended to convey a meaning different from this one suggested by common understanding. [FN22] Nevertheless, language in the *99 final proviso, which is intended to embody the prohibition against pyramiding, could be interpreted here in such a manner as to render the prohibition meaningless.[FN23]

FN22 The following passage appears in the opinion of the dissenting member in the "Weston award" proceedings, which purports to explain both the concepts of duplication and of pyramiding of benefits:
(A)n employee covered by the (collective bargaining) agreement who chooses the "moving expense" protection of Appendix C-1 must accept the obligations as well as the benefits of the specific provision in Appendix C-1 which provides that protection he cannot have both the "moving expense" allowance provided in Appendix C-1 and the "moving expense" allowance provided in the (collective bargaining) Agreement as that would be duplication; nor may he select the more attractive benefit of a specific provision of one formula of protection and the lesser obligations contained in a similar provision in another formula of protection as that would be pyramiding. "Each benefit carries with it the obligations which accompany That benefit"
(emphasis in original).
Although we are in total agreement with this interpretation of the prohibition against the duplication of benefits, we must disagree with the interpretation of the prohibition against the pyramiding of benefits. The dissenting member cites no source material compelling his interpretation of the concept of pyramiding. Moreover, the final quoted sentence in the above passage, which the dissenting member excerpted from Secretary Hodgson's affidavit in the Congress of Railway Unions v Hodgson litigation, See p. 97 Supra, was not, in its original context, clearly intended as an interpretation of the prohibition against pyramiding of benefits. More likely, it was merely a paraphrasing of the final proviso of Art. I, s 3 of Appendix C-1: "provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits" See note 17 Supra. From all appearances, the language in this final proviso was intended to operate independently of both the language in the first proviso (concerning the prohibitions against both duplication and pyramiding of benefits) and the language in the section's introductory clause (preserving existing employee benefits under other arrangements). Because the practice of linking the greater benefits of one provision to the lesser obligations of another provision already appears to be clearly prohibited by the final proviso of Art I, s 3 of Appendix C-1, we decline to follow the dissenting member's opinion which ascribes this function to the prohibition against pyramiding of benefits. Although our interpretation of the prohibition against *pyramiding of benefits is not compelled* by any source material, at least it is consistent with the original language of Art. I, s 3 of Appendix C-1 and ensures that each of its elements retains substantive effect. See text pp. 100-101 Infra.

FN23. It would appear that intervenor-respondent Brotherhood of Locomotive Engineers ("BLE") approaches such an interpretation of the language that the ICC employed to express the prohibition against pyramiding of benefits, as the following excerpt from its brief demonstrates:
For example, a forty year old locomotive engineer employed on the Burlington

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Northern at the time of its merger on March 1, 1971, could have lifetime employment and earnings under the attrition-type protection imposed in that case If the Burlington Northern merged with the St. Louis-San Francisco Railway, as is proposed, the Commission would now impose the so-called New York Dock conditions before the Court. Under those conditions, the employee would only have six years protection However, since 1971, the engineer's earnings have increased so that his guaranteed earnings may no longer be indicative of his earning capacity. Naturally, it would be appropriate and to his benefit to have the greater test period earnings used to determine any wage loss that he may incur from the second transaction or merger. Under petitioners' theory, the employee should be placed in a no-win situation. If he doesn't select the latest imposed conditions, he suffers unreimburseable losses. If he does, he suddenly finds himself at age 54 without any protection, including the loss of privileges and fringe benefits.

Brief for Intervenor-Respondent BLE at 20-21.

While this example stops just short of stating precisely what benefits the hypothetical engineer could receive consistent with the rephrased prohibitions against duplication or pyramiding of benefits, its direction seems clear: the engineer should not be limited to either the higher six year wage compensation provisions or the lower lifetime wage compensation provisions, but should be entitled to either some hybrid form of wage protection combining the best aspects of both provisions (an interpretation we believe is clearly incorrect in light of the final proviso of Art. I, s 3 of Appendix C-1, See notes 17 and 22 Supra, and effectively prohibited by the identical language contained in the "New York Dock conditions," See p. 96 Supra) or, at minimum, entitled to elect coverage under the higher wage protective provisions for six years, and then to resume coverage under the lower lifetime wage protective provisions (an interpretation we believe would have been clearly incorrect under the language expressing the prohibition against pyramiding of benefits in Art. I, s 3 of Appendix C-1, but which is arguably consistent with the ICC's rephrasing of the prohibition against pyramiding of benefits contained in the "New York Dock conditions," See text p. 96 Supra)

We do not believe that the ICC intended its rephrasing of the prohibition against pyramiding to strip that provision of all its substance, and so we advance what we believe to be encompassed by the concept of pyramiding, and then illustrate by example what we believe is and what we believe is not prohibited by the language of the final proviso. First, we believe that the concept of pyramiding refers to a situation where the same type or kind of benefit is made available to an employee under two or more employee protective arrangements, and those benefits differ only as to amount and duration. To use a variation of the example given in the BLE illustration reproduced in note 23, Supra, let us assume that such benefits are wage protective provisions, one guaranteeing an employee 75% Of *100 his most recent annual earnings for life, the other guaranteeing an employee just for a six year period 100% Of his most recent annual earnings, and also providing for subsequent indexing to keep current with cost of living and wage increases. We believe that an employee would be engaging in a prohibited pyramiding of benefits if he elected coverage under the employee protective arrangement containing the higher guaranteed wage for a six year period, and then, at the expiration of that wage protective period, elected to receive the lower guaranteed wage for the remainder of his life

[9] We do not, however, subscribe to the view expressed in the "Weston award" that the concept of pyramiding has any application to a situation where different types or kinds of benefits are made available to an employee under two or more employee protective arrangements. As an illustration, let us assume the existence of two identical employee protective arrangements, except that one arrangement contains a provision guaranteeing an employee retraining rights for a six year period, while the other arrangement contains a provision guaranteeing him a right of priority in rehiring until he reaches normal retirement age We do not believe that once an employee elects to be covered by the arrangement containing the retraining rights provision, the prohibition on pyramiding of benefits should preclude him from electing to be covered by the rehiring priority provision in the other arrangement at the same time. Furthermore, we take "the remainder, if any" language in the final proviso to mean that if

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all benefits in the retraining rights package originally elected by the employee expired at the end of a six year period, and the employee by that time had not yet reached normal retirement age, the prohibition against pyramiding of benefits would not prevent him from continuing to be covered by the rehiring priority provision for the remainder of its term, notwithstanding the fact that the principal benefit package that he originally had elected has expired [FN24]

FN24. The ICC, both in its brief and at oral argument, placed great stress on the fact that an employee, upon the expiration of the benefits provided under the plan originally selected, would be entitled to the benefits contained in the plan not selected only "for the remainder, if any, of (the) protective period under that arrangement." Apparently the ICC believes that this limiting phrase captured the essence of the original prohibition against pyramiding of benefits contained in Appendix C-1. Certainly, however, the two cannot be equated. The very concept of pyramiding has no relevance to a situation where benefits provided under different plans expire at the same time. Thus, in those situations where there are no "remainder benefits" in existence when the benefits provided under the originally selected plan expire, pyramiding of benefits is prevented, not by any prohibition against pyramiding, but as there are no "benefits" to pyramid, by force of logic.
Our interpretation of the ICC's rephrasing of the prohibition against pyramiding is not an attempt to substitute our view for that of the agency As previously developed, an employee could not receive the same type of benefit under different plans at the same time, for that would be prohibited duplication. See note 22 Supra. Further, an employee could not combine the greater benefits of one provision with the lesser obligations of another, for that would be prohibited by the final proviso of Art. I, s 3 of Appendix C-1, language that has been included verbatim in the "New York Dock conditions." See note 17 and text p. 96, Supra. Therefore, since it seems apparent that the ICC wished to soften the harsh effect of the Weston interpretation without depriving the prohibition against pyramiding of all content, we believe our interpretation of the Commission's language to be the intended one

[10] To summarize briefly, we believe that the ICC, in formulating the final proviso dealing with the prohibition against pyramiding of benefits, intended its meaning to be substantially as follows: when component benefits are provided under different sets of employee protective conditions, and those benefits differ only as to duration and amount, and not as to type or kind, then an employee, in electing coverage under one set of employee protective conditions, receives such component benefits to the exclusion of similar component benefits provided under the other sets; however, when different sets of employee protective conditions contain component benefits that differ as to type or kind between the sets, then an employee, in electing coverage under one *101 set of employee protective conditions, should not be rendered ineligible to receive benefits contained in the other sets that have no counterpart in the set he elected. Thus construction of the final proviso would seem to retain genuine substance in the prohibition against pyramiding of benefits, while at the same time circumventing the most objectionable aspects of the "Weston award."

In conclusion, we are unable to agree with petitioners that the ICC's imposition of the "New York Dock conditions" is not supported fully by a fair reading of the statutory authority contained in 49 U.S.C. s 11347. We are not unmindful of the fact that the ICC's imposition of these labor protective conditions may place substantial hurdles in the path of rail carrier management seeking to consummate in a smooth and rapid manner transactions covered by 49 U.S.C. ss 11343-11346. If that proves to be the case, however, the solution would appear to lie in an appeal to Congress, rather than to the courts.

The petition for review is denied, and the ICC's decision of February 9, 1979 is affirmed.

C.A.2, 1979.
New York Dock Ry. v. U.S.
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8 I C.C.2d 839, 1992 WL 46807 (I.C.C)

SURFACE TRANSPORTATION BOARD (S.T.B.)
DELAWARE AND HUDSON RAILWAY COMPANY-LEASE AND TRACKAGE RIGHTS EXEMPTION-SPRINGFIELD TERMINAL RAILWAY COMPANY
FINANCE DOCKET NO. 30965 (SUB-NO. 1 AND 2) FN[FN1]

Decided March 10, 1992

*839 The Commission sua sponte supplements its decision served December 13, 1991, and reaffirms its prior decision directing the United Transportation Union (UTU) to cease and desist from attempting to resolve a labor dispute under the Railway Labor Act (RLA) which arose from an arbitration award arrived at under Article I, § 4 of the Mendocino Coast labor protective conditions imposed on the transactions by the Commission The Commission further finds that it retains jurisdiction under 49 U.S.C. § 11347 to resolve disputes involving the proper interpretation of two central terms of an implementing agreement arrived at through arbitration under Commission-imposed labor conditions. The fact that the transactions were exempted from the approval process under 49 U.S.C. § 10505, rather than approved under 49 U S C § 11343, has no bearing on the Commission's jurisdiction. Once employees have accepted the benefits of Commission-imposed labor protective conditions, they must be deemed to have submitted to the Commission's jurisdiction to resolve labor disputes arising thereunder.
BY THE COMMISSION:

By this decision, the Commission sua sponte supplements its decision served December 13, 1991 in this proceeding in order to respond more fully to certain arguments made by the Railway Labor Executives' Association (RLEA) in a pleading which was filed too late to be taken into account in our December 13, 1991 decision, and which RLEA subsequently has sought to withdraw. RLEA asserts that our jurisdiction under 49 U S C § 11347 does not authorize us to order a rail labor union to cease and desist from attempting to resolve, under § 3 of the Railway Labor Act, *84045 U S C. 153 (RLA), a dispute arising under provisions of the Harris Award found necessary to the implementation of this series of transactions, and that the Commission has no authority to resolve disputes arising out of implementing agreements imposed pursuant to the labor protective conditions we impose on transactions such as this one. Of the parties to the immediate proceeding, the Springfield Terminal Railway Company (ST) has responded to RLEA's pleading and the United Transportation Union (UTU) has not. FN[FN2]

BACKGROUND

On December 13, 1991, the Commission served a decision in this proceeding, responding to an emergency petition filed by ST. The decision directed UTU to cease and desist from attempting to resolve disputes arising out of the implementation of two of the principal elements of the Harris Award under the Railway Labor Act (RLA) and ordered the parties, instead, to arbitrate any such disputes under the auspices of Article I, § 11 of the Mendocino Coast conditions imposed by the Commission on the transactions FN[FN3]

On the same date the decision was served we learned that RLEA had filed an opposition to ST's emergency petition, accompanied by a motion for it to be filed instanter Because RLEA's pleading was not received in time to be taken into account in our decision on ST's emergency petition, we decided, in a decision served January 13, 1992, to treat the motion as a petition for reconsideration of the December 13, 1991 decision.

**2 *841 RLEA has now filed a response informing us that it does not consent to having the Commission convert its opposition into a petition for reconsideration and seeks to withdraw its pleading. It asserts that it is a party aggrieved by the December 13, 1991 decision and does not wish any pending reconsideration before the ICC to interfere with its right to seek immediate Hobbs Act judicial review, citing ICC V. BLE, 482 U.S. 270 (1987). RLEA indicates that it would supplement its presentation to the ICC, explaining why it believes the Commission's cease and desist order to be unlawful, if the Commission were to stay that order.

Our January 13, 1992 order gave ST and UTU until February 3, 1992 to file any responses to RLEA's reconsideration petition. UTU has not responded; FN[FN4] however, ST has. ST addresses RLEA's

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jurisdictional arguments by asserting that the ICC has jurisdiction to prevent UTU's collateral attack on the Harris Award, that UTU as well as ST is a party to that Award and, therefore, the Commission has jurisdiction over UTU to enforce its own orders and arbitral awards ST also asserts that because the issue is one of the interpretation of the Harris Award, the RLA does not even come into play, but in any event the Commission has the authority to override provisions of the RLA In addition, ST challenges RLEA's standing to oppose the cease and desist order, arguing that it is neither subject to the order nor a party to the arbitration dispute in question.

DISCUSSION AND CONCLUSIONS

1. Procedural Matters

We decide to supplement our December 13, 1992 decision sua sponte. Although RLEA opposes our treating its response as a petition for reconsideration,[FN[FN5]] it is beyond doubt that the Commission is authorized, *842 when cause exists, to make appropriate orders supplemental to an order made in a proceeding under § § 11342-11345 and 11347. 49 U.S.C § 11351. The Commission also has continuing jurisdiction to suspend, reconsider or modify its orders at any time, even in the absence of a petition for reconsideration. Resort Bus Lines, Inc. v. United States, 264 F Supp. 742 (S.D N Y.1967) (three-judge court). And, provided that the Commission's actions do not interfere with the jurisdiction of the reviewing court, the Commission may issue additional findings even after a petition for review has been filed. American Farm Lines v Black Ball, 397 U S. 532, 541 (1970) (invoking a court's jurisdiction does not, in itself, mean that the Commission loses all jurisdiction to complete the administrative process); accord United States v. Benmar Transp. & Leasing Corp., 444 U S. 4, 5 (1979) (Commission may add to or firm up its findings if it acts before the court has received the record and heard arguments)

Because UTU's petition for judicial review was just filed (and RLEA has yet to file one), this supplemental decision should not interfere with the judicial process. No briefing schedule has yet been established. Thus, it is impossible to contemplate how this supplemental decision could interfere with the court's docket or prejudice the parties. Indeed, "empty formalities devoid of either substantive or procedural benefit have no place in the normal scheme for administrative review." United States v. Benmar Transp & Leasing Corp., 444 U S. at 6.

**3 UTU's plea to the NMB and ST's emergency petition were directed at two disputed issues The first issue is whether employees who work outside their craft or class, pursuant to the Harris Award's "incidental work rule," are nonetheless entitled to additional pay, as previously allowed under the pre-existing collective bargaining agreements (CBAs). The Harris Award modified the incidental work rule so that incidental work was allowed regardless of the location of the work and so long as the work did not comprise fifty percent of the total work of an individual employee in any single day. Harris found this modification of the applicable CBAs to be necessary to the implementation of the transaction

*843 The second issue asks whether employees who work on reduced train crews (crew consist rule) are entitled to special allowances as provided for in the lessor carriers' CBAs. Harris modified the crew consist rule so that ST could operate trains with a conductor and without a brakeman in through freight service; and with a conductor but with or without a brakeman on local freight and in yard work, if such usage complies with applicable Federal Railroad Authority safety standards. As with the first issue Harris also made the finding that his modification was necessary to the implementation of the lease transactions.

UTU sought a § 3 arbitrator under the RLA to resolve the issue of whether employees who fall within the strictures of the crew consist and incidental work rules are entitled to additional pay. UTU argued that it was not seeking an interpretation of the Harris Award but, rather, to enforce portions of the pre-existing CBAs, as modified by arbitrator Harris, for purposes of implementing the transaction we approved

Accordingly, our December 13, 1991 Decision primarily addressed why we view the disputed issues as requiring direct interpretation of the Harris Award and, therefore, to be arbitrable only under Article I, § 11 of the Mendocino Coast conditions.[FN[FN6]] Our December 13, 1991 Decision is compelled, we believe, by our October 4, 1990 Decision permitting the Harris Award to go into effect. In that decision we stated our agreement with the arbitrator's formulation of the implementing agreement, after concluding that no party had shown to our satisfaction that Harris had exceeded his authority, or that any of the issues raised on review required us to vacate the award. October 4, 1990 Decision, at 26. UTU, in our view, does not seek an interpretation of pre-Award CBAs as modified by the Harris Award, but rather seeks a determination of the effect of the

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Harris Award, itself, which to some extent preserved and to some extent modified the pre-existing CBAs. December 13, 1991 Decision, at 5

Now, RLEA has introduced arguments which directly challenge our jurisdiction to resolve disputes over the interpretation of implementing agreements such as the Harris Award. As with a court, questions of an agency's jurisdiction should be addressed at any time they are raised, and *844 we do so here. The two jurisdictional issues identified by RLEA are: (1) whether the Commission retains jurisdiction, pursuant to 49 U.S.C. § 11347, to resolve disputes arising under implementing agreements arbitrated under Article I, § 4 of Mendocino Coast so as to permit a transaction authorized by the Commission under 49 U.S.C. § 11343 to go forward, and (2) whether the Commission has sufficient jurisdiction pursuant to 49 U.S.C. § 11347 over rail employees (to support the cease and desist order), or merely has jurisdiction over rail carriers in approving transactions under § 11343. We will address these issues in order.

2. The Commission's Authority To Resolve Labor Disputes Arising Under Its Labor Conditions

**4 Section 11347 requires the Commission to assure that a rail carrier provides a fair arrangement to employees adversely affected by a transaction subject to the ICC's approval. The Mendocino Coast labor protective conditions satisfy that requirement. Article I, § 4 required the parties to arbitrate an implementing agreement if they could not voluntarily arrive at one. The Harris Award is that implementing agreement.[FN[FN7]] Article I, § 11 provides that when the parties cannot voluntarily resolve questions involving the interpretation of these conditions, they must submit them to an arbitration committee and must abide by that decision. We view a dispute over the proper interpretation of the Harris Award as one involving the interpretation of the Mendocino Coast conditions. Alternatively, of course, the dispute can be viewed as a continuing function of the Article I, Section 4 arbitration process which resulted in the Harris Award implementing agreement.[FN[FN8]] UTU seeks to resolve disputes concerning two *845 provisions of the Harris Award. The parties, unable to rectify the disputes surrounding the crew consist and incidental work rule provisions, may be said to have returned to the § 4 arbitration process to determine whether the Harris Award requires additional payments to the employees covered by the disputed provisions; in essence continuing the process begun with the arbitration process that resulted in the Harris Award.

In either eventuality, the Commission's labor protective conditions contain the exclusive dispute resolution mechanism for labor disputes arising out of implementation of the lease and trackage rights transactions approved by the Commission or exempted by the Commission from the approval process.

We recognize that this dispute arises after the lease and trackage rights transactions have been consummated and an implementing agreement has been imposed. Nevertheless, the implementing agreement has patently not been completed, in light of labor's assertion of a right to substantial additional pay if two significant terms of the agreement are put into effect. The integrity of the implementing process is directly at stake here. If one party can frustrate the orderly execution of the terms of an implementing agreement through resort to the RLA, they are in effect collaterally attacking the agreement. Thus, RLEA's argument is a collateral attack on this ICC order, which, it should be noted, is being challenged directly by petitions for review in the United States Court of Appeals for the District of Columbia Circuit. The National Mediation Board arbitrator could not fashion a meaningful arbitration award without impinging on the ICC's implementing agreement, upon which the transactions were permitted to go forward. See RLEA v. Staten Island R.R., 792 F.2d 7, 12 (2d Cir.1986), cert. denied, 107 S.Ct. 927 (1987). Thus, rail labor must not be permitted by artful pleading to assert RLA jurisdiction over matters directly related to implementing a transaction approved by the Commission under § 11343 and, thereby, avoid the jurisdictional bar of § 11341(a) See United Transportation Union v. Norfolk and Western Ry. Co., 822 F.2d 822 F.2d 1114, 1120 (D.C.Cir.1987), cert. denied, 484 U.S. 1006 (1988).

**5 This is not to say that, as RLEA asserts, the Commission's jurisdiction over such disputes will be timeless and limitless if rail labor is prevented from asserting RLA jurisdiction over these particular disputes. We recognize that at some future time our jurisdiction will cease, and the parties will be required to resort to the RLA to resolve disputes arising *846 under the collective bargaining agreements then in effect. However, that is not this case; and it is not this case for two reasons.

First, it is incontrovertible that what is at issue here is the proper interpretation of two central terms of the Harris Award involving the intended consequences of permitting reduced crew sizes and allowing ST's incidental work rule. These terms were arbitrated and

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modified by Harris under the authority of the Commission's labor protective conditions and reviewed by the Commission under the authority of the ICA. Any dispute concerning the proper interpretation of the effect of these critical terms must be resolved within the framework of the labor conditions we imposed, that is, under the authority of the ICA and not the RLA.

Second, while we concede that the Commission's jurisdiction over such disputes is not timeless, the implementing agreement here is less than two years old. The proximity of this dispute to the award cannot be questioned

Contrary to rail labor's assertion, there is no conflict between the ICA and the RLA in these circumstances. The items in issue go directly to the heart of the elements of the implementing agreement found necessary to permit the transaction to go forward. The RLA has no role to play in the arbitration of implementing agreements under the authority of the Commission's labor protective conditions

However, to the extent a conflict exists, it is now well-settled that, with the Commission's imposition of labor protective conditions, the RLA bargaining processes become inapplicable. 49 U.S.C. § 11341(a). The Supreme Court, in Norfolk & Western Railway Co. v. American Train Dispatchers' Ass'n, 499 U.S. 117 (1991) (Norfolk & Western), recognized that displacement of the RLA dispute resolution procedures is necessary to assure that ICC-approved transactions go forward. Accord Missouri Pacific R.R Co v United Transportation Union, 782 F.2d 107 (8th Cir.1986), cert. denied, 107 S.Ct. 3209 (1987). Although Norfolk & Western addressed the disruptive effect of allowing the parties to pursue the "major dispute" mechanisms of the RLA, no distinction can logically be made that the RLA "minor dispute" processes should be allowed to supplant the Commission's own independent labor dispute procedures. We need not speculate as to how broad a displacement of RLA processes by ICA processes is effected by a situation such as this. Plainly, where the dispute arises out of provisions of an implementing agreement, found necessary by the arbitrator, with our concurrence, to effectuating the transaction, such displacement must be found to have occurred to the extent there is any conflict between the two regimes.

**6 *847 Nor, as rail labor contends, does it matter, for purposes of asserting that jurisdiction, whether the transactions which form this proceeding were approved pursuant to 49 U.S.C. § 11343, or exempted from the approval process pursuant to 49 U.S.C. § 10505. RLEA argues that § 11341(a) does not apply as a bar to RLA processes when a transaction was exempted under § 10505. We find no support for this proposition. Indeed, the Supreme Court views the exemption authority as a provision that "provides abbreviated procedures for seeking approval for" allowing a transaction in the public interest to go forward. Pittsburgh & Lake Erie R.R. v RLEA, 491 U.S. 490, 500 (1989) (P & LE) (emphasis added) Similarly, in United Transportation Union v Norfolk and Western Ry. Co., 822 F.2d 1114, 1115 (D.C.Cir 1987), cert. denied, 484 U.S. 1006 (1988), the court saw no basis for distinguishing between approved and exempted transactions for purposes of the applicability of § 11341(a) It explained that the Commission "merely substitutes one form of continuing Commission oversight for another" when it imposes labor protective conditions pursuant to an exemption. See Brotherhood of Locomotive Engineers v. Boston and Maine Corp., 788 F.2d 794 (1st Cir.1986), cert. denied, 421 U.S. 975 (1987); RLEA v Guilford Transp. Indus., 667 F.Supp 29, 35 (D Me.1987), appeal dismissed, 843 F.2d 1383 (1st Cir.1988), cert. denied, 109 S.Ct. 3213 (1989). The reasonableness of this proposition is best expressed in one of our own decisions:

> [T]he Commission is expressly barred by the terms of § 10505(g) from using its exemption powers to derogate from the labor protection to which employees are entitled under the relevant statutory § pursuant to which the transaction would be approved, in this case, § 11347
>
> In summary, the approval of labor protective conditions in a consolidation, lease or trackage rights transaction is a statutory duty performed not under § 10505, but under 49 U.S.C. § 11347, regardless of whether exemption or application procedures are followed, and since § 11347 is contained in Subchapter 113 of the Act, the conditions of § 11341 are satisfied.Finance Docket No. 31730, Rio Grande Industries, Inc., et al.-Trackage Rights-Burlington Northern R.R. Co. Lines (not printed), served March 12, 1991, at 5

Moreover, there is no legitimate economic or regulatory policy basis for upholding a distinction between exemptions and approvals in labor matters since "there is, in fact, no difference in the treatment of labor protection matters under an exemption and under § § 11343-11344." Id Therefore, "§ 10505 does not diminish the Commission's preeminence with respect to *848 labor disputes arising from the transaction." Finance Docket No. 30582 (Sub-No. 2),

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Norfolk and Western Ry. Co., et al.-Exemption-Contract To Operate and Trackage Rights (not printed), served July 7, 1989, at 7.[FN9]

Nor is it necessary to view the ICA primarily as a labor statute to find that Congress intended the Commission to exercise its jurisdiction over labor disputes arising from approved transactions. See e.g. Missouri Pac. R.R. v. United Transp. Union, 580 F.Supp. 1490, 1503 (E.D.Mo.1984), aff'd, 782 F.2d 107 (8th Cir.1986), cert. denied, 482 U.S. 927 (1987). While the ICA as a whole may not be a rail labor statute, it is undeniable that §§ 11341 and 11347 make the Commission's labor conditions controlling to the extent necessary to permit a transaction approved under § 11343 or exempted from prior approval under § 10505 to go forward in the public interest.[FN10]

3. Our Authority Over Rail Labor

**7 RLEA suggests that, while § 11347 clearly allows the Commission to impose duties on carriers, it does not vest the ICC with jurisdiction over rail employees and, consequently, the cease and desist order against UTU was invalid and ultra vires.

Rail labor's reliance on language from P & LE, supra, 491 U.S. at 514, to the effect that labor need not participate in proceedings before the Commission to seek labor protections, and, even if it does, need not be satisfied with the resulting protection imposed, is clearly misplaced.

*849 P & LE involved a rail line sale under § 10901, which, unlike § 11343, does not require the Commission to impose labor protective conditions when it approves such a transaction. Rather, the Commission's authority to impose protective conditions under § 10901 is discretionary, and neither rail labor nor management had requested their imposition in that case. Moreover, in P & LE, the Commission did not impose labor protections, so that there was no mechanism for effecting necessary changes in CBA's other than via the RLA. Here, by contrast, the transaction is authorized under § 11343 and, hence, has the benefit of § 11341(a), as most recently interpreted by the Supreme Court in Norfolk & Western, supra. Finally, in this case, § 11347 applied to the approved transaction and did require the implementation of labor protective conditions, which the Commission imposed at the behest of both RLEA and UTU. The Harris Award implementing agreement is the result of that requirement.

Our authority to issue a cease and desist order to prevent UTU from subverting the process established by the labor conditions imposed upon this transaction flows logically from our statutory authority to oversee the implementation of transactions we have authorized under § 11343 as explained by the Supreme Court in Norfolk & Western, 499 U.S. 133. The Commission has inherent authority to enter orders consistent with its explicit statutory authority. United States v. Chesapeake & Ohio R.R. Co., 426 U.S. 500, 514 (1976), Gibbons v. United States, 660 F.2d 225, 230 (7th Cir.1981). RLEA conceded this point when it observed (Dec. 10, 1991 pleading at 8) that an administrative agency has the power to issue orders "necessary to give effect to matters brought within its jurisdiction in an enabling statute."

Even if the Commission were held to lack the authority to require rail labor to accept the terms of its labor protective conditions, once the employees have accepted the benefits of Commission-imposed labor protective conditions such as the Mendocino Coast conditions, they must be deemed to have submitted to the Commission's jurisdiction for all purposes including complying with the terms and conditions contained therein which they subsequently might rather not have been bound to. U.S. v. Chesapeake & Ohio R.R., supra, 426 U.S. at 515.

This action will not significantly affect either the quality of the human environment or energy conservation.

*850 It is ordered

**8 1. RLEA is permitted to withdraw its December 10, 1991 pleading.

2. The Commission's decision served December 13, 1991 is hereby supplemented by this decision.

3. This decision is effective March 16, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

FN1. This proceeding embraces Finance Docket Nos. 30925, 30951, 30966, 30967, 30972, 30981, 30993, 31002, 31003, 31015, 31023, 31086, 31103, 31115, 31125 and 31161.

FN2. UTU filed on February 10, 1992 a petition for review of the December 13, 1991 decision in the United States Court of Appeals for the District of Columbia Circuit. We discuss below the reasons why

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the filing of that petition does not bar us from issuing this supplemental decision at this time

FN3 See Mendocino Coast Ry. Inc.-Lease and Operate, 354 I.C.C. 732 (1978) and Norfolk and Western Ry. Co.-Trackage Rights-BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast, supra, 360 I.C.C. 653 (1980), aff'd sub nom. Railway Labor Executives' Ass'n v. United States, 675 F.2d 1248 (D.C.Cir.1982). The conditions imposed on these transactions combined the substantive conditions set forth in Mendocino Coast with the more protective procedural aspects of protective conditions developed for consolidation transactions set forth in New York Dock Ry.-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir.1979). See 4 I.C.C.2d 322 (1988) (Imposing extraordinary labor protective conditions on the lease transactions).

FN4. See n. 2.

FN5. We will permit RLEA to withdraw its pleading, although we do not understand how it could hope to seek review of our December 13, 1991 decision, as here expanded, not having been a participant in this particular dispute between ST and UTU before the Commission. It is well-settled that only those who have participated in the proceeding before the Commission have standing to petition for review of its action. E.g. Water Transport Ass'n v. ICC, 819 F.2d 1189, 1192 (D.C.Cir.1987); Packard Elevator v. ICC, 808 F.2d 654 (8th Cir.1986), cert. denied, 484 U.S. 828 (1987); Simmons v. ICC, 716 F.2d 40, 42-43 (D.C.Cir.1987). Because this supplemental decision is undertaken at the Commission's initiative, not that of any party, we do not need to resolve ST's challenge to RLEA's standing before the Commission in this particular proceeding

FN6. Article I, § 11 of the Mendocino Coast conditions provides for arbitration of any dispute which the parties cannot settle (with the exception of disputes under § § . 4 and 12) with respect to the "interpretation, application or enforcement" of any provision of the conditions. The decision of the arbitration committee is final and conclusive

FN7 An arbitrator's decision is treated as a decision of the Commission. See United Transp. Union v. Norfolk & Western Ry., 822 F.2d 1114 (D.C.Cir.1987), cert. denied, 108 S.Ct. 700 (1988). Thus, the Commission retains the authority to review arbitral awards under its limited scope of review set forth in Chicago & North Western Transportation Co.-Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd, IBEW v. ICC, 862 F.2d 330 (D.C.Cir.1988). See United Transp. Union v. United States, 822 F.2d 1114 (D.C.Cir.1987), cert. denied, 484 U.S. 1006 (1988).

FN8. In approving the Harris Award we recognized that it did not resolve all possible issues with the result that further proceedings would be necessary to complete the process. See, June 6, 1991 Decision, at 4; December 13, 1991 Decision, at 5, citing November 15, 1991 Decision, at 12.

FN9 This proceeding is again before the Commission on remand from the United States Court of Appeals for the District of Columbia Circuit to reconsider in light of the Supreme Court decision in Norfolk & Western, supra. American Train Dispatchers' Association v. ICC, No. 88-1694 (D.C.Cir. September 17, 1991).

FN10. Therefore, RLEA's reliance on cases like Burlington Northern R.R. v. Brotherhood of Maintenance of Way Employees, 481 U.S. 429, 435 n. 3 (1987) (BN) which say, in another context, that the ICA is not a rail labor statute, is misplaced. In Norfolk & Western, the Supreme Court determined that the ICA could, when necessary to the implementation of a transaction committed to the authority of the Commission, override a CBA negotiated pursuant to the RLA, and override the RLA. In reaching this conclusion, the Court explicitly noted the prior holding in BN, and said that any other conclusion would allow the RLA to be used to defeat the realization of the efficiencies which it was Congress's intention in authorizing the Commission to approve such transactions to promote. Norfolk & Western, supra, 499 U.S. at 133. As a result, in the § 11343 context, BN must be deemed to be severely restricted, if not overruled entirely.

8 I.C.C.2d 839, 1992 WL 46807 (I.C.C.)
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International Broth. of Elec Workers v. I C C.C.A D.C.,1988
United States Court of Appeals,District of Columbia Circuit.
INTERNATIONAL BROTHERHOOD of ELECTRICAL WORKERS, Petitioner,
v.
INTERSTATE COMMERCE COMMISSION and the United States of America, Respondents,
Chicago & North Western Transportation Company, Intervenor.
No. 87-1629.

Argued Sept. 9, 1988.
Decided Nov. 25, 1988.

Following arbitration of dispute over implementation of employee protective conditions in connection with rail line abandonment, the Interstate Commerce Commission asserted authority to review the arbitrator's decision, and upheld the decision. Union petitioned for review. The Court of Appeals, Harry T. Edwards, Circuit Judge, held that: (1) union had standing to pursue the appeal; (2) appeal was ripe for review; (3) agency's interpretation of its authority under the Interstate Commerce Act as allowing review of significant arbitration awards to make certain that they accord with ICC regulations was permissible, not inconsistent with judicial precedent, and not in unexplained change in the agency's construction of the Act; and (4) decision to review arbitration award was not arbitrary or capricious.

Petition for review denied.

West Headnotes

[1] Commerce 83 ⚿158

83 Commerce
83III Interstate Commerce Commission
83III(C) Judicial Review
83k158 k. Right of Review and Parties. Most Cited Cases

Union had standing to maintain appeal from determination of the Interstate Commerce Commission asserting authority to review arbitrator's decision with respect to implementation of employee protective conditions in rail abandonment case, and appeal was not moot, even though the ICC had ruled favorably to the union with respect to the underlying dispute, union had sufficient personal stake to meet demands of Article III with respect to case or controversy in that union would be subject to agency review in future cases, resulting in expense and delay. 49 U.S C A. § 10903; U.S C.A.Const Art 3, § 1 et seq.

[2] Commerce 83 ⚿153.1

83 Commerce
83III Interstate Commerce Commission
83III(C) Judicial Review
83k153 Decisions Reviewable
83k153.1 k. In General Most Cited Cases
(Formerly 83k153)

Union's appeal from ICC determination asserting authority to review arbitrator's decision with respect to implementation of employee protective conditions in rail abandonment case was ripe for review, though the ICC had upheld arbitrator's award favorable to the union, where the ICC's decision was "crystallized" and it had consistently asserted its right to review arbitration awards since its decision in the instant case.

[3] Statutes 361 ⚿219(2)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(2) k Existence of Ambiguity. Most Cited Cases

Statutes 361 ⚿219(4)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(4) k. Erroneous Construction; Conflict with Statute. Most Cited Cases

If statute is silent or ambiguous with respect to specific issue, question is whether construction of the statute by agency administering it was permissible, considering consistency with which agency interpretation has been applied.

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[4] Commerce 83 ⚿163

83 Commerce
83III Interstate Commerce Commission
83III(C) Judicial Review
83k163 k. Presumptions and Burden of Proof. Most Cited Cases
Interpretation of the Interstate Commerce Act by the Interstate Commerce Commission to permit the ICC to review significant arbitration awards to make certain that they accord with ICC regulations was permissible under the statute, which was silent on the issue, and the interpretation was not inconsistent with judicial precedent and was not unexplained change in the agency's construction, and thus reviewing court would defer to agency's interpretation of the statute, despite contention that delegation of authority to arbitrators to interpret, apply and enforce labor protective conditions in rail abandonment cases was irrevocable. 49 U S C A § § 10903, 10903(b)(2).

[5] Administrative Law and Procedure 15A ⚿763

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak763 k. Arbitrary, Unreasonable or Capricious Action; Illegality Most Cited Cases

T ⚿368

25T Alternative Dispute Resolution
25TII Arbitration
25TII(H) Review, Conclusiveness, and Enforcement of Award
25Tk366 Appeal or Other Proceedings for Review
25Tk368 k. Decisions Reviewable. Most Cited Cases
(Formerly 33k73 2 Arbitration)
Even if agency is not without authority under the governing statute to review arbitration awards, question remains whether agency's decision to do so is arbitrary or capricious. 5 U S.C A. § 706.

[6] Commerce 83 ⚿85.6

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85 6 k. Certificates and Extension or Abandonment of Lines. Most Cited Cases
Decision of the Interstate Commerce Commission to review arbitration awards in specific cases to determine whether its own regulations and statute have been followed in resolution of disputes over labor protective conditions in rail abandonment cases was reasonably explained and was not arbitrary or capricious, despite the agency's past suggestion that arbitration was the best mechanism for adjudication of individual labor controversies. 49 U.S.C A. § § 10903, 10903(b)(2).

*331 **104 Petition for Review of an Order of the Interstate Commerce Commission.

Michael S. Wolly, Washington, D.C , for petitioner.
*332 **105 Evelyn G. Kitay, Atty., I.C.C., with whom Robert S. Burk, Gen. Counsel, John J. McCarthy, Jr., Deputy Associate Gen. Counsel, I C.C., John J. Powers, III and Robert J. Wiggers, Attys., Dept. of Justice, Washington, D C , were on the joint brief, for respondents. John Fonte, Atty., Dept. of Justice, Washington, D.C., also entered an appearance, for respondent U.S.
Stuart F Gassner and Christopher A. Mills, Chicago, Ill., were on the brief for intervenor, Chicago & North Western Transp. Co

Before EDWARDS, BUCKLEY and WILLIAMS, Circuit Judges.

Opinion for the Court filed by Circuit Judge HARRY T. EDWARDS.HARRY T. EDWARDS, Circuit Judge:
In 1981, the Interstate Commerce Commission ("ICC" or "the Commission") authorized Chicago and North Western Transportation Company ("CNW") to abandon two rail lines. Under the terms of the authorization, CNW was required to apply employee protective conditions on behalf of workers adversely affected by the planned abandonments When a dispute arose over the implementation of the employee protective conditions, the matter was properly submitted to arbitration for resolution. Following arbitration, however, the ICC asserted authority to review the arbitrator's decision. The petitioner, International Brotherhood of Electrical Workers ("IBEW" or "union"),[FN1] argued that the ICC had no jurisdiction to review the arbitration award, but the ICC disagreed. Upon reviewing the award, the ICC upheld the arbitrator's decision in favor of the aggrieved employee. IBEW now petitions this court to reverse the ICC's decision that

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it has authority to review arbitration judgments settling disputes over the interpretation, application or enforcement of labor protective conditions.

FN1. IBEW served as the employees' collective bargaining representative and as their advocate during the arbitration proceeding.

The question posed for this court is one of first impression. Although the ICC has required the use of arbitration for a number of years to resolve disputes over labor protective conditions, neither the agency nor the courts heretofore have had occasion to decide whether the ICC may assert jurisdiction to review an arbitrator's decision. In our view, the ICC's determination that it may review arbitration awards under the Interstate Commerce Act, 49 U S C. § 10903 (1982) ("ICA"), is permissible and not contrary to precedent We further find that the ICC has provided a rational basis for asserting jurisdiction to review arbitration awards in select cases. Accordingly, we deny the petition for review.

I. Background

In 1981, acting pursuant to 49 U.S C. § 10903 (1982), the ICC authorized CNW to abandon two rail lines.[FN2] In approving the abandonments, [FN3] the Commission required CNW to observe the employee protective conditions formulated by the ICC in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C 91 (1979) ("*Oregon III* "). The *Oregon III* conditions require compensation for employees adversely affected by rail line abandonments. The conditions specify, in addition, that arbitration may be used in the event that the carrier and its employees cannot agree on the disposition of claims for protective benefits. Article I, section 11, of *Oregon III* provides:

FN2. On January 28, 1981, and on November 17, 1981, the Commission authorized, respectively, the abandonment of rail lines between Dubuque and Oelwein, Iowa and between Oelwein and Randolph, Minnesota.

FN3. Section 10903(b)(2) instructs that certificates of abandonment issued by the Commission "shall ... contain provisions to protect the interests of employees."

11. Arbitration of disputes-(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix ... within 20 days after the *333 **106 dispute arises, it may be referred by either party to an arbitration committee

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

360 I.C.C. at 101.

Following the ICC's authorization of the CNW abandonments, a dispute arose over payments due to Daniel Scheele, a CNW electrician. IBEW presented claims to CNW for the employee's moving expenses and the losses incurred in selling Scheele's home in Oelwein.[FN4] CNW refused to pay the claims and, pursuant to *Oregon III*, the matter was submitted to a Board of Arbitration ("the Board"). In January 1986, the Board held that Scheele was entitled to a sum of $17,377.98, which included the loss sustained on the sale of his home, some mortgage interest payments, moving expenses, and an interest penalty

FN4. In particular, the union requested payment of the mortgage interest, the realtor's commission and the judgment-type interest on all amounts due on the old house, as well as $500 to prepare Scheele's new home for occupancy. *See ICC v. Chicago North Western Transp Co -Abandonment*, 3 I C C 2d 729, 729-30 (1987) ("*ICC v CNW* ").

In March 1986, CNW filed a petition for administrative review of the Board's decision.[FN5] CNW argued that the Commission had authority to review the award on two grounds: first, CNW read *Oregon III* as a *delegation* of the Commission's authority to resolve disputes over labor protective conditions, which preserved the Commission's final say on the matter; second, CNW pointed to 49 U.S.C § 10903(b)(2), which requires the Commission to impose employee protective measures in rail abandonment situations. IBEW opposed CNW's petition on the ground that neither *Oregon III*,

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nor the ICA, nor any Commission precedent regarding protective conditions, provided support for such a review. [FN5]

FN5. CNW also petitioned the U.S. Court of Appeals for the Seventh Circuit for review of the Board's decision. *See Chicago & North Western Transp. Co v United States and ICC,* No. 86-1394 (7th Cir. filed Mar 12, 1986). CNW, however, asked the court to hold its review in abeyance pending the Commission's decision

FN6. IBEW also challenged the timeliness of CNW's petition The union does not, however, raise this matter in this appeal. Brief for Petitioner at 5 n. 4.

On April 28, 1987, the Commission held that it had jurisdiction to review arbitration decisions; upon review of the merits of the case, the ICC upheld the Board's award of benefits to Scheele. The Commission stated, however, that in this and in future cases it would limit its review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." 3 I C C.2d at 736.

In its decision, the Commission first noted that "there is no specific Commission precedent to rely on in resolving this [jurisdictional] issue." *Id.* at 732. Previous ICC "cases [did] not address the question presented here: what happens *after* an issue has been submitted to arbitration." *Id* at 735 (emphasis in original) Pointing to precedent involving the former Civil Aeronautics Board ("CAB"), the Commission found that "proper implementation of the statute may compel our review when an arbitration decision raises issues concerning our statutory responsibility to impose labor protection." *Id.* at 733 The Commission also looked to earlier instances in which the Commission had to answer questions raised "as to whether collective bargaining agreements . conform[ed] with statutory requirements for protection, and questions defining the scope or coverage of imposed conditions." *Id.* (footnotes omitted). While expressing the "continue[d] belie[f] that mandatory arbitration is appropriate for the final resolution of causation issues," the Commission concluded that "nothing in the mandatory arbitration requirement forecloses us from considering whether our abandonment decisions (and labor protection conditions) have been properly interpreted or carried out as we intended." *Id.* at 735 (footnote omitted).

*334 **107 The petitioner claims that, because the ICC has no authority to review arbitration decisions settling disputes over the interpretation, application or enforcement of labor protective conditions, the agency exceeded its jurisdiction in reviewing the Board's award in this case [FN7]

FN7. IBEW's petition for review was originally filed in the Seventh Circuit. By order of the Seventh Circuit, the review proceeding was transferred to this circuit *See International Bhd of Elec Workers v ICC and Chicago & North Western Transp. Co* , 832 F 2d 91 (7th Cir.1987)

II.Analysis

A. *Justiciability*

This case comes to us in a somewhat unusual posture, because the ICC upheld the union's position on the merits of the arbitration award. Given this state of the record, it might be claimed that there is no justiciable controversy before the court. However, at oral argument, counsel for both the ICC and the petitioner asserted that IBEW has standing to pursue this appeal, that the case is not moot and that the appeal is ripe for review. We agree.

[1] First, with respect to IBEW's standing to maintain this appeal, the union's interest in resolving the jurisdictional issue is sufficient to meet any constitutional requirements. The ICC stated that "[t]he *principal issue* raised by CNW's petition is our jurisdiction to review the Board's award to Mr. Scheele." 3 I.C.C.2d at 732 (emphasis added). Therefore, in pursuing this appeal, the petitioner is not merely quibbling over the agency's rationale in a case in which it has prevailed. The main focus of the union's defense before the agency was that the ICC lacked jurisdiction even to consider this type of case. Even if the resolution of this issue is seen as "collateral" to the merits of the case, the union has been adversely affected by the Commission's holding. Because of the ICC's decision to review arbitration awards, the union will be subject to agency review in future cases involving disputes over employee protective conditions.[FN8]

FN8 The Hobbs Act, which governs judicial review of final orders promulgated by the

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> ICC, requires that a party be aggrieved to petition a court of appeals to review an ICC order 28 U S.C. § 2344 (1982).

This injury is similar to interests held to be sufficient to confer appellate standing on an otherwise prevailing party In *Electrical Fittings Corp v Thomas & Betts Co*, 307 U S 241, 59 S.Ct. 860, 83 L Ed 1263 (1939), the interest identified was the prospect that an unfavorable ruling would act as collateral estoppel in subsequent litigation. *Id* at 242, 59 S.Ct. at 860-61, *see also Deposit Guaranty Nat'l Bank v Roper*, 445 U S. 326, 337, 100 S Ct. 1166, 1173, 63 L.Ed.2d 427 (1980) (indicating that the interest in *Electrical Fittings* concerned the collateral estoppel effects of the decision). The plaintiffs in *Deposit Guaranty National Bank* were found to have a continuing stake in a case where they had prevailed on the merits but had lost on the class certification issue. Their interest was the desire to shift part of the litigation costs to the other class members. 445 U S. at 336, 100 S Ct. at 1173.

Because the petitioner in this case will be forced to litigate future arbitration awards before the ICC, it has a personal stake sufficient to meet the demands of article III. The union is no less injured by the ICC's reviewability ruling than it would have been if the Commission had promulgated a rule in an informal rulemaking under 5 U.S.C § 553 (1982). It will incur the costs of resisting challenges to arbitration awards and the delays that such reviews entail. In other words, there is no doubt as to IBEW's standing in the classic sense of the term, and there is no doubt that the case before us is not moot.

[2] Second, although neither side raises the point, there is a question whether the instant appeal is ripe for judicial review The ripeness doctrine is designed
to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects *335 **108 felt in a concrete way by the challenging parties.

Abbott Laboratories v Gardner, 387 U.S. 136, 148-49, 87 S.Ct. 1507, 1515, (1967). As we noted in *Better Government Association v Department of State*, 780 F.2d 86 (D.C.Cir.1986),[a]lthough it is true that "ripeness law overlaps at its borders with Article III requirements of case or controversy," its application in the present case implicates the doctrine in only its prudential aspects. In that form, the ripeness inquiry takes into account pragmatic concerns regarding "the institutional capacities of, and the relationship between, courts and agencies." These concerns include "the agency's interest in crystallizing its policy before that policy is subjected to judicial review," "the court's interests in avoiding unnecessary adjudication and in deciding issues in a concrete setting," and "the petitioner's interest in prompt consideration of allegedly unlawful agency action." In *Abbott Laboratories*, the Supreme Court announced the two-prong test for ripeness that balances these interests. The test requires a court to evaluate "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration."

Id. at 92 (quoting *Eagle-Picher Indus., Inc v EPA*, 759 F 2d 905, 915 (D.C.Cir.1985) and *Abbott Laboratories*, 387 U.S. at 149, 87 S.Ct at 1515) (footnotes omitted).

No one disputes that the Commission's jurisdictional holding is fit for judicial review. The question is a purely legal one; any necessary factual findings have been fully developed in the proceedings below. The ICC's decision is "crystallized," *Eagle-Picher*, 759 F.2d at 915; indeed one is hard-pressed to imagine how the issue could arise in "some more concrete and final form" *Id.* (quoting *Continental Airlines, Inc v CAB*, 522 F 2d 107, 124-25 (D.C Cir 1974) (en banc); *see also Payne Enterprises, Inc. v. United States*, 837 F 2d 486, 492-93 (D.C Cir.1988).

The agency's labelling of the jurisdictional issue as "principal" confirms the Commission's position at oral argument that its institutional interests support immediate adjudication. The union has made equally clear that its interests do so as well. In light of the fact that the agency consistently has asserted its right to review arbitration awards since its decision in this case, Joint Brief of Respondents ICC and USA at 11, we can see no judicial institutional interest that militates against review at this time. Thus, we find judicial review appropriate in this case.

B. *Statutory Authority*

On the merits of this appeal, the petitioner first claims that the ICC is without authority under the ICA to review arbitration awards resolving disputes over labor protective conditions. On this point, the petitioner appears to contend that, under the statute governing the agency, the ICC cannot reclaim the

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authority that it has delegated to arbitrators to interpret, apply and enforce labor protective conditions. We find this position wholly untenable

1. Standard of Review

[3] Since the union's claim under the ICA presents "a pure question of statutory construction, our first job is to try to determine congressional intent, using 'traditional tools of statutory construction' If we can do so, then that interpretation must be given effect...." *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U S. 112, 108 S.Ct 413, 421, 98 L.Ed.2d 429 (1987) (quoting *INS v Cardoza-Fonseca*, 480 U.S. 421, 446, 107 S Ct. 1207, 1221, 94 L Ed 2d 434 (1987)). If, on the other hand, "the statute is silent or ambiguous with respect to the specific issue," *Chevron U.S.A., Inc v Natural Resources Defense Council, Inc.*, 467 U S. 837, 843, 104 S Ct. 2778, 2782, 81 L Ed 2d 694 (1984), then the question for us becomes whether the ICC's construction of the statute is "permissible," *id*, that is, one that is "rational and consistent with the statute." *United Food & Commercial Workers*, 108 S Ct. at 421, *accord* *336**109*International Union, United Mine Workers v Federal Mine Safety & Health Review Comm'n*, 840 F 2d 77, 81 (D C Cir 1988). Moreover, in reviewing the permissibility of a statutory construction, we must "consider the consistency with which an agency interpretation has been applied." *United Food & Commercial Workers*, 108 S.Ct at 421 n. 20

2. The ICA

[4] We begin by examining the ICA itself. The ICA is silent with respect to the ICC's reviewing powers in arbitration cases. The ICA requires only that the certificates of abandonment issued by the Commission "contain provisions to protect the interests of employees." 49 U.S.C. § 10903(b)(2). Nothing in the Act either requires or forecloses the agency's use of arbitration in employee disputes, or limits agency review of arbitration decisions

Thus, this court must defer to the ICC's interpretation in filling any gaps in the statute if the ICC has done so in a permissible manner. *See Chevron*, 467 U S. at 842-45, 104 S.Ct. at 2781-83. The Commission formulated employee protective conditions pursuant to the ICA in *Oregon III* In that decision, the ICC also determined that disputes over the application of protective benefits would be submitted to arbitration. Neither party disputes that it is "rational and consistent with the statute" for the ICC to use arbitration to resolve disputes over employee benefits However, it is also conceded that there is nothing in the statute that *mandates* the decision in *Oregon III* regarding use of arbitration The ICC acted within its sound discretion in electing to use arbitration, had it not done so, all disputes over employee protective conditions would have remained solely within the primary jurisdiction of the agency. The ICC surely did not make an irrevocable delegation to arbitrators pursuant to *Oregon III*, and we can find nothing in the statute prohibiting the agency from reviewing significant arbitration awards in order to make certain that they accord with ICC regulations. The ICC, after all, formulated the employee protective provisions and was not required to rely on arbitration in the first place. The agency's interpretation of its authority under the ICA is plainly permissible.

3. Judicial and Agency Precedent

The petitioner argues that even if the agency's present construction of the statute is facially permissible, it should nonetheless be reversed because it is inconsistent with judicial precedent, and because it constitutes an unexplained change in the agency's construction of the ICA. *See King Broadcasting Co v FCC*, 860 F.2d 465, 469-71 (D.C.Cir.1988). We reject both of these contentions.

IBEW claims that several judicial decisions establish that "arbitration has consistently been deemed to be the final step in the [employee protection] process," Brief for Petitioner at 9, and that the Commission lacks jurisdiction or authority under the ICA to proceed further once arbitration has been imposed. We disagree. The ICC has never before been asked to *review* an arbitration decision, and no court has directly addressed the issue. Thus is thus a case of first impression [FN9]

FN9. See, for example, *Brotherhood of Locomotive Eng'rs v. ICC*, 808 F.2d 1570 (D.C.Cir.1987), in which the court upheld the ICC's decision in favor of arbitration, finding that "[t]he Commission properly viewed the [employee protective] . arbitration procedures as the methodology by which the disputes over the interpretation and application of the [employee protective] conditions were to be analyzed and

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resolved" 808 F.2d at 1578 (footnote omitted). We *did not*, however, address the separate question whether, under the ICA, the ICC could later review the arbitration decision.

In *United Transportation Union v. Norfolk & Western Railway Co.*, 822 F.2d 1114, 1115 (D.C.Cir.1987), *cert. denied*, 484 U.S. 1006, 108 S.Ct. 700, 98 L.Ed.2d 651 (1988), this court explicitly left open the question whether an arbitration award in a consolidation case was "final" under the ICA, precluding further ICC review. *Id.* at 1119 n. 13. Similarly, in *Walsh v. United States*, 723 F.2d 570 (7th Cir.1983), the court considered whether the ICC or an arbitrator should decide in the first instance a factual issue about the petitioner's entitlement to protective arrangements. *See id.* at 572. The court found that the contract at issue imposed mandatory arbitration of the petitioner's dispute over the protective conditions. *Id.* at 574. But the court did not decide whether the ICC could later review the arbitrator's interpretations of the labor provisions.

*337 **110 Furthermore, our review of ICC decisions convinces us that the Commission has not interpreted its statutory authority inconsistently. IBEW claims that *Oregon III*, in which the Commission announced its imposition of employee protective conditions, made arbitration decisions regarding those conditions absolutely "final, binding, and conclusive." 360 I.C.C. at 101. This brief language does not establish, however, that the ICC was renouncing all authority to review arbitration awards. More important, however, is that the Commission has stressed in the instant case that it will limit its review to "recurring or otherwise significant issues of general importance regarding the interpretation of [its] labor protective conditions." 3 I.C.C.2d at 736. The Commission has no intention of interfering with "the arbitrators' special role in resolving disputes," *id.*, and will not "review arbitrators' decisions on issues of causation, the calculation of benefits, or the resolution of other factual questions." *Id.* Thus, the Commission's decision to clarify the meaning of *Oregon III* through review in selected cases will not measurably interfere with the overall finality of arbitration decisions and is not inconsistent with the Commission's decision in *Oregon III*.

IBEW also relies on *Leavens v. Burlington Northern, Inc.*, 348 I.C.C. 962 (1977), for the proposition that "arbitration procedures are the proper mechanism for adjudication of individual labor controversies." Brief for Petitioner at 10. *Leavens* involved, *inter alia*, a dispute over the adequacy of relocation payments in a merger proceeding. The Commission recommended the use of arbitration to resolve the dispute *in the first instance*. *See Leavens*, 348 I.C.C. at 979. The Commission did not determine, however, that it had no authority to review the arbitrator's award. Indeed, the Commission implied that it had reviewing power over arbitration decisions, writing that "[the ICC] should not exercise jurisdiction over individual controversies when appropriate arbitration procedures are *yet* to be utilized." *Id.* at 979 (emphasis added).

The decision in *Bell v. Western Maryland Railway Co.*, 366 I.C.C. 64 (1981), offers the strongest support for the union's position, but it too falls far short of saying that *Oregon III* represents an irrevocable delegation of agency authority to resolve disputes over labor protective conditions. In *Bell*, the Commission decided to allow the arbitrator to define the term "employee" and to decide whether the term applied to the petitioner. The Commission explained that it had "consistently declined to precisely define 'employee' on the ground that once the protective conditions have been imposed, the matter is for interpretation by the courts." *Id.* at 66 (citation omitted). The Commission also wrote that "[o]nce protective conditions have been imposed, our power of review is limited and possibly we may not retain jurisdiction to make the findings petitioner seeks." *Id.* at 67. *Bell* does not establish, however, that the ICC believed that it *never* had jurisdiction to review an arbitration decision involving employee protective conditions or that it would refuse to do so in cases involving important interpretations of those conditions.

Accordingly, we find that the ICC's construction of the ICA in this case is not inconsistent with its past interpretation of the Act.[FN10] While arbitration boards previously have operated under *Oregon III* without ICC review, the ICC has never before been asked to review an arbitration award, nor has it addressed its authority to do so. When confronted with this question in this *338 **111 case, it was reasonable for the ICC to determine that it had authority to review interpretive issues about the employee protective provisions that it had formulated. There was no inconsistency in this response

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FN10 The ICC also relied on cases holding that the CAB had authority both to require arbitration of disputes over labor protective conditions and to review the judgments of arbitration panels. *See, e g*, *Wallace v. CAB*, 755 F 2d 861 (11th Cir.), *reh'd denied*, 762 F 2d 1023 (1985) (en banc), *Pan American Airways v. CAB*, 683 F 2d 554 (D.C 1982); *Transport Workers Union v CAB*, 725 F.2d 775 (D C.Cir), *cert denied*, 469 U.S. 818, 105 S Ct. 87, 83 L.Ed 2d 33 (1984). We find these decisions to be somewhat helpful but not dispositive in analyzing the statutory question before us. The CAB enforced employee protective measures pursuant to an entirely different statutory scheme from the one governing the ICC. Therefore, our judgment regarding the legality of the ICC's action must involve more that just a consideration of precedent involving the CAB.

4 Conclusion on Statutory Authority

We find that the ICC's determination that it had statutory authority to review the arbitration award was a permissible construction of the ICA. The statute itself is silent on the issue, and the ICC's filling in of gaps is consistent with the terms of the ICA itself, the relevant case law involving the employee protective provisions of the ICA, and the ICC's own decisions Accordingly, we defer to the agency's interpretation of its governing statute.

C. *Substantive "Arbitrary and Capricious" Review*

[5] Our next task is to review the substance of the ICC's decision independent of questions of statutory authority. *See Weyerhaeuser Co v. Costle*, 590 F.2d 1011, 1024-25 (D.C Cir 1978) (explaining the distinction between "statutory" and "substantive" review). Even if the ICC is not without authority under the ICA to review arbitration awards, a question remains whether the agency's announced decision to do so was "arbitrary or capricious." *See* 5 U.S.C § 706 (1982). In other words, we must consider whether the agency abused its discretion in exercising the quasi-legislative authority delegated to it by Congress. *Weyerhaeuser*, 590 F 2d at 1025.

[6] The Supreme Court has explained substantive review as follows:
The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v United States*, 371 U S. 156, 168 [83 S.Ct. 239, 246, 9 L.Ed.2d 207] (1962). In reviewing that explanation, we must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment" *Bowman Transportation, Inc v. Arkansas-Best Freight System, Inc.*, [419 U S. 281, 285, 95 S.Ct. 438, 442, 42 L.Ed 2d 447 (1974)], *Citizens to Preserve Overton Park v Volpe*, [401 U.S. 402, 416, 91 S Ct 814, 823-24, 28 L Ed 2d 136 (1971)]. Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency's action that the agency itself has not given. *SEC v Chenery Corp*, 332 U.S. 194, 196 [67 S.Ct 1575, 1577, 91 L.Ed. 1995] (1947). We will, however, "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned" *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., supra*, at 286 [95 S.Ct at 442.] See also *Camp v. Pitts*, 411 U.S 138, 142-143 [93 S.Ct. 124], 1244, 36 L Ed.2d 106] (1973) (*per curiam*).

Motor Vehicle Mfrs. Ass'n v State Farm Mut. Auto. Ins Co, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866-67, 77 L.Ed.2d 443 (1983). IBEW argues that the ICC's decision to review arbitration awards is arbitrary and capricious because it is inconsistent with ICC precedent and is unreasonable on policy grounds. We reject the petitioner's arguments on both counts.

First, as we concluded above, the ICC's decision to review arbitration awards was not inconsistent with its earlier precedent. The issue of its reviewing powers has never before been raised, and the Commission's resolution of that issue in this case does not conflict with its earlier rulings.

*339 **112 Moreover, even if the Commission's decision in this case represented a new approach to

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arbitration, this court has recognized that "[c]hanges in agency policy are not . *per se* arbitrary and capricious action." *Pennsylvania v. ICC*, 561 F.2d 278, 291 (D.C.Cir 1977), *cert denied*, 434 U.S. 1011, 98 S.Ct. 723, 54 L.Ed.2d 754 (1978). When a court "examines a change in agency policy, the key factor that guides the scrutiny is whether the policy change has been adequately explained and justified so that the parties upon whom the policy will have an impact understand the newly adopted agency position." *Id.* at 291, *see also Greyhound Corp. v. ICC*, 551 F.2d 414, 416 (D.C.Cir 1977). The Commission justified its policy by explaining that "[p]rinciples of judicial economy and efficiency would be served by providing the courts with the benefit of [its] expertise prior to the time they engage in their review." 3 I.C.C.2d at 734. The Commission reasoned that the "proper implementation of the [ICA] may compel our review when an arbitration decision raises issues concerning our statutory responsibility to impose labor protection." *Id* at 733. The Commission also looked to common sense as a further justification for its position:

We approved these abandonments and formulated the *Oregon III* labor protection provisions at issue here. Therefore, we know best what we intended *Oregon III* (and our abandonment decisions) to mean Because this action raises issues within our special competence and expertise, it makes sense that we resolve, in the first instance, whether our intent has been carried out.

Id. at 733-34 (citations omitted).

We conclude that the Commission has offered a reasoned explanation for its decision to review arbitration awards, and that this decision was not arbitrary or capricious During oral argument, counsel for the petitioner suggested that the ICC will be flooded with arbitration cases, resulting in long delays in litigation over employee protective conditions, if the agency is afforded the power of review. This forecast is founded solely on speculation, so there is no way for us to assess it. If the union proves to be right in its prediction, then the agency may have a problem to deal with in the future. For now, however, it is not our place to second guess the Commission's expertise in this matter or to "substitute [our] judgment for that of the agency" *State Farm*, 463 U.S. at 43, 103 S.Ct. at 2866.

The petitioner also suggests that the ICC's decision should be rejected as arbitrary and capricious because it is patently "implausible." *Id.* On this point, the union argues that the decision in *Oregon III*, requiring parties to use arbitration to resolve disputes over employee protective conditions, rested in part on the Commission's acknowledged lack of expertise in this area. The union thus asks, if the ICC lacks the expertise to decide the cases that have been delegated to arbitration, how is the agency equipped to review those same cases once arbitration has been completed? This question raises a reasonable inquiry under *State Farm*, but it assumes too much

It is true that the ICC in the past has suggested that arbitration is the best mechanism for adjudication of individual labor controversies. *See, e.g., Brotherhood of Locomotive Engineers v Chicago & North Western Transp. Co.*, 336 I.C.C. 857, 860-61 (1983). But the decision at issue here is not inconsistent with this position. The Commission has made it clear in the instant case that it will limit its review to "recurring or otherwise significant issues of general importance regarding the interpretation of [its] labor protective conditions." 3 I.C.C.2d at 736. The Commission has indicated no intention to interfere with "the arbitrators' special role in resolving disputes," *id.*, and it has stated that it will not "review arbitrators' decisions on issues of causation, the calculation of benefits, or the resolution of other factual questions." *Id.* The Commission surely has the expertise to determine whether its own regulations and the statute have been followed in the resolution of disputes over labor protective conditions. Accordingly, we can find no inconsistency between the current position of the agency allowing for limited review*340 **113 of arbitration decisions and past decisions requiring the parties to use arbitration in the first instance. The ICC's approach poses no anomaly.

III. Conclusion

We can find no merit in the petitioner's claims in the instant case Therefore, for the reasons discussed in the foregoing opinion, the petition for review is hereby denied.

So ordered

C.A.D.C.,1988.
International Broth. of Elec. Workers v. I.C.C.
862 F.2d 330, 129 L.R.R.M. (BNA) 3017, 274 U.S.App.D.C. 103, 57 USLW 2328, 110 Lab.Cas. P 10,831

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49 C F R. § 1115 8

C

Effective: [See Text Amendments]

Code of Federal Regulations Currentness
Title 49. Transportation
Subtitle B. Other Regulations Relating to Transportation
Chapter X. Surface Transportation Board, Department of Transportation
Subchapter B. Rules of Practice
Parts 1100 to 1129--Rules of General Applicability
Part 1115 Appellate Procedures (Refs & Annos)

➡§ 1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Board, and is subject to the page limitations of § 1115.2(d). Standards for Board review of arbitration decisions are set forth in Chicago and North Western Transp. Co.--Abandonment, 3 I.C.C 2d 729 (1987), aff'd sub nom. International Brotherhood of Electrical Workers v. STB, No. 87-1629 (D.C. Cir. November 25, 1988). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115 5.

[54 FR 19894, May 9, 1989; 61 FR 52714, Oct. 8, 1996; 61 FR 57340, Nov. 6, 1996]

SOURCE: 47 FR 49568, Nov 1, 1982; 61 FR 52714, Oct. 8, 1996, unless otherwise noted

AUTHORITY: 5 U S.C. 559; 49 U.S.C. 721.

49 C F. R. § 1115.8, 49 CFR § 1115.8

Current through January 18, 2007; 72 FR 2202

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9 I.C C.2d 1021, 1993 WL 465149 (I.C.C.)

SURFACE TRANSPORTATION BOARD (S.T B.)
NORFOLK AND WESTERN RAILWAY COMPANY AND NEW YORK, CHICAGO AND ST LOUIS RAILROAD COMPANY-MERGER, ETC. (ARBITRATION REVIEW)
FINANCE DOCKET NO 21510 (SUB-NO. 4)

Decided July 14, 1993

**1021 The Commission interprets its jurisdiction over Commission-approved, negotiated employee protective conditions and finds the exercise of all available seniority rights a prerequisite to claiming benefits. Two arbitral decisions to the contrary are vacated and remanded to the arbitrator
BY THE COMMISSION:

On April 1, 1991, Norfolk and Western Railway Company (N & W) petitioned for review of two arbitral decisions issued concurrently on March 12, 1991 United Transportation Union (UTU) replied, and N & W filed a rebuttal.) The arbitration procedures had been invoked to resolve disputes over employee protective conditions that the Commission imposed on the 1962 Nickel Plate merger between N & W and the former New York, Chicago and St. Louis Railway Company (Nickel Plate).[FN[FN2]] We are vacating the arbitral decisions and remanding both proceedings to the arbitral board.

**1022 BACKGROUND

The Nickel Plate merger was governed by the requirement in former § 5(2)(f) (now 49 U.S.C § 11347) of the Interstate Commerce Act (ICA) that the Commission condition merger approvals on a fair and equitable arrangement to protect the interests of affected railroad employees. The minimum labor protective conditions that were required at the time of this merger were those described in New Orleans Union Passenger Terminal Case, 282 I.C.C. 271 (1952) (New Orleans). See Southern Ry. Co.-Control-Central of Georgia Ry. Co., 317 I.C.C. 557 (1962), 317 I C.C. 729 (1963), and 320 I C.C. 377 (1964) (Southern). Like all our standard labor protective conditions, these were derived from the Washington Job Protection Agreement of 1936 (WJPA). In the Nickel Plate merger, however, the Commission adopted and imposed the expanded "Merger Agreement" conditions negotiated by N & W and its labor unions.

The Merger Agreement was in large measure derived from the WJPA, § 1(a) of the agreement incorporated its provisions. However, the Merger Agreement added agreed-to benefits. The most important of these was the "attrition" protection that was substituted for WJPA's term protection. Thus, § 1(b) of the Merger Agreement provided for working-lifetime wage guarantees by specifying that no employee of either N & W or Nickel Plate at the time of the merger could be placed in a worse position with respect to compensation, rules, working conditions, fringe benefits, or rights or privileges at any time during his employment.

In return for lifetime economic protection, N & W received, under paragraph 3 of § 1(b), the right to "transfer the work" of the protected employees throughout the merged system. To facilitate N & W's exercise of this right, labor was directed to enter into implementing agreements that would allow employees to follow their transferred work voluntarily or, if they declined, to be reassigned (and retrained if necessary) in the "general locality" (not necessarily the same seniority district) of their last employment. This and other aspects of the Merger Agreement were subsequently clarified in four retroactive Memoranda of Understanding (MOUs).

**2 At issue here are claims from two groups of employees seeking to secure the economic benefits of the Merger Agreement when their jobs were abolished rather than transferred within the merged system. On May 17, 1990, N & W abolished 40 firemen and trainmen positions when it sold a 166-mile section of Nickel Plate's Wheeling and Lake Erie (W & LE) **1023 District in Ohio (the WLE Case).[FN[FN3]] Earlier, in August 1989, N & W had abolished four positions (two trainmen, one yardman, and one fireman) in Indiana (the NKP Case). The loss of three of the positions was attributable to leases and the fourth to a crossing automation. All positions in the two groups were represented by the UTU, the successor to the four original labor organization signatories to the Merger Agreement. Claimants were all Nickel Plate employees at the time of the Merger Agreement and had seniority entitling them to take other N & W positions

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However, instead of exercising their seniority, which may have required a geographic relocation, both employee groups submitted displacement claims under the Merger Agreement. N & W denied the claims because, in its view, the failure to exercise seniority was a refusal to take available work that disqualified claimants from the allowances provided [FN,FN4] In accordance with the Merger Agreement, the dispute was then presented to an arbitration board (Robert O. Harris, Chairman)

In each case, the arbitrator addressed whether or not a protected employee, upon abolition of his job, has a right to a displacement allowance after refusing to exercise seniority to an available position. The arbitrator's analysis started with § 1(b) of the Merger Agreement which protected employees from being placed in a "worse position" with respect to compensation, rules, or working conditions. He ruled that each employee must protect (i e , seek and accept) available assignments in any seniority district in which he held seniority at the time of the Nickel Plate merger and had previously worked, unless protecting the assignment would place him in a worse position. He found it to be a factual question whether an *1024 individual is placed in a worse position as, for example, by having to travel an unreasonably long distance to protect an assignment.[FN[FN5]

Using this framework, the arbitrator determined that two of the four NKP claimants, trainmen Hinton and Montgomery, had acquired pre-merger seniority that they could have exercised but did not do so. Because neither had shown that he would be placed in a worse position by exercising his pre-merger seniority, the arbitrator concluded that they were not entitled to merger protection benefits for the time they refused to exercise their pre-merger seniority.

The arbitrator sustained the two other NKP claims. He ruled that fireman Sutton was entitled to a displacement allowance because he tried but was unable to secure a position on his pre-merger seniority district during the latter part of August 1989 Also, he ruled that yardman Harmon was entitled to a displacement allowance because N & W had failed to show that he had been employed in another seniority district prior to the merger or that prior to the merger he operated outside the seniority district where he was working when his job was abolished.

**3 As to the 40 WLE claimants, the arbitrator determined that they were not required to exercise their seniority to accept jobs in the entire seniority district, which extended over several hundred miles, but only in their own home terminals (divisions). To find otherwise, according to the arbitrator, would allow N & W to do indirectly what it could not do directly: transfer people (as distinguished from work) up to 160 miles beyond their "general locality." January 10, 1962 MOU, Par 5. Accordingly, he found that, under the Merger Agreement, those employees would be placed in a "worse position" regarding their working conditions and would be entitled to displacement allowances, notwithstanding their refusal to exercise seniority to take available jobs in the WLE seniority district, if: (1) that exercise required them to take jobs located away from the "general locality" of their last work prior to May 17, 1990 (the date their positions were abolished); and (2) the amount of travel to the new job location exceeded the employee's travel prior to May 17, 1990. He placed the burden on the carrier to show in each instance that the replacement job would not move *1025 people beyond the "same general locality," an area which the arbitrator said had to be less than the entire district. He instructed the parties to agree on a definition of "same general locality" or to submit the question to further arbitration

N & W has asked us to review the two arbitral decisions, arguing that they fundamentally misinterpreted the protective conditions that the Commission imposed on the Nickel Plate merger.

DISCUSSION AND CONCLUSIONS

The Commission adopted arbitration procedures to ensure that "those most familiar with the complexities of labor law and particular problems associated with railroad employees would determine disputes arising out of such conditions." Leavens v. Burlington Northern, 348 I.C.C. 962, 975 (1977). Our role in the arbitral process is not that of a de novo reviewer Rather, we are interested solely in protecting the integrity of our labor protective conditions.

In Chicago & North Western Tptn. Co - Abandonment, 3 I.C C.2d 729 (1987) ("Lace Curtain"), the Commission asserted its authority to review arbitral awards arising from the labor protective conditions that the agency imposes upon its approval of mergers and other transactions embraced within 49 U S.C. § 11343(a). The Commission stated that it would not review an arbitrator's award "on issues of causation [or] the calculation of benefits," but would limit its review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." Id. at 736. Thus, the agency

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asserted that it would vacate an arbitral award only when "there is egregious error, the award fails to draw its essence from [the labor conditions], or the arbitrator exceeds the specific contract limits on his authority." Id. at 735. Our authority to review arbitral awards in this manner has been upheld. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C.Cir.1988) ("IBEW"); Employees of the Butte, Anaconda & Pacific v. ICC, 938 F.2d 1009, 1013-14 (9th Cir.1991), cert. denied, 112 S.Ct. 1474 (1992).

**4 UTU's sole argument here is that Lace Curtain review is precluded because the disputed labor protective conditions were bargained-for rather than Commission-derived conditions like New Orleans and that any review of the arbitral awards must be governed by the judicial review standards *1026 applicable to arbitration awards under the Railway Labor Act (RLA), 45 U.S.C. § 151 First (q).[FN6] We disagree.

Under 49 U.S.C. § 11347, rail management and labor may negotiate labor conditions that meet or exceed the minimum standards of the ICA. It has long been settled that there is no distinction between Commission-derived and bargained-for labor protection; the Commission's approval and imposition of negotiated conditions makes them the Commission's conditions. See Nemitz v. Norfolk and Western Railway Company, 436 F.2d 841, 846 (6th Cir.), aff'd, 404 U.S. 37, 43-45 (1971).[FN7]

Thus, the labor protective conditions set forth in the Merger Agreement are derived from the ICA and Commission order, not the parties' collective bargaining agreement. Arbitral awards issued pursuant to those conditions are therefore "orders of the Commission" within 28 U.S.C. § 2321(a), vesting review jurisdiction first with the Commission under the Lace Curtain criteria and then in the United States courts of appeals. United Transp. Union v. Norfolk and Western R. Co., 822 F.2d 1114, 1120 (D.C.Cir.1987), cert. denied, 484 U.S. 1006 (1988).[FN8] Indeed, the Commission has previously examined arbitral awards made pursuant to the *1027 Merger Agreement under the Lace Curtain framework. Norfolk & W. Ry. Co. and New York C. & St. L.R. Co. Merger, 5 I.C.C.2d 234 (1989).

We find that Lace Curtain review is appropriate here and that the two arbitral awards must be vacated because they fundamentally misinterpret and fail to draw their essence from the negotiated labor protective conditions that the Commission adopted and imposed on the Nickel Plate merger. The awards rest principally on the determination that an employee whose job is abolished need not exercise his seniority to take available work in the merged system that is beyond the general location of his present employment in order to maintain his eligibility for the agreement's economic benefits. There is no support for that position in the Merger Agreement, the MOUs, or elsewhere.

In § 1(a), the Merger Agreement expressly adopted all provisions of the WJPA, including the conditions necessary for employees to secure receipt of displacement allowances. Central to the WJPA, as outlined in § 6(a) of that agreement, is that employees are not placed in a "worse position" so as to trigger the receipt of compensatory benefits when they can exercise seniority rights to take positions producing equal or greater compensation elsewhere in the consolidated system. That requirement embodies the fundamental bargain in WJPA and all subsequent Commission-developed labor conditions that employees exercise existing contractual rights (seniority) to take available work elsewhere in exchange for economic protections that would be afforded should they ultimately be displaced. See, e.g., New York Dock, 360 I.C.C. at 86 (Article I, § 5(a)).

**5 Nothing in the Merger Agreement or the MOUs suggests that this essential bargain, having been expressly adopted by the parties in § 1(a), was immediately and fundamentally altered by § 1(b) to entitle employees whose jobs were abolished to receive displacement allowances without exercising their seniority and holding themselves available for work. By its own words, § 1(b) of the Merger Agreement simply added to the WJPA benefits adopted in § 1(a) by guaranteeing working-life economic protection, specifying that no employee could be placed in a "worse position" regarding compensation and working conditions "at any time during [his] employment." Nowhere does § 1(b) expressly withdraw the WJPA precondition that seniority must be exercised to secure those benefits.

The related January 10, 1962 MOU does nothing to remove that precondition in the circumstances here. Section 1(b) of the Merger Agreement grants N & W the right-in exchange for its obligation to provide *1028 lifetime economic protection-to transfer work throughout the merged N & W-Nickel Plate system. Paragraph 5 of the MOU interprets that right and provides that employees can, but are not required to, follow that work beyond the same general locality of their employment. If employees choose not to follow their transferred work, their in the merged system is nonetheless protected; under § 1(b), they may be

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assigned to a job within the same craft or class in the locale where they work presently or, alternatively, they may be retrained and similarly reassigned.

Here, however, N & W did not transfer work. Instead, it abolished 44 jobs. Nowhere does paragraph 5 provide that, when jobs are eliminated, the requirement that an affected employee exercise seniority-his basic collective bargaining right to bump those more junior to protect employment that he would otherwise lose-is waived.

Nor can the seniority requirement be assailed indirectly UTU suggests that the mandatory exercise of seniority to take available work beyond a displaced employee's present general location would place him in a "worse position" with respect to his "working conditions." Thus, he may claim compensatory benefits without having to take that work. Section 1(b)'s "worse position" language cannot be reasonably read together with paragraph 5's "no-transfer" provision to reach that result. Again, paragraph 5 of the MOU addresses the right of employees whose work is transferred to remain where they are and be reassigned, not situations where jobs are abolished from the merged rail system.

Moreover, invoking paragraph 5 and § 1(b) in combination to read a "worse position" geographic exception to seniority would perversely and inexplicably transform an employee's assertion of that right from one that protects work to one that penalizes it. There is simply no basis to glean that kind of unprecedented interpretation of the Merger Agreement's protective conditions in the face of the parties' express adoption, through § 1(a) of the Merger Agreement, of the WJPA requirement that seniority must be exercised to qualify for the Agreement's compensatory benefits.[FN[FN9]]

**6 The record discloses that the parties did not intend that result either. On June 21, 1988, N & W and UTU entered into an agreement to end a *1029 dispute in which the only issue was the meaning of the "no-transfer" provision of paragraph 5. The agreement, which the two arbitral awards ignore, resolved between the parties that the movement of an employee to another location, upon the exercise of his seniority rights, does not constitute a "transfer" as contemplated in paragraph 5 See WLE Carrier's Exh. 41 [FN[FN10]] Moreover, instructive arbitral awards interpreting the Merger Agreement have uniformly required employees to exercise seniority and take available work elsewhere on the system, including that beyond their general locality, to maintain their right to receive protective benefits.[FN[FN11]]

Thus, neither the Merger Agreement nor the underlying MOU support the arbitral awards. By excusing the failure to exercise seniority here, the awards egregiously misinterpret and fail to draw their essence from the negotiated protective conditions that the Commission adopted and imposed on the Nickel Plate merger. To correct that fundamental error and protect the integrity of our imposed conditions, we vacate the arbitral awards and remand them for further proceedings consistent with this decision.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.
It is ordered:

1. The rebuttal submitted by Norfolk and Western Railway Company is accepted.

2 The petition for review is granted. The awards are vacated and the claims remanded to the arbitrator for further proceedings consistent with this decision

3. This decision is effective on July 27, 1993.

*1030 4. This decision shall be served on the arbitrator:

Robert O. Harris
3665 Upton St. NW
Washington, DC 20008-3126

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners, Phillips, Philbin and Walden.

FN1. Ordinarily this would violate the Commission's rules as a "reply to a reply." See 49 C.F R § 1104.13(c). N & W petitioned for leave to file a rebuttal, and UTU did not object Accordingly, we will accept the rebuttal in the interest of a more complete record.

FN2. Norfolk & W. Ry Co. and New York, C. & St L R. Co. Merger, 324 I.C C. 1, 50 (1964). N & W filed its application to merge with the Nickel Plate on March 17, 1961. The Commission approved the merger on June 24, 1964, but made its approval retroactive to January 10, 1962, the effective date of the merger.

FN3 N & W sold all but 44 miles of the W & LE District and subleased certain trackage rights it had

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on the line to Wheeling Acquisition Corporation, now the Wheeling and Lake Erie Railway Company. The W & LE District originally ran through much of northern and eastern Ohio. The District began in Toledo, OH, and ran east through Bellevue, to Brewster, OH. Then it divided, running north to Cleveland, OH, through Canton and south to Pittsburgh Junction, OH. Only the line from Toledo to Bellevue remained with N & W after the sale.

FN4. In the WLE Case, the positions abolished had been held by firemen and trainmen employed in Brewster, Canton, and Pine Valley, OH, up to 160 miles from the Toledo to Bellevue line. Because all displaced employees had pre-merger seniority on the entire W & LE District, they were entitled to use their seniority to bid for jobs; on N & W's Toledo to Bellevue line. Eleven of the 40 employees in the WLE Case invoked that seniority and subsequently accepted jobs at other locations.

FN5. On appeal, no party disputes the arbitrator's finding that, if the employee fails to exercise his seniority (and is not excused), he will not merely have the imputed earnings from the declined position set off from his merger protection benefits but will lose his entitlement to those benefits (but not his seniority).

FN6. Under those standards, review is limited to situations where the arbitrator fails to or irrationally interprets the agreement at issue or makes an award that is fraudulent or corrupt, not where there was simply a mistaken interpretation. See e.g., Paperworkers v. Misco, Inc., 484 U S 29, 38 (1987); Hill v Norfolk and Western Ry Co , 814 F.2d 1192, 1194-95 (7th Cir.1987).

FN7. Nemitz in fact addresses the same negotiated agreement that is at issue in the arbitral awards under review here

FN8. UTU's reliance on Brotherhood of Locomotive Engineers v. ICC, 885 F.2d 446 (8th Cir 1989) is misplaced. The labor protective conditions negotiated there (and imposed by the Commission) expressly permitted the submission of disputes to a Public Law Board created pursuant to the RLA, with any review of resulting arbitral awards vesting solely in the United States district courts, not the Commission. The Merger Agreement here neither provides for the creation of an RLA Public Law Board nor incorporates by reference RLA standards of review.

Further, the fact that the Merger Agreement provides under § 1(d) that any arbitration would be "final and binding" does not, as UTU contends, limit the Commission to RLA review. All Commission-imposed labor protective conditions include final and binding arbitration. See e.g., New York Dock Ry - Control-Brooklyn Eastern Dist., 360 I C C. 60, 88 (1979) (Article I, § 11), aged sub nom. New York Dock Ry v. ICC, 609 F 2d 83 (2d Cir 1979) ("New York Dock"). With respect to all such arbitral decisions, the Commission may invoke necessary Lace Curtain review IBEW, 862 F.2d at 337, 339-40, United Tramp Union v. ICC, 905 F 2d 463, 467 & n 5 (D C Cir 1990)

FN9. There is also no basis, as suggested inconsistently in the NKP Case, that only pre-merger seniority may be relevant. There is no basis in the Merger Agreement or the MOU to support a distinction between seniority acquired before the Nickel Plate merger and after-acquired seniority.

FN10. That Agreement, as relevant, provides:

> That the exercise of seniority *** in accordance with the applicable schedule agreement does not constitute a "transfer" as that term is contemplated in the January 10, 1962 Merger Agreement and related Memoranda of Understanding. It was further recognized that the term "transfer" means the movement of an employee to another location where he has no seniority pursuant to an Implementing Agreement entered into between the parties under the Merger Agreement.

FN11. See e.g., O'Brien, Arb. 1978 (WLE Carrier's Exh. 30), Eischen, Arb. 1983 (WLE Carrier's Exh. 29), Shister, Arb. 1971 (WLE Carrier's Exh. 37); Van Wart, Arb. 1991 (Carrier's Add. Auth. Vol. II at 63-67).

9 I.C.C.2d 1021, 1993 WL 465149 (I.C.C.)
END OF DOCUMENT

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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 25981
Docket No. 45947
04-1-03-1-G-1727

The First Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(
(Gateway Western Railway

STATEMENT OF CLAIM:

"Claim of Gateway Western Engineer D. E. Brumit for one basic yard day each – on various dates from June 20 through September 30, 2001 (total of 102 basic yard days) account pursuant to Article 1 Section 4 of the New York Dock Implementing Agreement effective April 1, 2001 between the Kansas City Southern and the Gateway Western Railway and the Brotherhood of Locomotive Engineers for the consolidation of the KCS and GWWR yard operations in Kansas City, MO, whereas the Carrier failed to allow Claimant to exercise his seniority in accordance with this Implementing Agreement – identified as Carrier File No.(s) 201-01233G and 101-02487."

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On August 18, 2000, pursuant to Article 1, Section 4, of the New York Dock Labor Protective Conditions, the Kansas City Southern Railway (KCS) served Notice on the Brotherhood of Locomotive Engineers (BLE) regarding its intent to combine all GWWR yard assignments with KCS yard assignments at the Kansas City Terminal and bring the former GWWR yard assignments under the KCS Collective Bargaining Agreement. An Implementing Agreement was negotiated and sent out to the BLE membership for a ratification vote. After receiving a majority vote from the BLE membership on the GWWR and the KCS, the Implementing Agreement was signed on March 12, 2001, with an effective date of April 1, 2001.

The Implementing Agreement was signed on March 12, 2001. The last paragraph in that Agreement is quoted below:

> "This Agreement becomes effective April 1, 2001 and constitutes the implementing agreement required under the provisions of Article 1, Section 4, of the New York Dock Labor Protective Conditions, as imposed by the STB in its Finance Docket No. 33311."

The consolidation of Yard Operations did not take place until October 1, 2001. The Organization, as well as the Claimants in this case, thought the consolidation should have taken place on April 1, 2001. Consequently, prior to October 1, 2001, the Claimants filed claims alleging that they had been negatively impacted because the Carrier did not consolidate yard operations in Kansas City as required by the Implementing Agreement. The claims were denied at all levels and were progressed to the Board for final resolution.

The Board met on November 18, 2003, to review the claim cited above. At the outset of the discussion, the Carrier took the position that the Board did not have jurisdiction over the dispute involved here. It argued that the instant claim arose under an Implementing Agreement designed to afford protection benefits under Article 1, Section 4, of the New York Dock.

The Board reviewed the claim. It arose out of claims involving implementation of an Implementing Agreement under New York Dock. The Board has traditionally refused to accept jurisdiction of disputes that involve New York Dock Implementing Agreements. The claim listed here it, therefore, dismissed. The Board lacks jurisdiction to do otherwise.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 10th day of March 2004.

CSX TRANSPORTATION

J. H. Wilson, Director
N. V. Nihoul, Manager
(904) 359-1260

Labor Relations Department
500 Water Street, J-455
Jacksonville, FL 32202

November 10, 2006

File: 2178-12 ROA

Mr. L. Crawford, General Chairman
Sheet Metal Workers' International Association
6322 Hacklebarney Road
Blackshear, Georgia

Dear Mr. Crawford:

This is in reference to our recent discussions regarding our dispute in connection with the application of the April 4, 2005, National Agreement between the Sheet Metal Workers' International Association (SMWIA) and the National Carrier's Conference Committee, as it pertains to Roadway Mechanics on CSXT property that are represented by SMWIA.

Since the parties have been unable to agree on the question to be presented to resolve the dispute, this will confirm that we have agreed to present individual questions to arbitration, in accordance with the dispute resolution provisions of Article I, Section 11 of the "New York Dock Conditions", New York Dock Ry. – Control; - Broklyn Eastern Dist., 360 I. C. C. 60 (1979).

The party's questions are as follows:

SMWIA

> "Is the Carrier correct in denying the Sheet Metal Workers employed under the CSXT Labor Agreement No. 12-126-92 their negotiated wage increases that were negotiated under the Sheet Metal Workers International Associations' National Agreement through negotiations with the National Carriers Conference Committee signed on May 4, 2005?"

CSXT

> "Is CSXT correct that, pursuant to the New York Dock implementing agreement designated CSXT Labor Agreement No. 12-126-92, the wage and related adjustments to be applied to roadway mechanics are those

adjustments that have been subsequently agreed to in national bargaining between CSXT and the IAM instead of such changes agreed to by CSXT and SMWIA?"

Since this dispute involves the application of a "New York Dock" coordination agreement, the parties understand that the International Association of Machinists and Aerospace Workers and the Brotherhood of Maintenance of Way Employes may wish to participate in this arbitration. Accordingly, the parties will collectively contact designated representatives of those Organizations and invite them to participate.

During our various conversations regarding this matter, we have agreed to collectively contact Lynette Ross to seek her services to hear arguments and render a decision. If either the IAM&AW or the BMWE express a desire to participate, and do not object to contacting Ms. Ross, we will proceed. If either Organization objects we will develop an alternate method of selection agreeable to all parties, or request the services of the National Meditation Board.

If this accurately reflects our understanding, please affix your signature in the space provided below, returning one copy to this office for our files. Once I receive an executed copy, I will contact you so that we may make arrangements to contact Ms. Ross.

Very truly yours,

J. H. Wilson

Director – Labor Relations

I agree:

Mr. L. Crawford, General Chairman SMWIA

AGREEMENT BETWEEN

CSX TRANSPORTATION, INC.

And Its Employees Represented By

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

(U. S. District Counsel of Railroads)

IT IS AGREED THAT:

1. There shall be established a Public Law Board, hereinafter referred to as the "Board," pursuant to the provisions of Section 3, Second, of the Railway Labor Act, as amended by Public Law 89-456, to resolve the disputes listed on Attachment "A," otherwise referable to the National Railroad Adjustment Board.

2. (A) The Board shall have jurisdiction only over the disputes shown on Attachment "A." No other claims or grievances shall be submitted to the Board except by mutual consent of the parties to this Agreement.

   (B) The Board shall not have jurisdiction over, nor render awards on, claims or grievances arising under rules set forth in other Agreements where such contain specific provisions covering disputes procedures. Neither shall the Board have jurisdiction over disputes growing out of New York Dock implementing agreements, requests for changes in rates of pay, rules and working conditions, nor have authority to change existing Agreements or establish new rules.

3. The Board shall consist of three (3) members:

   (A) The "Employee Member" appointed by the Organization shall be:

   Mr. Larry Crawford
   General Chairman SMWIA
   6322 Hacklebarney Rd.
   Blackshear, Georgia 31516

   (B) The "Carrier Member" appointed by the Carrier shall be:

Mr. Jim Wilson
Director Labor Relations
CSX Transportation, Inc.
500 Water Street, J455
Jacksonville, Florida 32202

(C) The Chairman and Neutral Member certified by the National Mediation Board may be selected by mutual consent of the parties to this Agreement. In case the parties to this Agreement are unable to agree upon the selection of the Neutral member, either or both parties to the agreement may petition the National Mediation Board to furnish a list of eleven arbitrators, from which the parties will alternately strike names, and the last remaining arbitrator on the list shall be the Chairman and Neutral Member of the Board.

4. In the event of a permanent or temporary vacancy on the Board with respect to either Partisan Member or the Neutral Member, the vacancy shall be filled in the same manner as the original selection.

5. The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Employee Member shall be borne by the Organization. The compensation and expenses of the Neutral Member shall be fixed and paid by the National Mediation Board. All other expenses shall be borne equally by the Carrier and the Organization.

6. The Board shall hold hearings jointly with an arbitration committee established pursuant to Article I, Section 11 of the New York Dock conditions (the "Section 11 Committee"), as set forth in the Agreement dated November 10, 2006, 2006. The joint hearings shall be held in Jacksonville, Florida, at an agreed upon date, place and time, or at any other location mutually agreeable to the Members of the Board and the members of the Section 11 Committee. The Board shall meet until all matters submitted to it under this Agreement are disposed of.

At such hearings, the Partisan Members may present, either orally or in writing, a statement of facts, supporting evidence, data and argument of their position with respect to each dispute submitted to the Board.

7. Each party shall serve one (1) copy of its opening submission, addressed both to the Neutral Member of the Board and to the Neutral Member of the Section 11 Committee, and will simultaneously serve (via overnight express mail) two (2) copies of the opening submission to the other Board Member no later than twenty (20) days prior to the hearing date. Said submission shall address the issues put before the Section 11 Committee and the dispute shown on Attachment A. Each party shall serve its reply submission no later than ten (10) days prior to the hearing date to the same persons and in the same manner as for the opening submission. Said submissions shall be limited to the record of the data and material handled on the property and any materials provided with the party's opening submission and be in the following form:

   (A) The question or questions at issue and relief requested.

   (B) Statement of facts.

   (C) Position.

8. If and when any Member of the Board, including the Neutral Member, determines that an additional party and/or other Labor Organization(s) has an interest in a dispute, or disputes, before the Board, the Board shall give notice to such party of the time and date when said dispute, or disputes, will be heard, together with a copy of the claim and a copy of this Agreement. Hearing on such dispute or disputes shall be conducted and the representative of such third party or additional Labor Organization(s) may be heard in person, by counsel, or other representatives as they elect.

9. Each member of the Board shall have one vote and any two Members of the Board shall be competent to render the Award and to make any decision which the Board is empowered to make by statutes and this Agreement to carry out the functions of the Board. Prior to the adoption of any award, an Executive Session of the Board will be held if requested by any member of the Board.

10. The Board shall render an award(s) within sixty (60) calendar days after the close of the hearing on matters within its jurisdiction. Such award(s) shall be in writing and shall be final and binding upon the parties. After

hearing has begun, a case may not be withdrawn except by mutual agreement of the parties to this Agreement.

11. If a dispute arises concerning the interpretation or application of any Award rendered, the Board, while in existence or upon recall by either Carrier or Employees, shall interpret the Award upon request of either party.

12. The Board hereby established shall continue in existence until it has disposed of the disputes submitted to it under this Agreement, after which it will cease to exist, except for interpretation of the award(s) as provided herein.

This Agreement has been made and concluded this 10th day of November, 2006.

FOR THE ORGANIZATION:

Larry Crawford
General Chairman

FOR The Carrier:

Jim Wilson
Director Labor Relations

Attachment "A"

Case 1

Has the Carrier violated the April 4, 2005 national agreement between SMWIA and the National Carriers Conference Committee, including CSXT, by not applying the wage increases and benefit changes contained therein to Roadway Mechanics employed by CSXT and represented by SMWIA? In deciding this question, the Board shall have jurisdiction to interpret and apply the 1993 New York Dock implementing agreement known as CSXT Labor Agreement No. 12-126-92 insofar as it applies to employees represented by SMWIA.

LEXSEE 1980 ICC LEXIS 46

CSX CORPORATION - CONTROL - CHESSIE SYSTEM, INC , AND SEABOARD COAST LINE INDUSTRIES, INC.

Finance Docket No 28905 (Sub-No 1) n1

n1 This decision embraces Finance Docket No. 28905 (Sub-No. 2), CSX Corporation, Securities; No. MC-F-13891, CSX Corporation-Control-Seacoast Transportation Company; Finance Docket No. 28905 (Sub-No 3), Louisville and Nashville Railroad Company Trackage Rights Over Chesapeake and Ohio Railway Company Between KC Junction in Covington, KY, and a Point East of Stevens Yard At or Near Melbourne, KY, and Lease Stevens Yard from Chesapeake and Ohio Railway Company, Finance Docket No. 28905 (Sub-No. 4), Chesapeake and Ohio Railway Company and Louisville and Nashville Railroad Company Construction and Operation of Connection at Newport, Campbell County, KY; Finance Docket No. 28905 (Sub-No 5), Louisville and Nashville Railroad Company Trackage Rights Over Baltimore and Ohio Chicago Terminal Railroad Company Between East Chicago, IN, and Rockwell Street Junction, Chicago, IL; Finance Docket No 28905 (Sub-No. 6), Baltimore and Ohio Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company Construction and Operation Connection At or Near Calumet City, Cook County, IL, and At or Near Hammond, Lake County, IL, Finance Docket No. 28905 (Sub-No. 7), Baltimore and Ohio and Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company Construction and Operation Connection at Dolton, Cook County, IL; Finance Docket No. 28905 (Sub-No. 8), Chicago South Shore and South Bend Railroad Acquisition and Operation Louisville and Nashville Railroad Company Line, Michigan City Branch, in La Porte County, IN; AB-2 (Sub-No. 25), Louisville and Nashville Railroad Company Abandonment Between Medaryville and Michigan City, in Pulaski, Starke, and La Porte Counties, IN; Finance Docket No. 28905 (Sub-No 9), Louisville and Nashville Railroad Company Trackage Rights Over Baltimore and Ohio Railroad Company Between Mitchell, IN, and East St. Louis, IL, and Coordination of Operations Louisville and Nashville Railroad Company and Baltimore and Ohio Railroad Company Between Washington, IN, and East St. Louis, IL; Finance Docket No. 28905 (Sub-No. 10), Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company Construction and Operation Connection at East St. Louis, St. Clair County IL; Finance Docket No. 28905 (Sub-No. 11), Louisville and Nashville Railroad Company Trackage Rights Over Baltimore and Ohio Railroad Company in Cincinnati, OH; Baltimore and Ohio Railroad Company Joint Use Properties of the Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company and the Cincinnati Inter-terminal Railroad Company; Baltimore and Ohio Railroad Company Trackage Rights Over Louisville and Nashville Railroad Company Between KC Junction at Covington, KY, and Louisville, KY; Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company Coordination of Operations Between Cincinnati, OH, and Louisville, KY; AB-19 (Sub-No. 41), Baltimore and Ohio Railroad Company Abandonment From, At, or Near North Vernon, IN, To, At, or Near Nabb, IN, in Jennings, Jefferson, and Scott Counties, IN, Finance Docket No. 28905 (Sub-No 12), Chesapeake and Ohio Railway Company Trackage Rights Over Seaboard Coast Line Railroad Company Between Richmond, VA, and Portsmouth, VA, Chesapeake and Ohio Railway Company and Seaboard Coast Line Railroad Company Coordination of Operations Between Richmond, VA, and Portsmouth, VA; AB-18 (Sub-No. 27), Chesa-

peake and Ohio Railway Company Abandonment (A) Carfloat Operations Between Newport News, VA, and the Naval Operating Base in Norfolk, VA, (B) Connection with the Norfolk and Portsmouth Belt Line Railroad Company at Sewells Point in Norfolk, VA; Finance Docket No. 28905 (Sub-No. 13), Chesapeake and Ohio Railway Company Trackage Rights Over Louisville and Nashville Railroad Company Between Winchester and North Lexington, KY; AB-18 (Sub-No 28), Chesapeake and Ohio Railway Company Abandonment From, At, or Near Winchester, KY, To, At, or Near Chilesburg, KY, in Clark and Fayette Counties, KY; Finance Docket No. 28905 (Sub-No. 14), Chesapeake and Ohio Railway Company Trackage Rights Over Louisville and Nashville Railroad Company Between MN Junction At or Near East Louisville, KY, and Points in Louisville; Chesapeake and Ohio Railway Company Coordination of Operations Between Lexington, KY, and Louisville, KY; AB-18 (Sub-No. 29), Chesapeake and Ohio Railway Company Abandonment Line Known as Louisville Viaduct and Operations at Preston Street Yard, All in Louisville, Jefferson County, KY; Finance Docket No 28905 (Sub-No 15), Chesapeake and Ohio Railway Company and Louisville and Nashville Railroad Company Construction and Operation Connection Near Deane, Letcher County, KY; Finance Docket No. 28905 (Sub-No. 16), Delaware and Hudson Railway Company Trackage Rights Over (A) Baltimore and Ohio Railroad Company Between Shenandoah Junction, WV, and Washington, DC, and Between Park Junction, PA, and Washington, DC, and (B) Western Maryland Railway Company Between Shippensburg, PA, and Hagerstown, MD, and Between York, PA, and Baltimore, MD; Finance Docket No. 28905 (Sub-No. 17), Stanley E G Hillman, Trustee of the Property of Chicago, Milwaukee, St Paul and Pacific Railroad Company Trackage Rights Over Louisville and Nashville Railroad Company in Louisville, KY; Finance Docket No. 28905 (Sub-No. 18), Consolidated Rail Corporation Acquisition of Baltimore and Ohio Railroad Company Trackage Between CB Junction and Clearfield, PA; Finance Docket No. 28905 (Sub-No. 19), Consolidated Rail Corporation Acquisition of Chesapeake and Ohio Railway Company Trackage Between Kanauga and Hobson, OH, Finance Docket No. 28905 (Sub-No. 20), Consolidated Rail Corporation Trackage Rights Over Baltimore and Ohio Railroad Company Between Park Junction (Philadelphia, PA) and Potomac Yard, VA; Finance Docket No. 29009 (Sub-No. 1), Norfolk and Western Railway Company Acquisition of One-half Interest in the Cumberland Valley Subdivision of the Corbin Division of the Louisville and Nashville Railroad Company; Finance Docket No. 29009 (Sub-No. 2), Norfolk and Western Railway Company Leasehold Control of Carolina, Clinchfield and Ohio Railway Through Acquisition of Clinchfield Railroad Company; Finance Docket No. 29009 (Sub-No. 3), Norfolk and Western Railway Company Acequisition of Stock Interest in Detroit, Toledo and Ironton Railroad Company, Finance Docket No. 29009 (Sub-No. 4), Norfolk and Western Railway Company Acquisition of Stock Interest of Seaboard Coast Line railroad Company in the Winston-Salem Southbound Railroad Company; Finance Docket No. 29009 (Sub-No 5), Norfolk and Western Railway Company Trackage Rights Over the Baltimore and Ohio Railroad Company, the Chesapeake and Ohio Railway Company and Louisville and Nashville Railroad Company in the City Of Cincinnati, Hamilton County, OH, and in Kenton County, KY; Finance Docket No. 29009 (Sub-No 6), Norfolk and Western Railway Company Trackage Rights Over the Chesapeake and Ohio Railway Company Between Glasgow and Lynchburg, in Rockbridge, Amherst, and Bedford Counties, VA, and in the City of Lynchburg, VA; Finance Docket No. 29009 (Sub-No. 7), Norfolk and Western Railway Company Trackage Rights Over Seaboard Coast Line Railroad Company in Prince George and Chesterfield Counties, VA; Finance Docket No. 29009 (Sub-No. 8), Norfolk and Western Railway Company Trackage Rights Over Western Marland Railway Company; Finance Docket No. 29009 (Sub-No. 9), Norfolk and Western

Railway Company Trackage Rights Over Southern Railway Company in the City of Lynchburg, VA; Finance Docket No. 29009 (Sub-No. 10), Norfolk and Western Railway Company Trackage Rights Over Consolidated Rail Corporation in the Vicinity of East Norwood (Cincinnati), Hamilton County, OH, Finance Docket No. 28961 (Sub-No. 1), Southern Railway Company, Eastern Kentucky Railway Company, and Western Florida Railway Company-Acquisition of Properties-Chessie System, Inc., and Seaboard Coast Line Industries, Inc ; Finance Docket No. 28961 (Sub-No. 2), Southern Railway Company, Atlanta and Charlotte Air Line Railway Company, Georgia Southern and Florida Railway Company and Southern Railway-Carolina Division-Securities, Finance Docket No 28961 (Sub-No 3), Eastern Kentucky Railway Company-Securities; Finance Docket No. 28961 (Sub-No. 4), Western Florida Railway Company-Securities; and Finance Docket No 29258, Norfolk and Western Railway Company *v.* Consolidated Rail Corporation.

INTERSTATE COMMERCE COMMISSION

363 I.C.C. 521; 1980 ICC LEXIS 46

September 23, 1980

SYLLABUS:
[*1]

1. In Finance Docket No. 28905 (Sub-No. 1), acquisition of control by CSX Corporation of rail carriers subsidiary to Chessie System, Inc., and Seaboard Coast Line Industries, Inc., is authorized, subject to conditions.

2. In Finance Docket No 28905 (Sub-No. 2), The issuance by CSX Corporation of common stock and the assumption by CSX Corporation of obligations and liabilities of Chessie System, Inc. and Seaboard Coast Line Industries, Inc., are authorized

3. In No. MC-F-13891, acquisition of control by CSX Corporation of Seacoast Transportation Company is authorized.

4. In finance Docket No. 28905 (Sub-No. 3), the application of Louisville and Nashville Railroad Company for trackage rights over the Chesapeake and Ohio Railway Company between Covington and a point near Melbourne, KY, and lease of Stevens Yard from the Chesapeake and Ohio Railway Company is granted.

5. In Finance Docket No. 28905 (Sub-No. 4), the Chesapeake and Ohio Railway Company and Louisville and Nashville Railroad Company are authorized to construct and operate and connection at Newport, KY

6. In Finance Docket No. 28905 (Sub-No. 5), the application of Louisville and Nashville Railroad Company for trackage [*2] rights over the Baltimore and Ohio Chicago Terminal Railroad Company between East Chicago, IN, and Rockwell street Junction, Chicago, IL, is granted

7 In Finance Docket No. 28905 (Sub-No. 6), the Baltimore and Ohio Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company are authorized to construct and operate a connection near Calumet City, ILL, and Hammond, IN.

8. In Finance Docket No. 28905 (Sub-No. 7), the Baltimore and Ohio Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company are authorized to construct and operate a connection at Dolton, IL

9 In Finance Docket No. 28905 (Sub-No 8), Chicago South Shore and South Bend Railroad is authorized to acquire and Operate the line of Louisville and Nashville Railroad Company in Michigan City, IN.

10. In AB-2 (Sub-No. 25), Louisville and Nashville Railroad Company is authorized to abandon its line between Medaryville and Michigan City, IN.

11. In Finance Docket No 28905 (Sub-No. 9), the application of Louisville and Nashville Railroad Company for trackage rights over the Baltimore and Ohio Railroad Company between Mitchell, IN, and East St. Louis, IL, and coor-

dination of operations [*3] of Louisville and Nashville Railroad Company and the Baltimore and Ohio Railroad Company between Washington and East St. Louis, IL, is granted.

12 In Finance Docket No. 28905 (Sub-No. 10), the Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company are authorized to construct and operate a connection at East St Louis, IL.

13 In Finance Docket No. 28905 (Sub-No. 11), the application of (1) Louisville and Nashville Railroad Company for trackage rights over the Baltimore and Ohio Railroad Company in Cincinnati, OH, (2) the Baltimore and Ohio Railroad Company for joint use of properties of the Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company and the Cincinnati Inter-Terminal Railroad Company, (3) the Baltimore and Ohio Railroad Company for trackage rights over Louisville and Nashville Railroad Company between Covington and Louisville, KY, and (4) the Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company for coordination of operations between Cincinnati, OH, and Louisville, KY, is granted

14 In AB-19 (Sub-No. 41), the Baltimore and Ohio Railroad Company is authorized to abandon its line between North [*4] Vernon and Nabb, IN.

15. In Finance Docket No 28905 (Sub-No. 12), the application of the Chesapeake and Ohio Railway Company for trackage rights over Seaboard Coast Line Railroad Company between Richmond and Portsmouth, VA, and of the Chesapeake and Ohio Railway Company and Seaboard Coast Line Railroad Company for coordination of operations between Richmond and Portsmouth, VA, is granted.

16. In AB-18 (Sub-No 27), the Chesapeake and Ohio Railway Company is authorized to abandon its carfloat operations between Newport News and the Naval Operating Base in Norfolk, VA, and Between Newport News and the connection with the Norfolk and Portsmouth Belt Line Railroad Company at Sewells Point in Norfolk, VA

17. In Finance Docket No. 28905 (Sub-No. 13), the application of the Chesapeake and Ohio Railway Company for trackage rights over Louisville and Nashville Railroad Company between Winchester and North Lexington, KY, is granted

18 In AB-18 (Sub-No. 28), the Chesapeake and Ohio Railway Company is authorized to abandon its line between Winchester and Chilesburg, KY.

19 In Finance Docket No. 28905 (Sub-No. 14), the application of the Chesapeake and Ohio Railway Company for trackage [*5] rights over Louisville and Nashville Railroad Company between a point near Louisville, KY, and points in Louisville, KY, and of the Chesapeake and Ohio Railway Company for coordination of operations between Lexington and Louisville, KY, is granted.

20 In AB-18 (Sub-No. 29), the Chesapeake and Ohio Railway Company is authorized to abandon its line known as Louisville Viaduct and operations at Preston Street Yard in Louisville, KY.

21 In Finance Docket No. 28905 (Sub-No. 15), the Chesapeake and Ohio Railway Company and Louisville and Nashville Railroad Company are authorized to construct and operate a connection near Deane, KY.

22 In Finance Docket No 28905 (Sub-No. 16), the amended application of Delaware and Hudson Railway Company to acquire trackage rights over Western Maryland Railway Company between Shenandoah Junction, WV, and Anacostia Junction, DC, is granted.

23 In Finance Docket No 28905 (Sub-No 17), the application of Stanley E. G. Hillman, trustee of the property of Chicago, Milwaukee, St Paul and Pacific Railroad Company, for trackage rights over Louisville and Nashville Railroad Company in Louisville, KY, is dismissed.

24. In Finance Docket No. 28905 (Sub-No. [*6] 18), the application of Consolidated Rail Corporation to acquire the Baltimore and Ohio Railroad Company trackage between CB Junction and Clearfield, PA, is dismissed

25. In Finance Docket No. 28905 (Sub-No. 19), the application of Consolidated Rail Corporation to acquire the Chesapeake and Ohio Railroad Company trackage between Kanauga and Hobson, OH, is dismissed.

26. In Finance Docket No 28905 (Sub-No. 20), the application of Consolidated Rail Corporation for trakage rights over the Baltimore and ohio Railroad Company between Park Junction, PA, and Potomac Yard, VA, is dismissed

27. In Finance Dokcet No. 28905 (Sub-No. 21), the application of Boston and Maine Corporation for trackage rights over Consolidated Rail Corporation between Rotterdam Junction, NY, and Buffalo, NY, was rejected. n2

n2 The decision to reject this application was made in Boston & Maine Corp. Trackage Rights Over Conrail, 360 I.C.C 239 (1979).

28 In Finance Docket No. 29009 (Sub-No. 1), the application of Norfolk and Western Railway Company to acquire and one-half interest in the Cumberland Valley Subdivision of the Corbin Division of the Louisville and Nashville Railroad Company is dismissed. [*7]

29 In Finance Docket No. 29009 (Sub-No. 2), the application of Norfolk and Western Railway Company to acquire leasehold control of Carolina, Clinchfield and Ohio Railway through acquisition of Clinchfield Railroad Company is dismissed

30 In Finance Docket No. 29009 (Sub-No. 3), the application of Norfolk and Western Railway Company to acquire a stock interest in Detroit, Toledo and Ironton Railroad Company is dismissed.

31 In Finance Docket No 29009 (Sub-No. 4), the application of Norfolk and Western Railway Company to acquire a stock interest in the Winston-Salem Southbound Railroad Company is dismissed.

32. In Finance Docket No 29009 (Sub-No 5), the amended application of Norfolk and Western Railway Company Trackage rights over the Baltimore and Ohio Railway Company in Hamilton County, OH, is granted.

33. In Finance Docket No. 29009 (Sub-No 6), the amended application of Norfolk and Western Railway Company for trackage rights over the Chesapeake and Ohio Railway Company between Glasgow and Lynchburg, VA, and in Lynchburg, VA, is granted.

34. In Finance Docket No. 29009 (Sub-No. 7), the application of Norfolk and Western Railway Company for trackage rights over Seaboard [*8] Coast Line Railroad Company between Hopewell and Wheelwright, VA, is dismissed.

35. In Finance Docket No 29009 (Sub-No 8), the amended application of Norfolk and Western Railway Company for trackage rights over Western Maryland Railway Company is granted.

36. In Finance Docket No. 29009 (Sub-No 9), the application of Norfolk and Western Railway Company for trackage rights over Southern Railway Company in Lynchburg, VA, is granted.

37. In Finance Docket No. 29009 (Sub-No. 10), the application of Norfolk and Western Railway Company for trackage rights over Consolidate Rail Corporation is denied.

38. In Finance Docket No. 28961 (Sub-No. 1), the inconsistent application of Southern Railway Company, Eastern Kentucky Railway Company, and Western Florida Railway Company is dismissed.

39. In Finance Docket No. 28961 (Sub-No. 2), the application of Southern Railway Company, the Atlanta and Charlotte Air Line Railway Company, Georgia Southern and Florida Railway Company and Southern Railway-Carolina Division to issue bonds is dismissed.

40. In Finance Docket No. 28961 (Sub-No. 3), the application of Eastern Kentucky Railway to issue stock and assume obligation and liability is dismissed. [*9]

41. In Finance Docket No 28961 (Sub-No. 4), the application of Western Florida Railway to issue stock and assume obligation and liability is dismissed

42. In Finance Docket No 29258, the application of Norfolk and Western Railway Company for authority to use certain terminal facilities owned by Consolidated Rail Corporation in Cincinnati, OH, is granted.

COUNSEL:

Richard Allen, Phillip Beverly, Emried Cole, Jr., Roland Donnem, Rene Gunning, Richard Hollander, R Lyle Key, Jr., Albert Laisy, Phillip Lanier, Neil McArthur, Jr., John Paylor, Wandaleen Poynter, Charles Rosenberger, Peter Shudtz, and Edward Tannen for applicants CSX Corporation, Chessie System, Inc., Seaboard Coast Line Industries, Inc., and subsidiaries.

Kenneth Kolson for the Department of Energy.

Steven Kuney, Douglas Ross, John Vittone, and Marc Winerman for the Department of Justice

Mark Aron, James Baxendale, and Diane Liff for the Department of Transportation.

Steven Botts and Toby Dress for the Interstate Commerce Commission, Section of Energy and Environment.

Milton Grossman and Gloria Sodaro for the Office of Rail Public Counsel.

Steven Brigance and Leonard Smith for the Tennessee Valley Authority.

Sidney [*10] Weinberg for Boston and Maine Corporation, debtor (Robert W. Meserve and Benjamin H. Lacy, trustees).

Nicholas Moros for Burlington Northern, Inc.

Steven Lauer and Charles White for Canadian Pacific Limited.

Raymond Merrill, William Phillips, Thomas Ploss, and John Rowe for Richard B. Ogilvie, trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor.

Anne Valle for Chicago and North Western Transportation Company.

Charles Midkiff for the Clinchfield Railroad Company.

Charles Marshall, Charles Mechem, Bruce Wilson, and Richard Wilson for Consolidated Rail Corporation.

Daniel Fox and William Quinn for Delaware and Hudson Railway Company.

John Danielson and Harold Spencer for Detroit and Toledo Shore Line Railroad Company.

Frederick Nash for Detroit, Toledo and Ironton Railroad Company.

Robert Donin, Fritz Kahn, Eugene Lupfert, and L. John Osborn for Florida East Coast Railway Company.

Basil Cole, John Danielson, and Robert Vom Eigen for Grand Trunk Western Railroad.

Howard Koontz for Illinois Central Gulf Railroad.

Charles Chapman and John Heffner for Michigan Interstate Railway Company, operator of the Ann Arbor Railroad System.

Donn [*11] Randall and William Thie for the Missouri-Kansas-Texas Railroad Company.

Leon Leighton and Patrick Mullen for Missouri Pacific Railroad Company.

William Leiper and Henry Wick, Jr., for Newburgh and South Shore Railway Company.

John Haley, Terance Hynes, Kirk Johnson, Angelica Lloyd, Martin Lucente, G. Paul Moates, Peter Odgen, Donald Tolmie, Peter Vaghi, and William Woodridge for Norfolk and Western Railway Company.

Robert Gehrz and Byron Olsen for Soo Line Railroad Company.

Brice Claggett, Peter Craig, Nancy Fleishman, Charles Horsky, David Kaufman, Donna Kohansky, James Tapley, and R. Allan Wimbish for Southern Railway Company, Eastern Kentucky Railway Company, and Western Florida Railway Company.

Eric Cunningham and Donal Turkal for St. Louis-San Francisco Railway Company.

Peter Hohenhaus, Mark Kalafut, and James Lowe, Jr., for Union Pacific Railroad Company.

Phillip Olinger, Thomas Rehme, and Nancy Simmons for the city of Cincinnati, OH.

John Dillner for the village of Dolton, IL.

Hercules Bolos, William Scott, James Weging, and George Wolff for the State of Illinois and Illinois Commerce Commission.

Stanley Wasser for the Illinois Department of Transportation.

Paul [*12] Oakley for the Commonwealth of Kentucky and Kentucky Department of Transportation.

James Stropkai for Michigan Department of Transportation.

Robert Roylance for the city of Newport News, VA, and the Peninsula Ports Authority of Virginia.

Joseph Davidson, Jr , for New York Department of Transportation.

John Rudduck for the Ohio Public Utilities Commission.

J. Raymond Clark for the South Carolina Public Service Authority.

Ronald Bulkema for the village of South Holland, IL.

John Mark III, John Morris III, Denton Roberts, and Edward Tosh for the Commonwealth of Virginia.

John Clarke, Jr , and Charles Spitulnik for American Railway Supervisors Association, Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen, Brotherhood of Railway and Airline Clerks, International Association of Machinists and Aerospace Workers, International Organization of Masters Mates and Pilots, and United Transportation Union.

Richard Kraushaar and Harold Ross for Brotherhood of Locomotive Engineers and Railroad Yardmasters of America

Thomas Woodley for Railway Employees' Department, AFL-CIO

C. Arthur Rutter, Jr., for Seafarer's International Union.

Gordon P McDougall for [*13] Patrick W. Simmons and Jack O Black, Illinois and Indiana Legislative Directors for the United Transportation Union and railroad employees Samuel M. Griffith, John Wroski, and Clyde G. Coble.

R. F. Dudley for Agrico Chemical Corp.

James Freeman and John Molm for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Company Services, Inc

Paul Miller for Bethlehem Steel Corporation.

William Bailes, Jr., for Blue Diamond Coal Co., and Property Owner's Committee.

Donald Busch for Busch Farm Service

John Donelan and Renee Rysdahl for Carolina Power & Light Co., Combustion Engineering Inc., Duke Power Co , PPG Industries, Inc , South Carolina Electric & Gas Co., and Virginia Electric & Power Co.

Donald Avery for Camden Fibers, Inc., Celanese Fibers Company, and Fiber Industries, Inc.

Harold Spencer and Richard Emrich for C.F. Industries, Inc , Dixie Fuel Company, Gray's Knob Coal Company, Gardinier, Inc , Harlan Central Coal Company, Harlan Cumberland Coal Company, International Mineral and Chemical Corporation, Kentucky Cumberland Coal Company, Royster Company, the Fertilizer Institute, and V&C Coal Company.

Donald Markin [*14] for Cooperative Elevator Co.

Ronald A. Listwak for Eastern Associated Coal Company.

John Radey for Florida Phosphate Council, Inc.

Harry Gibson for Ford Motor Company.

Carl Tyner for Francesville Drain Tile.

William Jackson, Jr , for Georgia Freight Bureau

Chris Larson for Kankakee-Iroquois Regional Planning Commission

Warren Short for Pulaski County Farm Bureau Co-Op

Gregory Vanke for San Pierre Elevator

PANEL:

DECISION

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam Commissioners Trantum and Gilliam concurring with separate expressions. Commissioner Clapp dissenting in part with a *separate expression.*

OPINION:

SYLLABUS

The principal application is for CSX Corporation (CSX) to acquire control of the railroad subsidiaries of Chessie System, Inc. (Chessie) and Seaboard Coast Line Industries, Inc. (SCLI), as the surviving partner in a merger with Chessie and SCLI Chessie currently controls six rail carriers, including the Chesapeake and Ohio Railway Company (C&O), the Baltimore and Ohio Railroad Company (B&O), and Western Maryland Railway Company (WM). SCLI currently controls 10 rail carriers, including Seaboard [*15] Coast Line Railroad Company (SCL), Louisville and Nashville Railroad Company (L&N), and Clinchfield Railroad Company (CCO).

CSX will also acquire control of Richmond, Fredericksburg and Potomac Railroad (RF&P) RF&P is controlled by Richmond-Washington Company, a noncarrier which owns 65.9 percent of the voting capital stock of RF&P. Currently, Chessie and SCLI each own 40 percent of the common stock of Richmond-Washington Company.

The subsidiary rail carriers will remain as separate corporate entities.

We are granting this application and CSX's directly related applications because we find the transaction to be consistent with the public interest. The proposal will enable CSX to consolidate control of two railroad systems which geographically meet end-to-end, with minor exceptions, and will enable the operation of single-system service connecting the East and Midwest with the Southeast.

The new single-system service will benefit the shipping public. Although single-system service will not provide all the advantages associated with single-line service (traffic must still be interchanged among the affiliated carriers), single-system service does offer opportunities [*16] for significant improvements over present joint-line operations. Opportunities will exist for more efficient routing of traffic, simplified car tracing, improved customer information, greater car supply, improved car utilization, and improved service by virtue of systemwide run-through trains, systemwide blocking, and terminal consolidations.

Applicants propose a number of projects designed to coordinate operations at points where the two systems meet. Eighteen related applications seek authority for trackage rights, abandonments, constructions, acquisition of a line, lease of railroad properties, and joint use of lines. We approve and authorize all these projects because we find that they will offer significant operating benefits to the new system, eliminate redundant facilities, and reduce costs associated with present operations

Because of the efficiencies that are possible under the new system, CSX carriers will be able to provide greater intermodal competition in north-south transportation.

The consolidation will not tend to lessen substantially transportation competition in any relevant market. Specifically, strong competition will continue to fact the CSX system in [*17] the Midwest-Southeast markets and in the transportation of coal to utilities in the Southeast. The consolidation will not affect competition in Florida markets. Complaints by shippers about service by SCL in Florida bear no relation to any competitive effects caused by this proposal

Rail carrier protestants will not be harmed in such a way as to affect their ability to provide essential services. Many carriers which initially opposed the consolidation, and sought conditions to ameliorate the anticipated harm, have entered settlement agreements with CSX. Only Boston and Maine Corporation (B&M) and Detroit and Toledo Shore Line Railroad Company (DTSL) remain in opposition and seek relief beyond standard traffic routing conditions None has claimed that its essential rail services will be permanently harmed. The additional competition of the consolidated CSX system should generate competitive responses by carriers which will result in increased efficiencies and better service.

We find no reason to impose any protective conditions sought by the protestants.[1] Conditions sought by DTSL and B&M are not supported by evidence that they are needed to protect essential services. [*18]

We will not impose "DT&I" traffic protective conditions. n3 The remaining protestants seeking DT&I conditions have not shown the need for us to impose the conditions.

n3 *Detroit T. & I R. Co , Control, 275 I C C 455, 492 (1950)* (DT&I).

Primary applicants entered into settlement agreements with Norfolk and Western Railway Company (NW) and Delaware and Hudson Railway Company (D&H) whereby they agree to allow trackage rights over their lines. We are granting these applications.

D&H will be given trackage rights over B&O's line between Shenandoah Junction, WV, and Anacostia, DC, and over WM's line between Lurgan, PA, and Hagerstown, MD. These rights will improve D&H's service on north-south traffic and thereby enhance competition in the market

NW will acquire rights over CSX carriers' lines (1) between Glasgow and Lynchburg, VA (in conjunction with these rights, we are also approving NW's application for trackage rights over Southern in Lynchburg), and (2) between Connellsville, PA, and Hagerstown, MD. These rights are in the public interest because they will allow faster, more efficient operations, and, in the Connellsville/Hagerstown proposal, will link presently disconnected [*19] parts of NW's system and thereby allow NW to compete better in north-south markets.

In addition, we are granting NW's application to operate over B&O's tracks in Cincinnati, OH. In connection with this request, NW seeks authority to operate over terminal trackage of Consolidated Rail Corporation (Conrail) in order to connect with the B&O line (Conrail had opposed this terminal rights request). We find that the proposed operation in Cincinnati is in the public interest because it will improve NW's interchange with Southern Railway Company (Southern). The rights over B&O and Conrail will also alleviate safety and environmental problems caused by NW's present operations.

In determining whether the proposal is consistent with the public interest, we have considered the proposed transaction's effect on the interest of affected carrier employees We find that as conditioned, the transaction is consistent with the public interest, insofar as it affects railroad labor. Applicants' employees will be protected adequately by the minimum protection mandated by statute, and we will not impose conditions to protect employees of nonapplicant railroads

In conclusion, we are approving the [*20] principal application because it will permit improved transportation service to the public. We are also approving the related applications because they are necessary for the CSX system carriers to provide the efficient services contemplated. Finally, we are approving CSX's application to control a motor carrier subsidiary of SCL, and CSX's application to issue securities as part of this transaction.

INTRODUCTION

On January 18, 1979, CSX, Chessie, and SCLI filed a joint application in Finance Docket No. 28905 (Sub-No 1), seeking authority under *49 U.S C. 11343* for CSX to control the railroad subsidiaries of Chessie and SCLI and the RF&P through the merger of Chessie and SCLI into CSX. n4 By two related applications, CSX seeks authority (a) to issue securities and to assume obligations under *49 U.S.C 11301,* and (b) to acquire indirect control of Seacoast Transportation Company (STC) under *49 U S C 11343* STC is a motor carrier wholly owned by SCL.

n4 The rail carrier subsidiaries of Chessie and SCLI have also joined as applicants, as required by the Commission's regulations governing such transactions, 49 CFR 1111.1(a)(1), footnote 1

. The rail carrier subsidiaries of Chessie are C&O, B&O, WM, the Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), the Staten Island Railroad Corporation (SIRC), and Chicago South Shore and South Bend Railroad (CSS&SB).

The rail carrier subsidiaries of SCLI are SCL, L&N, CCO, Georgia Railroad (Georgia), the Western Railway of Alabama (WofA), Atlanta and West Point Railroad Company (A&WP), Columbia, Newberry and Laurens Railroad (CN&L), Durham and Southern Railway Company (D&S), Gainesville Midland Railroad Company (GM), and the Carrollton Railroad (Carrollton).

CSX will also acquire control of RF&P. RF&P is controlled by Richmond-Washington Company, a noncarrier. Chessie and SCLI each own 40 percent of Richmond-Washington Company. Upon merger CSX will control 80 percent of Richmond-Washington Company.

[*21]

We accepted these three applications for filing and published an appropriate notice in the Federal Register on February 15, 1979. n5 In that notice we waived an initial decision by the Administrative Law Judge and determined that the merits of the applications would be decided in the first instance by the entire Commission.

n5 *44 F.R 9839 (1979).*

On May 21, 1979, eight railroad subsidiaries of Chessie and SCLI filed 18 related applications seeking authority for trackage rights, coordinated operations, abandonments, constructions, acquisition of a railroad line, the lease of railroad properties and joint use of lines of railroad, all in furtherance of operating coordinations proposed by CSX n6 We accepted these applications for filing, and published notice of our acceptance of the seven trackage rights applications in the Federal Register on June 21, 1979 n7

n6 Our regulations at 49 CFR 1111.4(a)(5) require applicants to file all directly related applications concurrently with the primary application. Applicants received a waiver from that requirement as well as waivers from certain other filing requirements enumerated in the regulations. We found that a delay of 4 months in filing the numerous related applications would not delay the evidentiary hearings.

n7 *44 F R 36289 (1979).*

[*22]

While numerous shippers and receivers of freight filed written comments with the Commission supporting the CSX proposal, labor organizations and a number of railroads and shippers voiced opposition. In response to the CSX transaction, certain railroads and labor organizations proposed various conditions designed to mitigate the harm they foresee from approval of the CSX proposal. Many were requests for traffic protective conditions and employee protection. In addition, on May 16 and 21, 1979, six railroads filed 17 applications seeking trackage rights, joint use of lines of railroad, transfers of railroad properties and joint control and ownership of portions of several CSX railroads. n8 All the responsive applications filed by opposing rail carriers, except one, n9 were accepted for filing.

n8 See, 49 CFR 1111.4(b)(4).

n9 We rejected a trackage rights application filed by B&M because B&M sought authority over a nonapplicant as a condition to CSX approval or, alternately, a condition to approval of any condition granted *Conrail. Boston & Maine Corp. Trackage Rights Over Conrail, 360 I.C C. 239 (1979).* We refuse to consider applications seeking second-level affirmative relief in rail consolidation cases

[*23]

Public hearings on the applications were conducted by Administrative Law Judge David H. Allard on a consolidated record beginning June 25, 1979, and ending February 20, 1980. Evidence on the primary applicants' related applications was received through written, verified statements. n10 The evidentiary record was closed on April 28, 1980, the date of receipt of reply briefs, approximately 10 months ahead of the deadline imposed by the statute We commend the parties and Administrative Law Judge Allard for their efforts in concluding the evidentiary proceedings well in advance of the deadline.

n10 Due to the number of protestants, oral hearings were held to consider certain of the primary applicants' related applications. Hearings were held on September 11, 1979, in South Bend, IN, to consider Finance Docket No. 28905 (Sub-No. 8) and AB-2 (Sub-No. 25); hearings were held on September 24, 1979, in Newport News, VA, to consider Finance Docket No. 28905 (Sub-No. 12) and AB-18 (Sub-No. 18). In addition, oral hearings were held on December 5, 1979, in Cincinnati, OH, to consider the trackage rights applications of NW in Finance Docket No. 29009 (Sub-Nos. 5 and 10). All other oral hearings were held in Washington, DC.

[*24]

During the course of the proceedings, the level of opposition to the CSX proposal was reduced significantly. Through negotiations with the primary applicants, several rail carriers have either withdrawn their requests for conditions or sharply modified their original proposals. Of the 17 initial inconsistent and trackage rights applications filed in May 1979, only six remain for us to decide. Of those remaining six, none seeks authority without the concurrence of the primary applicants. n11

n11 CSX agreed to grant trackage rights to D&H and NW as part of settlements with those carriers. Those settlements are described later in this decision. D&H's amended application in Finance Docket No 28905 (Sub-No 16) and NW's amended applications in Finance Docket No. 29009 (Sub-Nos. 5, 6, 8 and 9) now have the concurrence of the owner railroads NW's application in Finance Docket No. 29009 (Sub-No. 9) seeks authority for trackage rights over Southern in order to connect NW's lines with C&O's in Lynchburg, VA, and is filed as directly related to NW's application in Finance Docket No. 29009 (Sub-No. 6). Southern has agreed to the use of its track and an agreement is on file.

NW also filed an application in Finance Docket No. 29009 (Sub-No. 10) for trackage rights authority over Conrail in Cincinnati, OH. NW filed this application as directly related to its application in Finance Docket No. 29009 (Sub-No. 5) in order to provide a connecting link between NW tracks and a B&O line over which NW seeks trackage rights in the Sub-No. 5 application. NW filed the Sub-No 10 application without an agreement from Conrail, but we accepted the application for filing based on assurances given that such an agreement in fact would be forthcoming. Conrail and NW were unable to agree on use of the line.

Therefore, on February 20, 1980, NW filed an application under *49 U.S.C 11103* (use of terminal trackage) for authority to operate over Conrail's tract. We docketed the application as Finance Docket No. 29258 and set the proceeding under modified procedure. All the evidence has been received Because the issues in Finance Docket No. 29258 are inextricably tied to the issues in Finance Docket No 29009 (Sub-Nos. 5 and 10), we are consolidating that application in this decision.

[*25]

NATURE AND SCOPE OF THE PRIMARY APPLICATIONS

CSX was incorporated for the purpose of this transaction and its present activities are related solely to this transaction.

Pursuant to the terms of the proposed merger agreement, Chessie and SCLI will merge into CSX CSX will thus acquire control of those rail carriers currently controlled by Chessie and SCLI. The individual railroads under CSX will continue to operate as separate corporate entities within a single railroad system

Chessie is a noncarrier holding company with subsidiaries engaged in railroad operations, real estate and land development, ownership and development of coal lands, oil and gas exploration, and other endeavors the principal railroads comprising Chessie are C&O, B&O and WM.

Chessie's railroads operate 11,464 miles of railroad in Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin, the District of Columbia, and the Province of Ontario, Canada. A map of Chessie's system is found in appendix H.

Based on revenues, the principal commodities handled by Chessie railroads are coal, transportation equipment, [*26] chemicals, primary metals, stone, clay, and glass products

The principal lines of C&O extend from Norfolk and Newport News, VA, on the east, through Richmond, Lynchburg, and Clifton Forge, VA; Hinton, Charleston, and Huntington, WV; Ashland, Maysville, and Covington, KY; Cincinnati, OH; Richmond, Muncie, and Peru, IN, to Chicago, IL, on the west. The principal lines of B&O extend from Philadelphia, PA, through Baltimore, MD, to Washington, DC; from Washington, DC, the B&O line continues to Cumberland, MD, and from Cumberland by separate routes to Chicago, IL, and St. Louis, MO. The line to Chicago goes through Pittsburgh, PA, and Akron and Willard, OH. The line to St. Louis goes through Parkersburg, WV, and Cincinnati, OH The principal lines of WM extend from Baltimore, MD, York and Lurgan, PA, through Hagerstown, MD, to Cumberland, MD, and from Cumberland, MD, by separate routes to Connellsville, PA, and to Elkins, WV.

SCLI is also a noncarrier holding company. It has no material interests other than its carrier subsidiaries engaged in transportation services. SCLI's carriers are commonly known as Family Lines The principal railroads comprising Family Lines [*27] are SCL, L&N, and CCO.

SCLI's railroads operate 16,638 miles of railroad in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, and Virginia.Based on revenues, Family Lines' principal commodities are coal, chemicals, food and kindred products, lumber and wood products, pulp, and paper and allied products A map of SCLI's system if found in appendix H.

The principal lines of SCL extend from Richmond, VA, to Jacksonville, Orlando, Tampa, and Miami, FL, via Rocky Mount, NC, Florence and Charleston, SC, and Savannah and Waycross, GA SCL's lines also extend from Richmond, VA, to Atlanta, GA, and Birmingham, AL, via Petersburg, VA, Raleigh and Hamlet, NC, and Greenwood, SC Other principal SCL lines also connect Atlanta, GA, and Birmingham, AL, with Florida points via Manchester and Waycross, GA, and from Montgomery, AL, via Thomasville and Waycross, GA SCL also has principal lines extending from Jacksonville to Tallahassee and Chattahoochee, FL, via Baldwin, FL, with lines from Miami and Tampa, FL, connecting at Baldwin.Principal lines of L&N extend from Cincinnati, OH, through Louisville, KY, Nashville, [*28] TN, Birmingham, Montgomery and Mobile, AL, to New Orleans, LA; from Chicago, IL, to Atlanta, GA, via Evansville, IN, Nashville and Chattanooga, TN; from Cincinnati, OH, to Atlanta, GA, via Corbin, KY, Knoxville, TN, and Cartersville, GA; and from Louisville, KY, to Chicago, IL, via Lafayette and Bloomington, IN, and to East St. Louis via Evansville, IN Additional lines extend from Louisville to the Corbin and Harlan, KY, coalfields and on to Norton and St Paul, VA; and from Louisville to Hazard, KY, coalfields via Frankfort, Lexington, Winchester, KY. The principal line of CCO extends from Elkhorn City, KY, to Spartanburg, SC, via Dante and St, Paul, VA, and Kingsport, Johnson City and Erwin, TN.

SCLI and its carrier subsidiaries on the one hand, and Chessie and its carrier subsidiaries on the other, have no officers or directors in common There are a number of companies in which SCLI and Chessie hold ownership interests, where both systems have officers and directors in common. These companies are the RF&P, the Richmond-Washington Company, a number of terminal railroads, car supply companies and a real estate company

The primary applicants do not have any preferential solicitation [*29] agreements.

The combined companies will provide single-system rail service connecting East and Midwest regions with the Southeast. The rail system will serve Alabama, Delaware, Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maryland, Michigan, Missouri, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, the District of Columbia, and Ontario, Canada.

Under the merger agreement, which has been approved by the directors and shareholders of both Chessie and SCLI, each outstanding share of Chessie common stock will be converted to one CSX common stock share and each outstanding SCLI common stock share will be converted into 1 35 shares of CSX common stock. No fractional shares will be issued CSX seeks authority to issue these securities CSX also seeks authorization to· (1) issue not exceeding 671,121 shares of common stock $1 per share par value, which respect to exercise of stock options issued under Chessie's employee stock ownership plan; (2) issue common stock of $1 per share par value pursuant to SCLI's dividend reinvestment and stock purchase plan; (3) issue not exceeding [*30] 52,681 shares of common stock of $1 per share par value in exchange for B&O's first consolidated mortgage 6 1/4 percent bonds, series G; and (4) assume the obligations and liabilities of Chessie and SCLI with respect to any of their outstanding securities, including, without limitation, $60 million principal amount of notes issued by Chessie under a loan agreement dated September 30, 1976, with the Bank of Nova Scotia and the Bank of Nova Scotia International (Curacao) N.V.

The fees and expenses required to issue CSX common stock as a result of the merger are estimated not to exceed $1,200,000. These expenses include the cost of the stock certificates, postage and the normal fees of transfer agents and registrars

To coordinate the operations of the two systems, applicants have proposed various operational changes. Some of these proposed changes require separate applications. The related applications can be grouped into nine general projects affecting six separate areas. These areas include: Chicago, IL; East St. Louis, IL, northwest Indiana; eastern Kentucky; Richmond-Newport News-Portsmouth, VA; and Cincinnati-Louisville-Lexington.The related applications and opposition to [*31] these applications are identified and summarized in appendix C.

Following the merger CSX will control STC, a wholly owned motor carrier subsidiary of SCL. STC is authorized to transport general commodities over regular routes between various points in Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida. STC operations are generally restricted to service which is auxiliary to, or supplemental to SCL movements

POSITIONS OF THE PARTIES

As noted, the level of opposition to the CSX proposal has decreased significantly from the beginning of the case. Several railroad parties have negotiated settlement agreements with CSX.

Most notably, Southern and CSX filed a notice of seettlement agreement on July 11, 1980, whereby Southern withdrew its inconsistent application n12 Southern's proposal, described more fullyu below, played a major role in developing the evidence in this proceeding, and several parties in their direct evidence and in their legal briefs addressed themselves to some extent to various parts of that application. Indeed, for several parties the extent of their participation was limited by and large to Southern's requests. Therefore, in [*32] describing the positions of the parties we will refer to Southern's application even though it is no longer before us formally We will not cover it extensively. However, we have considered all the evidence in the record, including that concerning the many requests for conditions, even though the requests themselves may have been withdrawn, in making our determinations on the primary applications.

n12 On June 2, 1980, we issued a notice informing the parties that although the record was formally closed, they could still submit settlement agreements and we would accept any such agreement into the record.

The positions of parties to the CSX related applications are contained in appendix C.

United States Department of Justice

DOJ participated in the case to ensure that the record on competitive issues would be developed fully DOJ does not oppose the CSX consolidation because it does not believe that the transaction will tend to lessen substantially competition in any relevant markets. It analyzed various relevant markets and determined that the consolidation would have no anticompetitive effects on rail transportation between the Midwest and Southeast or on rail transportation [*33] of coal to Southeast utilities. DOJ believes that the proposal will produce only modest public benefits and that applicants' claim of $70 3 million net benefit (by the third year following consummation) is overstated. It considers the public benefits to be limited to those derived from single-system service.

DOJ opposes the imposition of any protective conditions in this case since the merger will not harm competition generally. Therefore, conditions to lessen or neutralize the anticompetitive thrust of the consolidation are not needed. Specifically, DOJ opposes the DT&I traffic protective conditions requested by numerous railroads in this proceeding, as anticompetitive and without countervailing public benefits.

United States Department of Transportation

DOT participated to a limited extent. Based on its review of the record, however, DOT argues in its letter-brief that the consolidation will not have any positive or negative effects of national significance on traffic patterns, service efficiencies, economies of operation, or energy consumption.

DOT believes that NW's and D&H's interests have been fully satisfied by their respective settlement agreements with [*34] CSX. DOT does not advocate the imposition of restrictive conditions that do not redress adverse effects on transportation services.

Finally, DOT argues that existing problems raised by dissatisfied shippers can be resolved under our investigation and complaint procedures.

Office of Rail Public Counsel

RPC n13 believes that the consolidation will yield substantial public benefits, but that certain of the benefits claimed are overstated or illusory

n13 The former Office of Rail Public Counsel, under its independent duties defined at *49 U.S.C. 10381* et al., was a party until November 30, 1979. Congress did not appropriate funds for the office for fiscal year 1980. The Commission, by decision served January 21, 1980, substituted a transitional RPC for the former independent RPC. The transitional RPC, established by the Commission, was authorized only to complete its activity on pending cases.

RPC concludes that while the affiliation will result in some "not insignificant" operating savings, the far more substantial reason to find the consolidation in the public interest lies in the prospective service advantages to shippers. The many new opportunities for single-system service [*35] between the Northeast region and many of the industrial centers of the Great Lakes, on the one hand, and the Southeast on the other, would be improvements in the transportation network. RPC states that the single-system approach will overcome many of the revenue divisions problems that have

traditionally restrained development of innovative services in north-south corridors, e g , run-through trailer-on-flatcar (TOFC) trains.

RPC considers CSX's management plan vague, raising the possibility that certain operating benefits may not be realized because of management's inability to coordinate the systems efficiently. RPC does not view this management question as serious, but believes that integrating two systems on a 50-50 basis will necessarily lead to problems in integrating operations.

RPC contests the claimed operating savings to Family Lines of $60.6 millions over a 3-year period through acquiring hopper cars from Chessie's Raceland car building facilities in Russell, KY. CSX plans to use existing excess capacity to supply cars for Family Lines at cost RPC argues that such savings are illusory because Chessie in fact could sell the additional cars on the open market [*36] and achieve the bulk of the purported savings

RPC examined three areas concerning the consolidation's effect on competition· coal transportation; the Florida market; and the Chicago-Southeast market. In the transportation of coal RPC concludes that the consolidation has not been shown to have any significant anticompetitive effects Nor has it been shown that rail transportation to and from Florida points will be adversely affected by the merger However, in analyzing the Chicago-Southeast market, RPC found that the consolidation would reduce the quality or strength of competition through loss of the Chessie-Southern interline service at Cincinnati, OH. Southern would allegedly lose Chessie as a friendly connection at that point. Therefore, RPC supported that part of Southern's inconsistent application seeking acquisition of L&N's former Monon line between Louisville and Chicago.

Although RPC believes that the consolidation itself will have no significant anticompetitive effects on the transportation of coal or on the Florida market, it suggested (while the Southern application was still pending) two remedies that it believed would help cure existing service inadequacies in [*37] those areas. RPC proposed "potential competition" remedies whereby Southern's proposals for property acquisitions in eastern Kentucky and Florida would be held in abeyance for 3 to 5 years following CSX consummation. At the end of that period, CSX would have an affirmative burden of demonstrating that service in those two areas had improved.

Finally, RPC urges us to impose the standard DT&I traffic conditions for a limited time pending our general inquiry into the necessity of such conditions

United States Department of Energy

DOE did not participate as a party to the proceedings, but filed an amicus curiae brief.DOE does not take a position on the CSX proposal. DOE only expressed its views regarding certain aspects of Southern's then-pending application which DOE believed would foster the attainment of relevant national energy policy goals

Tennessee Valley authority

The TVA, an agency of the United States organized to foster economic, social, and physical development in the Tennessee Valley region, opposes the consolidation. TVA argues that the merger will lessen competition in its region and will result in a near monopoly of rail service. This situation, it [*38] believes, holds the potential for deterioration in service and higher rates. TVA asserts that the projected benefits may be overstated, are largely private rather than public benefits, and do not outweigh the cost to the public from reduced competition. Further, TVA asserts that the small public benefits can be achieved by methods short of merger.

If the merger is approved, TVA believes, some of the anticompetitive impacts can be mitigated by certain carrier-initiated actions (such as assuring levels of rates and quality of service through long-term contracts, providing for cost-based rates, establishing equitable joint or through rates) and through our imposing conditions. TVA supported those parts of Southern's application to acquire the Monon line (and related properties) and to acquire access to L&N's eastern Kentucky coalfields.

Boston and Maine Corporation

B&M operates over approximately 1,300 miles of track in Maine, Massachusetts, New Hampshire, New York, and Vermont Overhead traffic accounts for 34 percent of B&M's total. B&M opposes the consolidation because it fears that CSX will divert this overhead traffic to other routings via Detroit and Buffalo gateways. [*39]

B&M did not submit a traffic study; nevertheless, it estimates that CSX roads will divert from it over $1 million gross revenues a year. B&M is in bankruptcy and fears that such diversions would reduce its ability to compete.

If CSX is approved, B&M requests protective conditions, including certain of the DT&I traffic conditions, unspecified new joint rates, traffic allocations, a restriction preventing CSX from operating as a system, and "labor protection monies." n14

n14 B&M also filed an application for trackage rights over Conrail which we rejected. See footnote 9.

Chicago and Northwestern Transportation Company

CNW operates over approximately 10,000 miles of track serving the region west of Lake Michigan and south of Lake Superior, in Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, and Wisconsin CNW's participation in this proceeding has been for the purpose of retaining present through-routes with primary applicants However, on September 10, 1980, CNW withdrew its requests for conditions.

Chicago, Milwaukee, St. Paul and Pacific Railroad

Milwaukee, which is in bankruptcy, currently operates lines principally serving Louisville, [*40] Chicago, Kansas City, Milwaukee, Minneapolis-St. Paul, Duluth, and Miles City, MT.

Milwaukee initially opposed the consolidation because of anticipated traffic diversion. On August 29, 1980, however, Milwaukee filed a letter withdrawing its requests for conditions, including its application for trackage rights over L&N in Louisville, KY.

Consolidated Rail Corporation

Conrail initially opposed the CSX consolidation, and sought B&O and C&O properties, trackage rights over B&O, and numerous other conditions

After we ruled adversely on its request to seek an adjustment of north-south divisions as a condition to the CSX proposal, n15 Conrail withdrew its opposition and its applications.

n15 *CSX Corporation -- Control -- Chessie System, Inc , 360 I C.C. 610 (1979).*

Conrail remains opposed to NW's request to operate over 1.1 miles of Conrail track in Cincinnati, OH, to afford NW access to B&O's line between East Norwood and Southern's Gest Street Yard. NW and B&O agreed to the use of B&O's line by NW as part of NW's settlement with CSX. NW filed a terminal rights application after it failed to reach an agreement with Conrail to use the 1 1-mile segment. Conrail believes we [*41] lack jurisdiction to order it to allow NW use of the segment because that track is not a "terminal facility" within in scope of *49 U S.C. 11103* In addition, Conrail asserts that if NW is successful in appropriating operating rights over Conrail's line, and therefore gains access to Southern's yard via trackage rights over B&O, NW's operations will increase congestion on the heavily used B&O track and therefore disrupt Conrail's operations over that same route. Conrail claims such disruption of its operations would have an adverse competitive impact.

Delaware and Hudson Railway Company

D&H is a trunk line carrier operating over 1.673 miles of track in New York, Pennsylvania, Vermont, New Jersey, Maryland, Virginia, and the District of Columbia. D&H initially sought trackage rights over CSX carriers as a condition to the consolidation. D&H and CSX negotiated a settlement, however, whereby CSX agreed to grant trackage rights to D&H over B&O between Shenadoah Junction, WV and Anacostia Junction, DC, and over WM between Lurgan, PA and Hagerstown, MD. D&H filed its agreements with B&O and WM on March 18, 1980, amending its original application. No parties objected to [*42] the stipulation.

Detroit, Teledo and Ironton Railroad Company

DT&I is a small rail carrier located within the Ohio-Michigan industrial region. Its principal lines extend from the Detroit area through Springfield, OH to Ironton, OH, on the Ohio River. From Springfield it also continues to Cincinnati via trackage rights. DT&I's main line also connects with Toledo, OH via trackage rights.

DT&I originally opposed the CSX merger, but soon reached an agreement with the applicants. Their agreement (1) imposes the standard DT&I traffic conditions, with minor modifications, on applicants, (2) contains provisions for the future handling of traffic and contingency arrangements concerning the movement of (a) motor vehicles and auto parts to or from Dearborn, MI, Louisville, KY, and O'Bannon, KY, and (b) eastern Kentucky coal to Detroit Edison Com-

pany, (3) contains provisions assuring cooperation concerning the maintenance of certain joint rates and routes, (4) grants DT&I trackage rights over B&O between Rhinchville, OH, and Massillon, OH, n16 (5) contains provisions concerning the future handling of traffic and contingency arrangements concerning any trackage rights DT&I may need if CSX [*43] desires to redesignate DT&I's interchange points in Cincinnati, (6) provides that interchanges, rates, and routes at Cincinnati will be established upon a competitive basis, and (7) establishes a coordinated through service between Gregg, OH and Russell Yard, KY between C&O's yards in Wixom, Plymouth and Wayne areas, on the one hand, and on the other, DT&I's Flat Rock Yard.

n16 The trackage rights application will be filed at a later date.

Detroit and Toledo Shore Line Railroad Company

DTSL is a class II railroad operating 50 miles of track between Toledo, OH, and the Detroit, MI area. DTSL opposes the consolidation because it fears that its interchange operations with CSX carriers at Toledo will suffer It seeks several specific routing traffic conditions to protect that interchange.

Florida East Coast Railway Company

FEC operates between Jacksonville, FL, and the southern end of Florida with tracks that run along the east coast. At Jacksonville, FEC has connections with both Southern and SCL.

Initially, FEC opposed the CSX proposal and filed several requests for protective conditions. it has withdrawn its opposition provided our approval is conditioned on [*44] the observance by the applicants of the stipulation agreement negotiated with FEC.

In the stipulation, Chessie agrees to be bound to the same extent stated by the terms and conditions of a settlement agreement entered into between FEC and SCL and its affiliates on April 10, 1978, in settlement of FEC's complaint in Finance Docket No. 28417, Florida East Coast Line Railroad Company *v.* Seaboard Coast Line Railroad Company, et al. n17 The settlement reaffirms conditions 1 through 6 prescribed in the SAL/ACL n18 (standard DT&I protective conditions), and provides for additional terms to govern the relationship between the parties in light of these conditions

n17 FEC's complaint was consolidated with Finance Docket No. 21215 (Sub-No. 2) Seaboard Coast Line R. Co. -- Invest. of Control, and related dockets. The final decision appears at *361 I.C.C. 582 (1980)*

n18 *Seaboard Air Line R. Co -- Merger -- Atlantic Coast Line, 320 I.C C 122, 267 (1963).*

Specifically, the agreement lists terms designed to govern SCL-FEC interchange arrangements, and includes certain restrictions and limitations, as well as certain mandatory procedures. In addition, FEC agrees that it will not oppose [*45] the cancellation of any joint rates and routes between points involving Chessie and FEC if the revenue accruing to Chessie would be noncompensatory. Chessie will cancel simultaneously its rates on the same traffic applying via other routes, and if new rates and routes on this traffic are established by Chessie, FEC will be permitted to participate on the same divisional basis as existed on the rates what were conceled.

Grand Trunk Western Railway

GTW operates over 921 miles of track in Michigan, Indiana, and Illinois. Its principal lines extend from (1) Port Huron, MI, to Chicago, IL, (2) Port Huron to Detroit, MI, (3) Detroit to Muskegon, MI, and (4) Durand, MI, to Midland, MI. GTW estimates that it will suffer an annual gross diversion of $5,488,000 as a result of the proposed transaction.

GTW initially opposed the CSX proposal, disputed CXC's traffic diversion studies, sought the imposition of the DT&I traffic conditions, and sought a special "Cincinnati condition" on behalf of DT&I.

Following the submissed of reply briefs, GTW withdrew its opposition to the merger, and now requests us to approve the stipulation reached between DT&I and applicants

Illinois Central [*46] Gulf Railroad

ICG operates in Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, South Dakota, Tennessee, and Wisconsin. ICG is primarily a north-south Railroad operating between Chicago and the Gulf of Mexico.

ICG sought conditions which would minimize the impact of the consolidation However, on August 26, 1980, ICG filed a letter withdrawing its oppositon.

Michigan Interstate Railway Company

MI, operator of the Ann Arbor Railroad System (Ann Arbor), between Toledo, OH, and Ann Arbor, MI, currently receives a subsidy from the State of Michigan to cover its operating losses. However, its management is committed to become profitable by 1981 by promoting thr growth of overhead traffic and developing on-line industries.

MI initially opposed the consolidation and sought conditions intended to protect its operations from possible harm caused by the proposal. On August 18, 1980, however, MI withdrew its opposition.

Missouri-Kansas-Texas Railroad Co.

MKT operates over approximately 2, 187 miles of track connecting the major market centers of St. Louis and Kansas City, MO with the Texas gulf. MKT serves several major intermediate [*47] points including Tulsa and Oklahoma City, OK, and Dallas, Fort Worth, Austin, San Antonio, Houston, and Galveston, TX.

MKT opposed the CSX application Its concern contered on the prospective level of interchange at St. Louis and how it might be affected by changed traffic patterns after the CSX consolidation. Only July 21, 1980, however, MKT submitted a letter to the Commission formally withdrawing its opposition after negotiations with CSX on future operations between MKT and CSX carriers

Norfolk and Western Railway Company

NW operates 7,481 miles of track in 14 Midwestern and Mid-Atlantic States. NW is oriented primarily toward east-west movements, and currently competes with Chessie carriers at most important east-west and north-south gateways. SCL is NW's most important connection to the South. Applicants and NW have stipulated that NW will lose $26 million in gross revenues annually as a result of the CSX combination, based upon study year 1977 traffic.

In response to the CSX application, NW filed inconsistent and trackage rights applications and various requests for traffic protective conditions.

The primary applicants and NW have reached a settlement disposing [*48] of all NW applicants involving CSX lines and all proposed traffic conditions. Pursuant to this stipulation, applicants have granted three trackage rights to NW and one agency agreement. In return, NW has agreed to grant certain trackage rights to B&O between Springfield and Decatur, IL.

The rights offered to NW by CSX include trackage rights: (1) over 7.8 miles of B&O track in the vicinity of Cincinnati, OH, (2).over 28.59 miles of C&O track between Glasgow and Lynchburg, VA, and (3) over 179 miles of B&O and WM track (over B&O lines between Connellsville and Cherry Run, MD, and over WM between Cherry Run and Hagerstown, MD). Opposition to these trackage rights applications is limited to labor organizations.

NW filed two applications not directly involving CSX properties. In one it seeks trackage rights over Southern for 6 miles in Lynchburg, VA, to connect its lines with C&O track over which it is seeking trackage rights. Southern agreed to NW's use of its track for this purpose.

In the other application NW seeks to operate over Conrail for 1.1 miles to connect its line with B&O in conjunction with another trackage rights request. Conrail, as noted already, has not agreed [*49] to the use of its track.

Soo Line Railroad Company

Soo operates over 4,500 miles of track in Montana, North Dakota, South Dakota, Michigan, Minnesota, Wisconsin and Illinois. Its traffic flows are predominately between Chicago and United States and Canadian points northwest of Chicago

Soo initially opposed the consolidation and sought several conditions. However, on August 3, 1980, Soo filed a letter withdrawing its opposition

Southern Railway Company

On July 11, 1980, the primary applicants and Southern filed a notice of settlement agreement whereby Southern withdrew its inconsistent application. The terms of the settlement will require future Commission approval.

Southern participated extensively throughout the proceedings in support of its inconsistent application. Although it did not formally oppose the CSX proposal, it argued that unless its own proposals were approved to offset certain anti-competitive effects of the consolidation, the CSX transaction would not be consistent with the public interest. Southern's application sought approval of the transfer of certain properties, rights, and interests principally in three areas. (1) transportation of steam [*50] coal from eastern Kentucky to utilities in the Southeast; (2) transportation between Southeastern States and Chicago and beyond; and (3) transportation of phosphate and phosphate rpoducts within the Bone Valley near Tampa, FL, and from the Bone Valley to agricultural areas of the United States and Canada Southern and its affiliates filed related securities applications to effect these transactions.

Although the CSX-Southern settlement has removed the need for us to consider formally Southern's proposals, the record in this case was built in large part on Southern,s participation, particularly as to competition issues In our discussion we will refer to Southern evidence for purposes of our analysis.

To give a better perspective on how the record was developed with Southern's participation, we have included the list of proposals sought by Southern prior to its withdrawal in appendix G.

St Louis-San Francisco Railway Co

Frisco operates over 4,710 miles of tracks in States of Alabama, Arkansas, Florida, Kansas, Mississippi, Missouri, Oklahoma, Tennessee and Texas. Earlier this year, we approved the merger of Frisco into Burlington Northern, Inc. (BN). n19

n19 *Burlington Northern, Inc. -- Control & Merger -- St. L., 360 I.C C 784 (1980)* (BN-Frisco)

[*51]

Frisco seeks to retain its present through-routes with the primary applicants, and in that connection seeks imposition of the same DT&I traffic conditions on the applicants as imposed on it in the BN-Frisco case. There we imposed the DT&I conditions on applicants for a period of 2 years following consummation.

Other Railroads

BN, Canadian Pacific Limited (CP), and Missouri Pacific Railroad (MoPac) proposed various protective conditions in final lists filed prior to the start of hearing. BN and CP each seek imposition of standard DT&I traffic conditions, but neither submitted evidence to support their requests MoPac seeks the DT&I conditions in the main application, but it also seeks certain conditions in the related CSX applications involving coordinations in the Chicago area MoPac's position on those applications is set out in appendix C.

City of Cincinnati

The city of Cincinnati, OH supports NW's stipulation with CSX concerning trackage rights in Cincinnati. Cincinnati also supports GTW's request for trackage rights on behalf on DT&I. These rights would enable the DT&I to avoid using tracks in the Riverfront area of Cincinnati (As noted below GTW has withdrawn [*52] its request for these rights pursuant to a settlement with CSX).Cincinnati claims that the trackage rights will make transportation services in Cincinnati compatible with its ecology, will make the most efficient use of transportation facilities in Cincinnati, will promote revitalization of the rail system near Cincinnati, will enable railroads to eliminate redundant facilities near Cincinnati, and will enable the railroads to improve service to the public in and through the city. Cincinnati opposes the grant of the CSX application if these trackage rights are not granted

Eastern Kentucky Coal Companies

Gray's Knob Coal Company, Dixie Fuel Company, Harlan Central Coal Company, Harlan Cumberland Coal Company, V&C Coal Company, and Kentucky Cumberland Coal Company are all coal mining or coal marketing companies shipping almost exclusively by rail from points in L&N's Cumberland Valley Subdivision (CV), in eastern Kentucky to points in the Southeast and to the Great Lakes area. All six companies have large coal holdings and operations. They participated jointly in support of Southern's proposals to purchase interests in L&N's CV properties and to purchase SCL's Jacksonville-Tampa [*53] line.

The coal companies are concerned mainly with what they allege is present inadequate service by L&N. They claim that competition in the area is needed to improve maintenance, car supply, and service, and that an additional operator in the area would contribute to the maintenance of a reasonable rate structure.

The Fertilizer Institute

TFI represents the phosphate producers of the Bone Valley in Florida.TFI argues that the only significant public interest issue here is the opportunity or improvement of the rail system through encouragement of competition. For this reason TFI appeared in support of that portion of Southern's application dealing with the Western Florida Railway (WFR) proposal and acquisition of SCL's Jacksonville-Tampa line.

TFI claims that rail operations in the Bone Valley are repetitive, heavy, and extremely complex, requiring efficient rail services. Prior to the ACL-SAL merger in 1967, n20 the phosphate shippers received responsive service from ACL and SAL. Following the merger, shippers allege that they experienced a deterioration of service including serious inadequacies of car supply and car and track maintenance. TFI believes some form [*54] of additional competition is needed to restore adequate service to its area.

n20 *Seaboard Air Line R. Co -- Merger -- Atlantic Coast Line, 320 I C.C. 122 (1963),* affirmed, *Florida East Coast ry. v United States, 259 F Supp 993,* affirmed, *386 U.S. 544 (1967).*

TFI opposes RPC's suggested potential competition remedy because the condition would be unworkable and would affect negatively the relationship between CSX and the phosphate shippers

On August 8, 1980, TFI filed a letter requesting that we "publicly decline to consider or give effect" to the settlemtn agreements reached in private negotiations by the rail parties. TFI requests also that we strike the agreements from the record and decide the case solely on the merits. TFI is concerned specifically with the settlement between Southern and applicants. n21

n21 We in fact have considered the entire record, including evidence submitted by carriers which have subsequently withdrawn their opposition. Regarding Southern's settlement with the applicants, no agreement is on record; the parties reached an understanding which does not call for any action by us at this time. We deny TFI's request.

The Florida Phosphate [*55] Council, Inc.

FPC is a nonprofit trade association which promotes the general interest and welfare of the Florida phosphate industry. FPC expressed the same concerns as TFI regarding the transportation of phosphate in the Bone Valley FPC supported that part of Southern's application requiring the transfer of SCL's Jacksonkville-Tampa line, and the WFR proposal.

South Carolina Public Service Authority

South Carolina Public Service Authority (Santee Cooper) is a publicly owned electrical generating authority operating or constructing coal-fired stations at Pennyroyal, Pinopolis Junction, and Conway, SC, each of which is served by SCL. Santee Cooper now receives substantial amounts of coal at these points from Creech, KY, a point on the L&N.

Santee Cooper opposes the consolidation. It believes that the consolidation will eliminate source competition between Chessie coal origins and those it now uses located on Family Lines. Santee Cooper sees no benefits from the merger to offset such anticompetitive effects. Certain of the claimed benefits are attainable now without the merger, so that the necessity of the merger is illusory, it argues.

Labor

American Railway [*56] Supervisors Association, along with five other labor organizations, n22 opposes the CSX consolidation as harmful to the interests of carrier employees affected by the transactions If the applications are approved, these organizations request conditions for the protection of employees which in certain respects would be more beneficial to employees than the standard New York Dock conditions. n23

n22 Joining with American Railway Supervisors Association (ARSA), are the Brotherhood of Maintenance of Way Engineers (BMWE), the Brotherhood of Railroad Signalmen (BRS), the Brotherhood of Railway and Airline Clerks (BRAC), International Association of Machinists and Aerospace Workers (IAMAW), and the United Transportation Union (UTU).

n23 *New York Dock Ry. -- Control -- Brookly, Eastern Dist , 360 I C C 60 (1979),* affirmed, *New York Dock Ry v United States, 609 F. 2d 83 (2d Cir 1979)*

In addition, the labor organizations oppose the applications of D&H in Finance Docket No. 28905 (Sub-No 16) and NW in Finance Docket No. 29009 (Sub-Nos 5, 6, 8, 9, and 10). They consider these proposals adverse to the interests of the carriers' employees and argue for their denial As with [*57] the primary applications, they submit that approval of the applications should be accompanied by appropriate employee protective provisions

Brotherhood of Locomotive Engineers (BLE) and Railroad Yardmasters of America (RYA) also oppose the CSX consolidation. If the consolidation is approved, BLE and RYA seek, imposition of certain attrition-type protective conditions

, L&N employees Samuel M. Griffith, John Wroski, and Clyde G. Coble appeared in opposition to the CSX merger and related coordination projects. They are employed by L&N and hold seniority rights on L&N's Monon Subdivision They believe that a grant of the applications would lead to a reduction of rail employment opportunities in the area between the Ohio River and Chicago.

UTU Illinois and Indiana legislative directors Patrick W. Simmons and Jack O. Black, Legislative Directors for UTU in Illinois and Indiana, respectively, jointly oppose the CSX consolidation. They believe we should give particular attention to the properties of the former Monon line now owned by L&N, the former Chicago and Eastern Indiana Railroad Company (C&EI) line between Evansville, IN, and Dolton, IL, and operations at South Hammond, IN. [*58]

DISCUSSION AND CONCLUSIONS

This proceeding has an unusual history. The record is quite extensive, containing over 9,500 pages of transcript and over 450 exhibits. Numerous briefs and reply briefs were filed The voluminous record resulted from the vigorous opposition of many rail carriers, labor organizations and shippers. Most rail carriers, however, have now settled with the applicants or have simply withdrawn their protests. However, while still active in the proceeding these parties raised many issues concerning public interest considerations, including the overall competitive relationship of rail carriers in the Southeast, Northeast, and Midwest as well as specific competition issues concerning Florida markets and coal transportation

Although formal opposition to this consolidation proposal is now quite limited, we still must look beyond the private concerns of the parties and make our own analysis of the merits of the case in conformity with the applicable criteria. As we have enunciated in the other three major consolidation proposals that have come before us since the passage of the 4R Act, n24 we will examine very carefully the full implications of each [*59] proposal to determine the potential short-term and long-term effects. n25

n24 Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Public Law 94-210, 90 Stat. 31 (1976).

n25 the other cases are: *Norfolk & W. Ry Co. -- Control -- Detroit, T. & I R. Co , 360 I C C 498 (1979)* (DT&I Control), *Burlington Northern, Inc -- Control & Merger -- St. L., 360 I C C 784 (1980)* (BN-Frisco); and St. Louis S.W. Ry -- Pur -- Rock Island (Tucumcari), 320 (1980) (Tucumcari).

We have examined carefully the entire record, and have balanced all the factors. In particular, in examining the potential harm from the transaction we have analyzed the potential foreclosure of competition and the potential harm to essential services. We conclude that the CSX consolidation application and applicants' directly related proposals are consistent with the public interest and should be approved.

Consolidation criteria

Under *49 U.S.C 11344*(c) we are required to approve and authorize a consolidation of rail carriers if we find the transaction consistent with the public interest.This standard entails a balancing of many different factors. Applicable statutory language, prior case law, and [*60] our own policy pronouncements guide us in the balancing process.

Certain policy considerations bear on our anlaysis of public interest factors. The national transportation policy, *49 U.S C. 10101,* directs us to promote safe, adequate, economical and efficient transportation, while encouraging reasonable rates, sound economic conditions, and fair wages and working conditions. The 4R Act encourages mergers, con-

solidations, and joint use of facilities that tend to rationalize and improve the overall quality and financial strength of the Nation's rail system, while also directing us to foster competition among rail and other carriers n26

n26 Compare S. Rept 94-499, p. 20, with 4R Act section 101(b)(2).

Section 11344 criteria -- While the public interest standard is broad, Congress has given us specific elements to consider at a minimum. Under *49 U.S.C. 11344*(b), we are obligated to consider four factors:

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed trnsaction;

(3) the total fixed charges [*61] that result from the proposed transaction; and

(4) the interest of carrier employees affected by the proposed transaction.

Section 11344(c) requires us to make special findings when a transaction includes: (1) guaranty or assumption of the payment of dividends or of fixed charges, or an increase of total fixed charges; (2) joint rail-motor operations; or (3) inclusion of rail carriers located in the area. Section 11343(c) also gives us broad power to impose appropriate conditions on a proposed transaction. Further, section 11347 requires the imposition of employee protective conditions in appropriate cases.

Antitrust considerations -- The policies embodied in the antitrust laws play a significant role in our analysis of the public interest. As the Supreme Court has observed, the antitrust laws give "understandable content to the broad statutory concept of the 'public interest.'" *FMC v. Aktiebolaget Svenska America Linien, 390 U.S 238, 244 (1968)*

In *McLean Trucking Co v United States, 321 U S 67, 87 (1944)* (McLean), the Supreme Court noted the proper weight to be accorded to antitrust policy in carrier consolidation proceedings:

In short, the Commission must estimate [*62] the scope and appraise the effects of the curtailment of competition which will result from the proposed consolidation and consider them along with the advantages of improved service, safer operation, lower costs, etc., to determine whether the consolidation will assist in effectuating the overall transportation policy * * *. "The wisdom and experience of that Commission," not of the courts, must determine whether the proposed consolidation is "consistent with the public interest."

Accord, *Bowman Transportation v. Arkansas-Best Freight, 419 U S 281, 298 (1975); Port of Portland v United States, 408 U S. 811, 841 (1972); Northern Lines Merger Case, 396 U S. 509, 514 (1970);* and *Denver & R.G W R Co v. United States, 387 U.S. 485 (1967)*

In analyzing a proposed consolidation we consider its competitive effects. However, we do not sit as an antitrust court in determining compliance with the Clayton, Sherman or related antitrust acts. *Northern Lines Merger Case, 396 U.S. at 514* As the Supreme Court noted in McLean, our statutory obligation under the public interest standard is broader. We must balance a consolidation's competitive effects against its transportation [*63] benefits We may disapprove consolidations which to not violate the antitrust laws and approve consolidations even if they would violate the antitust laws. The anticompetitive effects of a proposed consolidation are therefore only one element -- although admittedly a significant one -- in our analysis of the public interest.

Policy statement. -- In our policy statement on rail consolidations, we set forth several criteria we will consider in analyzing a transaction, including continuation of essential rail services, enhancement of operating efficiencies, elimination of redundant facilities, improvement of investment potential, and financial viability. n27

n27 *Railroad Consolidation Procedures, 359 I C C 195 (1978),* 49 CFR 1111 10. We note that we recently issued a proposed revised policy statement that generally incorporates policies expressed in our consolidation decisions issued in the past year. See *45 F.R. 61335 (1980).*

Environment and energy factors. -- There are certain other elements which have a bearing on the public interest. The National Environmental Policy Act of 1969 (NEPA), requires us to consider the transaction's effects on the environment. [*64] See 49 CFR 1108 (1979). Similarly, we must consider the effects of the transactions on the conservation of energy resources, under the Energy Policy and Conservation Act (EPACA). See 49 CFR 1106 (1979)

Adequacy of transportation

Public benefits

The first area we will explore is the measure of benefits to be derived from the consolidation. In this first stage inquiry, we distinguish carefully between public and private benefits

Presumably, every proposed consolidation will produce private benefits for the involved parties Otherwise, the parties would not deem it to their advantage to enter the transaction. Our inquiry is whether the private benefits will also accrue to the public interest.

In this analysis, three situations must be distinguished. First, there are private benefits that are also public benefits. Cost reductions and service improvements that result from enhanced operating efficiencies are the most important. Cost reductions, after all, benefit the public if they are passed on to shippers through rate reductions, or if they delay rate increases that otherwise would occur. Cost reductions may also help to create a stronger, more stable rail industry by [*65] bolstering its capital base, thereby permitting the railroads to serve the public's needs better.

Second, there are private benefits that are neutral from a public point of view. One major consideration in this category is traffic diverted from competitors. To the extent that diversion takes place because of service improvements, there is a public benefit. However, if some diversion is caused by the influence a carrier can exert on a shipper to give the carrier its longest possible haul, certain inefficiencies may result to the detriment of the public, e.g., unnecessary circuity. In any case, as long as the diversion is not great enough to threaten essential services provided by the carriers losing traffic, one firm's gain and the other's loss cancel out.

The third category is private gains that are public losses. Here the principal concern is with the increased profits that are made possible by a reduction in competition. If the consolidation significantly reduces competition, it may permit a carrier to raise rates without improving service, or even to provide a reduced quality of service at a higher rate. We look at this possibility very closely because the public [*66] loss from reduction of competition can conceivably outweigh the public benefits.

Applicants claim that the consolidation will produce annual net benefits to them of $70 3 million by the third year following consummation of the transaction. Appendixes D and E are summaries and analyses of the traffic and cost studies underlying this estimate. Applicants claim that approximately $40 million will be in net operating savings; the remaining $30 million will be revenue gains attributable to diversion from other rail carriers as well as from other modes These figures represent private benefits to the CSX system and are not necessarily an accurate measure of public benefits It does however, enable us to make some inferences concerning the public benefits stemming from this consolidation

Although we discount the claimed operational savings to some extent, we find that the CSX consolidation will have an overall beneficial impact upon transportation services. While it is impossible to quantify the public benefits precisely, we believe the consolidation will provide benefits in the following areas. (1) service improvements; (2) operational savings; (3) enhancement of intermodal competition; [*67] and (4) strengthened financial position.

Service improvements. -- More than one-half of all rail shipments are currently interlined. One of the principal benefits of the transaction is the service improvement that could reasonably be expected from consolidation into a single system of two formerly rival (to a degree) firms. As separate systems, Chessie and Family Lines had some incentives to co-operate, in that, to varying degrees, each profited from shared traffic. Operating under a single corporate umbrella, the two systems can achieve cost savings easier, particularly in the areas of paperwork and related activities. Those cost savings are, dollar for dollar, beneficial to the consolidated entity, and will not be lost through inequitable divisions or other problems.

The consolidation of interchange partners should provide faster, more efficient service to a wider geographic area, to the public benefit. This would be to the carriers' collective self-interest if the system's profitability is increased by measures taken to cooperate, across-the-board, at all points of interchange. The trade-offs a carrier may make in one area presumably would be reciprocated by the [*68] partner in another. The CSX proposal is an example of how consolidations can enable carriers to work together with a common purpose to provide better service to more shippers.

CSX's largely end-to-end consolidation would create the first major railroad system extending from the northeast industrial center and many of the industrial centers of the Great Lakes region to the Southeast. The affiliation will create first-time single-system service over many major interregional corridors, such as Jacksonville-Philadelphia, Atlanta-

Philadelphia, Detroit-Jacksonville, Pittsburgh-Birmingham, Toledo-Atlanta, Detroit-Savannah, and Jacksonville-Baltimore.

It is generally thought that single-line service has many advantages over joint-line service for both shippers and carriers Interchange operations can be eliminated, reducing both operating and overhead costs and transit time; transaction costs are reduced, and incentives to provide less than efficient service (arising from per diem charges for railcars, rate divisions, or production externalities) are reduced. Thus, speed, reliability, and handling are enhanced For these reasons, shippers tend to prefer single-line service over joint-line [*69] service.

The CSX proposal would create greatly expanded single-system capabilities, but not single-line service Interlining between affiliated carriers is still required in a single-system movement. This automatically triggers certain additional costs and carrier duties beyond those required in a single-line movement n28

n28 For example, such duties include car inspection and car counting

Single-system service, however, will provide many of the benefits of single-line service The effects of creation of a multirail holding company are similar to those of a rail merger if corporate priorities are centralized. Under the CSX plan, the parent company will develop overall corporate strategy and operation planning and coordination Rail subsidiaries will execute policies developed at the top with the goal of maximizing systemwide profitability.

The proposed operating plan, with its many projects intended to coordinate the Chessie and Family Lines systems to achieve the goal of overall profitability, reflects the centralization of priorities. The affiliation of interchange partners will enable the system to avoid many interchange costs (e g , paperwork involving in billing [*70] and interline settlements) and delays, will simplify car tracing capabilities, and will improve the availability of customer information. n29

n29 By combining the capabilities of the respective computer systems, system carriers will be able to exchange car movement data on a daily basis, and facilitate car tracing. Centralization of information will allow "one-stop" shopping.

The record contains many references to planned and potential service and marketing innovations Applicants studied the feasibility of initiating high speed piggyback service over corridors linking major Northeast-Southeast and Midwest-Southeast city pairs.Rates on these piggyback services are planned to be competitive with those of motor carriers. Applicants also plan to operate a number of new systemwide run-through trains. The carriers will coordinate these trains to assure expeditious handling. New rates and routes should become available by virtue of these run-throughs. Other planned service improvements include systemwide preblocked trains and closely coordinated train scheduling.

Planned service improvements and operational changes will allow faster turnaround time and increased car [*71] utilization and expeditious service through terminals. These factors reduce transit times and, consequently, ease equipment supply problems Given the often serious car utilization problems in the industry, any action which increases the efficiency and availability of the car fleet is in the public interest.

The principal advantage that single-system service has in common with single-line service is that it places responsibility for service with a single company. With only one enterprise responsible for the movement, the customer knows to whom to address complaints The carrier will have a greater incentive to provide better service because it will know that its efforts to improve service will not be thwarted by other nonaffiliated carriers participating in a joint-line haul. The record contains a number of examples of disputes between railroads as to which was responsible for the deterioration or demise of a particular joint-line service.

When systemwide priorities are centralized, as proposed here, singlesystem service will provide an incentive to encourage the movement of traffic if it is profitable to the system as a whole even if it might be unattractive to the origin [*72] carrier viewed alone In this respect, systemwide and single-line services are similar Originating carriers solicit traffic which will provide them with the longest possible haul; the longer the haul, the greater their division of revenues. There are significant costs involved in loading cars at the origin, as well as in supplying the cars. For this reason, originating carriers are reluctant to short haul themselves.

Successful joint-line service requires the participation of properly motivated carriers Applicants argue persuasively that the lack of motivation of northern railroads has been an obstacle to the development of effective north-south interline service.

There are two significant examples to illustrate this point. First, on movements from Philadelphia to Jacksonville, the northern carrier's division of revenues is too small to give it any interest in developing the traffic. Applicants show that by overcoming this problem through consolidating Chessie and Family Lines carriers, they may be able to offer successful run-through piggyback trains, thereby diverting substantial amounts of traffic from motor carriers. Were the division to occur, it would represent [*73] a public benefit because shippers would not switch to rail unless it offered a better price/service combination than currently available.

Likewise, by overcoming this institutional barrier, applicants will be able to open up to a much greater extent the market for coal located in Chessie's service area. Despite the highly desirable low-sulfur coal in the eastern Kentucky fields served by Chessie that is attractive to southeastern utilities, the mining area is oriented heavily toward northbound traffic. (We will explore this situation later in our discussion on coal transportation.) The Chessie-served coalfields are only a short distance from a direct southbound connection with CCO at Elkhorn City, KY, but relatively little coal now flows in that direction because of Chessie's short haul to the interchange point. Elimination of the barrier to movements south will make much more coal available to Southeast utilities.

Applicants state that managers of the individual roads may from time to time be expected to subordinate their interests to the benefits of the system. Over time, however, the benefits received by and demands made of each constituent railroad should tend to balance [*74] out. If they do not balance, applicants claim they will make accounting adjustments between the carriers. Under the common control of a single entity, with its attendant functions as a policymaker, those often complicated operating arrangements can be established informally.

Many of the service benefits that can be obtained through consolidation can also be obtained by working agreements between the parties. Run-through trains, trackage rights, joint use of facilities, equipment sharing, preblocking of trains, and renegotiated revenue divisions could provide some measure of benefits to the respective systems. We strongly encourage the rail industry to utilize the many alternatives available to it. Some of those agreements, however, would involve long-term contractual arrangements, and may present management with uncertainty as to whether any particular agreement will remain beneficial in the future With carriers under common control, such operational agreements could be rearranged easily. Drafting contracts between nonaffiliated parties which allow similar flexibility is more difficult.

While many of the service benefits are at least theoretically possible without consolidation, [*75] we cannot ignore the incentive that exists when carriers are under common control.There is a limit to what two independent railroads will agree upon in service improvements. Each railroad generally seeks to obtain its own long haul, to maximize its own earnings, and to be in charge of a movement.As we noted, these considerations inhibit the establishment of cooperative services between railroads.

Run-through trains involving joint-line nonaffiliated carriers come close to providing the advantages which shippers ordinarily find in single-system service Still, concentrated responsibility over the entire haul gives the single-system service an advantage. Also, while the short-haul problems in some instances can be overcome by modifications of the existing revenue divisions, such agreements seem difficult to negotiate. n30

n30 In instances where the originating carrier is only a short distance from the interchange point, an adequate redivision of revenues must take into account not only the actual costs of delivering the traffic, but also the opportunity costs of foregoing possible movements over other routes which would give the carrier its longest haul and possible greater control over its own car fleet.

[*76]

If contractual arrangements were implemented on a scale sufficient to approach the level of benefits of a consolidation, they would require intricate contractual relationships, would continue the separation of ownership from responsibility, and would require a high degree of cooperation among carriers.

In conclusion, we find that the consolidation will provide service improvements because of the expanded single-system capabilities it offers.

Operating benefits. -- Applicants have the potential to generate significant cost reductions and improved utilization of physical assets. These savings will spring from common-point coordination projects, mechanical and engineering department coordinations, locomotive and car utilization improvements, and internal rerouting efficiencies. Each of these projects is discussed separately below.

In all, the projects authorized by the Commission will generate an estimated $40 million in savings by the third year following consolidation. Except for applicants' claimed savings of $20 million from the Raceland car building facilities, we believe that the savings generated by the cost reduction reflect the measure of resources freed for other productive [*77] uses, and are an accurate measure of the public benefits to be derived from the operating efficiencies.

While the proposed transaction is essentially and end-to-end consolidation, it offers many opportunities for cost reductions through coordinations at common points. Applicants have proposed coordinations in several areas and have filed 18 related applications in order to effect desired operating efficiencies. We believe that all the related applications should be granted. The related applications, proposed operations changes, and benefits are discussed as follows.

1. Movements through Cincinnati (Finance Docket No. 28905 (Sub-Nos. 3 and 4) and Services between Louisville and Cincinnati (Finance Docket No. 28905 (Sub-No. 11) and AB-19 (Sub-No 41).

Movement of L&N trains through the Cincinnati gateway will be substantially enhanced by this consolidation because of the elimination of congestion, clearance improvements to the C&O line, operation of additional trains, and increased use of run-through locomotives. In addition, L&N will lease C&O's Stevens Yard for coal switching, train assembly, interchange and storage. Applicants plan construction of a new connection [*78] between L&N and C&O at Newport, KY, to permit operation of L&N trains to and from Stevens Yard.

The consolidation will enhance services over the Louisville-Cincinnati corridor by rerouting B&O traffic over L&N's shorter route via trackage rights, coordinating operations, eliminating redundant facilities and creating other service improvements such as run-through trains.

As a result of the rerouting, B&O will be able to realize significant savings through the abandonment of a portion of its route between North Vernon and Nabb, IN. The abandonment will have no significant adverse effect on the shipping public. All overhead traffic will continue to move over L&N's line. The little remaining traffic originating or terminating on the segment is relatively insignificant and cannot support continued operations over the line. Alternate transportation services for this rail traffic are available. The segment is located in a rural area which appears to lack potential to generate further traffic in the future.

The proposed operational changes in Cincinnati and the Cincinnati-Louisville corridor will result in annual net benefits of $3,448,000 and a net one-time cost of $2,090,000.

2. [*79] Chicago terminal operations (Finance Docket No. 28905 (Sub-Nos 5, 6, and 7)).

Applicants claim that benefits to be derived from operations within the Chicago terminal area will equal $872,000 in net annual benefits and $30,000 in one-time benefits. There has been considerable discussion on the record concerning the true extent of the Chicago area benefits. While it is possible that the combined system will not reap all the benefits predicted by applicants, we believe that significant public benefits will be realized in the Chicago area.

First, the trackage rights and Dolton connection will give L&N an improved interchange with CSS&SB at East Chicago and a direct interchange with CNW at Rockwell Street Station These interchanges will enable L&N to expedite movements, lower operating expenses and improve equipment utilization While the primary traffic which would use these new interchanges (unit coal trains bound for Indiana and Wisconsin) is no longer transported by L&N, the proposed rights will place L&N in an enchanced position to recapture the traffic by improved services in the future, and will give L&N the flexibility to realize immediately the benefits of [*80] the new interchange.

Second, the proposed trackage rights and connecting trackage will give L&N the potential to realize substantial benefits from the requirement of South Hammond Yard and the consolidation of activities at Yard Center if similar rights sought in another proceeding are denied on appeal. n31

n31 The Commission granted these similar rights in *Louisville & N R. Co -- Trackage Rights, 360 I.C C 115 (1979)* The United States Court of Appeals recently affirmed these decisions in *People of the State of Illinois v. Interstate Commerce Comm., 622 F 2d 591 (7th Cir. 1980).*

Third, C&O trains to and from Yard Center and ICG's Markham Yard may be able to use the connection at Dolton, if necessary rights for the movements can be authorized and incorporated into the Dolton Interlocking Agreement. Finally, the proposal will allow for the improved handling of certain other local trains

The proposed operating changes raise the possibility that other Chicago area rail operations and the environment could be adversely affected. The environmental problems have been found to be insignificant. A discussion of these impacts is found on pages 592-94.

The chief operating [*81] problems raised concern congestion at Yard Center and Dolton interlocking facility. There is no evidence supporting protestants' claims concerning Yard Center, and we do not believe that applicants' proposal will unduly congest this facility. Similarly, we do not believe that the proposed operations will place an unreasonable burden on the Dolton facility While applicants plan extensive use of the Dolton facility, some planned operations may actually reduce rather than increase congestion in the area. For example, C&O traffic to and from Yard Center presently must cross the Dolton interlocking facility twice The proposed connection with enable C&O to reduce its crossing to one movement. Further, as discussed above, some of the projected movements over the B&OCT to Yard Center via Dolton will move over a different route if the rights granted in another proceeding are sustained upon further judicial appeal. Should severe congestion develop at Dolton and Yard Center in the future, we note that it is in the applicants' interest, as well as in the interest of all rail carriers in the area to work together to avoid undue delay. Therefore, any problems that might arise should be [*82] resolved without regulatory intervention.

In summary, we believe that the environmental problems caused by the proposal are inconsequential and that the congestion at Dolton and Yard Center is unlikely to occur as a result of this transaction. While the benefits to be derived from the Chicago transaction are probably not as large as originally projected by applicants, we believe that these benefits outweigh the possible detriments, and that we should approve the Chicago proposal.

3. Operations in northwestern Indiana (Finance Docket No 28905 (Sub-No. 8) and AB-2 (Sub-No. 25)).

L&N will abandon a portion of its branch line between Medaryville and Michigan City, IN. CSS&SB will acquire a portion of L&N's abandoned line in Michigan City. This abandonment and acquisition will result in a one-time benefit of $2,328,000 and annual net benefits of $82,000.

The abandonment will have no substantial adverse effects on the shipping public. L&N or CSS&SB will continue to transport most of the traffic through other interchanges. L&N will reroute the overhead traffic over other routes, and CSS&SB will assume L&N's responsibilities in Michigan City. The remaining traffic which [*83] originates or terminates on the line segment is insufficient to support further rail operations. Future industrial growth in the area appears unlikely. All stations along the line which have originated or terminated traffic within the last 5 years have additional rail service and motor carrier service available.

4. Service from Louisville to East St. Louis and St. Louis (Finance Docket No. 28905 (Sub-Nos. 9 and 10)).

Movements of trains through the St. Louis gateway and services between East St. Louis and Louisville will be improved, and related operating costs reduced, by this consolidation. These benefits will be realized by the consolidation of duplicate facilities, the sale of redundant properties, the concentration of overhead movements along the affiliated carriers' shortest route, the improvement of equipment utilization and car supply, and the construction of a new connection to improve L&N's main-line access to B&O's East St. Louis yard. Applicants will realize annual benefits of $1,140,000 and one-time benefits of $550,000 as a result of these projects.

5. Operations between Richmond and Portsmouth and Norfolk-Newport News (Finance Docket No. 28905 (Sub-No. 12) [*84] and AB-18 (Sub-No. 27)).

The proposed consolidation will enable applicants to make significant operational changes and to offer service improvements. These include. (1) concentration of SCL and C&O movements between Richmond and Portsmouth, VA, and coordination of SCL and C&O operations over this route; (2) the abandonment of C&O's carfloat operation between Newport News and Norfolk, eliminating a labor intensive operation which has been a source of delay, congestion, and expense; (3) the addition of scheduled trains over the Richmond to Portsmouth route; (4) clearance improvements over the SCL line at Richmond; (5) connection improvement between SCL and C&O at Weldon, NC, and (6) consolidation of certain facilities and changes in yard operations. The operational changes in the Richmond-Newport News/Norfolk corridor will result in a net one-time cost of $255,000, and annual net benefits of $755,000

The abandonment will not have a significant adverse effect on service to shippers. Most of the traffic moving on the carfloat is overhead traffic which can be rerouted over an all-land service route. The remaining traffic is insufficient to support continued operations, [*85] and can be moved by available motor carrier operations. Increased local carfloat use in the future appears unlikely.

6. Service between Winchester and Louisville (Finance Docket No. 28905 (Sub-Nos. 13 and 14) and AB-18 (Sub-Nos. 28 and 29)).

The proposed affiliation will enable applicants to improve services and realize operational savings between Winchester, Lexington, and Louisville, KY. Total one-time benefits from these changes will be $1,954,000 and annual net benefits will be $1,025,000

The proposed changes will enable C&O and L&N to concentrate overhead movements along one line between Winchester and Lexington. C&O will realize additional savings through the abandonment of the duplicative line and the retirement of certain yard tracks.

This abandonment will have no significant impact upon the shipping public. All overhead traffic will continue to move over L&N's line. No active rail shippers or receivers are currently located on the segment, and there is little likelihood for future industrial expansion.

The proposal will also enable C&O and L&N to realize operational savings through coordinated operations between Lexington and Louisville via C&O's existing and requested [*86] trackage rights over L&N. Other savings will be realized by the consolidation of yards and operations at Louisville and Lexington, the cessation of operations at Conrail's yard in Louisville, the abandonment of C&O's viaduct leading to Conrail's yard, and the consolidation of agency and clerical forces at Lexington and Louisville. Service benefits will stem from increased operational efficiencies and improved utilization of equipment and facilities

The abandonment of the Preston Street viaduct will have no effect on shippers. All overhead traffic will move through L&N's Louisville yard, no shipper is located on the segment. While one shipper is currently served by C&O at Preston Street Yard, alternate services are available to it.

7 Eastern Kentucky coal operations (Finance Docket No. 28905 (Sub-No. 15)).

The proposed connection between C&O and L&N at Deane, KY, will improve L&N's ability to transport coal from its Eastern Kentucky Subdivision to major coal consuming points in the Southeast. Currently, this traffic moves over routes which are up to 256 miles longer than the route to be created by the connection. The connection will, therefore, provide more efficient [*87] access to an important energy resource and allow the applicants to realize operating economies over the shorter route Based on estimates of 18,000 to 21,000 carloads of coal moved annually, net benefits to applicants of $1,256,118 $1,278,356, and $1,500,431 will result in the first, second, and third years following merger. There will be a one-time cost of $2,204,000.

Associated improvements concerning movements of coal and merchandise traffic through the congested Elkhorn City, KY gateway will yield $1,253,000 in annual net savings by the third year following merger

Applicants claim that coordinations between the mechanical departments will allow them to achieve cost savings through the expanded use of C&O's Raceland car building facility at Russell, KY, and the expansion of coal car capacity. Applicants plan to use excess capacity at C&O's Raceland facility to manufacture cars for Family Lines. C&O will sell these cars to Family Lines at $8,657 below market price. Applicants claim that total savings to the system will be approximately $20.2 million annually.

We believe that the public benefits to be derived from this car building plan are largely illusory. Applicants [*88] confuse the concepts of cost and price. If a car is purchased on the open market, society's cost of producing that car is not the market price, but the cost of additional resources (including labor and materials) required to produce that unit. The difference between these variable costs and the market price represents the markup a supplier must charge to cover those costs not variable with output. Since these fixed costs will be incurred by all car manufacturers regardless of where Family Lines buys its cars, they are not relevant to this discussion.

Thus, unless applicants can show that their variable costs of production are lower than that of other manufacturers, and thereby can demonstrate that Raceland will free society's resources for other uses, no public benefits can be claimed Applicants have failed to make such a showing. While it is logical to assume that sales and transaction costs may be less when a producer deals with affiliated carriers, the record does not indicate the magnitude of these costs.

To the extent that the applicants' financial strength may be increased by this intercorporate transaction, there may be a public benefit. This is discussed in the financial [*89] viability section below.

Applicants claim public benefits certain other operating areas, which we agree can be considered benefits flowing from the transaction Some of these coordinations in the mechanical department, we believe, could be accomplished between the parties fairly easily without the necessity of a consolidation. However, we accept generally the notion that they are in fact results that improve the efficiencies of the respective fleets

Due to certain physical limitations, L&N requires both 80- and 100-ton coal cars Following consolidation, Chessie will provide Family Lines with 80-ton coal cars from its existing fleet and replace the transferred cars with 100-ton cars. Replacing existing capacity by using fewer cars will result in operating efficiencies. The annual cost savings of this plan range from $417,000 in the first year to $1 2 million in the third year following consummation.

The proposed consolidation will result in improved utilization of ballast cars and surfacing units, and also in benefits from consolidated inventory of engineering supplies It will require interconnection of communication facilities. Net one-time benefits in the engineering [*90] department will be $3,588,000

The consolidation will also allow Family Lines to borrow Chessie's power equipment during winter months when this equipment is not required by Chessie This would reduce the number of locomotives Family Lines would have to lease from other sources.This power sharing would result in annual net benefits of $284,000.

Certain operational savings will result from improved car utilization This will result in an estimated savings of 28,307,836 car-miles and 268,116 car-days, and should result in $6.34 million in annual net benefits by the third year following the consolidation. n32 As indicated in the environmental discussion, this improved utilization will also contribute to the efficient use and conservation of fuel.

n32 The car utilization benefits were determined be an analysis of traffic flows of equipment between the two existing systems. Evaluations were made of locations where empty car-miles and empty car-days could be reduced through reciprocal loading practices A separate analysis was conducted for open-top hopper cars using a linear programing model to identify improved empty movement patterns for the hopper car fields. Equipment made available through improved utilization was matched with equipment needs resulting from traffic benefits from the merger. The additional available equipment was used to offset additional purchase requirements. [*91]

Applicants will create new principal traffic routes through the major gateways of Richmond, Elkhorn City, Cincinnati, and Evansville The CSX system will reroute the traffic internally to promote efficiency, increase car utilization, and provide better service. The rerouting of 18,760 cars is predicted. This rerouting will yield annual net benefits of $1,591,000 by the third year following consummation.

Intermodal competition. -- Applicants conducted a study to determine the possible impact of its proposal on diversion of traffic from other modes. This study is summarized in appendix D. In discussing the potential service improvements that could result from this consolidation, we noted that by creating a single-system operation connecting major north-south city pairs, CSX has the opportunity to develop traffic heretofore often unattractive to northern carriers in joint-line operations because of the short-haul problem. Single-system service can be expected to overcome these inhibitions to a great extent. The affiliated carriers will be able to compete more effectively with truck and barge operations, which now provide shippers a multiplicity of single-carrier options. [*92]

Applicants did not study all the possibilities of attracting traffic from users of truck or truck/rail combinations; they conducted a limited market survey. Furthermore, only a portion of the survey results were analyzed and tabulated, and added to CSX revenue gains. Moreover, our experience as shown that shippers' affirmative responses do not necessarily equate to the handling of the traffic. Shippers are always interested in exploring lower rates and more reliable service, and in maintaining strong competitive positions between modes. Therefore, we believe that applicants' estimate of revenue gains from truck to piggyback are optimistic. However, due to the limited nature of applicants' estimates, we believe the potential exists for even greater diversions so that the total actual effect is perhaps understated.

The new system will be able to attract traffic with price and service options featuring competitive rates, interregional single-system service, closely coordinated train scheduling, and more frequent service. Shippers are on record as endorsing the applicants' proposed price/service package, and testified that the system can in fact be expected to capture traffic [*93] now moving by other modes (see appendix B). To the extent that applicant carriers can develop new business by offering better price/service options, the public benefits.

We find that the opportunities for enhanced competition between rail service and services provided by other modes are significantly improved by this consolidation

Financial viability -- Applicants expect the consolidation to provide $70.3 million in net benefits by the third year following consummation. We have adjusted this figure somewhat following our analysis of applicants' traffic studies, but the change is not significant. (See appendix D, table D-2.)

Both Chessie and Family Lines are currently financially viable systems. Appendix F contains financial information for both Chessie and SCLI. Taking into account the expected net revenue gains from traffic diversion and operational savings (including those private benefits derived from operation of the Raceland car building facility), the consolidation should improve the system's overall financial position

We find that the financial benefits of the consolidation will accrue in the following ways: (1) an annual earnings growth rate reasonably [*94] predicted to be greater than 10 percent; (2) potential improvement in financial ratios; and (3) improved access to capital markets.

Effects on competition

The combined Chessie and Family Lines systems will create a vast rail network of over 27,000 miles, enveloping the Southeast and sizable areas of the Midwest and Northeast., In the recent past, each system has been one of the top five railroad systems in terms of net railway operating income and average rate of return. The new system will have greatly expanded single-system capabilities which shippers find attractive. No other railroad at present can equal those capabilities in direct competition with CSX.

We examine a transaction's effects on competition because we believe that strong competition, under most conditions, promotes efficiency. The thread running through our criteria governing rail consolidation proposals is the goal of maximizing efficiency in the allocation of transportation resources The spur of competition tends to provide incentives for firms to minimize the costs involved in providing any given level of service, to provide good service so as to attract customers, to offer lower prices to consumers, [*95] and importantly, to seek out new and improved technologies. We encourage competition, among railroads and between the various modes, in order to maximize efficiency and, consequently, to attain the best combinations of price and service for the consumer.

In analyzing the CSX proposal for its effects on competition, we find the economic frameworks provided us by RPC and DOJ helpful. In particular, we adopt the following RPC conclusions concerning transportation competition and relevant markets (1) point-to-point intramodal market shares are relevant in assessing efficiency, since intramodal competition is a highly effective constraint on market power; (2) intermodal competition and source competition (sometimes referred to as "area" or "geographic" competition) are often relevant in assessing efficiency, the extent of their relevance depending on the degree to which they constrain railroad market power; and (3) the effectiveness of intermodal and source competition in constraining market power depends in large part on locational and product characteristics.

The CSX proposal is basically an end-to-end transaction, although it has some parallel aspects. As opposed to parallel consolidations, [*96] end-to-ends generally do not reduce the number of rail competitors serving any transportation market At points served in common by the consolidating carriers, there may be an anticompetitive effect if the system enhances its degree of control over rail rates. Also, an end-to-end consolidation will allow the system to divert traffic from remaining competitors which, in certain cases, may have anticompetitive effects.

We have analyzed the evidence and conclude that in no relevant market does the transaction tend to lessen competitive substantially Adequate intramodal and, where pertinent, source competition exists in the CSX service territory to limit appropriately any undue market power the system as a whole may realize from the transaction.

Three areas were the focus of much of the evidence concerning CSX's possible anticompetitive effects: the market for transportation of commodities between the Midwest (through the Chicago gateway) and points in the Southeast, the market for coal transportation; and the market for the transportation of traffic to and from Florida Each area will be discussed separately.

Chicago-Southeast market. -- The issue of the possible effect [*97] of the proposal on the Chicago-Southeast market arises because Family Lines currently offers single-system service between Chicago and the Southeast, while Chessie interlines with other carriers to offer similar service L&N has two routes into Chicago, one from Louisville (the former Monon line) and one from Evansville, IN. Chessie likewise has two relevant routes into Chicago. an important

line from Cincinnati over C&O and a more circuitous route over B&O that traverses the upper regions of Indiana and Ohio.

The competition between Family Lines and Chessie (and its interline connections, primarily Southern) in this market may be described as parallel. As an example, a shipper in Chicago might now be able to reach a destination in the Southeast by using either a Chessie-Southern route or a single-system Family Lines route The merger will have an anticompetitive effect because CSX may be able to influence the shipper to specify the Family Lines route by downgrading service at the connection between Chessie and Southern in Cincinnati. Indeed, this was Southern's argument in seeking to acquire the Monon line, prior to its settlement with CSX. The question then is, what is the [*98] impact of this effect?

The answer lies in determining the extent of the competition that remains. If CSX still faces sufficient competition which will not allow it to abuse its market power to increase rates or reduce services unnecessarily, then the lessening of the competition cannot be considered substantial.

The record contains certain market share data that prove useful in the analysis Southern introduced point-to-point rail market shares, derived from data obtained from DOT based on a composite of sources n33 The data show that Family Lines is the predominant railroad serving the markets between the Midwest through Chicago and points in the Southeast. It now carries half the total rail traffic in the 25 largest Chicago-Southeast markets, and the addition of Chessie traffic would boost the CSX share to 57 percent. Southern is second with 17 4 percent, followed by NW with 10 7 percent. Other data show that, as between Family Lines, Southern, and NW, Family Lines has the largest rail share in 18 of 24 markets, Southern in 4, and NW 2

n33 Those sources include (1) merchandise traffic flows from the "Census to Transportation" commodity transportation survey, and (2) bulk traffic flows derived from a variety of sources with heavy reliance upon the One Percent Railroad Waybill Sample of rail traffic, railroad Quarterly Reports of Freight Commodity Statistics filed with the Commission, and statistics of waterborne traffic compiled by the U.S Army Corps of Engineers The interregional commodity flow projections provide 1972 historical and 1975, 1980, and 1990 forecasts of intercity freight traffic, by STCC two-digit commodity groups and by mode, between states and within each state by Bureau of Economic Analysis (BEA) area. BEA areas are groups of contiguous counties having a common economic base, as defined by the U.S. Department of Commerce.

[*99]

While the Family Lines' present position is impressive, we agree with RPC that these market shares do not indicate a monopoly power in any or all of these markets. Rather, we view the present and prospective market shares as an indication that shippers prefer single-system to interline service. Family Lines' strong position rests upon the fact that in most of the 24 markets it is the only rail carrier providing single-system service. It is noteworthy that NW provides single-line service in the two markets it dominates.

As noted, one possible effect the consolidation will have on competition in the Chicago-Southeast markets is the loss of the friendly Chessie-Southern connection in Cincinnati. Southern is a direct competitor of Family Lines over much of the Southeast, but Southern does not reach the important Chicago gateway except through interline arrangements with other carriers. Therefore, to determine what intramodal competition CSX lines will face, we must ascertain whether Southern and its northern and western connections can provide a competitive option for shippers.

The elimination of Chessie as an independent competitor between the Ohio River and Chicago will reduce [*100] the number of options available to many shippers. However, this fact alone is of little consequence, because in most instances shippers using Southern will have at least one or two, sometimes more, feasible interline partners from which to choose. Southern data show that Southern interlines with at least seven non-CSX railroads in West and Midwest to Southeast markets: Mopac, Milwaukee, CNW, ICG, NW, BN, and Conrail. In fact, Southern's interchange with Mopac at Mt. Vernon, IL, is its most important connection for traffic moving between Chicago and points on Southern's line. Milwaukee, until recently, also interchanged significant numbers of cars with Southern at Louisville. The evidence indicates that recent improvements in Milwaukee's ability to service the Louisville gateway can and will lead to increased interchange with Southern.Centralia, IL, will continue to be a significant interchange point between BN and Southern Thus, Southern is by no means dependent on Chessie.

We conclude that Southern, traditionally Family Lines' arch-competitor, will be strongly encouraged to be even more competitive in this market. We find that Southern can exercise influence as [*101] both terminator and originator

of traffic and possesses a wide variety of gateways and connecting routes necessary to achieve such competitiveness in response to CSX.

Coal transportation. --

Background. -- Apart from our general discussion and findings relating to the consolidation's effects on competition, we believe the issues relating to coal transportation are significant enough to merit separate, special attention.

Coal is the largest commodity transported by both Chessie and Family Lines in terms of revenues and originated tonnage. In 1977, Chessie originated approximately 40 million tons of steam coal and Family Lines originated approximately 60 million tons. Over 60 percent of Chessie's originated tonnage and approximately one-third of Family Lines' was coal A vast amount of conflicting factual and expert testimony was generated involving coal transportation Extended debate regarding the effect the CSX consolidation would have on competition for coal movements resulted from attempts by NW and Southern to acquire property interests in Family Lines trackage in coal-producing areas of Appalachia as conditions to approval of the CSX proposal. NW and Southern themselves [*102] are significant originators of coal for delivery in the eastern United States. Each has now withdrawn its request.

Regardless of the interest of the private parties, however, the coal issue is of substantial public importance in view of the national energy policy favoring the use of coal, and it requires our closest scrutiny. If we were to find that the consolidation would have anticompetitive effects on the movement of coal from minehead to users (generally, electric utilities) in any relevant market, we would be very concerned. Our analysis of coal transportation, however, must still involve balancing any benefits against any adverse competitive problems we might find.

Appendix H contains a map showing principal Appalachian steam coal reserves. It also shows the rail carriers and the mining areas they serve in the region. As shown, Chessie serves an area northwest of Elkhorn City, KY, known as the Big Sandy. L&N serves two areas of note: its Eastern Kentucky Subdivision (EK), located near Big Sandy, and its Cumberland Valley Subdivision (CV), which is south and west of EK. Except for a single mine at Deane, KY, Chessie and L&N serve no common mines.

The area [*103] depicted on the map is part of Bureau of Mines District 8 (BOM 8). n34 This area became the focus for much of the evidence, because of the significant originations by L&N and Chessie, and because the coal produced there has high heating value and low sulfur content, characteristics desirable to utilities.

n34 BOM 8 includes all or part of 28 counties in eastern Kentucky, 15 counties in West Virginia, 9 counties in Tennessee, and 7 counties in Virginia, plus any coal mined in North Carolina.

Markets. -- In analyzing the nature and extent of coal competition, we have considered such factors as source and modal alternatives, environmental restraints on utilities in the selection of "appropriate" coals, developing technologies in coal burning, and the prospective demand for coal in light of the energy crisis over oil imports and the somewhat clouded picture over the use of nuclear power. These factors are applied when we seek to define the relevant markets for measurement in order to determine whether the consolidation will have any anticompetitive effects. In defining a market we have to define both the product market and the geographic market.

We define the product (or service) [*104] market here as the transportation of steam coal from the mines to electric generating plants n35 Applicants suggest that this is overly narrow because the market power of any railroad is constrained significantly by options an electric utility has at the outset not to create a need for transporting coal, e g , construction of a nuclear powerplant. This, however, ignores the fact that a railroad may be able to exercise a great deal of market power without making coalfired generation uneconomic. However, effective intermodal alternatives do constrain a railroad's power. Trucking is an alternative for relatively short distances, while water carriers offer an effective alternative for any utility plant situated to receive deliveries from barges. Therefore, we have not limited the product market to rail transportation to utilities.

n35 Metallurgical coal is transported also, but its movement is not at issue here. Likewise, there is some commercial use of steam coal, but it is insignificant compared to utility use.

In considering the relevant geographic market, we look first at the origination of the transportation movement. Several parties, particularly Southern, sought to [*105] narrow the consideration to coal originated in BOM 8. We believe this is too restrictive All sources of usable coal have to be considered within the geographic market This would

include coal from other BOM districts, the coal from which may not have the same attractive qualities as coal from BOM 8, but nevertheless are suitable in an economic sense. As RPC points out, transport costs for bulk commodities such as coal often run to 30 percent of the delivered price, so that an increase in transportation rates could well trigger a search for alternative sources of coal supply.

As to the destination, the broadest definition of geographic market would be the entire area in which CSX roads operate. It is generally conceded, however, that substantial competition in the transport of coal to those destinations north of the Appalachian coalfields will remain. CSX will continue to face significant competition from (1) other railroads (NW and Conrail), (2) barge traffic along the Ohio River and its tributaries, (3) western coal arriving via all-rail and rail-lake routes, and (4) coals originating in Pennsylvania, West Virginia, Ohio, Illinois, Indiana and western Kentucky. [*106]

It is the CSX area south of the coalfields which concerns us. Southern expressed its concern about a reduction in competition between it and Family Lines for coal deliveries in the six-State area of Virginia, North Carolina, South Carolina, Georgia, Florida, and Tennessee. n36 Because these States are diverse in terms of their relative level of dependence on coal, dependence on rail for delivery of coal, and access to sources other than BOM 8, we can conveniently consider individual States as separate geographic markets for discussion purposes. In addition, any particular State may include utilities with different coal requirements. Further, most utility plants are part of systems which may operate in more than one State. If we were to find substantial anticompetitive effects in any State, utility system, or powerplant submarket, there would be cause for concern

n36 Kentucky and Alabama were excluded because each State consumes coal mined largely within its own borders; no loss of coal transport competition is expected.

The *question we must answer in considering the proposal's effects on coal transportation competition therefore* becomes. Is the consolidation likely to eliminate [*107] significant source competition between Chessie and Family Lines and thereby create undue market power in coal deliveries to the Southeast?

Discussion. -- We have examined the consolidation's effects on both present and potential competition and find that no utility will be harmed by an elimination of source competition between Chessie and Family Lines for coal purchases In addition, there is no reason to believe that there will be any adverse effect on competition between CSX and other coal carriers.

Two separate arguments were raised in an attempt to show that the consolidation would have anticompetitive effects on coal transportation to Southeast utilities (1) that the consolidation will destroy the source competition for coal movements to the Southeast that now exists between Chessie and Family Lines, and increase the market dominance which Family Lines already enjoys; and (2) that because of the increase in both coal reserves and active mines available to CSX over those now available to Family Lines, utilities whose plants are now or would be served exclusively by Family Lines will become captive to CSX for the entire movement. We will address each allegation in [*108] turn.

Source competition between Chessie and Family Lines may appear to exist because both carriers can originate coal from different fields in Appalachia (Chessie from Big Sandy, Family Lines from CV and EK). In 1977, the two systems together originated over 60 percent of the coal delivered to six Southeast States. Chessie from the Big Sandy originated approximately 14 million tons, and Family Lines originated over 38 million tons in Kentucky for termination in the region n37

n37 Chessie's total includes 7.7 million tons to Virginia, to which it delivered without participation from other roads.

Chessie's fields, however, are located on the southern end of its lines, only a short distance to its interchange point with CCO at Elkhorn City, KY. Because of this, Chessie necessarily short hauls itself on those movements which require joint-line service with Family Lines, Southern, or NW. n38 Of the six States in the Southeast studied, only Virginia is served directly by Chessie; deliveries to the other five States require joint-line service

n38 By "short haul" we mean when a carrier moves freight a short distance to an interchange point. See also footnote 30.

Consequently, [*109] because of this short-haul problem, Chessie solicits for northobound deliveries Most of its coal movements, therefore, are to the north, where Chessie is able to terminate the traffic and keep control over its cars

Most of the coal which originates on Chessie and moves to the Southeast is interlined with Family Lines. Data supplied by DOJ show that in 1977 Family Lines delivered to the six States 3.1 million tons originated by Chessie. Family Lines also participated as an overhead carrier to Southern from Chessie, carrying approximately 800,000 tons On the great preponderance of coal traffic given to Family Lines (basically CCO at Elkhorn City) for edlivery to Family Lines points (primarily located on SCL lines), Family Lines gets the long haul without responsibility for car supply and other service requirements associated with originating traffic.

Chessie interchanges relatively little coal traffic to the Southeast with carriers other than Family Lines, and claims that it would not do so in the future, because of the geographic positions of those carriers NW has favorable on-line coal origins closer to its markets than are the Chessie origins, and Southern has [*110] no convenient or direct connection with Chessie in Kentucky or West Virginia. Traffic interchanged to those carriers either short hauls Chessie or involves undue circuity

In a sense, then, Chessie and Family Lines operations can be seen as complementary rather than competitive. Chessie does not particularly desire to move coal to the south of its line, but when it must exercise its common carrier obligations and do so, Family Lines is its main connection.

Furthermore, there can be source competition between Chessie and Family Lines only where both have independent access to a utility. Most utility plants in the Southeast are served exclusively by a single carrier- Family Lines, Southern or NW. If Family Lines is the only railroad with access to a utility, then it is difficult for Chessie to compete if it must rely on Family Lines for interline service to the destination The terminating coal carrier has substantial control over rates and routes.

Source competition between Chessie and Family Lines for coal traffic does exist for utilities served by both carriers. n39 Of the 48 existing plants served by rail in the six States, only 7 are served by more than one railroad, and [*111] in each case the railroads are Family Lines and Southern. n40 In 1977, however, only the two smallest of the seven plants (Cape Fear and Lee) received Chessie and Family Lines coal on competing routes Both plants also received substantial amounts of coal from Southern and NW origins, indicating that source competition will exist even if Southern loses access to Chessie coal. There is no evidence to indicate what the future coal requirements of the seven dually served plants will be.

n39 Chessie can reach sites south of Virginia only through interline connections.

n40 The plants are McDonough/Atkinson and Harllee in Georgia, Cape Fear, Lee, and Marshall in North Carolina, Wateree in South Carolina, and Kingston in Tennessee.

Source competition between Chessie and Family Lines can also be important for a utility in the process of making a siting decision. The utility may be able to locate at a point reached separately by Family Lines and Chessie through interlining with another carrier

Of the six States, Virginia and North Carolina are the two now receiving substantial amounts of coal originated by both Chessie and Family Lines without handling by the other. In Florida, [*112] Georgia, South Carolina, and Tennessee, no more than 40,000 tons of coal originated on Chessie in 1977 were delivered without Family Lines participation. n41 There is little source competition for unsited plants in those four States because of inconvenient connections between Chessie and Southern. In Virginia and North Carolina, coal requirements are projected to increase, but it is difficult to determine what new plant requirements will be, and which new plants would be able to benefit from source competition between Chessie and Family Lines. Even if we accept fuel transportation costs as one of the most important siting factors, other factors may not yield any alternatives located on the line of another railroad. n42 The record does not indicate what kinds of specific siting alternatives the utilities in the Southeast now have.

n41 By contrast, Family Lines originated approximately 29 million tons for delivery to those four States.

n42 We note that because of our new policy on contract rates, a utility could obtain a competitive contract rate before siting a plant

Taking all these various factors into consideration, we find that the consolidation will not lessen [*113] significantly present source competition between Chessie and Family Lines.

We now turn to the second allegation regarding the CSX effect on competition. Southern argued that opening up Chessie fields for delivery to the Southeast (by overcoming the disincentive created by the shorthaul problem) would increase coal reserves and active mines for CSX over those now available to Family Lines, and the result would be to render Family Lines-served utilities captive to CSX for the entire movement. The argument is that with the growing demand for coal, Family Lines is beginning to run short on large blocks of "appropriate" low sulfur coal which can efficiently be delivered from mines in its territory to the Southeast. Supposedly, the consolidation would free up Chessie's vast reserves, thereby eliminating the need for Family Lines to offer captive utilities a joint-line alternative The premise is that the need to engage in joint-line service attenuates the market power of the delivering carrier.

This argument raises the following questions: Can a dependent foreign origin carrier compete with a single-line carrier's own coal origins, if the single-line carrier has adequate coal supplies? [*114] What if the delivering carrier does not have adequate coal supplies? We agree with applicants that each question must be answered in the negative.

As we noted, competition from a foreign origin carrier can arise only if that carrier has independent access to the consumer. We agree with applicants and DOJ that if the foreign origin carrier does not have independent access, there is no competition whether or not the delivering carrier has sufficient resources on its own lines. If the foreign origin carrier does have independent access, on the other hand, it is competitive regardless of the resources on the delivery carrier's lines. The utility must deal with the railroad serving its plant regardless of which carrier originates the coal.

Chessie does in fact have large reserves of low sulfur coal attractive to many consumers in the Southeast because of its quality, quantity, and location. To the extent that Chessie may, after the consolidation, ship such coal via its partners would render the coal unavailable for Southern termination. The market power, however, is due to the characteristics of Chessie-originated coal and is not a result of, nor is it increased by, [*115] the consolidation. To the extent a regulated rail carrier is able to exercise market power, one would expect Chessie to do so irrespective of the consolidation.

We find that the Southeast utilities are not now, nor would they in the future be, subject to monopoly in coal transportation. There remains a reasonable degree of competition to supply coal to the Southeast. The data show sizable present and future shares in coal deliveries for both Southern and NW. Most States receive substantial amounts of coal from at least two different BOM regions, and in several States there is significant intermodal competition, particularly from water carriers

Conclusion. -- In our examination of the consolidation's effects on coal transportation, we have considered both the possible elimination of present and potential competition We agree with both DOJ and RPC that the proposal will have no significant anticompetitive effects.

We have previously mentioned some of the benefits to coal transportation that are expected to result from the transaction. These include the elimination of constraints on the transportation of coal southbound from eastern Kentucky and the improvement of hopper car [*116] availability. These improvements should remove barriers to the movement of coal from C&O and L&N served mines to southeastern markets

Therefore, in sum, we find that the consolidation will likely have substantial procompetitive effects in coal transportation.

Forida. -- Southern's request for the acquisition of various SCL properties in Florida raised issues concerning the possible anticompetitive effects of the CSX proposal in the Florida market. Southern has withdrawn its inconsistent application. The Florida proposal, however, is still actively supported by several Florida shippers, primarily those in the Bone Valley near Tampa.

Initially, we note that without Southern's concurrence, we cannot grant the relief sought by the Florida shippers, i.e., the authorization of Southern's Florida proposal. We are empowered to impose appropriate conditions, such as requiring the divesture of certain properties, as condition to the authorization of a consolidation. This authority, however, does not negate the requirement that all carriers involved must agree to accept the conditions. We cannot force a nonapplicant railroad to purchase properties and assume duties to provide services [*117] when that carrier has indicated that it no longer wishes to do so.

In any event, the record does not support the condition. The Florida shippers contend that the CSX proposal will extend Family Lines' ability to perform a single-system service between Florida and many points currently beyond Family Lines' territory They fear that this will increase Family Lines' domination of Florida traffic. We note that shippers are not required to use the single-system service and that interline service alternatives will continue to exist. Other issues raised by the Florida shippers concern existing service problems that are not attributable to the effects of the consolidation. We, therefore, believe that the CSX proposal will not have a significant effect upon the competitive environment in Florida.

Conclusion. -- We believe the consolidation will have some procompetitive effects. Increased competition will result from the combination of Family Lines and Chessie routes and existing traffic flows, greatly increasing the territorial penetration of both systems. The many new point-to-point combinations between the northern and southern regions under single-system service should [*118] attract traffic from other modes, as well as from other railroads (unless, of course, those railroads devise attractive competitive responses to meet the challende) Numerous shippers have testified that they favor single-system service because it offers greater possibilities for speedier delivery times and more reliable service. (The shipper support for this transaction is summarized in appendix B.)

The efficiencies and improved services of signle-system service will inure to the public interest and will enable CSX to compete for additional traffic if the service provided via the single-system route is superior to the service available via competing joint-line routes. CSX, however, will be able to attract shippers to use its service only by demonstrating that it provides superior service, through such factors as transit time, consistency of service, car supply and accountability, and ease of communication, car tracing and claims settlement.

Harm to essential services

Many rail carrier protestants alleged that CSX would divert substantial amounts of traffic from them and that such losses require imposition of conditions to ameliorate the financial harm. Of course, with their [*119] subsequent settlement agreements, the issue of traffic diversion is practically eliminated because each carrier obviously has taken the matter into account to its satisfaction in making the agreement. An analysis of applicants' traffic study is contained in appendix D.

In evaluating the possible harm which may result from a consolidation, we necessarily focus on the proposal's effects on essential services.Given the significant benefits that may result from a consolidation, we must identify only the harm to essential services, and not harm to peripheral services, in balancing the totality of adequacy of transportation. This is logical because all consolidations will divert some traffic from competitors and thereby reduce the competitors' service to some degree We do not believe that it is our duty to insure preconsolidation levels of traffic for the benefit of competitors; no carrier is entitled to its traffic. This standard is not new; we have applied it consistently in past cases. n43

n43 *Great Northern Pac. -- Merger -- Great Northern, 331 I.C.C 228 (1967); Detroit, T & I R. Co. Contol, 275 I.C.C. 455 (1950).*

Although most carriers no longer actively oppose [*120] the consolidation, we note that even prior to the settlements on carrier alleged that the transaction would cause permanent harm to essential rail services. Unsubstantiated statements have been made about the ultimate demise of certain railroads, but those claiming this anticompetitive effect have not been able to specify how traffic diversions would affect rates and/or service

We find that traffic diversions caused by the formation of CSX will not tend to lessen substantially the competitive abilities of other carriers.

Management structure

Under the proposal, only the holding companies (Chessie and SCLI) will merge, creating a new holding company, CSX. The rail subsidiaries will continue to operate as separate entities under the new umbrella. The applicants characterize the transaction as a 50-50 partnership.

CSX's staff will come from existing personnel of Chessie and SCLI, and will be relatively small The functions of the parent will include finance, law, corporate services, corporate strategy, operation planning and coordination, and corporate audit. Each railroad will continue to report separately to the Commission, and will have its own balance sheet and budget. [*121] Final approval of budgets, however, will be at the parent level Policy will be established by the

parent company, while its application will be by the operating companies There are no present plans to combine the traffic departments of the railroads.

CSX claims that it will determine system traffic and operating policies designed to maximize the efficient provision of freight service for the entire CSX system to enable it to compete effectively and increase rail traffic. The managers of the individual railroads are to function within those overall policies, with the goal of making the entire system more efficient and competitive

RPC questions this framework RPC believes the management plan is vague, does not explain how CSX policy will be determined, and places somewhat false hopes on the 50-50 relationship that is to be established by the present Chessie and SCLI systems.

RPC's concern rests largely on the lack of a well-defined system of decisionmaking within the CSX management RPC distinguishes this consolidation, with its equal partnership concept, from the C&O-B&O consolidation and SAL-ACL merger which created the Chessie and SCLI systems. In the previous [*122] cases, one partner was understood to be dominant. RPC believes that these questions about the management structure require us to discount some of the claimed operating savings, because the coordinations will not result so effortlessly as applicants would have us believe

We share some of RPC's concerns. Obviously, a great deal of cooperation between the now separate managements is necessary to integrate the systems expeditiously and successfully. As structured, the system will leave the operating tasks to the individual railroads, subject to general policies established at the top. Conflicts between affiliated carriers may, and most probably will, arise. Discretion will be left to the railroads to work out their differences, and any differences that are unresolved will be handled by the parent company.

This problem solving approach may place too much confidence in the common sense of cooperation that is expected of the various railroads We are not prepared, however, to find that the system approach is any less advisable in these circumstances than a wholesale merger of the carriers. A merger could very well present problems not associated with a control situation. For example, [*123] renegotiations of labor agreements may be difficult. Notwithstanding the management structure proposed here, the carriers have an incentive to achieve whatever management plan is most efficient. Were they to discover that a wholesale merger in fact would lead to greater efficiency gains and profits than under the system approach, we think it likely that they would change their plans.

Chessie and SCLI now both operate their respective railroads under a system approach. This experience should prove helpful in resolving problems that arise between the separate carriers.

We cannot find that the management plan will render the consolidation unworkable, or even that it precludes us from finding that the transaction will yield significant public benefits

Conditions

We have broad powers to impose appropriate conditions on railroad consolidations. *49 U.S.C. 11344*(c) In the past we have imposed various kinds of conditions, varying in degree of complexity and scope. Some of these conditions have included requiring applicants to make indemnity payments, grant trackage rights, sell lines, open gateways, maintain routes and rates, and even revise existing agreements between carriers [*124] n44 If we find it appropriate, we need not impose conditions at all.

n44 *BN-Frisco, 360 I.C C. at 950,* and cases cited therein

In our recent decision in the BN-Frisco case, we described in detail our present policy towards conditions in a proposed transaction. n45 The issue of whether conditions should be applied in a consolidation goes essentially to the question of whether the transaction will result in a lessening of the adequacy of transportation to the public Carriers are not entitled to protection from traffic diversion or from the risk of competition. We affirm here our belief that a consolidation should not be conditioned for the benefit of other rail carriers unless essential services have been shown to be affected and the specific condition requested: (1) is shown to be related to the impact of the consolidation; (2) is to enable shippers to receive adequate service; (3) will not provide a windfall to the benefiting carrier, (4) will not pose operating or other problems for the newly consolidated system; and (5) will not frustrate the ability of the consolidated system to obtain the anticipated public benefits n46

n45 *360 I.C C at 950-952.*

n46 See Ex Parte No. 282 (Sub-No. 6), Railroad Consolidation Procedures, General Policy Statement, *45 F R. 61335 (1980)*

[*125]

With that policy in mind, we conclude that protestants have not demonstated that any of the conditions sought are necessary. We deny all requests for conditions as not satisfying the stated criteria.

DT&I traffic conditions. -- Primary applicants have from the beginning of the case opposed the imposition of standard DT&I traffic protective conditions. Applicants claim such conditions are unnecessary, are in fact anticompetitive because they freeze existing traffic patterns, restrict service benefits from the consolidation, to some extent frustrate many of their objectives, and are unsupported by the record.

DOJ agrees with applicants that standard traffic protective conditions are anticompetitive and should not be imposed here.

RPC urges us to impose the conditions for a limited period pending our general inquiry into whether such conditions should ever be imposed in merger cases. RPC advocates imposing interim protection that is flexible enough so that it could be terminated, modified, or extended, depending on the disposition of the issue in the general proceeding.

Standard DT&I protective conditions have been imposed in most rail consolidation cases over the past 30 years, [*126] starting with Detroit, T. & I R Co *Control, 275 I C.C 455, 492 (1950)* The conditions cal for six specific traffic protective conditions. n47 They were initially imposed to preserve rail competition by maintaining neutrality and equal access in traffic routing. It was hoped that shippers' options would be preserved, and destructive diversions from competing carriers would be avoided

n47 Condition 1 requires a consolidated carrier to "maintain and keep open all routes and channels of trade via existing junctions and gateways," unless otherwise authorized by the Commission Condition 3 requires a consolidated carrier to continue "present traffic and operating relationship." Conditions 2 and 4 prohibit, respectively, "discrimination in the arrangement of schedules" and "discrimination in promptness [and] frequency service." of Condition 5 precludes a consolidated carrier from restraining "the right of industries located on the acquired line to route traffic over any or all existing routes or gateways." Condition 6 provides standing to seek later modification of the conditions.

We have reappraised our policy in recent decisions and have examined the possibility [*127] that anticompetitive effects of the DT&I conditions outweigh any competitive benefits. Imposition of the DT&I conditions is not automatic in consolidation cases. As we stated in DT&I Control, such conditions should be imposed only where it is shown that harm may befall shippers and carriers who are not protected adequately by other provisions of title 49, subtitle IV. We refused to impose conditions in that proceeding because we determined that the lesser magnitude of the consolidation and its effect on the resulting competitive situation would result in no significant competitive changes.In *Seaboard Coast Line R. Co. -- Invest of Control, 360 I.C.C. 582, 603 (1977),* we stated our preference for protecting particular interchanges and services on a case-by-case basis through enforcement of stautory protections rather than by imposition blanket traffic conditions which may have a chilling effect on innovative practices. n48 In the Tucumcari case we did not impose DT&I conditions (even when stipulated to by the applicants) because we found that the opportunities for harmful activities to competing carriers would not be significant for a substantial period after the transaction's [*128] consummation, and that the leg-time was enough for competitors to develop responses. We did impose the conditions in BN-Frisco for a period of 2 years, finding that 2 years was sufficient time for competing carriers to adjust to the new competitive situation. The time limitation was first used in NB-Frisco and reflects our view that conditions should be imposed for limited purposes

n48 For example, the rate equalization provisions of the DT&I conditions allows carriers participating in a joint-line rate to block rate reductions on the single-line rates The blanket imposition of the DT&I conditions can thus discourage price and service innovations by affected rail carriers, can dissuade carriers from pricing according to actual costs, and can inhibit both intermodal and intramodal competition.

We have broadened our reappraisal of DT&I conditions by instituting a rulemaking to determine the advisability of eliminating DT&I-type conditions in all past and future rail consolidations. In Ex Parte No. 282 (Sub-No. 5), Rulemaking Concerning Traffic Protective Conditions In Railroad Consolidation Proceedings (published July 10, 1980), n49 we are considering whether to eliminate [*129] the standard traffic protective conditions in all rail consolidations, both

past and present. If we decide to eliminte past conditions, those protected by these conditions may file comments demonstrating that the facts of a particular situation warrant the continuation of the past interpretation and present enforcement of the conditions. A carrier would have to show, however, that elimination of the conditions would result in substantial impairment of its ability to provide essential rail service

n49 *45 F R. 46461 (1980).*

The rulemaking proceeding is an attempt to formulate a policy of general applicability and is an extension of a policy developed in the recent cases The final rulemaking should be issued soon after our decision here

We will not impose traffic protective conditions in this case Only B&M, DTSL and Frisco remain in the proceeding seeking imposition of some form of traffic protective conditions. All other carriers have either withdrawn their requests or have failed to present any evidence to support imposition of the conditions.

None of the remaining carriers has specified in its evidence how DT&I conditions would provide it any greater protection [*130] from possible effects of the consolidation than is now provided by the statute Frisco specifically aruges that the same traffic protective conditions it granted of Family Lines pursuant to a stipulation in the BN-Frisco case should be imposed on applicants here Frisco, however, does not show why the conditions are needed even though it was on notice from the initial stages of the case that applicants would not acquiesce in the imposition of the conditions.Carriers cannot assume that we will impose conditions without an adequate demonstration of need We do not believe that protestants have shown that the new competitive situation requires DI&I-type conditions.

Moreover, the statute provides protection in the same areas covered by the DT&I conditions. These protective provisions include (1) *49 U S C 11101,* which requires railroads to provide service and establish reasonable through routes and rates; (2) *49 U.S.C 10741,* which requires equal interchange facilities; (3) *49 U.S.C. 10705*(a), which authorizes the Commission to establish through routes, joint rates, and division of joint rates; and (4) *49 U S C 10705*(d) which prevents the cancellation of existing joint rates and [*131] through routes where a cancellation is not in the public interest.

B&M. -- In addition to some of the standard traffic protective conditions, B&M seeks, for a period of 5 years following consummation, certain conditions which would insure (1) that Family Lines and Chessie will not act as a system, (2) certain traffic allocations from CSX carriers, (3) new joint rates, and (4) labor protection monies. B&M also seeks indemnification for traffic diverted from it by CSX carriers.

B&M claims these conditions are needed because of the potential of the consolidated system to divert substantial traffic away from it. B&M submitted no traffic study or other evidence to substantiate its claim We have no basis to grant B&M's requested relief.

DTSL -- DTSL requests the imposition of special traffic protective conditions if the standard DT&I conditions are not imposed. DTSL has not shown any relationship between its special protective conditions and any alleged anticompetitive impact of the CSX consolidation. DTSL's requested conditions are designed to maintain the existing status between DTSL and applicants (primarily B&O and C&O) on present routings to and from DTSL via the [*132] Toledo interchange, and to maintain present operations, schedules, joint arrangements and practices. The CSX consolidation will not give C&O or B&O any significant advantage at the Toledo interchange that these carriers do not already possess. As shown by its earnings in the past several years, DTSL has been successful in protecting itself in the Toledo-Detroit market by offering an efficient competitive service The consolidation will have no effect on DTSL's present ability to compete No additional conditions will be imposed.

Stipulations

CSX entered into settlement agreements with six carriers -- Southern, NW, D&H, DT&I, FEC, and GTW -- and with the Commonwealth of Virginia. Under the terms of their respective agreements, the six carriers have all withdrawn their opposition to the consolidation. Under its settlement agreement, Virginia withdrew its opposition to the related coordination projects in the Newport News-Norfolk area. Specific discussion of some of these settlements follows. The stipulations involving Southern and GTW are not discussed because the terms of those settlements do not call for any present specific Commission action.

In connection with NW's application [*133] for trackage rights over B&O in Cincinnati, OH, we will also discuss its related terminal rights application to operate over Conrail's line in Cincinnati.

NW trackage rights. -- Of the 10 applications initially filed by NW in response to the CSX application, five remain pending because of the settlement agreement. n50 Three of the applications involve operations over CSX railroad lines, one over Southern (an agreement with Southern is on file), and one over Conrail (no agreement has been reached). Under the terms of the trackage rights agreements with CSX and the NW-CSX settlement agreement, none of the agreements amy take effect unless we approve the consolidation.

n50 Withdrawn by NW are its applications in Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, 4 and 7). These applications sought acquisition of L&N coal interests in eastern Kentucky, acquision of CCO, acquisition of B&O's potential interest in the DT&I, acquisition of SCL's interest in the Winston-Salem Southbound Railway (WSSB), and trackage rights over SCL in order to serve directly the Virginia Electric Power Company plant in Wheelwright, VA.

The trackage rights applications, as amended by the agreements submitted [*134] by NW on March 18, 1980, are over

(1) 7.8 miles of B&O's line in the vicinity of Cincinnati, OH, from milepost 10.9 at B&O's connection with Conrail near East Norwood, OH, to milepost 3.1 at B&O's connection with Southern at Brighton, OH. (Finance Docket No. 29009 (Sub-No 5).)

(2) 28.59 miles of C&O's line between Glasgow and Lynchburg, VA, from milepost 1.08 at Glasgow to milepost 174 89, at Balcony Falls, VA, a point of connection with C&O's mainline, and from milepost 174.89 to milepost 147.38 at Lynchburg, VA, a point of proposed connection between C&O and Southern (Finance Docket No. 29009 (Sub-No.6).)

(3) 176.21 miles of B&O and WM lines between Connellsville, PA, and Hagerstown, MD, (a) between B&O's connections at Connellsville, PA, with NW's sracks, and with the tracks of Pittsburgh and Lake Erie (P&LE), on the one hand, and B&O's connections with the tracks of WM at Cherry Run, WV, on the other hand, a distance of approximately 156.60 miles and (b) between WM's connection with the tracks of B&O at Cherry Run, WV, and WM's connection with the tracks of NW at Hagerstown, MD, a distance of approximately 19.61 miles. (Finance Docket No. 29009 (Sub-No 8).) [*135]

In addition to the trackage rights, NW, WM, and B&O entered into an agency agreement whereby WM will handle traffic in NW's own account between Connellsville, PA, and Hagerstown, MD, as agent of NW for a fixed price for loaded and unloaded cars. NW states that this agreement is subject to our prior approval Such an arrangement, however, is a private contractual matter between the parties, and we see no reason to act specifically on it. We certainly will not impose it as a condition in this case. This is the type of agreement parties should negotiate and implement themselves.

The only opposition to any of the NW-CSX trackage rights have come from labor representatives NW states that it will accept the standard employee protection conditions.

Glasgow-Lynchburg. -- Looking first to NW's request for trackage rights over C&O between Glasgow and Lynchburg, VA, and over Southern in Lynchburg, we find that the rights will provide substantial public benefits and should be approved By providing a direct connection between Glasgow and Lynchburg, NW traffic presently moving between and beyond these points will be moved more efficiently. The new route will be 60 miles shorter than [*136] the present route through Roanoke, and it will avoid a time-consuming cross-yard movement in Roanoke. Additionally, by linking NW's Shenandoah and Norfolk Divisions through a direct north-south connection, NW's north-south Allegheny corridor will be competitive with other north-south corridors.

Also, we find that NW's operation over these tracks will not interfere with, or require any significant changes in, current operation over the lines. The tracks will easily accommodate the addition of NW traffic.the terms of the agreements appear to be fair to all parties

Connellsville-Hagerstown. -- Looking next at NW's amended application for trackage rights over WM and B&O between Connellsville, PA, and Hagerstown, MD, we find that this application also provides many public benefits and should be approved.

NW's Pittsburgh Division stretches from Toledo, OH, through Canton, Columbus and Pittsburgh, to Connellsville. It comes to within 180 miles of reaching and connecting at Hagerstown with NW's Shenandoah Division and thus providing NW with a single-line route between the Pittsburgh area and the Southeast.

WM, through its own tracks and its trackage over B&O, connects Connellsville [*137] to Hagerstown. WM historically provided service to NW as part of the "Alphabet route" connecting NW's midwestern lines to north and northeastern carriers. Over the past 10 years, however, NW's interchange with WM has decreased substantially. CSX traffic studies show the likelihood of further declines under the consolidated system.

The requested trackage rights could be used by NW to move its own traffic from Connellsville east to Hagerstown (1) for interchange with Conrail and D&H for movement to the east and northeast (the "Alphabet route"), or (2) to NW for movement to the South. This ability to route traffic between Connellsville and Hagerstown would be clearly beneficial to efficient and reliable operations of the traffic over this routing. The rights will link the NW system between the Pittsburgh area and the Shenandoah Valley Division, thus enabling NW to institute better service between major parts of its railroad system. In light of the changes in the competitive structure brought on by the CSX consolidation, this ability to route north-south traffic more efficiently will improve NW's north-south posture to meet the competition.

We find the agreements fair to all parties. [*138] Furthermore, the rights will impose no operating problems.

Cincinnati interchange --

Background -- By its various applications relating to Cincinnati, NW is attempting to establish for itself an alternate route for interchange with Southern at Southern's Gest Street Yard. The new route has two purposes: (1) to improve the NW-Southern interchange at the important Cincinnati gateway, thereby providing both carriers the capability to conduct dependable and efficient service so as to meet the competitive challenge offered by CSX; and (2) to alleviate safety and environmental problems posed by NW's present interchange with Southern which is made by movement from NW's Clare Yard, located on the east said of the city, over the Front Street Line on Cincinnati's riverfront. The present route traverses a populated residential-recreational complex on the banks of the Ohio River known as the Central Riverfront Area. Southern's yard is located west of the city's business district. A map of the area is contained in appendix H.

Under its proposal, NW could avoid the riverfront route by looping north around the city. NW enters Cincinnati from the east via a line from Portsmouth, [*139] WV. NW would route its traffic to a connection with Conrail at Oakley Junction, using trackage rights over Conrail for 1.1 miles to East Norwood, a connection with B&O. From East Norwood, NW would use trackage rights over B&O for 7.8 miles to Southern's yard.

As part of the settlement agreement between NW and CSX, B&O agreed to give NW trackage rights over its 7.8-mile segment. However, NW and Conrail have not agreed on the use of conrail's 1.1-mile segment.

We cannot authorize operations over the lines of a carrier pursuant to a trackage rights application under *49 U.S.C. 11343* without the consent of the carrier owning the line. Therefore, NW's application for trackage rights over the Conrail segment must be denied. However, because the Conrail track is an integral link in NW's proposed operations over the B&O line at Cincinnati, NW filed an application under *49 U.S.C. 11103* n51 for authority to operate over the same Conrail segment The city of Cincinnati supports the NW proposals and filed evidence in each proceeding

n51 Section 11103 provides that:

> The Interstate Commerce Commission may require terminal facilities, including main-line track for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title, to be used by another rail carrier if the Commission finds that use to be practicable and in that public interests without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.[Emphasis added.]

[*140]

Discussion. -- We will grant both applications, thereby enabling NW to operate over an alternate route in lieu of its riverfront operation The new route will generate substantial public benefits, by way of improved service capabilities and environmental and safety considerations. NW's proposed use of the Conrail segment is practicable and will not impair Contrail's ability to handle its own business.

The new route will allow NW to improve its interchange operations at Southern's Gest Street Yard Because of the CSX consolidation, NW will lose L&N as a friendly connection for traffic moving between its points north of Cincinnatie and L&N's in the Southeast Southern itself will lose, to a degree, Chessie carriers as friendly connections for traffic interchanged between them in Cincinnati.

Current operations along Front Street are restricted because NW has agreed to the city's request to limit the hours the track is the use. This, in conjunction with the probable increase in interchange between NW and Southern, could cause further operating problems, such as congestion and delays in transit.

Far more impressive, however, are the environmental and safety benefits. [*141] NW's operations now pose a serious obstacle to the city's redevelopment plans for the Central Riverfront Area. The area contains several parks, a public landing, high-rise apartment complexes, and a sport complex that includes Riverfront Stadium and Coliseum. A variety of public witnesses, including Congressmen from the district, city officials, and members of local civic organizations testified about the need to remove as much traffic from that line as possible. n52 Unless NW is allowed to operate over the alternate route, the citizens who use the recreational facilities along the riverfront will continue to face hazards and annoyances.

n52 NW does not propose to abandon its Front Street track, but will use it only as a detour route

The Commission's Energy and Environment Branch (EEB) found in its Final Environmental Impact Statement (FEIS) that the NW proposal would conform with local land use plans, that there would be no significant adverse environmental consequences as a result of the proposal, and that rerouting of NW's traffic from the Central Riverfront Area would constitute a positive environmental impact.

In determining the public interest, especially when giving [*142] consideration to a grant of operating authority over a carrier's lines pursuant to section 11103, we must take into consideration not only the interests of shippers using the service involved, and the interests of the carriers, but also the interests of the residents of Cincinnati. n53 In balancing all the various interests, we find that the NW proposals are clearly in the public interest.

n53 See, *City of Hialeah, Fla. v. Florida East Coast Ry Co , 317 I C.C. 34, 36 (1962)*

We also find that NW's use of Conrail's 1.1-mile segment is practicable and will not impair Conrail's ability to handle its own business The segment is not used now by Conrail for the through movement of traffic. Conrail only uses the northern end of the tracks, and that only to reach an industry located on an industrial spur which extends off the segment. The evidence suggests that Conrail's use for that purpose is infrequent and for short periods.

In connection with its operations over the segment, NW anticipates that a substantial amount of track rehabilitation and reconstruction will be required.NW proposes to reimburse Conrail for the cost of performing the work. Specifically, connections [*143] at both ends will be installed or reconstructed and the track rehabilitated. NW estimates the total cost at $1.1 million.

Conrail itself has trackage rights over a portion of the B&O segment that NW now seeks rights over, but with access to the B&O track from a point different from the 1 1-mile segment at issue here.Conrail argues that NW's operations over B&O's line will impair Conrail's operations because of the congestion on the line that will result. Conrail points to evidence submitted by CSX witnesses in opposition to NW's request, prior to the parties' settlement. Conrail states that the B&O segment that would have to handle the traffic of all three carriers does in fact not have the capacity to do so, and, therefore, NW's proposed operation over B&O track via Conrail's line is impractical.

We disagree. First of all, whatever evidence submitted by CSX in prior opposition to NW's proposed use of B&O's line has to be discounted in light of CSX's acquiesence. We believe that any problems B&O may have perceived were not serious ones Second, our examination of the evidence leads to the conclusion that, given N&W's projected use of the line, adequate capacity does [*144] exist to handle movements by Conrail and NW to and from Southern's yard.The CSX evidence does not withstand close scrutiny regarding its congestion studies, its methodology, or its failure to consider the reduction of congestion to result from a new yard then under construction.

Finally, Conrail challenges our jurisdiction to grant NW's application, arguing that the involved track is not a "terminal facility" as that term is used in section 11103. Again, we disagree.

The act does not define terminals or terminal facilities, but it does say that "terminal areas" are areas within which carriers "transfer, collect or deliver" freight. *49 U.S.C 10523.* The Commission has traditionally included in the term "terminal facility" any property of a carrier which assists in the performance of the functions of a terminal n54 In addition, since our power to make terminal facilities of one carrier available to another is remedial in nature, the term should be construed liberally. n55 Further, section 11103 is not limited in scope to the terminal itself. Rather, it applies to track within a reasonable distance "outside of" a terminal which is necessary for access to the terminal. In classifying [*145] a track as a terminal facility, we look to the use to be made of the track. n56

n54 *Hastings Commercial Club v. Chicago, M & St. P R. Co., et al., 69 I C.C. 489, 494 (1922)*

n55 *City of Milwaukee v. Chicago & N W. R. Co., 283 I.C.C 311, 314 (1951)*

n56 *Florida East Coast Railway Co v United States, 256 F Supp 986, 989 (1966),* affirmed *386 U S 8*

NW's use of Conrail's track to get to and from interchange facilities in Cincinnati satisfies us that the track is indeed a terminal facility within section 11103. Conrail does not dispute that the track lies both within the switching limits of Cincinnati and within its terminal district. The track will be used by NW to provide a necessary link between several important terminal facilities in Cincinnati. Conrail's track is as much a terminal facility as the terminal properties it links.

NW and Conrail should expend their best efforts to agree upon the terms of compensation for NW's use of the track If these efforts fail, we shall fix the compensation as required under section 11103.

D&H trackage rights. -- D&H and CSX entered a settlement agreement on March 14, 1980, whereby D&H would be granted [*146] trackage rights over WM's line from Lurgan, PA, to Hagerstown, MD, and over B&O's line from Shenandoah Junction, WV, to Anacostia Junction, DC. D&H withdrew its request for various other protective conditions and amended its applications to reflect the terms of the agreement. n57

n57 D&H initially had sought trackage rights, in addition to those now sought, over B&O between Park Junction, PA, and Washington, DC, and over WM between York, PA, and Baltimore, MD, and between York, PA, and Hagerstown, MD

Specifically, the lines involved are·

(1) between B&O's connection with NW at Shenandoah Junction, WV, and the connection with Conrail at Anacostia Junction, DC, a distance of approximately 72.07 miles; and

(2) between WM's connection with Conrail at Lurgan, PA, and WM's connection with NW at Hagerstown, MD, a distance of approximately 34 51 miles; and additional trackage in Hagerstown, MD, for a total distance of approximately 36.78 miles.

D&H seeks the trackage rights to establish an alternate route for access to Potomac Yard in Alexandria, VA, a major interchange between northern and southern carriers.Presently, D&H operates between its own lines at Sunbury, PA (north of [*147] Harrisburg), and Potomac Yard via joint lines with Conrail and National Railroad Passenger Corporation (Amtrak). Operation over Conrail includes a route between Harrisburg, PA, and Perryville, MD. H&H then operates over the portion of Amtrak's northeast corridor between Perryville and Alexandria, VA. The use of these lines results from grants of the United States Railway Association (USRA) as part of its Final System Plan.

On its present route D&H encounters significant delays between Perryville and Potomac Yard because of the demands of Amtrak's passenger service over that segment. D&H also faces restrictions associated with operations through a tunnel at Baltimore, and delays because of rehabilitation of the corridor. The delays are likely to continue because completion of maintenance work on the corridor will facilitate passenger train operations, thereby aggravating the problem of operating freight trains.

The proposed route would be from Harrisburg to Anacostia Junction via Hagerstown and Shenandoah Juncation. n58 Operation over this route, however, would require (in addition to the trackage rights sought here) trackage rights over NW between Hagerstown and Shenandoah Junction, [*148] and trackage rights over Conrail between Harrisburg and Lurgan. NW has informed D&H that it is willing to grant the trackage rights. n59 Conrail has not given such assurance, but D&H states that the rights may be available under the supplemental transfer provision of the 3R Act. n60

n58 D&H already has operating rights from Anacostia Junction to Potomac Yard

n59 D&H is indirectly controlled by NW, but is not operated as part of a system.

n60 Regional Rail Reorganization Act of 1973 (3R Act), Public Law 93-236, 87 Stat. 985 (1973).

Thus the proposed rights are only the initial step to secure the alternated route. If we grant D&H's present applications, no service could be instituted because authority to operate over the necessary links in the route is lacking However, we do not consider the lack of such authority at this time fatal to D&H's requests. In analyzing the present applications, we have assumed that D&H will later file the appropriate applications to complete the route Any protestants at that time may challenge the transaction. We will reexamine our findings in light of any evidence that protestants may submit. If that evidence suggests that the [*149] Harrisburg to Anacostia Junction route is not in the public interest, we may negate our action herein by denying those applications. Nevertheless, we will act on the present application in order to avoid unnecessary refilings.

We approve D&H's application. We find that the trackage rights will provide public benefits by improving D&H's transit time between points on its own lines and Potomac Yard.

Better and quicker service by D&H will help in its solicitation efforts and thereby enhance competition in the north-south market

Because the rights are for overhead traffic only, they will not open any new markets to D&H. However, the rights will help D&H strengthen its efforts to serve existing markets more efficiently. We might add that the traffic D&H removes from the northeast corridor will lessen congestion there and aid Amtrak and Conrail in scheduling operations and reducing delays.

D&H's traffic will be a relatively small percentage of the traffic handled over the B&O and WM lines and should cause no operating difficulties for those carriers. We find the terms of the agreements fair to all parties

DT&I. -- DT&I and applicants agreed to numerous terms in their stipulation [*150] The stipulation includes the standard traffic protective conditions as well as certain additional traffic conditions pertaining to coal and auto parts traffic, and a provision calling for cooperation in maintenance of joint rates and routes. The parties seek to have these conditions imposed in any decision approving the consolidation.

We have already addressed the imposition of standard traffic protective conditions and determined that we will not impose them. As to the additional conditions, we see no reason to impose them because the parties themselves can agree to such arrangements without approval from us.

The stipulation also contains provisions for future trackage rights and coordinated through service. These terms do not call for action from us at this time.

FEC. -- FEC states that it has no objection to the consolidation provided approval is conditioned on the observance by the parties of their settlement agreement. Their agreement provides for Chessie carriers to be bound by an agreement between SCL and FEC entered in April 1978, pursuant to a settlement of an FEC complaint against SCL. In the instant settlement, Chessie agrees to be bound to the same extent [*151] as L&N is in the SCL-FEC agreement.

We find no need to impose on this transaction a requirement that the parties observe the agreement. The agreement specifically states that the parties may apply to a court of competent jurisdiction for enforcement without prior resort to the Commission. These remedies are sufficient to protect the parties' interests.

Labor

The statute, at *49 U.S.C. 11344*(b)(4) and 11347, requires us to consider the interest of, and provide protection for, carrier employees affected by a consolidation. We have considered the effect of the proposed transactions on the interest of carrier employees affected by the proposed transaction. We find that, with the conditions discussed below, the transaction is consistent with the public interest, insofar as carrier employees are concerned.

In *New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979)* (New York Dock), we described the minimum protection to be afforded those employees, absent a voluntarily negotiated agreement. n61 We say, if we choose, fashion employee protective conditions that are tailored to the special circumstances present in an individual case which may provide greater protection [*152] than New York Dock conditions. n62

n61 Applicants have not entered into any agreements with employee organizations

n62 *New York Dock Ry v United States, 609 F. 2d 83 (2d Cir 1979)*

Applicants and labor organizations request modifications of the New York Dock conditions. We find, however, that the minimum requirements of New York Dock are appropriate for the protection of employees without any of the suggested modifications. We will impose those conditions in this case.

Applicants estimate that the consolidation will actually increase the number of jobs on Chessie and Family Lines railroads, by a net of 276 positions. n63 The bulk of those created, 346 positions, will result from the increased production of railcars at Chessie's Raceland facility in Russell, KY. A number of positions will be abolished under the operating coordinations pursuant to applicants' related applications. These dislocations, however, are said to be short-lived. It is anticipated that all changes in employee positions will occur within 6 months following final approval of the applications. Applicants contend that, in contrast to the short-term impacts, the transaction will permit [*153] the combined system to compete more effectively, thereby improving railroad employment opportunities over the long term.

n63 The transaction involves the transfer of 15 positions, the creation of 446 new positions, the consolidation of 484 positions, and the abolishment of 170 positions. By the end of the third year following consummation, based on 1977 data, total savings from positions abolished are estimated to be $3,935,860, and costs for new positions created are estimated to be $10,531,576.

ARSA, et al., and BLE-RYA argue that the enumerated estimates are only the tip of the iceberg of adverse employee impact. Besides being grossly underestimated, ARSA contends that applicants' employee impact figures do not reflect the effect bound to occur as the needs of the system develop.The exercise of seniority bidding and bumping rights by affected employees will begin a rippling effect which will result ultimately, ARSA argues, in the uprooting and dislocation of families as displaced employees are forced to seek alternative employment.

We find that the applicants' estimate of employee impacts is reasonable. What dislocations there are promise to be short term. It is certainly [*154] possible that as the two systems mesh their operations, additional coordinations may occur that could lead to further employee displacements. However, no wholesale disruption of the carriers' work force should occur. Only at points where the basically end-to-end systems meet does it appear that perceptible dislocations will result. Those common point locations are clearly identified. We believe that the standard conditions will adequately protect those employees now identified as affected by the consolidation as well as those who may be affected in the future, but are not now identified specifically.

ARSA believes that the standard protective conditions are not adequate. It proposes certain modifications of the New York Dock conditions in order to bring them into compliance with the requirements of *49 U.S C. 11347,* and other modifications to fit the special circumstances of this case.

ARSA proposes three modifications it believes are necessary to bring New York Dock conditions into compliance with the statutory requirements. They are: (1) a modification of article I, section 1(c), to incorporate protection against being required to relocate a residence; (2) an alteration in [*155] the relocation benefits provision; and (3) an alteration in the duration of the protective period for affected employees.

The New York Dock conditions are significantly more protective of railroad labor than any previously imposed set of employee protective conditions. They in fact do satisfy the employee protection mandated by the statute n64 In BN-Frisco, n65 we specifically rejected a labor organization's arguments that those same modifications were required to bring the standard conditions in compliance with the statute. We once again reject those arguments.

n64 *New York Dock Railway v. United States, 609 F. 2d 83 (2d Cir. 1979)*

n65 *360 I C.C. at 946*

The modifications ARSA claims should be made in light of particular circumstances in this case include: a "conclusive presumption" standard wherein a displaced or dismissed employee is presumed to have been affected by the transaction for a period of 10 years following consummation (in effect, an attrition-type condition), an allowance for employees with less than 1 year of service; modification of forfeiture of protective benefits; and modifications to the test

period to be used in calculating displacement [*156] and dismissal allowances. Several other modifications are also suggested

We do not believe the circumstances in this case call for us to impose a greater degree of employee protection than the statutory minimum. ARSA's arguments in support of the proposed modifications simply to not show how this transaction requires special protections.

As to ARSA's "conclusive presumption" suggestion specifically, we find this attrition-type protection particularly unnecessary. We have consistently refused to impose this kind of protection in consolidation cases. Such conditions are calculated to preserve unnecessary jobs and unduly restrict a carrier's ability to established economical operations. n66 BLE-RYA also request certain attrition-type conditions. We reject those for the same reasons.

n66 See, *Oregon Short Line R. Co -- Abandonment -- Goshen, 354 I C C 76, 83-84 (1977)* and cases cited therein.

As to ARSA's remaining conditions, we also find that they are not needed. An expansion of employee protection imposes further restrictions on a carrier's ability to use its employees productively. The conditions requested by ARSA would have the effect of doing just that. We see [*157] no reason to exercise our discretion to impose protection greater than the statutory minimum in areas suggested by labor.

Both ARSA and BLE-RYA propose conditions which would extend protection to employees of nonapplicant railroads. They cite two court cases, *Railway Labor Executives' Association v. United States, 216 F. Supp. 101 (E.D. Va. 1963)* (RLEA) and *Soo Line R. Co v United States, 216 F Supp. 907 (D Minn 1968)* (Soo Line) to support their requests.

We have never imposed labor protection conditions for the benefit of nonapplicant carriers' employees. n67 The only exception to this policy involves employees who, by the nature of their work, could effectively be considered employees of the applicants We adhere to this longstanding policy here. RLEA does not require us to change our policy because RLEA is entirely consistent with our practice Soo Line stands for the proposition that when employees of a competing carrier show that a transaction will directly and adversely affect them, the Commission must either provide for protection of the employees or protect the competing carrier.It stands alone as a departure from the mainstream of agency and judicial [*158] interpretation of *49 U S C. 11347.* It also predates the 4R Act amendment to the statute by which Congress ratified our interpretations of labor protection requirements.

n67 See *Baltimore & O.R. Co. Operation, 261 I.C.C. 615, 620 (1946)*

In any event, aside from general allegations that diversion of traffic from competing railroads will necessarily lead to a reduction in the number of employees necessary to operate the competing carriers' lines, there is no evidence on the transaction's effects on nonapplicant carriers' employees.

Applicants also propose modifications to the New York Dock conditions. These involve (1) the definition of "transaction" (article I, section 1(a)); (2) the notice, negotiation and arbitration provisions (article I, section 4); and (3) moving expenses (article I, sections 9 and 12).

We find applicants' suggestions unnecessary. We considered these proposals, or something very similar to them, when we promulgated the New York Dock conditions Applicants do not persuade us that those cited provisions need any further elaboration or modification.

Applicants have a number of related abandonment and trackage rights applications which we have approved. [*159] We are imposing employee protective conditions on those transactions even though it is apparent that any employee affected by these related proposals would be covered under the New York Dock conditions imposed in the primary application. This requires some explanation.

In abandonment proceedings, we impose the conditions specified in *Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979)* (Oregon III).These conditions are identical to the New York Dock conditions. In trackage rights cases we impose conditions specified in *Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I C.C. 605 (1978)* (NW-BN), as modified by *Mendocino Coast Ry., Inc -- Lease and Operate, 360 I.C.C 653, 664 (1980)* (Mendocino). These conditions differ in certain respects from the Oregon III and New York Dock conditions because it is recognized that trackage rights and lease transactions frequently have lesser disruptive employee impacts than those

involving other types of transactions. The lesser degree of protection, however, has no practical significance here because, as stated in Mendocino

The greatest impacts are likely to result from such transactions where they are [*160] related to abandonments of service or to anticipated mergers requiring our approval. However, in such cicumstances, these employees would be protected by the provisions established in Oregon III and * * * [New York Dock] which would be incorporated into any authorizations in the related proceedings n68

n68 *360 I.C C. at 663.*

Finally, in the NW and D&H trackage rights applications which we are approving, we find that employees will be protected adequately by imposition of protective conditions specified in NW-BN, as modified in Mendocino

Environmental impacts

On December 28, 1979, the Commission's Energy and Environment Btanch (EEB) issued a Draft Environmental Impact Statement (DEIS), analyzing the primary application, related applications, inconsistent applications, and trackage rights applications. The Final Environmental Impact Statement (FEIS) was completed following cross-examination at the public hearing and receipt of written comments.

The FEIS analyzes the environmental impacts of the consolidation on both a regional and systemwide basis. The systemwide analysis considered the cumulative effects of the regional proposals and traffic diversions. Both analyses [*161] considered the effects on (1) land use and community development, (2) economic and industrial development, (3) labor, (4) transportation, (5) energy, (6) air quality, (7) noise, (8) safety, (9) aquatice and terrestrial environment, and (10) historic and cultural resources. The areas considered included Cincinnati-Lexington-Louis-ville, Chicago, northwestern Indiana, East St. Louis, Richmond-Newport News-Portsmouth, and eastern Kentucky We will not repeat the detailed analysis. We will only summarize the general conclusions and highlight certain areas involving controversy or requiring special attention.

In general, the FEIS indicates there will be no significant adverse impacts on the quality of the human environment as a result of the primary and related applications. Internal rerouting, diversions from other carriers, terminal consolidations and reduced empty car-miles will result in the estimated saving of 13,573,000 gallons of diesel fuel annually. The statement concludes: "On balance, the systemwide set of CSX proposals is seen to have a generally insignificant, but beneficial, effect on the human environment." We agree with the FEIS

The only significant opposition concerns [*162] the Chicago consolidations. The villages of South Holland and Dolton, IL, argue that the Chicago proposals will subject single-family dwellings in the affected area to an undue amount of noise and air pollution, and will cause acute safety problems by blocking the passage of emergency equipment through numerous grade crossings. UTU, the State of Illinois, and the Illinois Commerce Commission have made similar objections. Applicants object to EEB's suggestion that they be required to submit a noise abatement plan as a condition to a grant of the Chicago proposal.The Environmental Protection Agency (EPA) has commented in support of the noise abatement requirement

We agree that the Chicago coordinations will cause some air pollution, noise pollution, and safety problems. However, the increments caused by this proposal are slight; the major problems in these areas exist already. The consumption of 46,463 gallons of additional diesel fuel will have only an insignificant effect in relation to the Metropolitan Chicago Interstate Air Quality Control Region. Similarly, the effect on public safety through blockage of grade crossings is also projected to be slight. As discussed [*163] below, the increased noise pollution problems caused by this application are inconsequential.Furthermore, the Chicago operations will result in many public benefits including· increased flexibility in routing traffic through the Chicago gateway, opportunities for other operational benefits, and beneficial impacts on industrial development in the region On balance, we believe the slight adverse environmental effect cited by protestants will not support a denial of the Chicago applications

We will not impose a noise abatement plan requirement upon applicants' Yard Center operations. The FEIS states that the changes proposed by CSX at Yard Center would cause outdoor noise levels (Ldn) from rail operations to rise by 0.6dBA. n69 Such an increase is imperceptible, but would expose 150 additional residences to an Ldn from yard operations of more than 55dBA. Due to its insignificance, the increase in Ldn should go unnoticed by the occupants of the 150 residences. While the CSX proposal would worsen an already adverse noise situation, the effects of the Chicago applications alone are slight; further, the evidence suggests that the FEIS may have exaggerated the significance of yard

[*164] noise as a source of noise pollution. We therefore do not believe that the record justifies the imposition of a noise abatement plan.

n69 The EPA has established a goal that Ldn should not exceed 55dBA for residential areas. The State of Illinois has also set noise criteria at 61dBA for daytime and 51dBA at night.

The FEIS recommends three additional conditions: (1) a requirement concerning proper procedures governing L&N's salvage operations over the Kankakee and Little Calumet Rivers, between Medaryville and Michigan City, IN, (2) a requirement that B&O conduct an archaeological survey of a proposed construction site in St. Louis, and (3) a requirement that C&O and L&N consult with certain governmental agencies concerning the proper construction procedures to be used at Martin Yard and Deane, KY. There is no opposition to these conditions. They will be imposed.

The FEIS states that two segments to be abandoned, between Medaryville and Michigan City and between North Vernon and Nabb, were found to be suitable for alternative public uses. Segments in the other abandonments were not found to be suitable. We agree with these findings.

In addition to the primary [*165] application, the FEIS also considers the environmental impacts of inconsistent and trackage rights applications and requests for protective conditions filed by other railroads. The only applications still pending are NW's applications for trackage rights in and around Cincinnati, between Glasgow and Lynchburg, and between Connellsville, PA and Hagerstown, MD, and D&H's application for trackage rights between Shenandoah Junction, WV, and Anacostia Junction, DC, and between Lurgan, PA, and Hagerstown, MD. The EEB concludes that a grant of these applications would have no adverse environmental impacts. No opposition to these findings has been received. We concur with the EEB's finding.

Inclusion of other carriers and fixed charges

We are required to determine whether or not to include other carriers in the territory in a consolidation, and also to determine the effect of total fixed charges that will result in the proposed transaction. n70

n70 See *49 U S C. 11344*(b)(2) and (3).

No carriers have sought inclusion in the new system. We conclude that inclusion is not necessary for this transaction to be consistent with the public interest.

We also find that there will be no [*166] significant increase in fixed charges as a result of any of the prospective coordinations in operations among the constituent carriers in the new system or as a result of any other aspect of the consolidation.

Stock exchange

The consolidation will be effected through a conversion and exchange of Chessie and SCLI stock for CSX shares. The stock exchange ratios were derived by arm's-length negotiations between the applicants and have been approved by the respective boards of directors and by the overwhelming majority of stockholders. This indicates that those persons directly affected by the exchange have been accorded an opportunity to review and evaluate the plan in light of their respective interests and are satisfied with the result. Equally significant is evidence in support of the exchange ratios submitted by financial analysts with expertise in the field of security exchanges. In light of these observations and our own review to the exchange ratios, we find that the ratios are fair to the shareholders and should be approved.

Control of STC

CSX seeks authority under *49 U.S C. 11344* to acquire control of STC, a motor carrier. That section provides:

When a rail [*167] carrier, or a person controlled by or affiliated with a rail carrier, is an applicant and the transaction involves a motor carrier, the Commission may approve and authorize the transaction only if it finds that the transaction is consistent with the public interest, will enable the rail carrier to use motor carrier transportation to public advantage in its operation, and will not unreasonably restrain competition.

Where a transaction involving control of a moror carrier by a railroad or railroad affiliate results only in a change of form rather than a change of substance, the proviso of *49 U.S.C. 11344*(c) is not applicable. In such a case, the proper standard is the public interest test alone n71

n71 *BN-Frisco, 360 I.C.C. at 958, New York Central R. Co. (Delaware) Merger, 312 I.C.C. 417, 419 (1961).* See also, *Atchison, T. & S.F. Ry. Co. -- Control -- Santa Fe Trail Transp., 15 M.C.C. 469, 472 (1938)* and *Greyhound Mergers, 1936, 1 M.C.C. 342, 351 (1936).*

STC provides a motor carrier service that is generally restricted to, or supplemental of, rail carrier service provided by SCL. There will be no change in STC operations as a result of the proposed transaction. Therefore, [*168] this transaction is merely a change in form, not substance, and is to be governed by the public interest test.

The purpose of the CSX consolidation is to create a healthy railroad system capable of providing adequate service to the public. The control of STC by CSX is merely a collateral impact of the merger. It will not result in any change of STC's physical properties, nor will it adversely affect the transportation service rendered to the public. The proposed transaction will create no new motor carrier network, and there will be no adverse effect on existing carriers. Control is, therefore, approved.

Control of RF&P

As a result of the consolidation, CSX will gain control of RF&P through its combined 80-percent common stock ownership of Richmond-Washington Company, a noncarrier owning 65.9 percent of RF&P voting common stock. (The remaining 20 percent of Richmond-washington is owned by Southern.) CSX has, therefore, applied for approval of control of RF&P.

RF&P is primarily an overhead carrier operating 116 miles of railroad between Richmond and Arlington, VA. RF&P also operates Potomac Yard Joint Facility for the equal and impartial enjoyment of all users pursuant [*169] to the Potomac Yard agreement of December 31, 1927. Users of Potomac Yard include C&O, B&O, RF&P, Southern, D&H, and Conrail.

The proposed consolidation and control will strengthen RF&P by increasing the nember of movements over its lines. Applicants estimate that RF&P will enjoy a gross revenue gain of $951,000 through the affiliation. The users of Potomac Yard will continue to receive nondiscriminatory use of the yard facilities and no carrier should be adversely affected by the control. CSX control of the RF&P will be authorized.

Securities

CSX has filed a motion to dismiss all or any portion of its application to issue securities and to assume obligation and liability in respect of securities under *49 U.S.C. 11301*.

When we approve a control application in which a person which is not a carrier providing transportation subject to our jurisdiction acquires common control of more than one carrier that is subject to our jurisdiction, that person is subject as a carrier to certain provisions of the act (including provisions governing securities issuances) to the extent specified by us. n72

n72 *49 U.S.C. 11348*(a)

There is no doubt that the CSX securities application falls [*170] within our jurisdiction. The question remains as to what extent we should exercise our jurisdiction.

We have wide discretion in implementing our powers pursuant to this provision. In the past, one test of whether a noncarrier holding company should be subject to this provision has been whether the holding company is in control of carriers which by their size and nature of their operations will have a substantial influence on national transportation. *Illinois Cent. Gulf R. -- Acquisition -- G., M. & O., et al., 338 I.C.C. 805, 857 (1971).* Approval of this consolidation will place CSX in control of rail system operating approximately 27,000 miles of track in 22 States, Ontario, and the District of Columbia. The new system will hold a crucial position in rail transportation in important industrial, mining, agricultural, and population centers of our country. We believe it is fair to say that the carrier subsidiaries will have a substantial effect on the Nation's transportation system. The issuance of securities and assumption of obligation and liabilities is an integral part of the creation of this vast system, and should, therefore, be subject to our review. CSX's [*171] motion is therefore denied.

We may approve the involved application if we find the issuance or assumption (1) is consistent with the proper performance of public transportation by the carriers to be controlled by CSX Corporation, (2) will not impair the ability

of such carriers to provide public transportation, and (3) is consistent with the public interest in other respects n73 The issuance of CSX stock and assumption of obligation and liability meets these statutory requirements and will be approved.

n73 *49 U.S C 11348*(b).

As far as prospective securities applications are concerned, we see no point in subjecting the securities issues of CSX to our review when it would merely require prior approval for investments in areas over which we have no jurisdiction and where delay caused by the necessity of obtaining approval would cause CSX (and indirectly its rail subsidiaries) to lose otherwise beneficial business opportunities However, since the holding company will continue to control carriers which have a substantial impact on national transportation, these carriers should be subject to some continuing Commission jurisdiction. Recently, we have imposed fairly uniform conditions [*172] on railroad holding companies absent special conditions such as holding company abuses. See *Seaboard Coast Line R Co -- Invest. of Control, 360 I.C.C 582, 605 (1979), Missouri Pacific Railroad Company -- Merger, 360 I.C C 6 (1978), Chicago & N W Ry. Co -- Control, 347 I.C C 556 (1974);* and *Illinois Cent Gulf R. -- Acquisition -- G, M & O, et al., 338 I.C C 805 (1971).* We will impose similar conditions on CSX. CSX will be required to: (1) file annual reports on Form R-1 and to file such other periodic and special reports as we may require under *49 U S.C 11145;* (2) comply with *49 U S C. 11144;* and (3) file applications under *49 U S.C. 11301* and 11302 for those issuances of securities and assumptions of obligations which may relate to or affect the activities of carrier subsidiaries.

FINDINGS

In Finance Docket No. 28905 (Sub-No. 1), subject to the terms and conditions discussed above, we find (a) that the acquisition by CSX Corporation of control of the rail carrier subsidiaries of Chessie System, Inc , and Seaboard Coast Line Industries, Inc., through the proposed merger, is within the scope of *49 U.S.C 11343,* is consistent with the public interest, and [*173] will not adversely affect the adequacy of transportation to the public; (b) that failure to include other railroads in the area involved in the transaction will not adversely affect the public interest; (c) that any guarantee, assumption of payments of dividends or of fixed charges, or any increase in fixed charges resulting from the transaction is consistent with the public interest; and (d) that the interests of employees affected by the proposed transaction will be adequately protected by imposition of conditions.

In Finance Docket No. 28905 (Sub-No. 2), we find that the proposed issuance of securities and assumption of liabilities (a) is consistent with the proper performance of public transportation by the carriers to be controlled by CSX Corporation, (b) will not impair the ability of the controlled carriers to provide public transportation, and (c) is consistent with the public interest in other respects.

In No. MC-F-13891, we find that the acquisition by CSX Corporation of control of Seacoast Transportation Company through control of Seaboard Coastline Railroad Company, is consistent with the public interest and will enable Seaboard Coastline Railroad Company to use motor [*174] carrier transportation to the public advantage in its operations and will not unreasonably restrain competition.

In Finance Docket No 28905 (Sub-Nos. 3, 5, 9, 11, 12, 13, 14, and 16) and Finance Docket No. 29009 (Sub-Nos. 5, 6, 8, and 9) we find that the applications to acquire trackage rights, lease property, jointly use property, and coordinate operations are transactions within the scope of *49 U S.C. 11343;* that the terms of the transactions and conditions imposed on the transactions are just and reasonable; that the interests of the carrier employees will be adequately protected by the imposition of appropriate conditions; that the transactions will not result in the guaranty or assumption of payment of dividends or in an increase of the total fixed charges; that no other railroad has requested to be included in the transactions; and that approval of the transactions will be consistent with the public interest.

In Finance Docket No. 28905 (Sub-Nos. 4, 6, 7, 8, 10, and 15), we find that the present and future public convenience and necessity require and will be enhanced by the proposed constructions, acquisitions and operations.

In AB-2 (Sub-No. 25) and AB-19 (Sub-No. 41), [*175] we find that the proposed abandonments will not have a serious, adverse impact on rural and community development; that involved rail properties may be suitable for other public purposes; that the interests of carrier employees will be protected by the imposition of appropriate conditions discussed above, and that the present and future public convenience and necessity permit the proposed abandonments and discontinuances. The applicants shall not sell, lease, exchange or otherwise dispose of the right-of-way underlying the track, all bridges, and all culverts on the lines involved for a period of 120 days following issuance of the certificate

of abandonment unless this property has first been offered, upon reasonable terms, to public authorities or other reasonable persons interested in acquiring the property for public use.

In AB-18 (Sub-Nos 27, 28 and 29) we find that the proposed abandonments will not have a serious, adverse impact on rural and community development; that the involved rail properties are not suitable for public purposes; that the interests of carrier employees will be protected by the imposition of appropriate conditions; and that the present and future [*176] public convenience and necessity permit the proposed abandonments and discontinuances

In Finance Docket No. 29009 (Sub-No 10), we find that the application for trackage rights is not consistent with the public interest.

In Finance Docket No. 29258, we find that the application for terminal rights is practicable and in the public interest, and that it will not substantially impair the ability of any of the rail carriers owning or entitled to use of the facilities to handle their own business. If the carriers cannot agree upon the conditions and compensation for use of the facilities, we will establish the conditions and compensation under the principles controlling compensation in condemnation proceedings.

We find that these actions will not significantly affect the quality of the human environment. We also find that any effect on the conservation of energy resources will be beneficial

CONCURBY: TRANTUM; GILLIAM

CONCUR:

COMMISSIONER TRANTUM, concurring

As the decision indicates, applicants have shown the proposed combination to be in the public interest. However, CSX's demonstration was not exceptionally strong. CSX claims financial benefits from the merger of $70 million in the [*177] third year. Of course, these "savings" are not guaranteed; even assuming the estimates are realized, $70 million is a small return on a merger that combines $6.8 billion of assets and $4 billion of revenues. CSX also claims the merger will save $60 million in capital outlays for rolling stock. It is quite possible, however, that these savings could be achieved without merging the two railroads.

The record contains persuasive evidence that the merger will not substantially lessen competition among railroads or shippers. In fact, a number of shippers (particularly coal) situated on the lines of CSX may enjoy enhanced marketing opportunities. Protestants did not prove the opposite. Had they been able to do so, an affirmative public interest finding would have been difficult to reach.

My approval of the merger endorses the right of the Chessie and Seaboard management to exercise their discretion. Only secondarily does it reflect confidence that the merger will yield substantial financial benefits.

In the future the Commission may evaluate merger applications under more rigorous standards. (See Ex Parte No. 282 (Sub-No. 6), Proposed Policy Statement on Railroad Mergers.) [*178] Regulatory reform promises to provide railroads with a variety of important nonmerger avenues to improve their efficiency and profitability. In many cases cooperative endeavors between separate connecting railroads may offer savings as great or greater than those which would be achieved through merger.

It should be incumbent upon future merger applicants to bear the burden of demonstrating that the benefits they attribute to a proposed merger will be greater than the benefits which would result from cooperative endeavors between their separate firms. Railroads must be encouraged to acquaint themselves with and test innovative and competitive practices as an alternative to a less imaginative merger response. Railroads can realistically capture substantial benefits through fresh business opportunities created by deregulation.

The decline in the railroads' share of the transportation market particularly in the Northeast, will not be reversed simply by changing organizational and ownership entities. Management initiatives in ratemaking, cost reduction, asset utilization, and service improvements can and must be undertaken to restore competitive vitality and stimulate customer demand [*179] for rail service. To date, however, no carrier has made a convincing showing that it is positioned to take full advantage of regulatory reforms. In the final analysis, the railroad industry's future financial viability is more dependent on vigorous management responses to the marketplace than reliance on merger.

COMMISSIONER GILLIAM, concurring:

Upon review of the statements submitted in support of the application, and the protests thereto, it is clear that this consolidation will not lessen substantially competition in any relevant market. In fact, in keeping with the spirit and intent of the national transportation policy this transaction will go a long way toward strengthening north-south intermodal competition by creating additional possibilities for new TOFC operations. Also, the new single-system service will benefit the public by providing for more efficient routing of traffic, improved car utilization, and improved service by virtue of the fact that a single system offers opportunities for a vastly improved service over joint-line operations

Improvements in the efficient movement of traffic in and through the important Cincinnati gateway is one example of [*180] the consolidation's beneficial effect on service to the public. The new system should create possibilities for more expeditious service between the Southeast and points in the Great Lakes and Midwest regions, via Cincinnati. Furthermore, by our action in approving Norfolk and Western's related applications involving movements within Cincinnati, we are improving not only the interchange arrangement between Southern and NW, but we are also alleviating an unnecessary safety problem in the city's recreational area.

I strongly concur in these results.

DISSENTBY: CLAPP (In Part)

DISSENT:

COMMISSIONER CLAPP, dissenting in part:

I disagree with the majority's decision not to impose DT&I traffic conditions. I would impose DT&I conditions and reserve jurisdiction to permit modification or elimination of the conditions depending on the outcome in Ex Parte No. 282 (Sub-No 5), Rulemaking Concerning Traffic Protective Conditions In Railroad Consolidation Proceedings, *45 F.R. 46461 (1980).*

It is ordered:

(1) In Finance Docket No. 28905 (Sub-No. 1), the application is approved.

(2) In Finance Docket No. 28905 (Sub-No. 2), the motion of CSX Corporation to dismiss its application is denied.

(3) In Finance [*181] Docket No. 28905 (Sub-No. 2): (1) the issuance by CSX Corporation of its shares of common stock of $1 per share par value, in conversion from Chessie System, Inc.'s common stock and Seaboard Coast Line Industries, Inc 's common stock; (2) the issuance by CSX Corporation of not exceeding 671,121 shares of common stock of $1 per share par value, with respect to exercise of stock options issued under Chessie System Inc.'s employee stock ownership plan; (3) the issuance by CSX Corporation of common stock of $1 per share par value pursuant to Seaboard Coast Line Industries, Inc.'s dividend reinvestment and stock purchase plan; (4) the issuance by CSX Corporation of not exceeding 52,681 shares of common stock of $1 per share par value in exchange for the Baltimore and Ohio Railroad Company's first consolidated mortgage 6 1/4-percent bonds, series G; and (5) the assumption by CSX Corporation of obligations and liabilities of Chessie System, Inc., and Seaboard Coast Line Industries, Inc., with respect to any of their outstanding securities, including, without limitaton, $60 million principal amount of notes issued by Chessie System, Inc., under a loan agreement dated as of September [*182] 30, 1976, as amended, between Chessie System, Inc , and the Bank of Nova Scotia and the Bank of Nova Scotia International (Curacao) N.V. are approved.

(4) Except as authorized and set forth in the decision, no security or stock shall be sold, pledged, repledged or otherwise disposed of by applicants unless and until approved by the Commission.

(5) The applicants shall report concerning the matters involved in Finance Docket No. 28905 (Sub-No. 2) in conformity with the regulations prescribed in 49 CFR 115.6.

(6) In Finance Docket No. 28905 (Sub-No. 2), the Commission reserves rights to make any supplemental decision it may deem necessary pursuant to *49 U.S C. 11301*

(7) Nothing in this decision shall be construed to imply any guaranty or obligation as to described notes, or interest thereon on the part of the United States.

(8) In No. MC-F-13891, the application is approved.

(9) If the parties consummate the transaction in No. MC-F-13891, they shall promptly take such steps necessary to comply with *49 U.S.C. 10927*, 10762, and 10330, and with the rules, regulations, and requirements prescribed under the statute.

(10) In Finance Docket No. 28905 (Sub-No. 3), the application is [*183] granted.

(11) In Finance Docket No. 28905 (Sub-No. 4), the application is granted.

(12) In Finance Docket No. 28905 (Sub-No. 5), the application is granted.

(13) In Finance Docket No. 28905 (Sub-No. 6), the application is granted.

(14) In Finance Docket No. 28905 (Sub-No. 7), the application is granted.

(15) In Finance Docket No. 28905 (Sub-No. 8), the application is granted.

(16) In AB-2 (Sub-No. 25), the application is granted.

(17) Upon approval of the abandonment in AB-2 (Sub-No. 25) and institution of salvage operations along the involved line, Louisville and Nashville Railroad Company will be required to do the following:

1. Cut bridge structures off at streambed level to prevent disruption of bottom sediments and aquatic life.

2. Remove abutments only if excessive stream siltation can be prevented.

3. Remove bridges during the low-flow period of the year.

(18) In Finance Docket No. 28905 (Sub-No. 9), the application is granted.

(19) In Finance Docket No. 28905 (Sub-No. 10), the application is granted.

(20) In Finance Docket No. 28905 (Sub-No. 10), the authorization of the construction and operation is contingent upon the Baltimore and Ohio Railroad [*184] Company conducting an archaeological survey of the proposed construction site prior to construction of the crossover tracks near its yard in East St. Louis. This survey will be accomplished under the supervision and guidance of the Illinois Department of Conservation, Cultural Resources Division.

(21) In Finance Docket No. 28905 (Sub-No. 11), the application is granted.

(22) In AB-19 (Sub-No. 41), the application is granted.

(23) In Finance Docket No. 28905 (Sub-No. 12), the application is granted.

(24) In AB-18 (Sub-No. 27), the application is granted.

(25) In Finance Docket No. 28905 (Sub-No. 13), the application is granted.

(26) In AB-18 (Sub-No. 28), the application is granted.

(27) In Finance Docket No. 28905 (Sub-No. 14),the application is granted.

(28) In AB-18 (Sub-No. 29), the application is granted.

(29) In Finance Docket No. 28905 (Sub-No. 15), the application is granted.

(30) In Finance Docket No. 28905 (Sub-No. 15), prior to commencement of construction activities on the Martin Yard track extensions and on the Connection near Deane, KY, applicants shall consult with both the U.S. Army Corps of Engineers and the U.S. Department of Interior Fish and Wildlife Service. [*185] This consultation shall be for the purpose of identifying and complying with required procedures of the two agencies regarding the construction.

(31) In Finance Docket No. 28905 (Sub-No. 16), the amended application is granted.

(32) In Finance Docket No. 28905 (Sub-No. 17), the application is dismissed.

(33) In Finance Docket No. 28905 (Sub Nos. 18, 19, and 20), the applications are dismissed.

(34) In Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, 4, and 7), the applications are dismissed.

(35) In Finance Docket No. 29009 (Sub-No. 5), the amended application is granted.

(36) In Finance Docket No. 29009 (Sub-No. 6), the amended application is granted.

(37) In Finance Docket No 29009 (Sub-No 8), the amended application is granted.

(38) In Finance Docket No 29009 (Sub-No. 9), the application is granted.

(39) In Finance Docket No 29009 (Sub-No. 10), the application is granted.

(40) In Finance Docket No. 28961 (Sub-No. 1), the inconsistent application is dismissed

(41) In Finance Docket No 28961 (Sub-No 2), the application is dismissed

(42) In Finance Docket No. 28961 (Sub-No. 3), the application is dismissed.

(43) In Finance Docket No. 28961 (Sub-No. 4), the [*186] application is dismissed

(44) In Finance Docket No 29258, the application is consolidated with this proceeding

(45) In Finance Docket No. 29258, the application is granted

(46) In Finance Docket No. 29258, Norfolk and Western Railway Company and Consolidated Rail Company shall submit within 180 days of the effective date of this decision, for consideration and approval of the Commission, respective joint agreements containing the terms and compensation covering the operation of respective terminal and track facilities described in the decision. In the event such agreement for any reason cannot be reached, a petition may be filed requesting the Commission to determine just and reasonable terms and compensation.

(47) In Finance Docket No 29258, the enjoyment of the use of the involved terminal facilities shall be subject to the right of Consolidated Rail Corporation to require that the compensation paid for the use shall be adequately secured to it before the use shall be commenced.

(48) The authority granted in Finance Docket No 28905 (Sub-No. 1) is subject to the conditions for the protection of employees enunciated in *New York Dock Ry -- Control -- Brooklyn Eastern Dist*, [*187] *360 I.C C 60 (1979)*, unless and agreement is entered prior to consolidation, in which case protection shall be at the negotiated level (subject to our review to assure fair and equitable treatment of affected employees)

(49) The authorities agranted in Finance Docket No. 28905 (Sub-Nos. 3, 5, 9, 11, 12, 13, 14, and 16) and Finance Docket No. 29009 (Sub-Nos. 5, 6, 8, and 9), are subject to the imposition of employee protective conditions to the extent specified in *Norfolk and Western Ry. Co -- Trackage Rights -- BN, 354 I.C.C. 605 (1978)*, as modified by *Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653, 664 (1980)*.

(50) The authorities aranted in AB-2 (Sub-No. 25), AB-18 (Sub-Nos 27, 28, and 29) and AB-19 (Sub-No. 41), are subject to the imposition of employee protective conditions as discussed in *Oregon Short Line R Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979)*

(51) Notice of the abandonment decisions in AB-2 (Sub-No. 25), AB-18 (Sub-Nos. 27, 28, and 29), and AB-19 (Sub-No. 41), shall be published in the Federal Register pursuant to 49 CFR 1121.38(a), as notice to potential financial assistance offerors. If any person or government entity is considering [*188] making a financial assistance offer to enable continuation of the involved rail service, it shall comply with 49 CFR 1121.38(b) of the abandonment regulations. Within 10 days after receiving an appropriately filed notice that a financial assistance offer is being considered, applicants shall comply with the informational requirements of 49 CFR 1121.38(e).

All correspondence to the Commission regarding financial assistance offers for the continued operation or acquisition of the subject lines will contain an appropriate reference to this proceeding. Additionally, the following notation will be typed in boldface on the lower left-hand corner of envelopes containing such correspondence "Section of Finance AB-RSCP."

Subject to the above conditions, appropriate abandonment certificates shall be issued pursuant to *49 U.S.C. 10903-06* and 49 CFR 1121 Applicants shall not abandon the involved lines or discontinue service over them prior to the effective date of the abandonment certificate.

(52) Except for the abandonment authorizations, if authority granted by this decision is not exercised within 1 year of the effective date of this decision, or such further time as may be fixed by [*189] the Commission, then that portion of this decision pertaining to the unexercised authority shall be of no further force and effect. If the authority granted by an abandonment certificate is not exercised within 1 year of its effective date, that certificate shall be of no further force and effect.

(53) If the applicants consummate the approved transactions, they shall conform in writing to the Connission with 15 days after consummation, the dates of the consummation. Where appropriate, applicants shall submit to the Commission three copies of the journal entries recording the consummation of the transactions.

(54) All notices to the Commission as a result of any authorization shall refer to this decision by date of decision and docket number.

(55) No change or modification in the terms and conditions approved in the authorized applications without the prior approval of the Commission.

(56) This decision shall be effective 30 days from the date of service Pursuant to *49 U.S.C 10903*(c)(2), abandonment certificates issued in this proceeding shall be effective on the 20th day after its service date. The authority granted in this decision shall not be exercised prior [*190] to the effective date of the decision.

(57) The requirement of an initial decision is waived pursuant to *49 U.S.C. 11345*(e). The decisions embraced here are final decisions within the meaning of *49 U S C 10327* Any administrative appeal may be entertained only under *49 U S C 10327*(g), which permits appeal only on the basis of material error, new evidence, or substantially changed circumstances.

APPENDIX: APPENDIX A

Abbreviations used in this decision

Railroads and affiliates.

A&S - Alton & Southern Railway Company

A&WP - Atlanta and West Point Railroad Company

ACL - Atlantic Coast Line Railroad Company

Ann Arbor - Ann Arbor Railroad System

Amtrak - National Railroad Passenger Corporation

B&M - Boston & Maine Corporation

B&O - The Baltimore and Ohio Railroad Company

B&OCT - The Baltimore and Ohio Chicago Terminal Railroad Company

BN - Burlington Northern, Inc.

BRC - The Belt Railway Company of Chicago

C&C Brideg - Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company

C&EI - Chicao and Eastern Indiana Railroad Company

C&O - The Chesapeake and Ohio Railway Company

Carrollton - Carrollton Railroad

CCO - Clinchfield Railroad Company; Carolina Clinchfield [*191] & Ohio Railway

Chessie - Chessie System, Inc.

CIT - Cincinnati Inter-Terminal Railroad Company

CN&L - Columbia, Newberry and Laurens Railroad

CNW - Chicago and North Western Transportation Company

Conrail (CR) - Consolidated Rail Corporation

CP - Canadian Pacific Limited

CSS&SB - Chicago South Shore and South Bend Railroad

CSX - CSX Corporation

CUT - Cincinnati Union Terminal

D&H - Delaware and Hudson Railway Company

D&S - Durham and Southern Railway Company

DT&I - Detroit, Toledo and Ironton Railroad Company

DTSL - Detroit and Toledo Shore Line Railroad

EKR - Eastern Kentucky Railway Company

FEC - Florida East Coast Railway Company

FRISCO - St. Louis-San Francisco Railway Company

Georgia - Georgia Railroad

GM - Gainesville Midland Railroad Company

GTW - Grand Trunk Western Railway Company

ICG - Illinois Central Gulf Railroad

IHB - Indiana Harbor Belt Railroad

KIT - Kentucky and Indiana Terminal Railroad Company

L&N - Louisville and Nashville Railroad Company

MI - Michigan Interstate Railway Company

Milwaukee (MILW) - Chicago, Milwaukee, St. Paul and Pacific Railway

MKT - Missouri-Kansas-Texas Railroad Company

Monon - Monon Railroad

MoPac - Missouri [*192] Pacific Railroad Company

N&PBL - Norfolk and Portsmouth Belt Line Railroad

NW - Norfolk and Western Railway Company

RF&P - Richmond, Fredericksburg and Potomac Railroad Company

SAL - Seaboard Air Line Railroad Company

SCL - Seaboard Coast Line Railroad

SCLI - Seaboard Coast Line Industries, Inc.

SIRC - The Staten Island Railroad Corporation

SLSF - St. Louis-San Francisco Railway Company (Frisco)

Southern (SOU or SRS) - Southern Railway Company

Soo - Soo Line Railway Company

STC - Seacoast Transportation Company

WFR - Western Florida Railway Company

WM - Western Maryland Railway

WSSB - Winston-Salem Southbound Railway

WofA - Western Railway of Alabama

Other abbreviations:

AAR - Association of American Railroads

ARSA - American Railway Supervisors Association

BLE - Brotherhood of Locomotive Engineers

BMWE - Brotherhood of Maintenance of Way Engineers

BOM - Bureau of Mines

BOM 8 - Bureau of Mines, District 8

BRAC - Brotherhood of Railway and Airline Clerks

BRS - Brotherhood of Railroad Signalmen

CV - Cumberland Valley Subdivision of Chessie

dBA - decible level

DEIS - Draft Environmental Impact Statement

DOE - United States Department of Energy

DOJ - United [*193] States Department of Justice

DOT - United States Department of Transportation

EEB - Energy and Environment Branch

EK - Eastern Kentucky Subivision of Chessie

EPACA - Energy Policy and Conservation Act

FEIS - Final Environmental Impact Statement

FPC - Florida Phosphate Council, Inc.

FRA - Federal Railroad Administration

IAMAW - International Association of Machinists and Aerospace Workers

IOMMP - International Order of Masters, Mates and Pilots

Ldn - Outdoor noise level

NEPA - National Environmental Policy Act of 1969

PTL - Peninsula Terminal, Ltd.

RPC - Office of Rail Public Council

RYA - Railroa Yardmasters of America

Santee Cooper - South Carolina Public Service Authority

SIU - Seafarer's International Union

SPE - San Pierre Elevator

TOFC - Trailer-on-flatcar

TVA - Tennessee Valley Authority

TFI - The Fertilizer Institute

UTU - United Transportation Union

USRA - United States Railway Association

APPENDIX B

Shippers in support of consolidation

Twenty-two shipper witnesses were sponsored by applicants and filed verified statements supporting the consolidation.

Amoco Chemicals Corporation anticipates increased operating efficiencies, faster transit [*194] times on traffic moving via joint routes of Family Lines and Chessie, and better car utilization.Amoco has experienced delays in its shipments moving in interline service and restriction of its movements because of revenue allocation problems. It anticipates that the single-system service of CSX will alleviate these problems. Amoco is in favor of rail competition and sees no disadvantages to the proposed CSX consolidation.

Island Creek Coal Company anticipates that the proposed transaction will facilitate the expansion of markets for coal, particularly for mines in eastern Kentucky and West Virginia served by Chessie. It anticipates that the flexibility provided by the proposed transaction will enable the marketing of coal to permit fuller development of certain coal reserves. The operation of Chessie and Family Lines under common control will permit many of the advantages, including better routes and faster service, that are normally found only in single-line service.

East Kentucky Power, a major electric utility, expects to be receiving over 4 million tons of coal per year via C&O and L&N by 1986, and believes that the proposed consolidation will form a more efficient and [*195] improved railroad system, which be in the public interest and the interest of its own customers.

American Cast Iron Pipe Company, which makes regular movements between its plant in Birmingham, served by the Family Lines, and points in the Northeast served by Chessie, sees benefits from the companies ability to provide single-system service, and benefits in improved car supply.

Bethlehem Steel Corporation, a major steel manufacturer, which annually ships over 1 million tons of iron and steel via Chessie and 300,000 tons via the Family Lines, and over 10 million tons of coal from its mines served by Chessie, believes that the proposed consolidation will result in greater financial strength for the applicant railroads, and operational benefits including improved car supply. It sees increased opportunities for the marketing of coal from C&O mines in the Southeast.

Union Camp Corporation, a major manufacturer of paper products, chemical products and lumber products with plants located in Virginia, Georgia, Florida and Alabama, considers rail transportation vital for receipt of raw materials in its manufacturing operations, and supports the proposed consolidation. It has found [*196] that the rail structure has an historical bias towards east-west traffic, which inhibits its south-north distribution needs, and it supports the proposed consolidation as a change which will facilitate south-north traffic. Union Camp also sees productivity improvements available from this end-to-end merger, including increased car supply, elimination of service deficiencies at major gateways, improved transit times, and expanded opportunities for preblocking and run-through train operations.

Union Camp also anticipates that this consolidation will generate improved rail operations, not only by the applicants, but also by other railroads in the Northeast, and that the coordination will facilitate its own car-tracing operations. Union Camp also supports the philosophy of a holding company committed to the supervision of independent railroad operations, to function as a part of an entire integrated system, and believes that the proposed coordination will allow the applicants to improve their earnings and will make the further commitment of capital to rail transportation attractive

Jos. Schlitz Brewing Company believes the proposed transaction will result in the expedited movement [*197] of rail equipment, and will provide the applicants with the opportunity to invest wisely in capital programs and reduce overall transportation costs.

Martin Marietta Corporation, a major diversified manufacturing company which shipped over 30,000 carloads of freight via Family Lines and 17,000 carloads via Chessie in 1978, also supports the consolidation. It notes that its 1978 shipments represent almost 10,000 carloads less than its 1977 shipments, and that the loss in tonnage as caused by a shortage of railroad cars. It believes this proposal offers an oportunity to eliminate or minimize car shortages by better utilization of power and equipment owned by the applicants. The experience of Martin Marietta is that Chessie has had an outstanding performance in car supply and has had adequate track maintenance and power supply. It believes that association of Family Lines with Chessie will improve the car supply problems which Family Lines has experienced Alleviation of these car supply problems will bring back to the rails substatial tonnage that is moving via truck today.

Gold Kist Inc. is a major regional agricultural cooperative which utilizes rail, water, and motor carrier [*198] service, and supports the proposed consolidation on the basis that it will create increased opportunities for the rail transportation of agricultural products, will improve car supply, will establish a sounder and broader financial structure for the applicants, and will facilitate more efficient management and operations.

Gold Kist has found with past rail mergers that merged companies were stronger financially and were more efficient, and that they provided better service after merger It believes that this consolidation will have the same effect, and will be beneficial to the total transportation system.

Armco Inc., a major steel and coal producer which makes extensive use of the Chessie rail services, supports the proposed consolidation. It believes that such single-system service will make rail transportation available for present shipments of iron and steel products from the East to the Southeast, now moving by motor carrier, and will increase its marketing potential for coal in the Southeast

Electric utilities in the South and Southeast are seen as potential customers for Armco's coal, but Armco has found C&O reluctant to send its equipment off-line to these [*199] markets. It believes the merger will open up these markets by providing dependable direct service to these areas. Armco plans to divert its shipments from motor carrier to rail whenever possible. It has found that motor carrier rates are generally higher than rail rates for distances exceeding 300 miles.

ITT Rayonier, Inc., a major producer of woodpulp and other forest products with manufacturing facilities throughout the Southeast, supports the proposed consolidation and anticipates substantial benefits from the end-to-end proposal, including greater competition in north-south transportation. ITT Rayonier believes the proposal is in the public interest, the interest of the railroad industry, and its own interest as a shipper.

The Celotex Corporation, a major manufacturer of building materials and insulating materials, ships and receives in excess of 25,000 railcars per year, and has plants located on the lines of both Family Lines and Chessie. It believes that the proposed consolidation will benefit its company by improving the quality and frequency of service, increasing railcar supply, and providing the coordinated rail companies with better access to capital markets.

FMC [*200] Corporation is a major diversified manufacturer of chemicals. It supports the proposed consolidation on the expectation and hope that the improved service and economies promised by the consolidated companies can be achieved. It believes that the possibilities for success of this transaction are great, since both rail systems are vigorous, competitive candidates, and are particularly well-suited to accept the challenges presented by this application. It notes that end-to-end proposals hold out the promise of expanded singlesystem service, allowing greater attention to managing operations and less to coordinating movements with connecting lines It also sees simplified billing, tracing and claim collection, speedier and more reliable service, improved car utilization, greater economies leading to lower rates, and reduced labor tension as benefits of such a proposal.

FMC favors rail competition and believes that the most important factor is to have strong viable railroad systems in the private sector. To the extent it is not possible to have the degree of intramodal competition which shippers might like and to have a strong railroad sytem, the creation of strong rail systems will [*201] in the long run provide greater competition than a number of weak railroads. Rail competition cannot be viewed only as competition between railroads, but must be viewed as the ability to compete effectively in the transportation marketplace. FMC believes that better service, particulary north-to-south piggyback trains, would cause it to look more favorably on rail movements versus truck movements.

I. S. Joseph Company, Inc., a grain product merchandising company with plants located in Florida, supports the proposed consolidation because it sees a number of benefits, including an improvement in car supply, which should reverse its trend toward motor carrier transportation caused by a shortage of rail equipment. In addition to improved car supply, I. S. Joseph sees the consolidation as improving transportation between the North and the South, providing a dependable rail service immediately and in the future, providing the rail system with a strong financial structure, improving service to export facilities and terminals, insuring the continuance of a private enterprise rail system in the country, and providing fuel-efficient transportation service.

I. S. Joseph has experienced [*202] difficulty in moving traffic north and south because there is no "transcontinental railroad running north and south in this country." It believes this merger offers a great opportunity to alleviate this problem, and will provide an efficient alternative to the use of water transportation on the Mississippi River system

The Detroit Edison Company, a major public utility in Michigan, is primarily dependent upon coal and expects to utilize 640 million tons of coal over the anticipated useful lives of its coal-fired generating units. It supports the proposed consolidation, and sees benefits to its overall coal program, particulatly its procurement of low-sulfur coal

Seald-Sweet Growers, Inc., which markets agricultural products from Florida throughout the world, but particularly into the northeastern section of the United States and eastern Canada, presently makes all of its shipments into the Northeast by truck However, it anticipates the possibility of 8,000 to 10,000 TOFC trailerloads between Florida and the Philadelphia area, if single-system service is offered to that area. It accordingly supports the proposed consolidation, because it will provide the single-system [*203] service necessary to attract its present movements from motor carrier to rail.

Perishable agricultural crops are time-sensitive and present rail TOFC service is too slow to attract this traffic However, the single-system service offered by CSX from Florida to the Philadelphia area will be able to meet the needs of this traffic. Joint truck-rail-truck service could provide adequate speed and economies not available via all-truck service. Seald-Sweet is prepared to invest in new TOFC equipment for this service provided single-system rail service to Philadelphia is available.

General Motors Corporation considers rail service absolutely vital to its operations and supports this consolidation as consistent with its long-term views on the necessity of rail restructuring to insure continued, adequate rail service. It particularly supports end-to-end rail mergers. It sees this particular application as improving service of its heavy and steady volume of rail traffic moving in north-south routes, through the gateways of Elkhorn City, Cincinnati, Washington and Richmond. It expects improved car utilization and general improved service.

General Motors considers single-system service [*204] preferable to joint-line service, and it prefers service by one strong, healthy, viable railroad system, rather than two systems in financial difficulty

Brown & Williamson Tobacco Corporation supports the proposed transaction. It anticipates improved service, including single-system service from its major plant in Georgia to 11 of its distribution warehouses (accommodating an annual tonnage of 56 million pounds), improved car supply, more economical service, improved financial position of the carriers, and more effective competition, which will improve the rail carriers' ability to compete with motor carriers.

A. T Massey Coal Company, Inc. sells approximately 15,300,000 tons of coal annually, and has major originations on Chessie, NW, and Conrail. It sees substantial benefits from the proposed affiliation and supports the application.

If the merger is consummated, A. T. Massey expects to ship 1 million tons of coal per year from West Virginia mines to new customers in Florida and 750,000 tons per year from the Big Sandy district to customers in Georgia and the Carolinas It also expects to ship 1 million tons or more of L&N coal to Newport News for export.

Missouri Farmers [*205] Association, Inc , a farmer cooperative association representing over 160,000 farmer members, also supports the application, and sees several important benefits to the shipping public from the anticipated coordination.

Vulcan Materials Company, a leading producer of construction aggregates and chemicals with plants located throughout the Southeast, sees substantial benefits from the proposed coordination, including improved car supply. It supports the applicants.

Consumers Power Company, which serves 1,286,000 electric power customers in the Lower Peninsula of Michigan and which consumed over 5,800,000 tons of coal in 1978, expects, within the next 2 years, to begin transporting at least 500,000 tons of coal annually from eastern Kentucky origins on the L&N via joint L&N/Chessie routing. It supports the proposed application because it believes that coordinated freight service of the consolidated companies will be better than two-line service otherwise available, and economies of operation may hold down rail costs and future freight rate increases.

In addition to the 22 shipper witnesses in support of this application sponsored by the applicants, three shipper witnesses [*206] appeared independently of the applicants and filed verified statements in support of the application.

Combustion Engineering, Inc. is a major shipper via Chessie and Family Lines, paying over $1 million in transportation charges to each of those railroads annually It supports the CSX consolidation because it believes that it will have a beneficial and substantial effect on the cost and quality of service, will strengthen the rail industry for the future and will actually enhance competition in the transportation industry because a stronger railroad system will be created from two end-to-end, essentially noncompetitive systems. The greatest competition facing the railroads is over-the-road car-

riers and water carriers, and a merger such as this which makes the railroad industry stronger, will enable it better to compete with those carriers.

PPG Industries, Inc ships and receives extensive amounts of traffic flowing between the Chessie and Family Lines' territories by both rail and truck. It believes the CSX affiliation will improve transit times between the North and South, thus improving service and turnaround time for shippers cars, that CSX will strengthen the applicants and [*207] the railroad industry; that it will improve car utilization; and that it will enhance the establishment of freight rates between the North and the South.

Coca-Cola USA is the largest single user of sugar in the United States, with seven plants which receive sugar by rail located in the CSX territory. Two of these plants are served by Chessie, two by Southern, one by SCL, one by NW and one by MoPac. It believes many benefits will flow from this consolidation and will accrue to the shipping public, including a stronger and more viable railroad, improved car supply and utilization, and other economies and service improvements which will enable the combined system to meet the service demands of the shipping public.

APPENDIX C

RELATED APPLICATIONS

MOVEMENTS THROUGH CINCINNATI

(Finance Docket No 28905 (Sub-Nos, 3 and 4))

Cincinnati, OH, is a major gateway for L&N coal originating at its Eastern Kentucky and Cumberland Valley districts. At Cincinnati, L&N interchanges coal with B&O, C&O, Conrail, DT&I, and NW for northbound movements to such markets as Chicago, Detroit, Cleveland, Buffalo, and Pittsburgh. In addition to this interlined coal, L&N serves barge terminals on the Licking [*208] River at Newport, KY, and on the Ohio River west of Cincinnati at Gent, KY.

DeCoursey Yard is the principal L&N yard for the classification and handling of coal and general merchandise traffic in the Cincinnati terminal. Although DeCoursey Yard has recently been expanded, congestion at that yard is a serious problem due to the volume of traffic, connecting line restraints, and line capacity problems throughout Cincinnati.

To alleviate this problem at DCoursey, L&N has requested authority to lease C&O's Stevens Yard. This lease will provide L&N with a coal switching, train assembly, interchange and storage yard.L&N will provide switching services for C&O at Stevens Yard. To reach Stevens Yard, L&N seeks trackage rights over C&O from KC Junction at Covington, KY, n1 and a direct and convenient means for L&N trains to move between its line and the C&O trackage rights segment. Although there is already a connecting track between L&N and C&O at Newport, KY, it is not suitable for the efficient movement of the projected volume of L&N traffic. Therefore, C&O and L&N will construct a 0.17-mile-long connection at Newport, KY, at an estimated cost $166,019.

n1 The trackage rights will be over a 14.65 mile segment between KC Junction at milepost 662.65 at Covington, KY, and milepost 648, at a point east of Stevens Yard at Melborne, KY.

[*209]

Upon arrival at DeCoursey Yard, the majority of L&N coal trains, except unit trains for connections, will be moved to Stevens Yard, where necessary switching will be performed. Licking River Terminal and Gent coal will be held at Stevens Yard until needed and then moved to those terminals. If necessary, unit trains which cannot be moved from DeCoursey Yard could be handled at Stevens Yard by the inbound yard crew. It is estimated that 2,388 loaded cars will be handled each week at Stevens Yard.

The overall impact of L&N's lease of Stevens Yard will provide a substantial increase in yard capacity in its Cincinnati terminal. This capacity can serve as a "surge tank" to permit the terminal to cope with sudden fluctuations in operating requirements.

The recent consolidation of C&O/B&O switching activities at the new Queensgate Hump Yard in Cincinnati will result in a substantial decrease in C&O activities south of the Ohio River By contrast, L&N has extensive activities south of the Ohio River which will be expanded by its use of Stevens Yard. C&O and L&N have entered into an agreement which provides that L&N will perform all of C&O's industrial switching in the terminal south [*210] of the Ohio River.

In association with the involved applications, applicants plan to alter one of the Ohio River bridge crossings. Currently, four main tracks approach the Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company (C&C Bridge) and Cincinnati Inter-Terminal Railroad Company (CIT) bridge from the south. However, only one can accommodate high cars. Many of the trains using the bridge must use this high clearance route. As a result, trains are held waiting for the track with adequate clearance to become available, causing serious congestion. Applicants plan to remove one of these four tracks to permit the lowering of a second track. This will improve the clearance, significantly increase the capacity of the line, reduce congestion, and provide for the efficient movement of traffic through the area.

Applicants anticipate that a grant of these two applications and related operational changes will result in many benefits Such benefits include a more efficient flow of traffic through the Cincinnati gateway, relieved congestion and improved efficiency at L&N's DeCoursey Yard, increased L&N yard capacity at Cincinnati, and increased line capacity [*211] over the bridge crossing. The proposed trackage rights, lease and construction will have a minimal impact on the operation and performance of passenger operations.

Overall, the net benefits from this proposal will be approximately $1 5 million annually for L&N and C&O in the first 3 years following merger. The trackage rights charge for L&N's use of C&O's line is $0.14 per car-mile and is subject to revision based on Association of American Railroads (AAR) indexes

Applicants estimate that the involved operations will lead to the abolishment of three trainmen positions and one engineman position on the C&O at Cincinnati. Due to these abolishments, C&O will incur additional costs of $102,700 in the first year following the consummation of the merger and will realize savings of $111,200 in each of the 3 years following the merger L&N will consolidate nine trainmen and three enginemen positions at Cincinnati. There will be no costs or savings associated with L&N's employee consolidations.

The applications are opposed by NW, BLE, BRS, and UTU n2

n2 NW has negotiated a settlement with applicants concerning its opposition to the merger proceeding. The settlement agreement did not contain any provisions for the withdrawal of NW's opposition to the related applications

[*212]

NW claims that applicant's proposal calls for the interchange of NW/L&N traffic at Stevens Yard, rather than DeCoursey Yard. NW states that it will not agree to the alteration of the interchange point. It believes that the oroposal is unsafe and ineficient and constitutes unreasonable interchange facilities.

BLE claims that approval of the transaction will have an adverse effect on approximately 500 Chessie engineers. Predicted adverse effects include: displacement, unemployment, lower paying jobs, and less preferential working conditions. BLE suggests that the adverse effects upon labor may be felt many years following the consolidation. To ameliorate the possible effects on labor, BLE has proposed the following conditions: (1) attrition protection, or, at a minimum, certification of adversity and establishment of test period earnings; (2) agreements to allow engineers to follow their work, (3) requirements that carriers negotiate with employee representatives in order to reduce shifting among seniority groups, limit displacement, and provide for a reasonable and equitable allocation of work; and (4) adequate protection against lost earnings and relocation expenses [*213] if an employee is required to move. BLE suggests that its conditions proposed in the consolidation proceeding meet these criteria.

BRS generally claims that the Cincinnati coordinations will have an extensive impact on each of applicants' employees, that the initial effects will be greater than that conceded by applicants and that the effect will be felt for many years. BRS claims that if Stevens Yard is still in operation as a Chessie facility when leased to L&N, at least 81 trainmen will be adversely affected. BRS also fears that applicants eventually intend to coordinate L&N's DeCoursey Yard with Chessie's Cincinnati Terminal.

UTU claims that the involved applications, along with those filed in Finance Docket No. 28905 (Sub-No. 11) and AB-19 (Sub-No. 41), will have a grave effect on L&N employees in Cincinnati. The UTU further claims that the adverse effects will be greater than those anticipated by applicants and will occur over a longer period of time. UTU states that applicants' planned changes will result in the reduction of switching crews at DeCoursey Yard. UTU believes that as many as 150 yardmen may be affected and that the described changes may have a similar effect [*214] upon other railroad employees.

In response, applicants state that the L&N/NW interchange will remain at DeCoursey unless NW and CSX mutually agree to a change. Applicants further argue that the labor representatives failed to provide any support for their estimates concerning adversely affected employees or their requests for employee protection beyond the statutory required minimum.

CHICAGO OPERATIONS

(Finance Docket No 28905 (Sub-Nos. 5, 6, and 7))

In Finance Docket No. 28905 (Sub-No. 5), L&N seeks trackage rights over 25 81' miles of B&OCT track between milepost 4.85 near East Chicgo, IN, and milepost 30.66 near Rockwell Street Junction in Chicago, IL In Finance Docket No. 28905 (Sub-No. 6), B&OCT and L&N seek authority to construct and operate a 0.13-mile connecting line between points near Calumet City, Cook County, IL, and Hammond, Lake County, IN. In Finance Docket No 28905 (Sub-No. 7), B&OCT and L&N seek authority to construct and operate a 0 08-mile connection between existing lines of B&OCT and the Indiana Harbor Belt Railway Company (IHB) at Dolton, Cook County, IL.

Both Chessie and L&N conduct extensive operations in the chicage terminal Chessie's Chicago operations [*215] include: B&OCT (a major intermediate and switching carrier), CSS&SB (a freight and high volume commuter carrier) and three main lines operated by C&O and B&O The L&N operates two main lines to Chicago, one originating in Evansville, IN and terminating at Yard Center n3 and another originating at Louisville and terminating at South Hammond Yard (the Monon Subdivision) The two L&N yards are located 6 miles apart There is currently no direct connection between the two main lines.

n3 Yard Center is a joint L&N/MoPac facility.

For the purposes of this discussion, the sought trackage rights can be divided into three segments. These segments include (1) trackage rights between State Line and Dolton, IL; (2) trackage rights between Dolton, IL and East Chicago, IN, and (3) trckage rights between Dolton and Rockwell Street Junction, IL

The portion of the proposed L&N trackage rights over B&OCT between State Line and Dolton will give L&N a convenient, direct access route between its Monon Subdivision and Yard Center. Trains operating over the Monon Subdivision with be able to originate and terminate at Yard Center, rather than at South Hammond. This connecting link [*216] will enable L&N to retire its South Hammond Yard and consolidate its yard operations at Yard Center, a larger, more modern and efficient facility. Under this proposal, switching service for Hammond area industries will be provided by an L&N crew from Yard Center. Applicants claims this consolidation would enable the system to eliminate an excess facility, effect operating economies, and enhance its financial viability.

The portion of the proposed L&N trackage rights over B&OCT between Dolton and East Chicago will provide L&N access to an interchange point with the CSS&SB at East Chicago, IN. The present interchange route between L&N and CSS&SB is at Burnham, IL. The more direct and efficient route for interchange with CSS&SB will permit L&N to effect operating efficiencies and economies.

The portion of the proposed L&N trackage rights over B&OCT between Dolton and Rockwell Street Junction will provide L&N with direct access to an interchange point with CNW. Presently, the Belt Railway Company of Chicago (BRC) operates as an intermediate carrier and collects a charge for this service. The direct interchange will reduce L&N's intermediate carrier expense and improve equipment [*217] utilization.

In connection with the trackage rights, applicants propose to construct two connections in the area The connection at State Line will give L&N access to the B&OCT for the movement of trains between the Monon Subdivision and Yard Center. The connection at Dolton is necessary for the same purpose; also it will provide L&N with a shorter, more direct route for interchange with CSS&SB. In addition, the Dolton connection will provide C&O a more direct route to Yard Center and ICG's Markham Yard.

The connection at Dolton will cost $424,150 to construct. The State Line connection will cost $287, 416

It is anticipated that the proposed Chicago operations will have a minimal positive effect on passenger and commuter operations.

Applicants claim that total potential net benefits associated with this proposal will amount to $875,000 n4 However, a portion of these benefits may not be realized. Applicants originally claimed that they would realize $413,000 in

benefits from coordinated handling of Indiana and Wisconsin unit coal trains L&N no longer handles these trains Nevertheless, L&N still desires the involved trackage rights to enable it to recapture the coal traffic [*218] or other similar traffic and give it the flexibility to realize benefits immediately

n4 B&OCT's benefits include a trackage rights charge to be paid by L&N at 14 cents per car-mile. This figure is subject to annual adjustment for inflation or deflation based on AAR indexes.

Applicants also claim that direct connection at Dolton would give L&N direct access to Yard Center, creating net savings of $307,000 annually. L&N has previously applied for authority which would enable it to make similar movements. In Louisville N R Co. -- Trackage Rights, 360 I.C.C. 115 (1979), we granted this similar authority. Our decision was upheld by the United States Court of Appeals in People of the State of Illinois v. Interstate Commerce Comm., 622 F. 2d 591 (7th Cir. 1980). This decision is on appeal.

Applicants estimate that the involved applications will lead to the abolishment of 30 positions at Hammond, IN. As a result, L&N will incur additional costs of $439,629 and $114,903 in the first and second years following consolidation and will save $796,640 in the third year.

The applications are opposed by MoPac, the village of South Holland, IL, the village of Dolton, the State [*219] of Illinois, UTU, BLE, and BRAC.

MoPac contends that a grant of the trackage rights is not justified since: (1) L&N's coal unit trains are no longer moving and any future movements are largely speculative; (2) rights which provide a more direct connection between the Monon Subivision and Yard Center have been granted in another proceeding; (3) applicants have failed to demonstrate how C&O will traverse the distance between ICG's main line and the Dolton Interlock or by what right C&O will use the joint MoPac/L&N yard; and (4) applicants have failed to justify the imposition of additional burdens on parties to the Dolton and State Line interlocking plant agreements.

Yard Center is located in the villages of South Holland and Dolton. These two villages allege that applicants' proposal to increase operations at Yard Center will increase noise and air pollution and block grade crossings to all traffic (particularly police, fire, and medical equipment). The villages claim that these problems, which have intensified during the past few years due to traffic increases at Yard Center, will be further exacerbated by applicants' proposal.

The State of Illinois, the Illinois Commerce Commission, [*220] and representatives of the UTU have submitted joint pleadings in opposition to the applications They claim that the application, if granted, would lead to greater congestion at Yard Center and Dolton Junction, inefficient operations, less economical movement of traffic, and severe adverse environmental consequences. They contend that applicats' estimated savings from the closing of South Hammond Yard are overstated in light of the recent reductions of operations at that facility. Finally, they argue that applicants have failed to demonstrate that the public will benefit from the transactions.

UTU and BLE argue that the transaction will have an initial and continuing effect upon employees on the L&N at South Hammond Yard. These employees hold closed yard seniority and have no displacement rights at other locations. UTU and BLE claim that the retirement of South Hammond Yard will, therefore, lead to the permanent loss of employment for these workers, some of which may be unemployable outside the industry or by other carriers. They suggest that applicants exaggerated the number of employees at South Hammond Yard in order to claim a higher labor cost savings. They also accuse [*221] applicants of attempting to avoid liability for labor protection by currently reducing forces at South Hammond

BRAC maintains that the long-term effects of the transaction may result in the displacement of 28 BRAC employees at Rockwell Street Yard and Barr Yard. BRAC emphasizes the hardships suffered by employees due to such relocations and describes the difficulties faced by employees attempting to demonstrate that they were adversely affected by a transaction. BRAC suggests that we protest such employees by requiring a conclusive presumption that any reduction or adverse effect for a 10-year period resulted from the implementation of the transaction.

Applicants replied to protestants. Contrary to MoPac's claims, applicants state that necessary connections between ICG and C&O can be made within the Dolton interlocking and that the rights for such a connection can be incorporated with a new agreement for use of that interlocking. They also state that C&O does not plan to use Yard Center as a joint facility but will continue to interchange traffic at that yard. CSX claims that the proposed Dolton connection will not significantly affect congestion at Dolton interlocking, [*222] nor will the present noise and congestion levels at South Holland and Dolton be exacerbated by its proposed operations.

Applicants argue that Chessie employees will not be adversely affected by the proposed transactions, and that the evidence does not warrant increasing employee protection beyond the minimum levels required by statute. While there has been a reduction in Yard Center forces since 1978, CSX claims that the reductions are caused by business fluctuations, rather than an anticipation of the consummation of this transaction.

NORTHWESTERN INDIANA

(AB-2 (Sub-No. 25) and Finance Docket No. 28905 (Sub-No. 8))

L&N seeks authority to abandon 44.87 miles of track between milepost QB 15.16 near Medaryville, IN, and Milepost QB 60.03 near Michigan City, IN, in Pulaski, Starke, and LaPorte Counties, IN. In a related application, CSS&SB seeks authority to acquire the 4.36-mile portion of this L&N line between milepost QB 55.67 and milepost QB 60 03, in LaPorte County, IN.

The segment to be abandoned is a portion of branch line acquired through merger with the Monon Railroad. With the exception of the Michigan City area, the area adjacent to the line is devoted almost entirely [*223] to agriculture. There are nine small communities located on the line.Only one, Westville, has a population in excess of 1,000.

A fair amount of rail traffic moves over the abandonment segment However, with the exception of Michigan City, very little traffic actually originates or terminates at industries on the line. Most of the traffic handled over the segment is moving to or from interchange points on the segment or to or from industries in Michigan City. Under this proposal, traffic which is now being handled through interchange points on the abandoned segment will be rerouted and handled through alternate interchange points. Some traffic has already been rerouted by L&N through agreements with other carriers. The traffic which now originates and terminates on the L&N in Michigan City will be handled by CSS&SB. The line between Medaryville and Monon will continue to be served by a crew from Monon on a turnaround basis

Without the overhead interchange traffic and the traffic to be handled by CSS&SB, applicants claim that the traffic generated by intermediate stations will be insufficient to support operations. In 1978, the abandonment segment (excluding the Michigan [*224] City area) originated or terminated only 156 carloads or 3.9 cars per mile. n5 Based on this traffic level, the continued operation of the segment would result in an annual avoidable loss of approximately $100,000, without consideration of the return on value of the properties involved. The segment is currently maintained to Federal Railroad Administration (FRA) class 2 standards. In order to keep the segment at the same classification, maintenance expenditures of approximately $1.44 million would be required over the next 5 years. Such expenditures would be avoided under the proposal. L&N would also realize the net liquidation value of approximately $885,000 from the 40 miles of track to be abandoned. CSS&SB will pay L&N $1 for the Michigan City track.

n5 This segment originated or terminated 187, 152, 171, and 132 carloads in 1974, 1975, 1976, and 1977 respectively.

Applicants allege that there are sufficient alternate means of transportation available to shippers along the line. All stations except Otis, are served by other rail carriers (Otis has not produced any rail shipments along the L&N in the last 5 years). Alternate motor carrier service is also [*225] available. Applicants claim that there is very little potential for industrial growth outside of the Michigan City area due to a poor labor supply and lack of adequate utilities.

The northermost 4.36-mile segment of the involved line is sought by CSS&SB, a Michigan City-based Chessie affiliate with yard and switching operations in the area. By acquiring the line, CSS&SB will be able to provide service on an as needed basis. A substantial amount of the existing traffic will receive improved service due to the extent of CSS&SB's operations in Michigan City and the routings which CSS&SB will be able to provide as an originating or terminating carrier. The line segment to be acquired handled a total of 203 carloads in 1978. Of these, 65 were delivered by other carriers at Michigan City through switching services. In the future, these 65 movements will travel over other segments Based on the remaining 138 carloads, CSS&SB will realize an annual loss of $16,152. n6

n6 This projected loss does not include revenue from traffic to be generated by Central Illinois Steel Company. This company recently acquired a site in Michigan City and intends to use rail services in the future.The shipper predicts that it will receive 125 carloads per month and ship 120 carloads per month.

[*226]

%after this transaction, L&N and its affiliated lines will continue to handle most of the traffic currently moving over the segment. Although CSS&SB anticipates that its service to L&N customers in Michigan City will initially result in a small operating loss, L&N will enjoy a substantial savings as a result of the proposed abandonment. Thus, the CSX system as a whole will realize a net benefit from the transaction.

L&N estimates that the proposed abandonment will permit the elimination of the four-man crew working out of Monon, IN

Verified statements in opposition to the abandonment application were filed by UTU, BLE, San Pierre Elevator (SPE), Vistron Corporation, Bortz Elevator Company, Wanatah Merchantile Co., Inc., Cooperative Elevator Company of Francesville, Pulaski County Farm Bureau Cooperative Association, Inc., Francesville Drain Tile, Busch Farm Service and Representative Floyd Fithian of the Second District of Indiana. The County Commissioners of LaPorte County, the Kankakee-Iroquois Regional Planning Commission, the County Commissioners of Pulaski County, the Town Board of Trustees of Francisville, the County Commissioners of Starke County, the Town Board of Trustees [*227] of Medaryville, the Pulaski County Soil Water Conservation District, the Arrow Head Country Resource Conservation and Development Area Executive Council and various interested citizens in the affected communities have also indicated their opposition to the applications

SPE, located in San Pierre, IN, is bounded on the south by a Conrail line and on the east by the L&N line. The elevator is served by a three-car spur from Conrail's line. Since their purchase of SPE in 1974, the current owners have made significant improvements to the facilities, including an increase in storage capacity fom 10,000 to 55,000 bushels

SPE predicts that it could ship nine carloads per week during 7 months of the year and a lesser volume in the off season. Protestants predict that revenues from these operations would equal approximately $303,996 and would be sufficient to support operations between Medaryville and the Conrail crossing at San Pierre

Following abandonment, SPE claims that the existing services will not adequately meet its needs. It claims that the Conrail track mainly serves the eastern export grain market, a market which requires shipments in 10 multiple units. The elevator does [*228] not possess the capacity to ship in excess of three-car units and the protestant prefers to ship to the southern domestic market, a market based on these three-car units. While the elevator has utilized motor carriage in the past, rail carriage is the preferred mode of transportation.

Vistron Corporation, through its marketing outlet Sohigro Company, distributes fertilizers throughout the Midwest. Sohigro operates a plant at San Pierre which is heavily dependent upon the rail system for the inbound transportation of materials. During 1978, Sohigro received 39 carloads of materials and paid $103,377 n7 in freight charges. It claims that there is no other economically competitive transportation available. Sohigro claims that use of motor carriage would: (1) increase transportation expenses by 35 percent; (2) create congestion at the plant; (3) require modification of the unloading system; (4) require more personnel; and (5) reduce future productivity.

n7 The division of revenue to L&N on these shipments was $24,985.

Bortz Elevator Company has two grain elevators in Westville. One elevator is located on the NW line. The other, smaller elevator is located on the [*229] L&N line. While Bortz has used NW's services in the past, it will guarantee 50 carloads per year over L&N's line if the abandonment is denied. Bortz emphasizes the fuel efficiency of rail service over motor carrier service

Wanatah Mercantile Co., Inc., of Wanatah, fears that the abandonment will have a serious adverse effect on its ability to ship grain to the expanding southern markets and to receive inbound shipments. It believes that the L&N operation over the line could be lucrative if the car supply were dependable.

Cooperative Elevator Company of Francesville, Inc. and Pulaski County Farm Bureau Cooperative Association, Inc. express concern that the remainder of the Monon to Michigan City line will be abandoned in the near future. They contest L&N's cost figures because: (1) bad weather reduced crop production; (2) L&N did not provide an adequate number of cars; and (3) the incentive to use rail transportation should increase due to the energy crisis. They further argue that abandonment will severely hamper future development of the area. They submitted a rail justification study prepared by Purdue University in support of their allegations.

Two Francesville shippers, [*230] Francesville Drain Tile and Busch Farm Service, are concerned that service to Francesville will be downgraded following the abandonment. While Francesville is not located on the abandonment segment, these shippers fear that the line to Francesville may also be abandoned in the future.

Representative Fithian expresses his concern that the abandonment would be cost and energy inefficient, would have an adverse effect on the area's economic growth, particularly Indiana's export business, and could lead to deterioration of service between Monon and Medaryville.

Applicants dispute the projections of significant increases in L&N rail use in the next year. While SPE has predicated that the future volumes ould be sufficient to maintain a portion ot the abandonment segment between Medaryville and San Pierre, applicants' break-even analysis indicates that the increased volume would be insufficient to support this portion of the line

LOUISVILLE TO EAST ST LOUIS AND ST LOUIS

(Finance Docket No 28905 (Sub-Nos. 9 and 10))

L&N and B&O operations in East St. Louis, IL, are quite similar. Both railroads operate separate circus-style piggyback facilities and adjacent switching yards. These [*231] facilities handle interchange traffic and limited industrial switching. L&N reaches East St. Louis via its line from Evansville, IN. (Evansville is the junction of L&N's Chicago-Nashville and Louisville-St. Louis lines) B&O reaches East St. Louis via its line from Cincinnati, which crosses L&N's Louisville-Chicago line at Mitchell, IN and L&N's Evansville-Chicago line at Vincennes, IN

In East St. Louis, B&O and L&N plan to consolidate their operations in B&O's yard, retaining two long tracks at L&N's yard. The present track configuration does not permit direct efficient movement of traffic from L&N's main line to B&O's yard. They seek authority to construct and operate a 0.12-mile connection to provide improved access. The cost of this connection will be $295,030. Applicants will also consolidate their piggyback operations at the B&O facility. Due to the increased activity, accelerated maintenance work will be performed at B&O's yard and piggyback facility. The proposed consolidation will release L&N property for industrial development and sale.

A combination of the L&N route from Louisville to Mitchell and the B&O from Mitchell to East St. Louis is 29 miles [*232] shorter than the L&N route via Evansville. L&N seeks trackage rights over B&O's line from Mitchell to East St. Louis, a distance of approximately 210.5 miles, n8 and have applied for authority to coordinate their operations between Washington and St. Louis, including yards at Washington and Vincennes. These coordinations will allow certain service improvements. For example, the L&N trains will be able to make connections to the B&O's Alton and Southern Railroad (A&S) train at Washington. Further, L&N will be able to setoff and pickup at Vincennes for connection to its trains between Evansville and Chicago. (These trains operate on the L&N line that intersects the B&O line at this point.) This will shorten the route for the involved traffic by 78 miles.

n8 The trackage rights will be between L&N's connection with B&O at milepost 125 near Mitchell and milepot 335 46 at B&O's Cone Yard at East St. Louis

Applicants plan several other changes at Vincennes and Mitchell. Due to the increased traffic handled at Vincennes yards, additional maintenance work will be performed. The B&O-L&N connection at Mitchell and Vincennes will be rehabilitated and restored. Yard and agency forces [*233] at Vincennes will be consolidated.

Applicants anticipate that a grant of these two application will result in significant benefits, including the elimination of duplicative facilities, the release of valuable property for sale or development, improved equipment utilization and supply, and improved services. The proposal should have no impact on commuter or passenger operations.

The proposed trackage rights, coordinated operations, yard consolidations, and construction will result in savings to L&N and B&O of approximately $1.2 million annually. The trackage rights charge for L&N's use of B&O's line is 6 cents per car-mile A related charge of 35 cents per car-mile will be assessed when one carrier handles the cars of the other over the coordinated trackage section.

Applicants estimate that five positions will be abolished and two created on the B&O at East St Louis. The abolishments will add costs of $110,500 in the first year following merger and $27,400 in the second and third year following merger. Savings from the abolishments will be $146,500 in each of the 3 years following merger. The labor cost of the two positions created will be $47,600 in the first 3 years following [*234] merger.

On the L&N, 25 positions at East St. Louis, 4 at Evansville, and 1 at Vincennes will be abolished. Labor costs associated with these abolishments will be $517,328, $211,422, and $134,024 in the first, second, and third years following merger. Savings will be $696,577 in each of the 3 years following merger. Numerous positions on the B&O and L&N will be consolidated with no related labor costs or savings.

BLE estimates that the job security of eight engine service employees employed by L&N at East St. Louis will be threatened by a grant of the two applications BLE repeated substantially the same arguments and requests the same conditions described in Finance Docket No 28905 (Sub-Nos. 3 and 4).

The UTU (representing B&O employees) believes that this transaction will have an immediate and long-term effect on employees of B&O as well as other lines UTU claims that the consolidation of 9 positions at East St Louis and 45 positions at Washington and Vincennes, IN, could lead to loss of additional jobs and create further displacement of employees. UTU also feels that the diversion of traffic away from the involved B&O line resulting from operating changes and [*235] diversions proposed in the control case may lead to the loss of additional positions. UTU argues that the adverse effects of these job losses will be enhanced as employees exercise their seniority rights. Finally, UTU expresses its concern over the extensive congestion currently existing on the B&O lines and facilities.

UTU (representing L&N employees) claims that this transaction will have both an initial and continuing effect on L&N employees. It estimates that 15 positions will be lost immediately at L&N's East St Louis Yard, that 115 men on the seniority roster at Evansville Yard will be adversely affected, and that if any service on the L&N line is downgraded, a reduction of forces at the Owensboro Yard could also result. (An estimate of the effect of the Owensboro Yard was not submitted.) Further, UTU predicts that the St. Louis subdivision stands to lose 33 to 36 jobs immediately and that 9 employees on the seniority roster and 3 extra board employees on the Texas subdivision may be affected as well.

Although applicants indicate that jobs will merely be consolidated on the B&O, BRAC (representing B&O employees) believes that some jobs will be lost. BRAC contends that [*236] the potential adverse effects of this application on employees are larger than predicted due to the geographic scope of the involved seniority district. BRAC emphasizes the difficulties faced by employees attempting to demonstrate that they were affected by the transactions and suggests that we condition approval to protect such employees by a conclusive presumption that all adverse effects within 10 years resulted from the implementation of the transaction.

SERVICES BETWEEN LOUISVILLE AND CINCINNATI

(Finance Docket No. 28905 (Sub-No. 11) and AB-19 (Sub-No. 41))

Cincinnati, OH, is the largest common point terminal of Chessie and Family Lines. It is the junction of seven major Chessie routes with lines serving St. Louis, MO, Louisville, KY, Indianapolis, IN, Chicago, IL, Toledo, OH, Columbus, OH, Parkersburg, WV, Russell, KY, and points beyond. Cincinnati is also the junction of two main L&N lines, one line to Louisville, Nashville, Birmingham, and New Orleans and the other to Knoxville and Atlanta. Cincinnati is L&N's most important gateway for the interchange of L&N originated coal traffic

Chessie's terminal presently consists of 11 classification and industrial yards, 6 [*237] of which are being replaced by the new Queensgate computerized hump yard, which currently is under construction. L&N's Cincinnati terminal operations are concentrated at DeCoursey Yard at Covington, KY.

L&N's Cincinnati terminal operations are on the south side of the Ohio River, except for its new piggyback crane terminal on the property of the former Cincinnati Union Terminal (CUT) and its Plum Street team track Chessie's Cincinnati terminal operations are on the north side of the Ohio River, except for limited industrial business and Stevens Yards. (Although this yard was scheduled for retirement under the Queensgate Yard project, it will be leased to L&N pursuant to the proposal under Finance Docket No. 28905 (Sub-Nos. 3 and 4)) One of the three railroad crossings over the Ohio River invovles properties of C&C Bridge and CIT, subsidiaries of C&O. These facilities provide L&N access to B&O, Southern, and Conrail interchange points, access to L&N's piggyback terminal and other north side work, and access to a portion of the C&O's main line between Russell, KY, and Chicago, IL.

B&O operates through trains between Cincinnati and Louisville via North Vernon, IN. B&O trains [*238] originate or terminate at Kentucky and Indiana Terminal Railway Co. 's (KIT) Youngtown Yard. KIT serves as an intermediate carrier to B&O connections, including L&N at Louisville. L&N operates numerous trains between Cincinnati and Louisville via its "Short Line." This route is approximately 10 miles shorter than B&O's route between Cincinnati and

Louisville via North Vernon, IN At Louisville, L&N's terminal operations are centered at its computerized Osborn (Strawberry) Yard.

B&O seeks trackage rights over L&N, C&C Bridge and CIT, which would allow it to move between Cincinnati and Louisville over L&N's "Short Line " B&O and L&N will coordinate operations over this L&N seeks certain trackage rights to facilitate movements between B&O and L&N Yard n9

n9 More specifically, (1) B&O seeks trackage rights over L&N lines between Covington and Louisville, KY: (a) in Covington, over 3.2 miles of track between KC Junction at L&N milepost 107 1 and DeCoursey Yard at milepost 103.9; (b) over 116.7 miles of track between KC Junction at milepost 107 1 at Covington and Osborn (Strawberry) Yards at milepost 10 in Louisville; and (c) in Louisville, over 2 7 miles of track between milepost 3.0 and milepost 0.3.

(2) L&N seeks trackage rights over 0.97 miles of B&O track in Cincinnati between Queensgate Yard at milepost 666 03 and Fifth and Baymiller Streets at milepost 665.06.

(3) B&O and L&N wish to coordinate their operations between Cincinnati and Louisville including terminal and switching operations.

(4) B&O seeks authority to use jointly C&C Bridge and CIT properties crossing the Ohio River in order to connect the two roads between Cincinnati and Covington (2.37 miles of track between Fifth and Baymiller Streets at milepost 665 06 in Cincinnati and KC Junction at milepost 662.69 at Covington).

[*239]

Applicants plan the following operational changes.

(1) B&O will operate a run-through train between Cumberland, MD, and Louisville, KY. This train will gather B&O's Louisville traffic and traffic routed Cincinnati-L&N for Louisville and beyond. This train will move over L&N's "Short Line" between Cincinnati and Louisville. There will be no switching at applicants' Cincinnati yards A similar train destined for Louisville and beyond will originate at L&N's Queensgate Yard carrying B&O and L&N traffic to Louisville and beyond. (Reverse movements from Louisville will also move over this route) There will be no handling at DeCoursey Yard in any of these movements.

(2) L&N's Plum Street team track at Cincinnati will be consolidated with B&O's facility at Wood Street. L&N's facility will be sold.

(3) L&N's interchange with Southern at Plum Street will be handled by B&O as the intermediate carrier.

(4) B&O and C&O piggyback operations at Mill Creek will be handled at L&N's new TOFC facility. Chessie's ramp facilities will be sold. Chessie and L&N piggyback personnel will be consolidated at L&N's offices. Due to the proximity of L&N's terminal, Chessie will perform necessary [*240] switching and spotting at L&N's TOFC facility. L&N will transfer traffic between DeCoursey Yard and the TOFC facility.

(5) B&O's TOFC ramp at Jeffersonville, IN will be consolidated with L&N's ramp in Louisville The limited locomotive and car maintenance functions performed at Jeffersonville will be transferred to the L&N facility. C&O, B&O, and L&N agency and clerical forces will be consolidated at Chessie's office building.The Jeffersonville ramp facility and related property will be sold.

(6) B&O will jointly use L&N's terminal facility in Louisville (Osborn Yard).

(7) B&O will reduce its use of KIT's Youngtown Yard for classification, maintenance and inspection purposes.

B&O's trackage rights over L&N will eliminate any need for B&O to operate between Louisville and Cincinnati via North Vernon. B&O has therefore applied for authority to abandon operation over the portion of the route between North Vernon and Nabb. n10 Service to B&O patrons located between Cincinnati and North Vernon will not be affected by the abandonment since this line is also used as B&O's main line between St. Louis and Cincinnati B&O patrons located between Nabb and Louisville will continue [*241] to be served by B&O's Jeffersonville Switcher originating at Osborn Yard.

n10 The B&O will abandon a 28.17-mile section of track between railroad milepost 0.35 near North Vernon, IN, and railroad milepost 28.52 near Nabb, IN.

The area traversed by the involved line is generally rural and lacks industrial development potential. There are no patrons with private sidings along the line. The involved track is currently used primarily for bridge or overhead traffic (33,299 and 34,169) carloads of overhead traffic moved over this line in 1977 and 1978 respectively.) During 1977, 12 carloads of traffic originated or terminated at a passing siding near Deputy, IN, in 1978; 19 carloads originated or terminated at this siding. All the loads moved to the siding by motor carrier. B&O claims that the existing B&O patrons located along this line will not be significantly affected because alternate rail loading facilities are located at North Vernon, less than 15 miles from the Deputy siding. None of the patrons served by B&O along the involved line have protested the abandonments.

The involved track is maintained at FRA class 3 standards and requires no rehabilitation. Abandonment [*242] will enable B&O to avoid maintenance expenses of $241,232.The estimated net salvage value of the line is $775,204

Applicants anticipate that a grant of these two applications will result in various benefits including elimination of duplicate facilities, concentration of overhead movements along one route, more efficient use of terminal facilities, and improved financial viability for the carriers. The only passenger or commuter operation affected is a daily Amtrak train using the C&C Bridge and CIT in Cincinnati. The proposed operation will reduce the number of freight movements over the bridge and should have a minor positive impact on passenger operations.

Overall, the proposal will produce approximately $2 million in net annual savings to B&O, L&N, C&C Bridge and CIT. This includes trackage rights charges. The charge for B&O's use of L&N's line is 3 cents per car-mile and for L&N's use of B&O's line, 14 cents per car-mile. A related charge of 35 cents per car-mile is assessed when one carrier handles the cars of the other over the coordinated trackage section. These charges were developed to equalize the total net savings associated with the operations between Cincinnati [*243] and Louisville, excluding Cincinnati terminal savings. The per car charges are subject to annual revision for inflation or deflation, based on AAR indexes and the carriers' system accounts. B&O's joint use of the C&C Bridge and CIT will be on the same basis as the existing joint use agreement between C&O and L&N. Under this agreement the parties share in the costs and expenses of the facilities on a proportionate basis determined by use.

Applicants estimate that the operations will abolish a total of 20 B&O positions at Louisville, Watson, Jeffersonville, and Cincinnati. The labor costs associated with these abandonments will be $427,200, $68,900, and $22,000 in the first, second, and third years following merger. Labor savings will be $473,700 in each of the 3 years following merger. Four positions on the L&N at Cincinnati will be abolished. These L&N abolishments will result in additional labor costs of $59,990 in the first year following merger. Labor savings of $98,447 will be realized in each of the 3 years following merger. Numerous positions on the B&O and L&N will be consolidated without any related labor costs or savings.

The applications are opposed [*244] by BLE, BRS, and UTU. n11

n11 A shipper located south of the proposed abandonment filed a petition to intervene but made no further statements.

BLE estimates that 100 B&O engine service employees, along with an unknown number of L&N engineers, will be adversely affected by a grant. BLE repeats substantially the same arguments and requests the same conditions described in Finance Docket No. 28905 (Sub-Nos. 3 and 4). These arguments were dealt with in the body of this decision

BRS (representing C&O and B&O employees) claims that the coordinations will have an extensive impact on each of applicants' employees, that the initial effects on employees will be greater than conceded by applicants, and that the effects will be felt for many years.

UTU also claims that the transactions will have a grave effect on L&N employees in Cincinnati. The UTU claims that these adverse effects will be greater than those anticipated by applicants and will occur over a longer period of time. UTU states applicant's proposed changes in operations will result in the reduction of required L&N switching crews at DeCoursey Yard. UTU believes that the number of yardmen affected may be as many as 150 [*245] and that the described operations changes may have a similar effect upon other railroad employees

In reply, applicants claim that BLE, UTU and BRS have generally failed to substantiate their allegations of harm and failed to demonstrate the existence of any special circumstances warranting any protection beyond the statutory minimum. Applicants agree, in part, with the BRS allegations and have acknowledged that one additional signal maintainer position may be abolished. The abolishment would result in further labor savings of $23,382 in years 1 through 3 following the merger and labor costs of $22,229 in year 1 only. Applicants predict no other changes in employment, and do not foresee any abandonment of the remainder of the line.

RICHMOND-NEWPORT NEWS-PORTSMOUTH, VA

(Finance Docket No. 28905 (Sub-No. 12) and AB-18 (Sub-No. 27))

Two main lines of the SCL from the south terminate at Richmond, VA, where SCL has connections with C&O, RF&P and Southern At Weldon, NC, one of SCL's lines to Richmond intersects its line to Norfolk-Portsmouth, VA C&O has two lines to Richmond from the west. East of Richmond, a C&O line follows the north bank of the James River to Newport News, [*246] VA, where C&O has its major coal dumping facility. The C&O extends its service from Newport News to Norfolk, VA, by means of tug-propelled carfloats. Both C&O and SCL have piggyback facilities on their respective sides of the river

The C&O carfloat operates between Newport News on the north side of the James River and the Naval Operating Base and Sewells Point on the south side. At Sewells Point, Norfolk and Portsmouth Belt Line Railroad (N&PBL) loads and unloads the carfloats and performs switching and interchange services for C&O in the Norfolk and Portsmouth areas. Switching to and from the float bridge at the Naval Operating Base is performed by that installation, with its own equipment and personnel.

C&O seeks trackage rights and authority to coordinate its operations with SCL over SCL's lines between Richmond and Portsmouth, VA, and to abandon its carfloat operations in the Newport News area. n12

n12 These trackage rights are between milepost 1 3 at Brown Street Yard in Richmond, VA, and milepost 1 at Portsmouth, VA, a distance of 166.35 miles. C&O currently operates its carfloats between Newport News, VA, and the U.S Naval Operating Base at Norfolk, VA, a distance of approximately 6 miles and between Newport News, VA, and a connection with N&PBL at Sewells Point in Norfolk, a distance of approximately 7 miles. [*247]

With the trackage rights, C&O will operate a new scheduled train from the west via Clifton Forge, VA, reclassify the train at Fulton Yard in Richmond and then operate the train over SCL to Portsmouth. At SCL's Collier Yard, south of Richmond, blocks of cars will be set-off for interchange with SCL trains, and SCL cars destined for Portsmouth will be picked up. C&O grain trains for Norfolk will be moved in advance of the new scheduled train to Collier, where the grain trains will be picked up for movement to Portsmouth. A similar westbound service will also be operated Applicants claim that C&O's use of this all-land route for access to Norfolk will provide better service than is provided by its present land-water-land route. Transit times over the all-land route to Norfolk will be at least as good as the existing route utilizing carfloat service.

Currently, C&O operates a piggyback facility at Newport News and SCL has a similar facility at Norfolk. C&O's piggyback facility is used by patrons from both the Newport News and Norfolk areas Trailers from Norfolk consigned for movement on C&O trains must be handled by highway from Norfolk to the piggyback ramp at Newport [*248] News Piggyback trailers are not handled on the carfloats due to the time-sensitive nature of the traffic, the lack of capacity on the carfloats, and the expense. Under this proposal, the SCL piggyback facility at Portsmouth will become a joint SCL/C&O piggyback facility. The C&O piggyback facility at Newport News will also be retained. This will permit C&O shippers in the Norfolk-Portsmouth areas to haul their trailers to the joint Portsmouth facility for subsequent movement on the C&O via the proposed trackage rights, saving the time, money and fuel required to haul trailers by highway from Norfolk to Newport News. At the same time, C&O piggyback patrons at Newport News will continue to have trailer ramp service at the existing C&O facility.

Certain improvements and efficiencies in yard and related operations will be realized. The operation of through-train services between C&O's Fulton Yard at Richmond and SCL's Collier Yard south of Richmond will eliminate the handling and car inspection functions for this traffic at SCL's Brown Street Yard in Richmond Although the C&O and SCL Yards in Richmond will remain separate, the agency clerical forces will be consolidated. At [*249] Portsmouth, SCL will handle C&O's terminal operations, including switching of trains, interchange and industrial services. C&O and SCL freight agency forces at Portsmouth will also be consolidated. N&PBL will continue to provide switching

service for C&O's Norfolk-Portsmouth customers Traffic to the U.S. Naval Operating Base will be handled by N&PBL and NW over existing rail lines.

Two planned facility mofifications will improve operations over the proposed trackage rights route. At Richmond, the SCL line has clearance limitations where C&O's main line crosses overhead to the SCL Line. This restriction will be improved by raising the C&O bridge, thus enlarging SCL's clearance capacity on its line and providing sufficient clearance for the C&O traffic to Norfolk. At Weldon, NC, the existing connection between the SCL's north-south and east-west line will be improved, to permit the new trains to make a through movement without reversing their direction

C&O's carfloats handled 19,113 and 21,426 carloads in 1977 and 1978, respectively. All of the overhead or bridge traffic will be retained under the proposed abandonment and all-land trackage rights route. No C&O team tracks [*250] or other public use facilities will be affected by the abandonment. All C&O tugboats in operation will be transferred for use in other operations in the Portsmouth area.The only traffic which C&O anticipates will be lost is 338 carloads of waterborne scrap metal traffic, which both originated and terminated in the Newport News-Norfolk terminal areas. Because the carfloat abandonment does not eliminate actual rail access to any shipper's facility, this patron will continue to receive rail service for its other shipments Alternate motor transportation is available for the 338 carloads which were handled on the carfloat. Applicants do not believe that a grant will have a significant effect upon industrial development on the Virginia peninsula. C&O has had no inquiries from industrial prospects or existing industries to use the carfloat during the past 10 years.

While the all-land route between Richmond and Portsmouth will be 80 miles longer than C&O's existing route, authorization of the two applications will have several beneficial impacts C&O will be allowed to retire a labor intensive operation which is a source of congestion, expensive to operate and maintain, [*251] and vulneable to climatic changes. Further, it is doubtful that the existing carfloat operation will have sufficient capacity to accommodate projected expansions of grain shipments. The all-land route will eliminate these capacity restraints. The consolidation of certain activities at Portsmouth and Richmond will enable applicants to realize operational and financial benefits at these points. C&O's planned construction will offer the benefits of an improved clearance along SCL's line and an improved connection at Weldon. The reduction of C&O operations between Newport News and Richmond will have a minor positive impact on the one Amtrak train operating daily over the line. The increase of traffic over portions of the Richmond to Weldon section of SCL may have a minor negative impact upon three daily Amtrak trains. However, applicants claim that SCL lines in the area have sufficient capacity to handle the extra traffic without any passenger train interference.

The proposal will permit C&O and SCL to realize net annual savings of approximately $730,000. The trackage rights charger for C&O's use of SCL's line is 2 cents per car-mile. A related charge of 35 cents per car-mile [*252] is assessed when one carrier handles the cars of the other over the coordinated trackage section

Applicants estimate that the proposal will enable C&O to eliminte 45 positions at Newport News and three positions at Richmond Four additional positions will be created at Richmond. C&O will consolidate 33 positions Labor costs associated the position abolishments will be $1,081,600, $472,100, and $328,800 in the first, second, and third years following merger. Savings will be $1,244,500 in each of the 3 years following merger Labor costs associated with positions created will be $112,700 in each of the 3 years following merger.

On SCL, 10 positions will be abolished at Richmond. SCL will consolidate 21 additional positions. Labor costs associated with the abolishments will be $15,903 in the first year following merger. Labor savings will be $230,020 in each of the 3 years following merger.

The following parties appeared at the oral hearing or submitted verified statements: Commonwealth of Virginia, Virginia Peninsula Industrial Council, Peninsula Port Authority, Peninsula Terminal, Ltd (PTL), the city of Newport News, UTU, BRACK, the International Organization of Masters, [*253] Mates, and Pilots (IOMMP), BLE, and the Seafarer's International Union (SIU).

Virginia Peninsula Industrial Council and Peninsula Ports Authority object to C&O's abandonment. They suggest that C&O investigate the possibility of using the carfloat to establish a water bridge for two-way traffic between northern and southern port terminals in Hampton Roads. This would provide an alternate route for container traffic.

PTL, in Newport News, is concerned that the reduction of car movements through the Virginia peninsula will cause a deterioration of future rail service. It requests conditions which would require the establishment of SCL trailer and container ramp points at Newport News, changes in port absorption provisions at Newport News, assurances that there

would be no deterioration in rail services, and guarantees that Newport News would have direct access to any existing or proposed express or limited trains.

The city of Newport News fears that Newport News will become a transportation "deadend" and that loss of the carfloat will deprive the city of a major tool in the marketing of industrial locations on the peninsula.

UTU (representing C&O employees) is concerned [*254] that authorization of the two applications will have a significant adverse effect upon employment opportunities in four seniority districts Specifically, UTU indicates that 18 to 20 trainmen positions and some yardmaster positions at Newport News will be abolished and that there will be a reduction of approximately 10 employees in trains and engine service between Richmond and Newport News. UTU also fears that SCL and C&O terminal facilities at Richmond will be consolidated, further reducing employment opportunities. UTU claims that the strictly local seniority systems will be severely affected.

UTU (representing SCL employees) notes that SCL plans to abolish six yard positions at Richmond and stresses the substantial displacement problems which could occur as trainmen exercise their seniority rights. UTU asserts that similar adverse effects may be felt by yard and road conductors. UTU argues that long-term employee protection is required since many impacts will not be felt immediately UTU cites the possible C&O and SCL yard consolidation at Richmond as one such future contingency.

BRAC foresees a significant adverse effect upon C&O employees in its Richmond District Transportation [*255] Department, Clerical Roster, a districtwide seniority system. BRAC claims that a grant may result in the abolishment of more jobs than predicted by applicants and that additional employees will be affected by the exercise of seniority rights by others. It suggests that we condition approval upon a conclusive presumption that any reduction or adverse effect within 10 years resulted from the implementation of the transaction.

IOMMP has one affected seniority roster, which is strictly local and includes individuals in the C&O Marine Department at Newport News. IOMMP estimates that approximately 70 percent of the tugboat work performed by the Marine Department will be eliminated if the abandonment is approved. IOMMP forecasts the immediate loss of 12 positions and predicts that eventually C&O will eliminate its Marine Department. IOMMP fears that the combination of small seniority district, abandonment, and job loss will force many of its members to seek jobs unrelated to their current skills, or relocate and go through relicensing in the new area. The union also stresses the adverse effect that relocation would have upon members' spouses and their employment.

BLE estimates that [*256] 30 engineers will be adversely affected by the abandonment and rerouting BLE repeats substantially the same arguments and requests the same conditions described in Finance Docket No. 28905 (Sub-Nos. 3 and 4) These contentions have been addressed in the body of the decision.

SIU argues that the abandonment will cause the elimination of at least one tugboat operation, with the loss of eight carfloat captain engineer positions, four tug captain positions, four tug mate positions, four tug engineer positions, and eight tug deckhand positions. SIU argues that the Oregon III conditions are inappropriate in this proceeding. It argues that affected employees should receive the protection offered by their existing collective bargaining agreement, or if that agreement does not take precedence, then the protection accorded employees under the Regional Rail Reorganization Act of 1973.

Applicants assert that the proposed abandonment will not result in the deterioration of C&O rail service to the Newport News area. Applicants predict continued traffic growth in this area. Applicants also disputes the port interest's contention that the carfloat operation is a good marketing tool for future [*257] growth. Applicants state that no customer has expressed any interest in the carfloat operation. Applicants further claim that the Peninsula Port Authority's suggestion that the carfloat be used for transportation of containers and trailers is not feasible, would require major alterations to the carfloat, and is not responsive to the time and cost sensitivity of container traffic. Finally, applicants argue that the conditions requested by PTL, are unsupported and not relevant to the carfloat abandonment application.

· In response to labor union representatives, applicants emphasize that labor's estimates of employee reductions are unsupported.

WINCHESTER-LEXINGTON, KY

(Finance Docket No. 28905 (Sub-No. 13) and AB-18 (Sub-No. 28))

C&O and L&N both operate between Winchester and Lexington, KY, over separate parallel lines. The two lines connect at Winchester and Lexington.C&O seeks to abandon a portion of its route between Winchester and Lexington

in favor of obtaining trackage rights over L&N's line between these points. n13 No new connections are required to permit such an operation, although the present connection at Winchester will be improved for road train operation. [*258] The only change in yard and shop facilities associated with this proposal is the retirement of some C&O yard tracks at Winchester

n13 The trackage rights will be 20.2 miles between milepost 114.3 at Winchester, KY, and milepost 97.7 at North Lexington, KY. The abandonment section is 9 11 miles and lies between milepost 625.38 near Winchester and milepost 634 49 near Chilesburg.

No active rail customers are located on the line to be abandoned and there appears to be little, if any, prospect for further industrial development in the near future. Following the abandonment, local service on the remaining portion of C&O's line between Winchester and Lexington will be provided by local crews.

During 1978, C&O's line handled 24,500 carloads of overhead or bridge traffic All of this traffic will be retained by C&O and routed over the trackage rights.

The line is maintained at FRA class 3 standards Tie renewal and surfacing required on the C&O line will cost approximately $205,000 The annual normalized maintenance expenses which would be avoided by abandonment are approximately $85,000. The estimated net salvage which would be realized from the abandonment is approximately [*259] $26,000

Applicants predict that the authorization of these two transactions will result in several benefits. These include the elimination of duplicative facilities, the realization of operating economies, and the release of rail and other property assets for sale and reuse. Passenger and commuter operations will be unaffected.

Based on historical maintenance costs, without consideration of rehabilitation and normalized maintenance cost, this proposal will produce net annual savings of $30,000 for C&O and L&N. The trackage rights charge for C&O's use of L&N's line is 4 cents per carmile, subject to annual revisions for inflation or deflation based on AAR indexes.

Besed on operating studies, applicants estimate that approval of these applications will not result in any job abolishments, transfers, or consolidations

The applications are opposed by BLE and UTU.

BLE predicts that engine service employees on both C&O and L&N will be adversely affected While BLE is not able to estimate the exact number of individuals affected, it points out that at least seven C&O engineers will be adversely affected by the abandonment of C&O's Netherland facility at Lexington.

UTU claims that [*260] the abandonment of C&O trackage between Winchester and Chilesburg and the downgrading of track between Chilesburg and Lexington will adversely affect various signal employees, maintenance-of-way employees, and other crafts UTU is unable to specify the precise effect.

In response, applicants claim that BLE's arguments concerning possible changes at Netherlands terminal in Lexington are irrelevant to the present applications and are directly related to Finance Docket No. 28905 (Sub-No 14) only. Applicants further argue that BLE and UTU have failed to substantiate their claims.

LEXINGTON-LOUISVILLE, KY

(Finance Docket No 28905 (Sub-No. 14) and AB-18 (Sub-No. 29))

Both C&O and L&N operate between Lexington and Louisville, KY.At Lexington, C&O and L&N maintain separate yard facilities and perform industrial security and interchange work. From Lexington C&O reaches Louisville by trackage rights over L&N's line. At Louisville, C&O operates over its own 0 53-mile line to Conrail's Preston Street Yard. At that facility, all yard switching work is performed for C&O by Conrail. In Louisville, C&O interchanges traffic to ICG, which provides intermediate service for C&O to [*261] its connections. L&N has substantial operations in Louisville. At Louisville, L&N has several yards, including Osborn (Strawberry) Yard, which is an electronic hump yard with 49 classification tracks, and South Louisville Yard, which serves L&N's large car and locomotive shops and handles industrial activity in that area.

Under this proposal, C&O and L&N will coordinate operations between Louisville and Lexington, and C&O will obtain access to Osborn Yard. n14 With this access, C&O will be able to obtain switching and yard services from L&N,

abandon its current yard and switching operations at Conrail's Preston Street Yard, and abandon its viaduct leading to Preston Street Yard. n15

n14 To gain this access, C&O seeks trackage rights over L&N between milepost 1.9 at MN Junction near East Louisville, KY, and milepost 10 at Osborn (Strawberry) Yard, a distance of 11 5 miles and between milepost 3.0 and milepost 0 3 at Eleventh and Maple Street in Louisville, a distance of 2.7 miles.

n15 The Louisville viaduct extends from Valuation Station 4 + 20 to Valuation Station 32 + 22.2 a distance of 0.53 miles.

Applicants plan certain other operational changes, including the consolidation [*262] of all yard and interchange operations at L&N's Lexington Yard, the retirement of most of C&O's Lexington Yard, and the merger of clerical and agency forces at Lexington and Louisville. At the consolidated Lexington facility, C&O and L&N will combine their interchange with Southern and will seek to negotiate a new direct interchange train service.

No customers are located on the line to be abandoned. While C&O does jointly serve one customer out of the Preston Yard facility, the traffic is minimal (the customer originated 11 carloads in 1978). Service to this customer will continue to be available through L&N C&O moved 10,385 and 13,078 carloads of overhead traffic through Preston Street Yard in 1977 and 1978. This traffic will be retained over other routes

The abandonment segment includes a 1,382-foot elevated viaduct which is maintained to FRA class I standards. The viaduct requires $623,000 in rehabilitation. Continued operation of the line would also require $16,500 in normalized maintenance after rehabilitation. These maintenance and rehabilitation expenditures will be avoided by the abandonment.

Applicants anticipate various benefits, including increased operational [*263] efficiency and flexibility, improved equipment utilization, minimized classification requirements at terminals, and improved financial viability of the carriers. (Conrail may also reap financial benefits through the possible retirement and sale of the Preston Street Yard) Public safety may be enhanced by the rerouting of interchange traffic, including hazardous materials, away from downtown Louisville. There should be no adverse effect on passenger or commuter operations

The proposed abandonment trackage rights and coordinations will result in annual net savings to L&N and C&O of approximately $1.2 million. The trackage rights charge for C&O's use of L&N's line is 14 cents per car-mile. A related charge of 35 cents will be assessed when one carrier handles the cars of another over the coordinated trackage section. These charges and the Louisville user charges have been established at a level which will give approximately equal benefits to C&O and L&N. The per car charges are subject to annual inflation or deflation based on AAR indexes and the carriers' system accounts.

Applicants estimate that the operations will lead to the abolishment of 10 positions on C&O [*264] at Lexington. Due to these abolishments, C&O will incur additional costs of $238,800, $77,600 and $25,100 in the first, second, and third years following abandonment and will realize savings of $249,500 in each of the 3 years following abandonment C&O will consolidate 48 positions at Lexington.

On L&N, three positions at Lexington will be abolished These abolishments will lead to labor costs of $41,089, $19,147, and $19,147 in the first, second and third years following consolidation Labor savings will be $68,952 in each of the 3 years following merger. Four new positions will be created at Louisville, causing $137,996 in labor costs in each of the 3 years following consolidation. Twenty-four L&N positions will be consolidated.

BLE estimates that two C&O engine service employees will lose employment and two others will be adversely affected by the abandonment. BLE further predicts that three L&N and two C&O engine service employees will be adversely affected by the trackage rights.

UTU claims that various L&N and C&O employees will be adversely affected by coordination of terminal activities at Lexington and coordination of line operations between Lexington and Louisville [*265]

In response, applicants argue the BLE and UTU have failed to substantiate their claims.

DEANE, KY CONNECTION

(Finance Docket No. 28905 (Sub-No. 15))

L&N's Eastern Kentucky District, commonly referred to as the "EK," is one of the largest coal producing districts on the L&N. Coal from this district moves to northern and western markets via L&N's Cincinnati gateway.

L&N's sole feasible outlet to the south and southeast involves circuitous movement from the EK to Winchester, and Corbin, KY. From Corbin, shipments either move to St Paul, VA, for connection to CCO and later transfer to SCL lines, or to Atlanta over L&N for connection to SCL lines. In the past, 57 percent of the southeastern traffic moved via St. Paul; the remainder moved through Atlanta.

L&N serves Deane, KY, by its branch line from the EK district; C&O serves Deane by a branch from its Big Sandy main line. At Deane, the C&O and L&N lines connect, but the connection is inadequate for the movement of through-trains C&O and L&N propose to build a 0.22-mile connection at Deane and operate trains between hazard, KY (on the L&N), and Martin, KY (on the C&O). From Martin, C&O would move the trains via Elkhorn City [*266] to the CCO using a new Shelby-Dante run-through service arrangement. This routing will eliminate 200 miles from the existing St. Paul routing, and 265 miles from the Atlanta routing. It is estimated that 18,012 carloads will move through Deane in the first year following merger. This will increase to 19,765 in the second year and 21,515 carload during the third year.

To provide the necessary plant and facilities for the new Deane movement, accelerated track maintenance work will be undertaken between Hazard and Martin, new yard tracks will be provided at Martin, and a siding extended at mile-post 32 on the CCO.

The proposed connection and new routing will result in substantial operating economies Due to the significant reduction in mileage over the new route, substantial savings will be realized in locomotive unit-miles, car-miles, and gross ton-miles. Additional benefits include increase hopper car supply through greater productivity and substantial fuel savings.

Outlays for these new facilities and improvements will total $2,204,000 (including $256,036 for the new connection at Deane). C&O and L&N will realize net benefits of $1,256,118 in the first year, $1,378,356 in [*267] the second year, and $1,500,431 in the trird year.

Applicants estimate that the described changes will lead to the abolishment of three roadmen positions and one road engineer on the L&N at Cincinnati (DeCoursey Yard). The labor costs of these abolishments will be $61,045 in the first year following consolidation. Labor savings will be $97,320 (year 1), $106,785 (year 2), and $106,253 (year 3). Four positions on the L&N at Hazard will be consolidated.

On the C&O, three road trainmen positions and one road engineer position will be created at Martin The cost of creating the positions during the first 3 years is as follows: year 1 -- $83,100; year 2 -- $93,200; year 3 -- $97,300 Four additional positions will be consolidated at Martin.

BLE estimates that this transaction will have an adverse effect upon 150 C&O engineers as a result of the elimination of locomotive engineer positions at Martin and subsequent transfers within the seniority district. BLE further asserts that 500 L&N engine service employees located in a number of seniority districts will be adversely affected due to diversion of traffic moving through these districts.

UTU predicts that use of the connection [*268] may divert approximately 70 percent of the Hazard to Ravenna, KY, coal movements to other CSX system lines, depriving approximately 30 trainmen of employment at their present location. Similarly, UTU claims that there will be a reduction in train movements between Ravenna and Corbin and between Ravenna and Cincinnati. UTU maintains that the diversion of traffic to Corbin alone would require a reduction of about 24 trainmen and 8 engineers. Clerical and maintenance personnel in these areas would be similarly affected.

Initially, applicants argue that BLE has presented no factual basis for its sweeping statments concerning adverse effect on employees. Applicants argue that UTU's inflated estimates of adversely affected employees are based on a misconception of the operating plan. The plan projects that only a small percentage of Hazard to Corbin traffic will be subject to rerouting over the Dean connection and that all north and westbound traffic will continue to flow through Cincinnati rather than Deane. There should, therefore, be no significant decline in traffic along these routes and no adverse effect to the employees connected with this traffic.

APPENDIX D

Analysis of [*269] traffic diversion studies

GENERAL BACKGROUND

Our required methodology is designed to achieve a high degree of uniformity and comparability among conflicting traffic diversion studies. Traffic studies are prepared to estimate gains and/or losses of traffic expected from a proposed transaction and the resulting impacts on other carriers. The purpose of the studies, however, is not to establish damages to affected railroads. Instead, their purpose is the quantitative measurement of the expected, short-term changes in the relative competitive strength of the consolidated rail system in relation to competing carriers. These estimated changes are then considered as factors to be weighed in determining whether or not a proposed transaction is in the public interest.

We emphasize that traffic diversion studies are only estimates. While the traffic sample is drawn on an objective basis, the evaluations of divertibility, though based on factual criteria, are judgmental. They consider and measure only the actions applicants can be expected to take as a result of the transaction, and not those actions affected carriers may take to offset traffic losses.

In this proceeding, [*270] we have only examined those diversion estimates which are in contention Where the evaluation of one witness was clearly more reliable than that of the opposing party, we have accepted the more reliable judgment and adjusted the total estimated amount of diversion accordingly. In this manner, we have determined the estimated dollar amount of potential gross revenue diversions. The final figure, however, remains an estimate based on the expert opinions of the carriers' traffic evaluators

Since so many economic and operational changes take place annually in the rail industry, the competitive impacts of a specific rail unification in time become blurred, if not totally unidentifiable. These other economic and operational factors include: (1) other rail unifications; (2) changes in the national and regional economies; (3) changes in operations throughout the industry through utilization of new routes; (4) institution of run-thourgh train schedules; (5) changes in specific rates or rate levels; (6) changes in the intensity of competition from other modes of transportation, (7) rail line abandoments; and (8) changes in the level of cooperation between two or more competitors.

The [*271] foregoing factors represent some of the reasons why traffic diversion estimates cannot be cast in concrete. To conclude otherwise, we would be forced to consider the transportation industry as static. Our findings of traffic diversion totals are simply reasonable estimates of overall short-term competitive impacts on specific carriers. Car-by-car and dollar-for-dollar precision is not necessary.

According to applicants' projections, the full impact of the proposed consolidation will not occur until the third year following consummation.

Southern, n1 NW, n2 GTW, n3 MKT, D&H, and ICG submitted traffic studies to demonstrate diversions that would result from the CSX consolidation. Because of stipulations entered into by applicants and most protestants, it is only necessary to analyze the traffic studies submitted by applicants

n1 Southern submitted its study as part of its application in Finance Docket No. 28961 (Sub-No. 1), in addition to the traffic study it did not show the effects of its own proposals.

n2 NW and applicants subsequently stipulated to the gross diversion effect on NW.

n3 GTW's study included not only its anticipated losses, but also losses to DTSL (an affiliate) and DTI (at that time a prospective affiliate).

[*272]

APPLICANTS' RAIL TRAFFIC STUDY

Applicants conducted two studies: One to determine traffic diversion from other railroads, and one to determine potential traffic diversion from other modes. A discussion of the studies follows.

The applicants conducted a rail traffic study using probability sampling procedures in order to estimate the gains in rail traffic and revenues that could occur as a result of unification of the two systems. The frame sampled consists of all rail traffic which moved during the year 1977. The relevant date for determining whether a movement was to be included in the frame for the sample was the settlement date when available, or waybill date otherwise The applicant roads in the sample were SCL, L&N, CCO, Georgia, A&WP, WofA, CN&L, D&S, GM, B&O (including traffic of SIRC), C&O, WM, CSS&SB, and RF&P The sample frame included approximately 7.2 million car counts. The applicants' traffic frame included only that traffic in which at least one of the applicant roads participated.

The applicants stratified the traffic frame into four categories. These categories are: (1) category 11, global local (traffic handled by any one or more of the applicants, except [*273] FR&P, and not by any nonapplicant line-haul railroad) with routing in or through Kentucky or Virginia, or with potential routing after diversion in or through either of those States; (2) category 12, global local not meeting the geographic criteria of category 11: (3) category 21, interline (traffic handled by the RF&P or a nonapplicant line-haul railroad) and meeting the geographic criteria for category 11, (4) category 22, interline, and not meeting the geographic criteria of category 11. These geographic categories were made on the basis of a State-to-State matrix

To avoid duplicate car movements in the sample frame, an hierarchical order of recording movements was made. This hierarchical order corresponds to the sequence in which the applicant carriers are listed above A railroad did not include in its traffic file any movement handled by any carrier higher on the list than itself For example, the first sequenced carrier listed above is SCL, which categorized all cars falling in calendar year 1977, while the second sequenced road above, the L&N, excluded from its file any cars interrchanged with SCL. Traffic interchanged with a railroad lower on the sequence [*274] was included.

The sampling plan adopted the car or trailer as the sampling unit. The plan adopted a standard acceptable method of probability sampling which involved two phases. First, the railroads prepared counts on the number of car movements by stratum for the four strata. Then it selected a stratified random sample. The sampling rate for category 11 was 1 in 3,000; category 12, 1 in 4,000; category 21, 1 in 2,000; and category 22, 1 in 4,000. The sample was selected in 10 replicated subsamples to aid in the calculation of the standard error. Using the 10 replications, within each stratum and for each subsample, one car of every consecutive "in" car was selected with random numbers for the sample. The zoning interval "n" was 30,000 40,000 or 20,000, depending on the sampling rate established for the stratum. The number of sample movements falling in category 11 was 549, in category 12, 444; in category 21, 1,453; and in category 22, 229. A total 2,675 movements were included in the sample.

The traffic study was based upon complete waybill data and other information reproduced. A joint traffic team composed of Family Lines and Chessie marketing, routing, pricing, divisions, [*275] and sales personnel participated in the analysis of the waybill abstracts. For each of these abstracts a decision was made as to whether a movement was divertible. A movement was deemed nondivertible if the traffic evaluators found any one of the following reasons. (1) lowest rate, route, and/or divisions do not apply for extending new system lines routing; (2) shipper siding is not open to switching to a system line; (3) consignee siding is not open to switching to a system line; (4) required specialized handling facilities are not available on a system line at the origin (i e., auto ramp, ore dock, coal dock, or other), (5) required specialized handling facilities are not available on the system line at the destination, (6) new system routing does not offer an opportunity for diversion due to the geography (origin-destination) of the movement, (7) present routing provides service superior to potential new system routing; (8) foreign road's furnishing of specialized cars coupled with system road's inability to supply same cars precludes diversion; (9) origin foreign road would be short-hauled, resulting in less revenue; (10) is moving via system lines today and therefore not divertible; [*276] 11(a) system line(s) do not reach origin; 11(b) system lines(s) do not reach destination; or 11(c) traffic is divertible today and the merger offers no additional opportunity for diversion.

Of the 2,675 car movements reviewed, 133 were found to be divertible. In each case where the movement would result in a gain to an applicant, the traffic evaluators assigned separate reasons for the gains taken. The criteria for establishing divertibility were: (1) a system road is the originated-interline forwarded carrier and reroute will involve another system road becoming the interline received carrier; (2) a system road is the originated-interline forwarded carrier and reroute will involve another system road becoming the overhead carrier replacing a foreign intermediate road, resulting in no short-haul to the foreign destination road; (3) a system road is the originated-interline forwarded carrier and reroute will involve another system road becoming the overhead carrier replacing a foreign intermediate road, resulting in short-haul to the foreign destination road; (4) a system road is the terminating-interline received carrier and reroute will involve another system road becoming [*277] the originated-interline forwarded carrier; (5) a system road is the terminating-interline received carrier and reroute will involve another system road becoming the overhead carrier replacing a foreign intermediate road resulting in no short-haul to the foreign origin road; (6) a system road is the intermediate-overhead carrier and reroute will involve another system road becoming the origin-interline forwarded carrier; or (7) a system road is the intermediate-overhead carrier and reroute will involve another system road becoming the destination-interline received carrier.

For traffic found to be divertible, the evaluators expressed the amount of diversion as a percentage ranging between 0 and 95 percent based upon access to shipper/consignee sidings. To these percentages could be added supplemental

percentages ranging from 0 percent to 20 percent based on a supplemental set of criteria that gave weight to the rail service and the ability to provide equipment, stated in terms of superior, comparable, or acceptable performance.

The revenue from the 133 sample movements deemed divertible was projected to apply to all traffic included in the frame In the original study submitted, [*278] this produced an expanded gross annual revenue gain of approximately $55 million.

However, on rebuttal applicants revised their diversion estimate to $71 million because the initial traffic study included only that traffic handled by CSX roads in 1977. As the proceeding progressed, applicants received additional traffic data from other carriers who were protestants or inconsistent applicants. The additional traffic information primarily was the nonjoint traffic studied by those carriers. CSX made reevaluations of the traffic data furnished by the other carrier parties and "added on" the resulting diversion amounts to the applicants' own traffic study estimates. These combined estimates upon which applicants rely are shown in the following table

TABLE D-1

Chessie/Family Lines consolidation rail traffic study results annual gross revenue change by railroad

Railroad	Gross revenue change Thousands
Chessie/Family Lines roads:	
Seaboard Coast Line	$5,008
Louisville & Nashville	18,242
Clinchfield	2,400
Baltimore & Ohio	14,342
Chesapeake & Ohio	14,992
Western Maryland	(657)
Richmond, Fredericksburg & Potomac	951
Other (Southern losses) n1	5,819
Other (N&W losses) n2	9,699
Total Chessie/Family Lines roads	70,796
Other railroads:	
Akron, Canton & Youngstown	[466)
Arkansas & Louisiana Missouri	(111)
Bangor & Aroostook	4
Boston & Maine	118
Canadian Pacific	1,108
Central Vermont	111
Chicago, Milwaukee, St. Paul & Pacific	(519)
Conrail	(16,961)
Delaware & Hudson	260
Detroit & Toledo Shore Line	276
Detroit, Toledo & Ironton	(1,406)
Grand Trunk Western	(972)
High Point, Thomasville & Denton	54
Illinois Central Gulf	(4,559)
Illinois Terminal	(183)
Maine Central	157
Missouri-Kansas-Texas	(786)
Missouri Pacific	(2,324)
New Orleans & Lower Coast	109
New York, Susquehanna & Western	8
Norfolk & Western	(26,000)
Pittsburgh & Lake Erie	(330)
St. Louis-San Francisco	(770)
St. Louis Southwestern	(2,548)

Railroad	Gross revenue change
South Branch Valley	176
Southern	(16,002)
Southern Pacific	835
Union	13
Winston-Salem Southbound	(89)

[*279]

n1 Reflects the difference between original CSX traffic study and revised Southern "damages" study

n2 Reflects the difference between original CSX traffic study and stipulated loss of $26 million.

Note: ( ) indicates revenue loss.

The applicants' traffic studies contain certain infirmities. One of these is the reliability of the sample. We have reviewed the sampling procedures and find that L&N's sample frame (its traffic tapes for 1977) is in such a condition that it would be impossible to match by computer (as the applicants attempted) the sequenced car movements in the L&N traffic tape with the random numbers that had been furnished by the statistician.The sample frame can be characterized as a "dirty" tape with incomplete data and inaccuracies, a tape not readily usable for computer selection of car movements by random number.

The individual L&N traffic sample abstracts were also examined, and we note that on several of the abstracts pencil changes had been made by the applicants in an effort to match the sample abstracts' sequence numbers with their respective waybills. These pencil changes involved changing (1) the date on the sample abstracts, [*280] (2) the car numbers, (3) geographical locations, and (4) shippers and consignees. The applicants admitted on cross-examination that they had a problem with the match between the sample sequence number and waybill

As a result of our examination, we find that the condition of the L&N sample frame (i.e , the traffic tapes for 1977) and the applicants' difficulty in matching the waybill with the sample abstract sequence number results in 18 substituted car movements different from those selected by the random number process. Consequently, the traffic studies themselves and the inferences made from them are incorrect.

We estimate that the L&N sampling frame constitutes approximately one-third of the applicants' total sample frame, and that the L&N movements found divertible represent the same proportion of the total movements found divertible in all of applicants' traffic studies. This is a sizable segment of the study. On the basis of our review, we conclude that we cannot place full confidence in the results

In addition to the sampling infirmities, there are certain factors noted in the studies, and some assumptions made, that have a bearing on the reliability of the applicants' [*281] traffic estimates.

The traffic diversion estimates assumed a post-merger status quo situation in terms of rates and routes as they existed during 1977, the study period. The applicants' witnesses stated on cross-examination that the 1977 routes and rates would remain unchanged until year 3 after unification, after which they would be subject to change depending on the circumstances at the time. Thus, the actual magnitude of diversions after that period of time are not ascertainable from applicants' studies.

The applicants also assumed that if a movement was clearly divertible today it would not be divertible as a result of the proposed unification. It is reasonable to conclude that the type of traffic applicants refer to could include the kind in which there presently is little or no profit because of a short-fall and/or small divisions of revenue received by the applicant carriers standing alone. One of the more important justifications for unification strongly advocated by applicants is that the north-south divisions problem would be obviated, and the unified system would thereby capture some of this traffic Therefore, we believe that the applicants have understated the [*282] potential diversions from other railroads on this traffic. The amount of such understatement, however, cannot be determined from the applicants' studies.

Applicants failed to consider the effects of shipper allocation policies when making judgments on the divertibility of traffic. Exclusion of this factor as a criterion for divertibility can affect the precision of the estimates of diversion on traffic clearly subject to shipper allocations. Our experience in nearly all rail unification proceedings has shown that

newly unified carriers may actually lose traffic in instances where, prior to unification, three carriers served a shipper which allocated traffic evenly. After unification of two the carriers, the shipper policy would result in a 50-50 split between the newly unified carrier and the remaining competitor (which would gain traffic at the expense of the unified carriers).

Conversely, if a shipper allocated traffic on the basis of contributions of equipment to car pools, there is at least a likelihood that the newly unified carrier could increase the number of pool cars available, thereby increasing the unified carrier's share of the traffic over that enjoyed by its predecessor [*283] railroad or railroads.

Since, applicants' traffic study is silent as to the effects of shipper allocation policies on potential diversion, the estimates may be either too high to too low on such traffic.

Overall, we conclude that applicants' estimates of traffic gains are conservative This conclusion encompasses applicants' reevaluations of nonjoint traffic covered in the studies submitted by other carriers. Our conclusions, however, must be qualified even further due to the previously described problems with the L&N traffic study. The impact of those problems result in the necessity of statistically adjusting applicants' total diversion estimates.

As stated earlier, we find that 18 of the sample movements in the L&N sample deviate from statistical standards. Thus, if the correct movements had been chosen in those 18 instances and all had been determined to be 100-percent divertible, applicants' estimated revenue gain would be increased by $6,611,000. Conversely, if all 18 correct movements were found to be not divertible, applicants' estimate of gains would be reduced by $826,000.

This situation should stand as a clear warning to all parties submitting traffic [*284] studies in proceedings of this type: sampling of data must be done according to the strictest statistical standards to avoid what may turn out to be, as here, serious miscalculations of potential traffic diversion.

Applicants' estimates of gross revenue have been adjusted to reflect the statistical infirmities in table D-2, as follows:

TABLE D-2

CSX estimates of revenue gains adjusted to reflect statistical errors

Chessie/Family Lines roads n1	55,278,000
Maximum gain adjustment	6,611,000
Adjusted Chessie/Family Lines roads	61,889,000
Gain from Southern n2	5,819,000
Gain from Norfolk & Western n3	9,699,000
Maximum adjusted revenue gain	77,407,000
Chessie/Family Lines roads n1	55,278,000
Minimum gain adjustment	(826,000)
Adjusted Chessie/Family Lines roads	54,452,000
Gain from Southern n2	5,819,000
Gain from Norfolk & Western n3	9,699,000
Minimum adjusted revenue gain	69,970,000

n1 SCL, LN, CCO, B&O, C&O, WM, and RF&P.

n2 See footnote 1, table D-1.

n3 See footnote 2, table D-1.

Source: Table D-1.

We regard the $69,970,000 figure in table D-2 as the lowest estimated gross revenue gain that the applicants can expect within the range. Due to [*285] the previously described weaknesses in the applicants' judgmental processes in estimating diversion, the actual estimated gain probably would be higher. Also, we have not studies traffic diversion estimates by carriers which have entered into stipulations with applicants. Additional revenue may be gained from the stipulating carriers. Only NW and applicants stipulated an estimate of diversion ($26 million).

APPLICANTS' NONRAIL TRAFFIC STUDY

To estimate traffic and revenue divertible from motor and water carriers, applicants studied traffic presently moving via these modes. In determining potential diversion to CSX piggyback service, applicants' sales departments surveyed approximately 850 shippers now using truck or truck/rail combinations. These shippers identified their business moving by truck and specified present rail rate/service disabilities. From these surveys, applicants identified potentially divertible long-haul movements originating and/or terminating in areas where Chessie/Family Lines intermodal terminal facilities exist or where dedicated piggyback service can be instituted. New dedicated piggyback-only service was considered operationally feasible [*286] between Philadelphia-Jacksonville, Philadelphia-Atlanta, Detroit-Jacksonville, Detroit/Toledo-Atlanta, and Pittsburgh-Birmingham. To determine potential revenue gains, competitive rates and competitive services for movements only within the Philadelphia-Jacksonville corridor were assembled and analyzed. Movements were judged 100-percent divertible based on applicants' ability to provide (1) ramp-to-ramp service which, in combination with over-the-road service, would produce acceptable truck-competitive dock-to-dock service levels, and (2) acceptable rail rates which when combined with drayage charges, would be competitive with truck rate levels.

To determine potential carload diversions, applicants identified potentially divertible truck and barge movements based on active shipper/consignee files or on investigations undertaken during the normal course of business. Contacts with shippers during, or prior to, the study revealed present rail service/rate disabilities. Among the movements identified is a considerable volume of coal being trucked from mine areas served by Chessie/family Lines (8-9 million tons from Kentucky). Contracts with receivers of this coal indicated that [*287] much of this traffic could be recaptured by CSX with increased hopper car availability. Applicants estimate 918 open-top hopper cars will be made available from merger-related operating improvements, and limited coal diversions will be carried by these car (1.5 million tons).

For the remaining noncoal traffic, applicants evaluated those movements identified, assuming competitive CSX service and rates. Where reduced rates were necessary to divert the traffic, the required competitive rate was determined and the movement was costed to determine whether acceptable revenue levels would be obtained Those movements where Chessie/Family Lines could provide an acceptable competitive rate/service package, and achieve acceptable profitability, were considered 100-percent divertible. Reasons supporting these and applicants' other diversions included:

planned service improvements,

increased availability of merchandise cars,

increased availability of open-top hopper cars,

construction of bulk transfer terminals,

establishment of new competitive rates, and

Chessie/Family Lines single-line long-hauls providing acceptable profitability incentives (includes construction of Hi-Rail terminals). [*288]

The results of applicants' study are summarized below

TABLE D-3

Diversions from nonrail carriers

	Gross revenue year 3	Net revenue year 3
		Millions
Diversions from motor carrier to carload	$14 6	$6 8
Diversions from motor carriers to piggyback	13.5	5.8
Diversions from water carriers to carload	9.4	2.4
Diversions from motor carriers to rail bulk transfer truck delivery	2 4	1.4
Total	39.9	14.4

Principal commodities to be diverted to CSX carload service include coal from motor carriers ($9.1 million in gross revenues) and, from water carriers, primary metal products ($4.8 million in gross revenues). Principal commodities

diverted from motor carriers to rail carload/truck transfer include plastic and plasticizers Piggyback traffic includes freight of all kinds.

APPENDIX E

Analysis of cost evidence

This appendix summarizes the cost evidence submitted by the primary applicants

APPLICANTS' EVIDENCE

Applicants presented net benefits to be realized from operational coordinations, internal reroutings, and traffic diversions. Summaries of these benefits are described below and recapped in table E-1.

A Unification of operating functions [*289]

1. Winchester-Lexington and Lexington-Louisville, KY. -- Applicants plan to reroute present C&O through trains between Winchester and Lexington to the L&N line, abandoning C&O tracks east of Chilesburg, KY. Lexington yard activities will be coordinated in the L&N facility, with consolidation of clerical and agency forces. Interchange traffic for Southern will be combined to reduce switching requirements. C&O trains at Louisville will cease using Conrail's Preston Street facility in favor of operation to Strawberry Yard via South Louisville. L&N will add one 5-day yard crew to handle C&O's traffic, including all classification and interchange switching.

2 Movements through Cincinnati and services between Louisville and Cincinnati. -- The major yards of the combined Cincinnati operation will be Chessie's Queensgate (now under construction) and L&N's DeCoursey. C&O's Stevens Yard, after the opening of Queensgate, will be leased by L&N and converted to a subsidiary facility to alleviate congestion at DeCoursey. L&N team track operations in Cincinnati will be consolidated with B&O, permitting disposal of the existing Plum Street facility.

B&O trains, now operating [*290] between Cincinnati and Louisville via North Vernon, IN, will be handled after the coordination over the C&C Bridge's line crossing the Ohio River, with further movement over L&N to Strawberry Yard, Louisville. B&O also seeks rights to operate over L&N within the Louisville area in order to gain acess to ICG's Oak Street Yard and the KIT connection at Seventh and Magnolia.The present B&O piggyback ramp at Jeffersonville will be closed, and the line abandoned between North Vernon and Nabb, IN.

3. Louisville to East St. Louis and St. Louis. -- L&N service via Evansville and B&O service via North Vernon will be discontinued in favor of a shorter joint L&N-B&O operation via Mitchell, with one intermediate crew change at Washington, IN. Schedules will be coordinated at Washington for B&O's direct A&S connection and at Vincennes, IN for L&N's Evansville-Chicago line. Rehabilitation of Alice Yard at Vincennes will be required because of the increased switching activity at that point.

At East St. louis, train and piggyback operations will be consolidated in the B&O yard, with retention of two adjacent L&N tracks. Yard and agency forces will also be consolidated.

4. Chicago operations. [*291] -- Present L&N trains originating and terminating at Hammond will be diverted to a facility operated for L&N by MoPac at Yard Center. Access will be obtained through trackage rights over B&OCT via Dolton, IL and the State Line interlocking plant. Five daily C&O trains will also use this connection to reach the ICG interchange at Markham, IL. Also, unit coal trains interchanged at Burnham, IL, by L&N to CSS&SB for delivery at Baileytown, IN can use the B&OCT connection via East Chicago and Miller, IN, with resulting reduction in distance and attendant delay. Similarly, unit coal trains, now interlined with CNW through the Belt Railway of Chicago via Clearing Yard and 40th Street, will be handled over B&OCT direct, improving transit time, equipment utilization, and equipment availability over present operations.

5. Richmond-Newport News/Norfolk-Portsmouth, VA. -- C&O's carfloat operation between Newport News and Norfolk, VA, a service of limited capacity and high costs, will be phased out. A new all-rail service to handle traffic (including piggyback) to and from the Midwest will operate on trackage rights over SCL between its Brown Street Yard in Richmond and Portsmouth, VA, [*292] via Weldon, NC. SCL interchange traffic will be handled by this train at the intermediate Collier Yard. All C&O traffic in Norfolk will be handled by either the N&PBL or by SCL. Local C&O service between Richmond and Newport News will continue to be available.

6. Eastern kentucky. -- Although Elkhorn City, KY, will remain the designated interchange point between C&O and CCO, an expected increase in traffic moving through this gateway mandates a modification in operations In lieu of

performing crew change and inspection at Elkhorn City, where train brakes must be set on a steep grade, all trains in both directions will stop at Shelby, KY, for these purposes. South of Shelby, coal trains and merchandise trains will operate to and from Dante, VA and Erwin, TN, using crews furnished by both railroads. Clerical functions now performed at Elkhorn City would be transferred to Shelby.

An appreciable amount of circuity presently exists for coal moving to southern markets from mines located along L&N lines running eastward from Patio, KY, on the Knoxville-Cincinnati main line. A significant portion of this circuity will be eliminated through handling such coal via an improved connection [*293] to C&O at Deane, KY. To effectuate this rerouting, applicants propose to intensify track maintenance between Hazard and Martin, KY, install new yard tracks at Martin, and extend a siding on CCO at milepost 32.

7. Northwestern Indiana. -- The L&N presently serves Michigan City, IN over a branch extending from Monon, IN, on the Louisville-Chicago main line. Since traffic to and from Michigan City itself can be handled by CSS&SB, and traffic interlined with Conrail, NW, and GTW can be handled at alternate junctions after consolidation, applicants propose to abandon the lightly used portion of this line north of Francesville, IN

B. Engineering

1 Ballast cars. -- Approximately 475 special cars designed and equipped for transporting and unloading ballast are currently operated by Chessie. Because of freezing weather which prevails during 3 winter months, these cars often stand idle. Following consolidation, such cars can be utilized in warmer areas through which Family Lines operates Allowing 1 month transit to and from these areas, applicants have projected savings through availability of these cars during the remaining 2 months.

2 Tie and surfacing units -- [*294] Chessie tie and surfacing units are available for use on Family Lines during 4 cold months each year. A seasonal exchange of this equipment is projected to permit a net reduction of three fewer units of each kind

3. Material inventory. -- Applicants presently maintain inventories in their respective engineering departments with a combined value of nearly $100 million. Through a standardization of the types and sizes of stockpiled materials, less total inventory can suffice for the combined needs. Consolidation of inventories at common points will permit additional savings.

4. Communications. -- Consolidation of the present rail networks requires augmenting existing communication systems. Ten trunk lines will be installed to connect the Chessie switchboard at Baltimore with that of SCL in Richmond. Similarly, five trunklines will connect Chessie at Cincinnati with L&N at Louisville. One-time installation costs and monthly leases will be incurred as offsets to other savings.An ultimate expansion of the microwave system to Jacksonville, FL, is not reflected in the calculated costs.

C. Mechanical

Chessie plans to utilize excess manufacturing capacity at its Raceland Car [*295] Shop in Russell, KY to construct over a 3-year period 7,000 coal hopper cars for use by Family Lines. An estimated $8,567 savings per car can be realized compared with prices otherwise paid to outside builders. Operating cost savings are also expected to accrue through use of an unspecified number of 100-ton capacity coal hoppers which will replace 80-ton cars currently in service. The latter group of cars will then be available for use on L&N where certain line capacity constraints preclude the handling of larger cars.

D. Equipment utilization

1. Freight cars -- Applicants conducted studies to project changes in the composition and volume of joint traffic following affiliation. Savings would result from reducton in crosshauling of empty cars and reciprocal use of cars for loading.

Applicants determined that additional carolads would create a demand for boxcars, gondolas, trilevel rack cars, and overed and open-top hoppers. Improved utilization of hopper cars will eliminate the need to acquire additional units to handle joint traffic. Merchandise cars, exclusive of retirements, will be acquired in the first 3 years at the rate of 28, 322, and 541 cars, respectively.

2. [*296] Locomotives -- Applicants claim that the net effect of adding 7 scheduled trains comprising 16 consists, and of discontinuing 3 trains comprising 6 consists, is the need for 39 four-axle units, including a 10-percent allowance

for spares. Appicants project, however, that through seasonal utilization of locomotives over the combined rail network, cost savings can accrue beginning in year 1 following consummation

E. Internal routing and traffic diversion

To project the effect upon costs arising from anticipated changes in routing patterns, applicants made Rail Form A n1 analyses for each of the various classes of traffic so affected. This cost formula was applied to 1977 operations of the eight Class 1 railroads affected, with the resultant unit costs used for these eight carriers, as well as certain subsidiaries n2

n1 ICC statement No. 1F1-73, "Formula for Use in Determining Rail Freight Service Costs "

n2 The eight class 1 railroads and subsidiaries are B&O (CSS&SB, SIRC), C&O, CCO, GA (A&WP), WofA), L&N, RF&P, SCL (CN&L, D&S, GM), and WM.

In making the Rail Form A application, adjustments to normal procedure were adopted to eliminate superintendence and [*297] general overhead accounts, because no increase in these items is expected. Only the variable portion of the unit costs was considered in applicants' studies. The cost of capital at the embedded debt level, as produced in Rail Form A, was incorporated into the unit costs. Car costs from Rail Form A were used for all railroadowned cars. Inter- and intratrain switching costs were calculated on a car-mile basis.

The traffic movements to which the costs were applied were identified through waybill and other samples by the traffic teams For each such movement data were collected regarding class of traffic, type of car, net tons, commodity code, revenue, and short-line mileage. Where applicable, absorbed switching and TOFC data were noted.

Unit costs as developed were applied to changes in service units projected from the traffic studies. The actual number of terminal and interchange handlings was determined. Average trains were assumed for non-TOFC merchandise traffic. Circuity factors of 6 percent (except that no circuity was used for RF&P and WM, and 7 and 3 percent, respectively for B&O and C&O) were applied to line-haul distances. Adjusting factors developed by the Commission [*298] in Ex Parte No 270 (Sub-No. 4), Investigation of Railroad Freight Rate Structure -- Coal, were used in costing new coal traffic. Costs for handling a dedicated 70-car TOFC train between Jacksonville and Philadelphia 6 days per week, consisting of both existing and added traffic, were based on projected operating expenses and statistics. Loss and damage cost was predicated upon average experience per ton originated or terminated by railroad for the respective commodity code.

The general categories of traffic to which the above costing procedures were applied are as follows:

1. Internal routing efficiencies. -- Applicants expect to reroute existing traffic within their respective system network to reduce handling cost. As an example, a shipment origination on C&O at Paw Paw, MI, and terminating at Hialeah, FL, would incur 218 fewer miles following a rerouting. In implementing such change, the shipment would be rerouted from the present gateway at Richmond to Cincinnati.

2. Diversions from motor carriers. -- Applicants state that SCLI roads have major traffic potential but no suitable site for a bulk transfer terminal, while Chessie is claimed to have excellent sites with only [*299] modest potential A consolidated system is alleged to offer mutual incentive for establishment of such facilities at Cincinnati and Chicago. The applicants costed representative movements for the rail portion of traffic now moving solely in motor carriage Additionally, it is contemplated that service improvements and equipment availability will permit generalized diversion of motor carrier traffic to rail carload and TOFC handling Signficant volumes of of SCL-RF&P TOFC traffic, now handled over the highway north of Alexandria, VA, are projected to move all-rail following scheduling coordination.

3. Diversions from other railroads. -- Studies were made of the traffic handled by each applicant for the purpose of projecting the extent of possible rerouting to achieve a long haul over the new system. In each instance in which a gateway was shifted to accomplish this objective, the new operating route was specified for costing purposes.

4. Diversion from water carriers -- The applicants studied traffic now moving in whole or in part by water. Their projections of divertible segments were delineated by commodity, volume, origin, and destination Traffic subject to [*300] diversion moves both on inland waterways and in Atlantic and Gulf coastal services.

F. Summary

Applicants' calculation of net benefits appears in table E-1 A separation is made between direct benefits and year 1 implementation costs. The net impact of these nonrecurring items was ascribed a value of 10 percent per annum, resulting in a yearly reduction in directed benefits of $907,000. Thus, net merger benefits of $56.5, $64.6 and $70.3 million, respectively, are projected in the first 3 years.

TABLE E-1

Applicants' calculation of benefits

Item	Net annual benefits Year 1	Year 2	Year 3	Net costs Year 1 only Thousands
Unification of operating functions				
Winchester-Lexington-Louisville·				
Winchester-Lexington	$1	$1	$1	$291
Lexington terminal	387	387	387	1,051
Lexington-Louisville	637	637	637	612
Subtotal	1,025	1,025	1,025	1,954
Cincinnati-Louisville.				
Covington lower main	211	211	211	(249)
Northbound coal	1,507	1,507	1,507	(4,395)
TOFC (Cincinnati)	336	336	336	170
North side/south side	397	397	397	987
Cincinnati-Louisville	360	360	360	785
Run-through trains	611	611	611	
TOFC (Louisville)	26	26	26	612
Subtotal	3,448	3,448	3,448	(2,090)
Louisville-East St. Louis:				
East St. Louis terminal	739	739	739	498
Rerouted trains	401	401	401	52
Subtotal	1,140	1,140	1,140	550
Chicago:				
Close Hammond Yard	$262	$262	262	240
Dolton connection	245	245	245	(210)
Indiana coal trains	178	178	178	
Wisconsin coal train	187	187	187	
Subtotal	872	872	872	30
Richmond-Newport News/Norfolk·				
Abandon carfloat	1,418	1,418	1,418	200
Portsmouth trains	(1,084)	(1,084)	(1,084)	(455)
TOFC (Portsmouth)	97	97	97	
Agency (Newport News)	36	36	36	
Yards (Richmond)	288	$288?	288	
Subtotal	755	755	755	(255)
Eastern Kentucky:				
Coal via Elkhorn City	777	788	800	
Merchandise via Elkhorn City	453	453	453	
Coal via Deane	1,256	1,378	1,500	(2,204)
Subtotal	2,486	2,619	2,753	(2,204)
Northwestern Indiana:				
Abandon Francesville-Michigan City	98	98	98	2,328
CSS&SB operation	(16)	(16)	(16)	
Subtotal	82	82	82	2,328
Total	9,808	9,941	10,075	313
Engineering				
Ballast cars	68	68	68	
Tie and surfacing				1,130

Item	Net annual benefits Year 1	Year 2	Year 3	Net costs Year 1 only
Inventory				2,458
Communications	(40)	(40)	(40)	
Total	28	28	28	3,588
Mechanical				
Raceland shop	20,000	20,000	20,000	
Capacity efficiency	417	808	1,210	
Total	20,617	21,008	21,410	
Equipment utilization				
Freight cars:				
Coal	$2,624	$2,968	$3,024	
Merchandise	2,983	3,315	3,315	
Subtotal	5,607	6,283	6,339	
Locomotives	284	284	284	
Total	5,891	6,567	6,623	
Internal routing and traffic division				
Internal routing.				
Coal	305	392	435	
Merchandise	809	1,040	1,156	
Subtotal	1,114	1,432	1,591	
Traffic diversion:				
Motor carriers·				
Bulk transfer	800	1,200	1,400	
Carolad	4,108	5,478	6,847	
TOFC	3,489	4,652	5,815	(12,972)
Other railroads	10,543	13,556	15,062	
Water carriers	961	1,682	2,402	
Subtotal	19,901	26,568	31,526	(12,972)
Total	21,015	28,000	33,117	(12,972)
Grand total	57,359	65,544	71,253	(9,071)
Year 1 costs annualized at 10 percent	(907)	(907)	(907)	
Adjusted grand total	56,452	64,637	70,346	

[*301]

COMMENTS ON ANALYSES

Certain restatements of the CSX net benefits are necessary. We have adjusted the CSX revenue gain, including CSX's recalculation of traffic from Southern and NW, to reflect corrections for the statistical error found in the L&N traffic sample. Further, an adjustment is required to remedy an understatement in traffic divertible from ICG. Assuming that the planned capital expenditures are adequate to accommodate the divertible traffic, the realizable net gain may be calculated from the evidence.

Based upon the CSX projection of 21 3 cents in pretax diversion benefits per dollar of revenue, we find that the total net revenue divertible from other railroads will range from $14.967 million to $16.551 million. Coupled with operating benefits and nonrail diversion of $55.284 million, the total merger benefits are expected to aggregate between $70.251 million and $71.835 million.

APPENDIX F

Financial analysis

INTRODUCTION

This appendix contains financial information on the applicants, Chessie and SCLI The information consists of financial data (covering income and expense items, condensed financial position, and selected financial ratios) [*302] for 1977, 1978, and 1979.

The financial ratios selected for analysis are ratios generally accepted and used by us as criteria in determining the financial posture of a transportation entity. The ratios include the operating ratio, working capital ratio, long-term debt to total capital ratio, fixed charge coverage ratio, the rate of return on average shareholders' equity ratio, the rate of return on average net investment in transportation property ratio, and the dividend payout ratio or, conversely the internal capital retention ratio. These selected ratios demonstrate a carrier's earnings and operating performance, its capacity and ability to meet short-term and long-term liability obligations, and the future growth and stability of its total operating viability

When reviewing this data, and before making a final analysis, an accounting factor should be considered We adopted Financial Accounting Standards Board Statement No. 13, effective January 1, 1977 It established criteria for distinguishing between capital leases and operating leases. A capital lease is required to be recorded as an asset and an obligation at the amount equal to the present value at the beginning [*303] of the lease term of minimum lease payments, and such asset amounts are amoritzed on a straight-line basis by periodic charges against earnings Minimum lease payments are allocated between reduction of capital lease obligation amounts and interest expense. Operating lease rentals are expensed as incurred.

Chessie System, Inc.

	1979	1978	1977
Revenue, expense, and income items			Thousands
1. Total railway operating revenues	$1,859,562	$1,608,308	$1,492,616
2. Total railway operating expenses	1,689,832	1,278,092	1,160,811
3 Net revenue from railway operations	169,730	330,216	331,805
4. Income available for fixed charges	240,412	149,935	191,086
5. Fixed charges	75,246	79,405	67,335
6. Income taxes (total)	44,688	(904)	19,214
7. Extraordinary items -- net and accounting charges			(9,614)
8. Net income	120,481	70,530	87,190
9. Cash dividends paid	46,096	45,467	44,609
Condensed financial position			
1. Cash, working funds and termporary cash investments	116,756	102,915	149,776
2. Materials and supplies	114,215	82,490	94,444
3. Total current assets	612,932	569,041	514,210
4. Transportation property -- net	2,624,054	2,568,046	2,400,761
5. Total assets	$3,418,781	$3,293,817	$3,064,427
6. Total current liabilites	599,913	535,198	481,815
7. Long-term debt due after 1 year	910,267	1,246,192	1,084,056
8. Total shareholders' equity	1,303,934	1,221,052	1,198,624
9. Total liabilities and shareholders' equity	3,418,781	3,293,817	3,064,427
Selected financial ratios			Percent
1 Operating ratios	90.87	79.47	77 77
2. Working capital ratio	1 02	1.06	1.07
3. Debt to total capital	41.11	50 51	47 49
4. Fixed charge coverage	3.19	1 89	2.84
5.Dividend payout ratio	38.26	64 46	51.16
6. Return on equity	9 54	5.83	7.46

[*304]

Source: Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934; or "Moody's Transportation Manual" or annual report to shareholders

Seaboard Coast Line Industries, Inc

	1979	1978	1977
Revenue, expense, and income items			Thousands
1. Total railway operating revenues	$2,123,494	$1,826,449	$1,678,650

	1979	1978	1977
2. Total railway operating expenses	1,939,325	1,674,095	1,512,834
3. Net revenue from railway operations	184,169	152,354	165,816
4 Income available for fixed charges	232,331	176,564	193,475
5 Fixed charges	103,474	95,374	93,118
6. Income taxes	(3,784)	(524)	(2,094)
7. Extraordinary items -- net and accounting charges		(13,880)	
8 Net income	132,641	67,670	102,356
9. Cash dividends paid	32,203	32,117	29,876
Condensed financial position			
1. Cash	40,463	(194)	714
2. Working funds and temporary cash investments	134,495	96,397	74,634
3. Materials and supplies	107,957	87,030	74,643
4 Total current assets	757,186	541,776	434,219
5. Transportation property -- net		2,408,568	2,381,260
6. Total assets	3,402,207	3,141,333	3,007,061
7.Total current liabilities	637,918	514,698	435,475
8 Long-term debt due after 1 year	1,087,043	1,121,080	1,103,183
9. Total shareholders' equity	1,334,728	1,232,945	1,196,566
10 Total liabilities and shareholders' equity	3,402,207	3,141,333	3,007,061
Selected financial ratios			Percent
1. Operating ratios	91.33	91.66	90.12
2. Working capital ratio	1.19	1.05	1 00
3.Debt to total capital	44.89	47.62	47.97
4. Fixed charge coverage	2.25	1.85	2.08
5. Dividend payout ratio	24.28	47.46	29.20
6. Return on equity	10 33	5.57	8.80

[*305]

Source: Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934; or "Moody's Transportation Manual" or annual report to shareholders.

APPENDIX G

Southern requests

Southern sought the following conditions in Finance Docket No. 28961 (Sub-No. 1). The application has been withdrawn. The Eastern Kentucky Railway (EKR) and Western Florida Railway (WFR) were incorporated by Southern in order to facilitate certain aspects of the proposal.

EASTERN KENTUCKY

(1) Acquisition by EKR of all trackage, rail properties, yards, and appurtenant facilities constituting L&N's Cumberland Valley Subdivision (with the exception of lines between Cumberland Gap, TN, and Norton, VA); and certain locomotives and cabooses now used in operations of the Cumberland Valley Subdivision

(2) Acquisition by Southern of joint control with L&N of EKR through 50-percent stock ownership.

(3) Acquisition by Southern of perpetual trackage rights over trackage of EKR (in lieu of Southern's present trackage rights over L&N) between Cumberland Gap, TN, and Middlesboro, KY

JACKSONVILLE-TAMPA, FL

Acquisition by Southern of the SCL line from Jacksonville, FL, via Sanford [*306] and Orlando, FL, to Uceta Yard at Tampa, FL, including the classification yard and piggyback facility at Uceta Yard and other yards at Sanford, Orlando, Lakeland, and Winston; branch lines from Deland Junction to Deland, FL, from Sanford to Aloma and Beck

Hammock, FL, from Haines City to Waverly, FL, and from Park Junction to Park, FL, and all appurtenant trackage, yards, rail properties, and rail facilities

WESTERN FLORIDA

(1) Acquisition by WFR of certain trackage, rail properties, yards, and appurtenant facilities including port facilities constituting SCL's Tampa Division (with the exception of the main line and certain branch lines to be acquired by Southern between Jacksonville and Tampa, branch lines between Sanford and Umatilla, FL, between Orlando and Tavares, FL, and between Sanford and Dr Phillips and Groveland, FL, and with the exception of the line between Zephyrhills, FL, and Yeoman Yard at Tampa, FL, via Plant City, FL); and certain locomotives and specialized equipment now used in operations on the Tampa Division.

(2) Acquisition by WFR of perpetual trackage rights over trackage to be acquired by Southern between Auburndale, FL, and Uceta Yard at Tampa, [*307] FL, and between Park and Park Junction, FL.

(3) Acquisition by WFR of perpetual trackage rights over SCL between Central, FL, and Yeoman Yard at Tampa, FL, and between Tenoroc and Winter Haven, FL.

(4) Acquisition by Southern of joint control with SCL of WFR through 50-percent stock ownership.

LOUISVILLE, KY-CHICAGO, IL

(1) Acquisition by Southern of sole control of KIT through acquisition of the stock and other ownership interests in KIT of B&O and L&N

(2) Acquisition by Southern of the L&N line (former Monon Railroad) from Louisville, KY, to Hammond (State line), IN, including South Hommond Yard and other yards at Bloomington and Lafayette; branch lines between Orleans and Paoli IN, between Wallace Junction and Midland, IN, between Monon and Indianapolis, IN, and between Monon and Michigan City, IN; and all other appurtenant trackage, yards, rail properties, and rail facilities.

(3) Acquisition by Southern of the L&N's (former Monon Railroad) ownership interests in and right to operate within the Chicago, IL, terminal area over properties of the Chicago and Western Indiana Railroad Company and the Belt Railway Company of Chicago.

(4) Acquisition by Southern of perpetual [*308] trackage rights over B&OCT from Hammond (State line), IN, to Blue Island, IL; from Blue Island to a connection with CNW near Wood Street Yard; from Blue Island to a connection with the Milwaukee at Bensenville Yard near Franklin Park, IL; and from Blue Island to a connection with Soo near 48th Avenue Yard at Forest Park, IL.

Appendix H

[See Illustration in Original]

LEXSEE 86 F3D 349

CSX TRANSPORTATION, INCORPORATED, Plaintiff-Appellee, v. UNITED TRANSPORTATION UNION; BROTHERHOOD OF LOCOMOTIVE ENGINEERS, Defendants-Appellants.

No. 96-1172

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

86 F.3d 346; 1996 U.S. App. LEXIS 13575; 152 L.R.R.M. 2491

May 6, 1996, Argued
June 7, 1996, Decided

PRIOR HISTORY: [**1] Appeal from the United States District Court for the District of Maryland, at Baltimore. Frederic N. Smalkin, District Judge. (CA-96-212-CCB).

DISPOSITION: AFFIRMED

COUNSEL: ARGUED: Richard S. Edelman, HIGHSAW, MAHONEY & CLARKE, P.C., Washington, D.C., for Appellants.

Ronald Maurice Johnson, AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P., Washington, D.C., for Appellee.

ON BRIEF: William G. Mahoney, Donald F. Griffin, HIGHSAW, MAHONEY & CLARKE, P.C., Washington, D.C.; Clinton J. Miller, III, General Counsel, UNITED TRANSPORTATION UNION, Cleveland, Ohio; Harold A. Ross, ROSS & KRAUSHAAR, P.A., Cleveland, Ohio, for Appellants.

JUDGES: Before WILKINSON, Chief Judge, and HALL and LUTTIG, Circuit Judges.

OPINION BY: WILKINSON

OPINION:

[*347] WILKINSON, Chief Judge:

This case requires us to assess the propriety of a district court's anti-strike injunction, which was issued to enforce an arbitration decision made pursuant to the Interstate Commerce Act ("ICA"). CSX Transportation sought to consolidate four separate railroads that it had acquired. The unions representing the railroads' employees opposed the consolidation. After the arbitrator's award in favor of CSX's proposed consolidation was upheld by the Interstate [**2] Commerce Commission ("ICC"), the unions threatened a strike. CSX then obtained an injunction prohibiting that strike. The unions now appeal this injunction, contending that the Norris-LaGuardia Act ("NLGA") prohibits anti-strike injunctions to enforce arbitration awards under the Interstate Commerce Act. We disagree. The NLGA may not be used to circumvent the "final, binding, and conclusive" arbitration process that is undertaken pursuant to the ICC's interpretation of the ICA, *49 U.S.C. § 11347* (now recodified at *49 U.S.C. § 11326*). *New York Dock Railway-Control-Brooklyn Eastern Dist. Terminal, 360 I.C.C. 60, 78, 88 (1979)*, aff'd sub nom. *New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979)*. We therefore affirm the judgment of the district court.

I.

CSX Transportation, Inc. was formed from eleven rail carriers and their subsidiaries, including the Baltimore and Ohio Railroad ("B&O"), the Chesapeake and Ohio Railroad ("C&O"), the Western Maryland Railway ("WM"), the Louisville and Nashville Railroad, Seaboard Coast Line Railroad, and the Richmond, Fredericksburg, and Potomac Railroad ("RF&P"). The CSX network is one of the nation's largest, totaling 18,800 miles [**3] in 19 states, the District of Columbia, and Ontario, Canada. Its employees are represented by the United Transportation Union and the Brotherhood of Locomotive Engineers ("unions").

CSX has attempted to merge these various operations into a single, integrated network. It is one of these attempts at consolidation that gave rise to the present dispute. CSX claimed that its attempts at integration were hindered by the existence of separate labor [*348] agreements with the railroads' unions. The practical result of these separate agreements was that CSX could not

use its engineers and trainmen throughout its system, but was forced to operate separate workforces within the geographic confines of each former railroad. This apparently caused train delays (as trains passing from one railroad to the next had to switch crews) and frustrated CSX's ability to efficiently allocate manpower across railroad boundaries.

On January 10, 1994, CSX gave notice to the unions that it intended to consolidate train operations on the WM, RF&P, a portion of the C&O, and then merge these into the B&O. This would create a unified operation between southern Pennsylvania and southern Virginia called the Eastern B&O [**4] Consolidated District. The new territory was to be governed by the collective bargaining agreement applicable to the former B&O district, and the consolidation therefore would require changes in the collective bargaining agreements for the WM, RF&P, and the C&O In particular, the working and seniority lists of the various territories would be consolidated, there would be a temporary loss of positions (CSX anticipated adding more trains and positions after the consolidation), some supply points would be closed, and reporting points would be changed for some employees, thus requiring their transfer. Otherwise, the terms of the collective bargaining agreements applicable to the employees on these lines would remain unchanged in the new B&O district

Pursuant to § 11347 of the ICA as interpreted by the ICC's decision in *New York Dock, 360 I.C.C. at 60,* a railroad must establish protective conditions for employees who are adversely affected by a consolidation. *49 U.S.C. § 11347.* Because the unions claimed that CSX's planned alteration of bargaining units would violate New York Dock, the unions refused to participate in the negotiation of a protective agreement. Under the terms [**5] of New York Dock, the dispute was then submitted to mandatory arbitration. Both the unions and CSX agreed to Robert M. O'Brien as their arbitrator.

O'Brien held a hearing on March 28, 1995. At this hearing, both parties presented extensive arguments and a "plethora of evidence." On April 24, the ALJ, pursuant to *New York Dock, 360 I.C.C. at 78,* issued his "final, binding, and conclusive" award. O'Brien agreed with CSX, holding that CSX's proposed changes flowed from the merger and were necessary to secure the public benefits of that merger: "Were the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district, the operating efficiencies contemplated by the coordination would be illusory." O'Brien noted that the vast majority of the former collective bargaining agreements would be preserved in the consolidation and that this case was not an attempt by CSX to transfer wealth from employees to CSX. Indeed, under the New York Dock protective arrangement set forth by CSX, any displaced employees would continue to receive their full wages and fringe benefits for a period of years--even if they were not [**6] working. In short, the arbitrator's approval of CSX's consolidation was contingent upon CSX making whole all displaced employees. See *New York Dock, 360 I.C.C. at 60*

Both parties appealed aspects of O'Brien's decision to the ICC. On November 22, 1995, the ICC affirmed O'Brien's findings of fact and conclusions of law:

> Because the proposed implementing agreements are necessary to effect the proposed transaction and would not override any "rights, privileges, and benefits" that must be preserved under our New York Dock labor protection conditions, we conclude that those agreements satisfy the requirements of our labor protection conditions. The agreements should therefore be adopted.

The unions then sought a stay from the United States Court of Appeals for the District of Columbia Circuit. The court denied this motion on January 5, 1996.

On January 15, CSX notified the unions that it would implement the consolidation on January 30. Four days before the consolidation was to take place, the unions announced that they would strike unless CSX rescinded its plans. CSX then obtained a preliminary injunction from the district court that barred [*349] the proposed strike. [**7] On January 30, CSX implemented its consolidation. This appeal followed.

II.

Congress has bestowed significant powers on the ICC with respect to rail mergers. The ICC is vested with the "exclusive authority to examine, condition, and approve proposed mergers and consolidations." *Norfolk & Western Ry. Co. v American Train Dispatchers' Ass'n., 499 U.S. 117, 119, 113 L. Ed. 2d 95, 111 S Ct 1156 (1991).* It is also responsible for ensuring that "the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction." *49 U.S.C § 11347.* Pursuant to the Congressional authority vested in the ICC and § 11347, the ICC, in *New York Dock, 360 I.C.C at 60,* adopted "a comprehensive set of conditions and procedures designed to meet its obligations under § 11347." *American Train Dispatchers' Ass'n., 499 U.S at 120.* These guidelines require consolidating railroads to preserve displaced employees' pay, working conditions, benefits, and rights to collective bargaining. *New York Dock, 360 I.C.C. at 77* For example, if an employee is forced to

take a lower paying job as a result of the consolidation, a displacement allowance provides the difference in [**8] pay between the old and new positions for a period of years. *Id at 78*

New York Dock's interpretation of § 11347 has long been relied upon in settling labor disputes that result from railroad consolidations See *American Train Dispatchers' Ass'n, 499 U S at 120-21* New York Dock provides for thirty days of negotiations between the consolidating railroad and its unions "for the purposes of reaching agreement with respect to application of the terms and conditions" of the labor protective compact. *360 I C C. at 77.* If no agreement is reached by the end of this period, either party may request arbitration. Once arbitration is requested, the parties are called upon to "select a neutral referee" and if they cannot agree upon one, the National Mediation Board shall appoint one. *Id at 78* After the arbitration hearing, the referee has thirty days to render a decision, which "shall be final, binding, and conclusive." Id.

Section 11347 and New York Dock seek to achieve a balance between the interests of labor and management. Labor receives guaranteed wage protections while management benefits by avoiding a strike. The avoidance of strikes is crucial to the [**9] public interest in maintaining the nation's transportation system. *International Ass'n. of Machinists v Soo Line Railroad Co, 850 F.2d 368, 371 (8th Cir. 1988)* (an important goal of the ICA is "preventing labor strife"), cert. denied, *489 U.S. 1010, 103 L. Ed. 2d 181, 109 S Ct 1118 (1989)* "The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern." *Virginian Ry Co. v. System Federation, 300 U.S. 515, 552, 81 L. Ed 789, 57 S Ct 592 (1937).* While both sides may thus contest the particulars of a proposed implementing agreement before an arbitrator, the arbitrator's "final, binding, and conclusive" decision prevents either the union or the railroad from holding the nation's transportation system hostage to its aims.

III.

The unions claim that the "final, binding, and conclusive" arbitration provided for by the ICC is unenforceable if the unions choose to strike The unions contend that because the NLGA generally prohibits labor injunctions, see *29 U.S.C. §§ 101*-107, unions may strike if they choose and federal courts are without jurisdiction to enjoin them. Such a strike, however, would [**10] unilaterally frustrate the arbitrator's decision, undermine the ICC's efforts to "ensure the development and continuation of a sound rail transportation system," *49 U S C. § 10101* (4), and shut down part of the nation's vital rail transportation network.

The NLGA does not command any such result. In fact, the Supreme Court has clearly held that the NLGA will not be interpreted to frustrate the results of binding arbitration. See *Boys Markets, Inc. v Retail Clerks Union, 398 U S 235, 251, 90 S. Ct.* [*350] *1583, 26 L. Ed 2d 199 (1970), Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co., 353 U S. 30, 34, 1 L. Ed. 2d 622, 77 S Ct 635 (1957)* And the Eighth Circuit has expressly recognized that the NLGA may not operate to restrict the terms of § 11347 of the ICA. *Burlington Northern Railroad Co. v United Transportation Union, 848 F 2d 856, 862-63* (8th Cir.), cert. denied, *488 U.S 969, 102 L. Ed. 2d 535, 109 S Ct. 499 (1988); Missouri Pacific Railroad Co. v United Transportation Union, 782 F 2d 107, 111-12 (8th Cir. 1986).* Based on the reasoning of these precedents, we hold that the NLGA does not prohibit an anti-strike injunction that is issued to enforce an arbitration award made pursuant to § 11347 of the ICA.

A

While the NLGA generally [**11] removes from federal courts the jurisdiction to enjoin labor strikes, its provisions are not absolute. The NLGA allows for an injunction when "unlawful acts have been threatened and will be committed unless restrained," *29 U S C § 107,* and when such an injunction would not be "contrary to the public policy declared in" the NLGA, *29 U S C § 101* Moreover, the Supreme Court has curtailed the sweeping nature of the NLGA in the face of subsequent statutes:

> As labor organizations grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes. This shift in emphasis was accomplished, however, without extensive revision of many of the older enactments, including the anti-injunction section of the Norris-LaGuardia Act. Thus it became the task of the courts to accommodate, to reconcile the older statutes with the more recent ones.
>
> *Boys Markets, 398 U.S. at 251*

Of substantial concern to courts faced with accommodating the NLGA has been the conflict between the NLGA's prohibition [**12] of labor injunctions and

more recent statutes' arbitration provisions. If a federal court cannot enjoin a strike when a union deems an arbitration award unfavorable, the practical result is that arbitration is meaningless. *Id. at 247.* Indeed, such a "'request for judicial enforcement may be viewed as the final step in the arbitration process.'" *Sea-Land Service, Inc. v. International Longshoremen's Ass'n, 625 F.2d 38, 41-2 (5th Cir. 1980)* (citation omitted).

Recognizing these principles, the Supreme Court has held that the NLGA cannot be used to circumvent the arbitration provided for by the Railway Labor Act ("RLA"). *Chicago River, 353 U.S. at 42.* Under the RLA, if parties are unable to reach agreement, the dispute may be referred "by either party to the appropriate division of the [National Railroad] Adjustment Board." *Id. at 34* (quoting *45 U.S.C. § 153, 1st (i)*). The arbitration awards of the Board "shall be final and binding upon both parties to the dispute." Id. (quoting *45 U.S.C. § 153, 1st (m)*). In Chicago River, the union contended that it could avoid arbitration by striking because the NLGA prevented a court from enjoining such a strike. *Id.* [**13] *at 34, 39-40.* The Supreme Court squarely rejected this argument. It found that the union's interpretation of the NLGA "would render meaningless those provisions in the [RLA] which allow one side to submit a dispute to the Board, whose decision shall be final and binding on both sides," *id. at 34,* and that "the specific provisions of the Railway Labor Act take precedence over the more general provisions of the Norris-LaGuardia Act," *id. at 42.*

So too has the Court accommodated the NLGA to arbitration provisions in collective bargaining agreements. In Boys Markets, the union called a strike despite the existence of a clause in its collective bargaining agreement requiring that labor disputes be resolved by arbitration. *398 U.S. at 253.* The district court entered an injunction against the strike. The Supreme Court affirmed the district court's determination that "the dispute was subject to arbitration under the collective bargaining agreement and that the strike was in violation of [*351] the contract." *Id. at 240.*

In Boys Markets, the Court focused on the purpose of the NLGA, explaining that "a refusal to arbitrate was not 'part and parcel of the abuses against [**14] which the [NLGA] was aimed.'" *Id. at 242* (quoting *Textile Workers v. Lincoln Mills, 353 U.S. 448, 458, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957))*. While the NLGA was aimed at correcting "the abuses that had resulted from the interjection of the federal judiciary into union-management disputes on the behalf of management," arbitration raises no such concern. Id. at 251-53. When a court enforces an arbitrator's award, that court is not interjecting itself on behalf of either side. Sometimes enforcement of a neutral arbitrator's award will benefit the railroads, other times, the unions. See, e.g. *Nursing H. & Hosp. Union v. Sky Vue Terrace, 759 F.2d 1094, 1098 (3d Cir. 1985)* ("an injunction prohibiting the further distribution of Sky Vue's assets was necessary to ensure that an arbitral award in the union's favor was more than a 'hollow formality'"). There is no risk, however, of the systemic bias that motivated Congress to enact the NLGA in 1932. See *29 U.S.C. § 102.* Moreover, the NLGA "manifests a policy determination that arbitration should be encouraged." *Boys Markets, 398 U.S. at 242.* Section 8 of the NLGA requires parties to make "'every reasonable effort' to settle the dispute by negotiation, [**15] mediation, or 'voluntary arbitration.'" *Lincoln Mills, 353 U.S. at 458* (quoting *29 U.S.C. § 108)*.

While the NLGA's purpose provides the basis for limiting its scope, strikes in the face of labor arbitration awards also fall within the NLGA's exception for "unlawful acts." *29 U.S.C. § 107.* Subsequent statutes, such as the Railway Labor Act, establish arbitration as the remedy for certain labor disputes. See *45 U.S.C. § 153.* If a union, as in Chicago River, seeks to use a strike to violate such a law, this should qualify as an "unlawful act" within the meaning of the NLGA and should therefore preserve the jurisdiction necessary to grant an injunction. The Supreme Court recognized as much when it stated that there "is no substitute for an immediate halt to an illegal strike." *Boys Markets, 398 U.S. at 248* (emphasis added); see also *Order of Railroad Telegraphers v. Chicago & North Western Ry. Co., 362 U.S. 330, 338-39, 4 L. Ed. 2d 774, 80 S. Ct. 761 (1960)* ("the Chicago River case [] held that a strike could be enjoined to prevent a plain violation of a basic command of the Railway Labor Act").

Whether one accommodates the NLGA to arbitration clauses on the basis of the NLGA's purpose [**16] or because of the NLGA's "unlawful acts" exception, the result is the same. "The Norris-LaGuardia Act must be accommodated to the subsequently enacted provisions . . . and the purposes of arbitration." *Boys Markets, 398 U.S. at 250.* The district court thus has the jurisdiction to issue injunctive orders to enforce compliance with arbitration awards notwithstanding the provisions of the Norris-LaGuardia Act. See *Pittsburgh & Lake Erie Railroad Co. v. Railway Labor Executives' Ass'n, 491 U.S. 490, 513, 105 L. Ed. 2d 415, 109 S. Ct. 2584 (1989)*.

B.

The same principles that mandate accommodation of the NLGA to arbitration clauses in the RLA and in collective bargaining agreements generally also apply to *49 U.S.C. § 11347.* The unions seek to distinguish the RLA provision at issue in Chicago River from § 11347 by arguing that the former is a labor statute deserving of accommodation and the latter is a transportation statute

undeserving of accommodation. But the arbitration procedures under both statutes are indistinguishable provisions governing labor-management disputes. The arbitration process under both statutes operates to protect interstate commerce (as well as labor and railroads) by prohibiting strikes [**17] Section 11347 also guarantees substantial benefits for labor--presumably in exchange for the prohibition on the right to strike--including wage maintenance for a period of years following a consolidation. Accordingly, § 11347, like the RLA's arbitration provision, *45 U.S.C. § 153*, is "part of a pattern of labor legislation." [*352] *Chicago River, 353 U.S. at 42*

Moreover, the unions' argument that the NLGA should only be accommodated to other statutes when the result furthers the interests of labor, misses the point of both Chicago River and Boys Markets. In both of those cases, the unions' proffered interpretation of the NLGA was rejected by the Supreme Court because it would have rendered arbitration involving labor unions meaningless. Such a result, the Supreme Court held, was contrary to both the NLGA and subsequent statutes. See *Boys Markets, 398 U.S. at 235; Chicago River, 353 U.S. at 30* The weakness of the unions' argument is made evident by the fact that neither of the principal cases relied upon by the unions involved arbitration. See *Pittsburgh & Lake Erie, 491 U.S. at 490; Railroad Telegraphers, 362 U.S. at 330* In fact, Pittsburgh & Lake Erie [**18] actually supports our holding here: "Thus, a union may be enjoined from striking when the dispute concerns the interpretation or application of its contract and is therefore subject to compulsory arbitration." *491 U.S. at 513* (emphasis added). In this case, a strike by the unions would have prevented CSX from implementing changes in bargaining agreements that O'Brien, after compulsory arbitration, found were "necessary to implement the transaction proposed by [CSX]" and that the ICC upheld as necessary to "effect that carrier's coordination of operations in a new operating district." *

> * As for the unions' argument that CSX lacked standing to seek the injunction in the first instance, CSX (as the prevailing party in the arbitration and the party that would be injured by the strike) is the logical one to seek enforcement of the arbitration. See *Chicago River, 353 U.S. at 30* (injunction granted to railroad to prevent strike that would have circumvented arbitration); *Sky Vue Terrace, 759 F.2d at 1094* (injunction granted to union to prevent the dilution of a company's assets necessary to pay an arbitration award).

[**19]

The "final, binding, and conclusive" arbitration at issue here is simply indistinguishable from the arbitration provisions at issue in Chicago River and Boys Markets Certainly when Congress enacted § 11347 and the ICC adopted the New York Dock conditions, neither contemplated that the NLGA would frustrate a "final, binding, and conclusive" arbitration that protects workers while obviating the concern that a strike might hold hostage a portion of our national transportation system. The Eighth Circuit recognized this in Burlington Northern:

> When a consolidation transaction [is] subject to *49 U.S.C. §§ 11341*, 11347, statutory provisions which specifically exempt carriers from all other law and require mandatory employee protective conditions, neither the RLA nor Norris-LaGuardia could operate to restrict the terms of the ICA.

848 F.2d at 862-63; see also *Missouri Pacific, 782 F.2d at 111-12.*

To hold otherwise would thwart the operation of the arbitration provisions in New York Dock. Like previous courts addressing these issues, we too decline to create a conflict between the ICA and the NLGA. See *Railway Labor Executives' Ass'n. v. CSX Transportation,* [**20] *290 U.S. App. D.C. 405, 938 F.2d 224, 230 (D.C. Cir. 1991)* ("use of the RLA's status quo obligation to halt a sale approved by the ICC under section 11343 would short-circuit the functioning of the ICC and would bring the two statutes into conflict"). After all, it was for Congress and the ICC, pursuant to its delegated authority, "to make the choice of the means by which its objective of securing the uninterrupted service of interstate railroads was to be secured." *Virginian Ry. Co., 300 U.S. at 553.* Given the "congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes," *Lincoln Mills, 353 U.S. at 45-59,* we hold here that "Norris-LaGuardia's policy of nonintervention by the federal courts should yield to the overriding interest in the successful implementation of the arbitration process." *Boys Markets, 398 U.S. at 252* (explaining the holding of *Chicago River, 353 U.S. at 30).* As the Supreme Court explained.

> the very purpose of arbitration procedures is to provide a mechanism for the expeditious settlement of industrial disputes without resort to strikes, lockouts, or other self-help measures. This basic purpose is

[*353] obviously largely undercut [**21] if there is no immediate, effective remedy for those very tactics that arbitration is designed to obviate.

Boys Markets, 398 U.S. at 249

IV.

For these reasons, we affirm the judgment of the district court.

AFFIRMED

CSX TRANSPORTATION

Employee Relations
500 Water Street - J455
Jacksonville, FL 32202

August 14, 1992

File: 217812(ROA)

OVERNIGHT MAIL

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Gentlemen:

This letter constitutes Notice pursuant to Article I, Section 4 of the "New York Dock" Labor Conditions imposed by the Interstate Commerce Commission in Finance Docket Nos. 28905 (Sub. No. 1), 31954, 32020 and related proceedings, of the intent of CSX Transportation, Inc. to transfer and coordinate Engineering Department equipment repair work and employees from and to the location(s) shown below, effective on or about November 16, 1992.

Present Location/Force:

Columbus Shop	16 Shop Mechanics
Fairmont Shop	17 Shop Mechanics
Hamlet Shop	26 Shop Mechanics 7 Blacksmith Welders 2 Carman Welders 1 Carman Helper 3 Laborers
Waycross Shop	18 Shop Mechanics

Proposed Location/Force:

Richmond Shop	77 Shop Mechanics

It is suggested that we meet to discuss this proposal in detail at 9:00 a.m., Tuesday, August 25, 1992 in our office located in Jacksonville, Florida. Please advise if the suggested meeting date is acceptable.

Yours very truly,

J. B. Allred
Director Employee Relations

J. T. Williams
Director Employee Relations

RECEIVED
FEB 01 1993

AGREEMENT BETWEEN

CSX TRANSPORTATION, INC.
including the RF&P Railway Co.,
and the B&OCT
and their employees represented by the

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS,

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES,

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

Pursuant to Carrier's Notice of intent to transfer and coordinate Engineering Department (MofW) equipment repair work and Employees to and from the locations as hereinafter described, the Carrier, desirous of implementing an orderly transaction, proposes the following:

Article I - Protection

A. Any Roadway Mechanic who accepts a position initially advertised in the coordinated operation will be certified to receive the protective benefits and conditions provided in the "New York Dock Conditions", New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979). (Attachment "A"), if furloughed for any reason during the protective period.

B. Nothing in this Agreement shall be interpreted or applied to provide protective benefits less than those provided for in the New York Dock Conditions appended hereto.

C. Any Mechanic who accepts a position initially advertised in the coordinated operation, will be entitled to the protective benefits contained in the August 1, 1980 EPA Agreement (Attachment "B"), effective upon the date of coordination.

D. All Mechanics (described in A and C above), will be given a "Test Period Average" pursuant to the New York Dock Conditions. Any Mechanic who suffers a loss of earnings will be paid a monthly "displacement allowance" as described in Section 5 of the New York Dock Conditions.

Should any Mechanic be furloughed for any reason (except when furloughed because of conditions beyond the control of the Carrier such as flood, snowstorm, hurricane, tornado, earthquake, fire, strike, etc.), during the protective period (six years following the date of coordination) he may elect to draw either the protective benefits enumerated in the New York Dock Conditions, or draw EPA protective benefits for the applicable protective period enumerated in the EPA Agreement.

E. Any Mechanic entitled to protective benefits as a result of this transaction who is currently drawing protective benefits under another protective agreement, may continue to receive that benefit, and, upon its expiration, draw the protection elected in this coordination for the remainder of the protection period. Additionally, any Mechanic entitled to "Orange Book", or February 7, 1965 protection may elect to receive the protection provided by this coordination, and, upon its expiration, continue his coverage under the provisions of either of those Agreements.

F. Any Roadway Mechanic whose position is abolished as a result of this transaction, and who is offered and refuses a position in the coordinated operation will be ineligible to draw any monthly guarantee or separation allowance from other protective agreements; with the exception of the separation election provided for in Section G of the "Orange Book" Agreement.

G. A furloughed Mechanic will not have his EPA protection period extended; nor will he be recalled to service as a consequence of a System Gang Mechanic or Regional Mechanic working on his former prior and/or prior prior rights territory.

H. A Roadway Mechanic who is designated as a protected Employee as a result of this coordination, and who had been previously furloughed and remains in a furlough status at the time the six year period expires, will not be eligible to draw any EPA protective benefits, except for that which he may already be drawing under Section C of this Article, until such time as he has been recalled to service, works for at least 30 days and is subsequently furloughed.

I. A Roadway Mechanic who is designated as a protected Employee as a result of this coordination, who is furloughed subsequent to the expiration of the six year protective period, will be eligible to draw EPA protective benefits in accordance with the applicable provisions contained in the EPA Agreement, subject to the exceptions contained in this Agreement.

Article II - Consolidation of Seniority Districts

A. Seniority Rosters for all Employees currently working (and those who were working on a permanent position on the date of Carrier's Notice - August 14, 1992)as Engineering Department "Roadway Mechanics" on all former properties of CSXT, Inc., represented by the IAM&AW, BMWE, and SMWIA will be consolidated

by dovetailing the existing seniority of the employees as it appears on their respective seniority rosters onto a "Consolidated System Roster", which shall be known as the "CSXT Engineering Department Mechanics Roster" (Attachment "C"). Should more than one Mechanic have the same seniority date, the date last entered service will be used to determine the roster positions; oldest date assuming the superior position. If this procedure still results in a "tie" the oldest employee by date of birth will be given the superior position on the roster.

B. The "Consolidated System Roster" will show: name; identification number; seniority date; date of birth; prior rights; prior prior rights (if any); union affiliation; and a shop/field designation.

C. Mechanics will establish prior rights and retain prior prior rights, if any, for displacement and bidding purposes in the coordinated operation. "Prior rights" is defined as the Mechanic's former home road property (B&O, B&OCT, C&EI, CL, C&O, GA/AWP, L&N, RF&P, SCL, and WM) as designated on the "Consolidated System Roster". "Prior prior" rights is defined as the territories indicated as the "prior district", and the "prior consolidated district", as shown on the January 1, 1992 "Chessie Work Equipment System Seniority Roster"; and applies only to employees who appear on that roster.

D. For the purposes of this Agreement, all former SCL IAM&AW and BMWE represented Mechanics will have prior rights to any field positions advertised on the former Seaboard Coast Line territory.

E. A separate list will be established and maintained for Mechanics who are furloughed or actively employed in another department (with bidding rights pursuant to CSXT Labor Agreement No. 1-229-87) on the date of coordination. Employees on this list will be given preference (based on existing seniority) to fill new positions involving an increase in force or permanent vacancies which occur during or subsequent to this coordination. Mechanics who are awarded positions under this provision will retain prior and/or prior prior rights and will establish seniority on the "Consolidated System Roster" as of the date they return to active service as a Roadway Mechanic in the Engineering Department.

Article III - Abolishment/Establishment of Positions

A. Engineering Department Equipment Repair Work presently performed separately on Carrier's former properties will be coordinated as hereinafter provided and will be performed, except as specifically provided herein, under the IAM&AW and former C&O Railway Company Agreement (Chesapeake District, reprinted June 1, 1969).

B. Carrier will abolish all Engineering Department Roadway Mechanics positions and readvertise 274 positions effective upon the date of coordination in the following classifications:

1. 116 Shop Mechanics positions
2. 68 Regional Mechanics positions
3. 90 System Gang Mechanics positions

35 PTF BCs, Smwia

C. Carrier will simultaneously advertise 22 voluntary separation allowances at the time the 274 new positions are bulletined (this number represents the difference between the current active numbers of Mechanics positions, and the numbers of positions that were active on August 14, 1992). NOTE: EMPLOYEES REPRESENTED BY THE SMWIA ARE <u>INELIGIBLE</u> TO PARTICIPATE IN THE VOLUNTARY SEPARATION OFFER. IN THAT REGARD ANY REFERENCE TO "VOLUNTARY SEPARATIONS" THAT APPEAR THROUGHOUT THIS AGREEMENT HAVE <u>NO</u> APPLICATION TO ANY OF THE EMPLOYEES REPRESENTED BY THE SMWIA.

1. The amount of voluntary separation allowance offered to employees will be $46,000.00.

2. Employees referred to in Article II, A, desiring to be considered for a voluntary separation allowance shall submit application on a form, copy attached, to be provided by the Carrier.

3. Applicants for voluntary separation allowances shall be awarded in seniority order.

4. Voluntary separation allowances will be paid within thirty (30) days from the date the employee is notified of the award pursuant to paragraph 3, and in addition, the employee will receive any vacation pay to which entitled, and any pro rated lump sum payment that may be due at the time of the separation, less all applicable deductions required by law.

5. Applications for voluntary separation allowances shall be irrevocable. When applications are awarded, the payment of any separation allowance granted pursuant to the terms of this agreement will be contingent upon the affected employee executing a voluntary resignation agreement and release form.

D. During the initial bidding process, all Mechanics who were working on a permanent position or furloughed subsequent to August 14, 1992 (the date of Carrier's Notice), will be eligible to bid on any position/positions or a voluntary separation allowance, advertised in the coordinated operation. Positions will be awarded to the senior applicant having prior and/or prior prior rights to the advertised position. If none of the applicants have prior and/or prior prior rights to the position, the job will be awarded to the most senior applicant. Positions which go "no bid" will be filled by assigning Mechanics from the "Consolidated System Roster" (in seniority order) whose jobs have been abolished as a result of the coordination and who have elected not to place a bid on any position advertised in the coordinated operation, or whose seniority was insufficient to obtain a position that they had bid on. Any remaining vacancies will be offered to the Mechanics on the "separate list" (Article II, Section E); and then in accordance with understanding between the parties signatory to this Agreement.

Article IV - Shop/Field designation

A. Employees who are awarded/assigned a shop position, as a result of the initial bidding process, will have a "Shop" designation affixed next to their name on the "Consolidated System Roster." Subsequent to the coordination, new positions and vacancies in the shop will be offered first (by bulletin) to "Shop" designated Mechanics only. Positions which receive no bids will be filled by the senior unassigned Shop Mechanic.

B. Employees who are awarded/assigned a "Field" position as a result of the initial bidding process, will have a "Field" designation affixed to their name on the "Consolidated System Roster." Subsequent to the coordination, new positions and vacancies in the field will be offered first (by bulletin) to "Field" designated Mechanics only. Positions which receive no bids will be filled by the senior unassigned Field Mechanic.

C. Shop positions, which are not filled by existing shop forces pursuant to Section A above, will be filled in the following order: first, by recalling any furloughed "Shop" designated Mechanics; next the positions will be offered in seniority order (by bulletin) to "Field" designated Employees; any remaining shop positions will be offered to the Mechanics on the "Separate List" (Article II, Section E); and then in accordance with understanding between the parties signatory to this Agreement.

D. Field positions, which are not filled by existing field forces pursuant to Section B above, will be filled in the following order: first, by recall of any furloughed "Field" designated Mechanics; next the positions will be offered in seniority order (by bulletin) to "Shop" designated Employees; any remaining field positions will be offered to the Mechanics on the "Separate List" (Article II, Section E); and then in accordance with understanding between the parties signatory to this Agreement.

E. In the event of a force reduction or job abolishment in the field or shop subsequent to the date of coordination "Field" designated Mechanics will only be permitted to displace junior "Field" designated Mechanics, likewise; "Shop" designated Mechanics will only be permitted to displace junior "Shop" designated Mechanics.

F. "Field" designated Mechanics shall not be utilized or permitted to fill temporary vacancies in the coordinated Shop; likewise, "Shop" designated Mechanics shall not be utilized or permitted to fill temporary vacancies in the field.

G. Carrier will furnish all "Field" and/or "Shop" designated Mechanics with the proper tools to perform their assigned duties at no cost to the Employees.

Article V - Shop positions

All existing work equipment shops on CSXT, Inc. will be coordinated into a single shop located at Richmond, Virginia.

A. During the initial bidding process, positions in the coordinated shop will be awarded in seniority order, with preference given to those mechanics whose present seniority would permit them to displace onto a position in one of the present shops, or who are currently working in a shop position.

B. Within a 30 day period following the completion date of coordination, all positions at the Richmond Shop will be re-bulletined (for those Employees who have previously been awarded/assigned a shop position). Shop bulletins shall include the primary duties of the position as well as the standard information required by the Bulletin Rule.

C. Shop Mechanics will be paid on an hourly basis, straight time for straight time hours and overtime for overtime hours, in accordance with the schedule Agreement. The rate of pay for hourly Mechanics will be $14.55, adjusted to reflect any subsequent wage increases.

D. Duties of the Shop Mechanics will include major overhaul and heavy repair to equipment utilized in the Engineering (MofW) Department.

Shop Mechanics will also be assigned to maintain and repair components such as, but not limited thereto, transmissions, differntials, electrical components, small engines, track drills, and other similar equipment utilized by the Engineering (MofW) Department.

E. Shop Mechanics will have a work week of five 8 hour days or four ten hour days.

Article VI - Field Positions

A. "Field" designated Mechanics will be paid on a monthly basis, $3,443.56 (adjusted to reflect any subsequent wage increases) contemplated on 232 2/3 hours per month. Records will be kept and all "Field" Mechanics will be paid at the applicable overtime rates for all work in excess of 232 2/3 hours per month and for routine maintenance and repair work performed on the first rest day, and for all work performed on the second (and subsequent rest days).

B. Subsequent to the coordination Field Mechanics may decline to accept an assigned position located off of their prior rights territory and accept furlough status with no protection entitlement. If that option is elected, the vacancy will be offered to Shop Mechanics and filled in the same manner as other vacancies.

C. All time spent by Field Mechanics in the furtherance of the Carrier's business (with the exception of Gang Mechanics receiving a mileage allowance when making a trip to/from their residence), i.e., picking up parts, delivering parts, transporting parts or equipment, etc., will be considered as "on duty" time for purposes of computing time worked under the above provision.

D. "Field" designated Mechanics will have a work week of five 8 hour days or four ten hour days. Additionally, they may be assigned a work week of eight 10 hour days when consistent with a gang they are supporting.

E. The starting times for Field Mechanics will be between 5:00 a.m. and 10:00 a.m., and will not be changed without thirty-six hours notice. Field Mechanics will not be required to report early or remain on the job site after scheduled working hours except to the extent necessary to meet service requirements.

F. In applying rules on holidays, personal leave, bereavement leave and jury duty to Mechanics working ten hours per day; a basic day's pay will be considered ten pro rata hours.

G. Mechanics working on a ten hour per day schedule will be credited with 1.25 days credit for each day worked for vacation qualifying purposes.

H. It is understood that all continuous service with either CSXT, the B&OCT, or the RF&P, will be combined for service related entitlements.

There will be two categories of "field" positions - Regional Mechanics and System Gang Mechanics.

Article VII - Regional Mechanics

A. 68 Regional Mechanics positions will be established and headquartered throughout the System (identified on Attachment "D"). The bulletins for such positions shall list the headquarters and the former railroad territories to be covered in addition to the standard information required by the bulletin rule in the schedule Agreement.

B. Primary duties will consist of maintaining and repairing equipment that is not assigned to system production gangs including, but not limited to: cranes, air compressors, dozers, backhoes, etc. on the regions assigned.

C. During the initial bid process, all Mechanics on the "Consolidated System Roster" will be eligible to bid on the Regional Mechanics positions, with preference given to those mechanics who have prior, and/or prior prior rights on the territories to be covered. Where regions encompass more than one prior and/or prior prior rights territory; the senior Employee from within those territories, who has bid on the position, will be awarded same.

D. Subsequent to the coordination, new Regional Mechanics positions or vacancies will be offered (by bulletin) to "Field" designated Mechanics (pursuant to Article IV, Section D) with preference given to those Mechanics who have prior, and/or prior prior rights on the territories to be covered. Where regions encompass more than one prior and/or prior prior rights territory; the senior Employee from within those territories, who has bid on the position, will be awarded same.

E. Regional positions which are not filled as a result of the above section will be filled in accordance with Article IV, Section D.

F. Regional Mechanics will be allowed actual, necessary expenses while working away from their headquarters (including Carrier provided lodging when working more than fifty miles from their headquarters). Additionally, they will be provided with a Carrier vehicle for use in the performance of their duties and for transportation to/from their headquarters point.

G. Should a Regional Mechanic be displaced due to a a reduction in force or job abolishments, he will be entitled to displace any junior Field Mechanic in his prior or prior/prior rights territory; or any junior Field Mechanic on the System, provided the Mechanic being displaced does not hold prior or prior prior rights on the desired position.

Article VIII - System Gang Mechanics

A. 90 System Gang Mechanics positions will be established by bulletin; assignments for the 1993 production season (Attachment "E") are broken down as follows:

1. 60 Mechanics will be assigned to cover the schedule for the Maintenance of Way System Production Gangs (SPGs);

2. 18 Mechanics will be assigned to smoothing gangs scheduled to work within Carrier's present operating divisions;

3. 12 Mechanics will be assigned to division brush cutting gangs and "system" material handling gangs.

B. During the initial bid process all Mechanics on the "Consolidated System Roster" will be eligible to bid on the System Gang Mechanics positions, with preference given, in seniority order, to those Mechanics who have prior, and/or prior prior rights on the territories to be covered.

C. System Gang Mechanics positions which are not filled as a result of the above section will be filled in accordance with Article IV, Section D.

D. Gang schedules, and the territories to be covered will be posted on an annual basis prior to the start of production season. A System Gang Mechanic will be permitted to submit a written request, within 10 days following written notification of the new schedule, that his position be abolished and readvertised should he choose not to remain on his assigned position. Should a System Gang Mechanic be displaced, for any reason, or his position be abolished for any reason (including the request described in this section), he will be permitted to exercise displacement rights onto any field position on his prior and/or prior prior rights territory occupied by a junior Mechanic; or onto <u>any</u> field position occupied by a junior Mechanic provided the junior Employee being displaced does not hold prior and/or prior prior rights to the desired position.

E. A System Gang Mechanic will be viewed as having prior and/or prior prior rights to a particular gang position only so long as the gang's work schedule for the year includes his prior and/or prior prior rights territory.

F. Should the gang move off of its assigned territory (as posted at the beginning of each year' production season) for more than 20 consecutive calendar days, the Mechanic(s) assigned to the gang may submit a written request that his position be abolished. Should he choose to continue working with the gang, he will receive an additional allowance of $15.00 for everyday (beginning with the 21st day) he continues to work the assignment, continuing until such time as the mechanic is returned to his assigned territory.

G. System Gang Mechanics will be allowed actual, necessary expenses for meals and miscellaneous expenses when required to travel more than 50 miles from their residence to the gang location to which assigned. They will also be provided with a Carrier owned vehicle, including necessary fuel, for use in the performance of their duties, as well as transportation to/from their residence and assigned gang location. Additionally, Carrier will pay an allowance based upon the following schedule for each normal and customary round trip (beginning with the 101st mile) made to/from the Mechanic's residence: 101-250 roundtrip miles, $35.00; 251-500 miles, $95.00; 501-750 miles, $190.00; 750 miles or more, $300.00. For purposes of this Agreement "normal and customary" is interpreted to mean one round trip per work week, except for unusual or extenuating circumstances.

H. The above mileage allowance will be payable whether or not the Mechanic uses the Carrier owned vehicle to make the round trip between his residence and his assigned gang location. However, in those extreme cases where a Carrier owned vehicle is not furnished or cannot be used due to Federal or State Laws, the above mileage rate will be allowed beginning with the 51st mile (all of the other mileage allowances detailed in paragraph H above will likewise be reduced by 50 miles). Additionally, any Mechanic who drives his personal vehicle or takes public transportation, or rents a vehicle to travel between his residence and his assigned gang location (as a result of not being provided with a vehicle by the Carrier), will be reimbursed for the round trip mileage at the Carrier's authorized mileage rate (currently 28 cents per mile). Mechanics who do not return home under such circumstances will be provided lodging by the Carrier and will be reimbursed for meals and any other necessary expenses.

I. It is not the intent of the parties that System Gang Mechanics be assigned to work more than 8 hours per day (or ten hours, if working 4x10's) during the off/winter repair season except as necessary to meet unusual service requirements or in an emergency.

Article IX - Relocation Benefits

Each Roadway Mechanic who moves his place of residence (as recorded with the Carrier) a distance of fifty (50) miles or more, as a result of accepting a position in the coordinated operation, will be allowed:

A. A moving van for his household goods (arranged by the Carrier); or, a $3,000.00 lump sum payment, the Employee being responsible for moving his own household goods.

B. A $2,500.00 "Lace Curtain" allowance; $1,250.00 payable upon the date of coordination, the remainder payable within 30 days of notification by the Employee to the Carrier officer in charge at the new location that his move has been completed.

C. One of three real estate options:

1. Carrier will purchase the Employee's house if it is in marketable condition at the established appraised market value.

2. Carrier will provide a 15% payment of the home's appraised market value should the Employee choose to keep his home.

3. If the Employee sells his house, Carrier will provide a 15% payment of the home's appraised market value or actual cash sale price, whichever is greater.

D. Temporary expense options:

1. Five working days off with pay, temporary living expenses for the employee at the new work location, and reimbursement for the cost of acquiring license for one automobile, including the use tax and any cost of retitling such automobile, or;

2. An allowance of $4,500.00; $2,500.00 to be paid upon the date of transfer and $2,000.00 to be paid within 30 days notification to the Carrier officer in charge at the new location that the move has been completed.

E. Cash allowance elections are subject to all applicable deductions.

F. Carrier will pay the moving van expense (per our standard relocation benefits policy), for any Mechanic who accepts a position in the coordinated operation, relocates his residence, and subsequently retires within the protective period (six years following the date of coordination).

Article X - Representation

A. The incumbent Roadway Mechanics represented by the IAM&AW, BMWE, and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law.

B. Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.

Article XI - General Provisions

A. This Agreement with all attachments referred to herein shall constitute the required agreement as stipulated in Article I, Section 4 of the New York Dock Conditions. This Agreement shall not constitute a precedent or prejudice the position of either the Carrier or the Organization signatory hereto in future similar cases.

B. Dismissed or suspended employees, employees on leave-of-absence account sickness, promotion and other approved absences, who return to service subsequent to the coordination, shall be entitled to whatever rights that they may have had if they had been present at the time of the coordination. Any such person who returns to service may:

1. Exercise displacement rights onto any position on his prior and/or prior prior rights territory occupied by a junior Mechanic; or onto <u>any</u> position occupied by a junior Mechanic provided the junior Employee being displaced does not hold prior and/or prior prior rights to the desired position.

2. The subsequently displaced junior employee referred to in paragraph 1 above, who is displaced as a result of an employee returning to the craft, may elect a separation allowance as described in Article III, C, in lieu of the protection referred to therein.

C. The repair of Motive Power (Locomotive) and Mechanical (Car) Department Equipment, such as Fork Lifts, Mobile Cranes, and other shop machinery and equipment historically maintained and repaired by the Michigan Division Mechanics, will, following the coordination, continue to accrue to Roadway Mechanics, until otherwise agreed upon by the parties.

D. All Employees who have accepted a position in the coordinated operation will be covered by the Master Transfer Agreement (Attachment "F") within 60 days following the effective date of the Coordination.

Should there be any conflict between the terms and conditions of the Master Transfer Agreement and this Implementing Agreement concerning specific provisions of this transaction, the terms and conditions of this Implementing Agreement will control.

E. Each Employee affected by this coordination will receive a copy of this agreement along with a copy of the "Consolidated System Roster". Such roster will be open for protests for a period of one year following the date of this coordination.

F. For convenience, all references to gender, if any, in this Agreement are made in the masculine gender. It is understood and agreed by the parties to this Agreement that references to the masculine gender include both the masculine gender and the feminine gender.

G. This Agreement shall be construed, for all intent and purposes, as a separate Agreement between CSX Transportation, the B&OCT, the RF&P, and each of the Organizations signatory hereto.

H. The provisions of this Agreement shall become effective on January 29, 1993, or as hereafter agreed by the parties signatory hereto.

FOR THE ORGANIZATIONS:

J. A. Coker
J. A. Coker, Genl. Chrmn., IAMAW

R. L. Elmore
R. L. Elmore, Genl. Chrmn., IAMAW

J. R. Cook, Genl. Chrmn., BMWE

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FOR THE CARRIER:

J. B. Allred
J. B. Allred, Dir. Emp. Relations

J. T. Williams
J. T. Williams, Dir. Emp. Relations

CSX TRANSPORTATION

January 27, 1993

Employee Relations
500 Water Street
Jacksonville, FL 32202

J. B. Allred, Director

J. T. Williams, Director

File: 217812 (ROA)
Letter of Understanding No. 8

Mr. R. L. Reynolds, Pres. & Dir. Gen. Chairman
International Association of Machinists
and Aerospace Workers, Dist. Lodge No. 19
111 Park Road
Paducah, Kentucky 42003

Dear Sir:

This refers to the Implementing Agreement covering the coordination of equipment repair work throughout the CSXT System.

This confirms our understanding that in the event that the proposed draft Agreement between CSXT, Inc. and the IAM&AW is ratified and signed in its present form, it will replace the former C&O Railway Agreement (Chesapeake District, reprinted June 1, 1969) for IAM&AW represented employees working under this coordination.

Should there be any significant changes made to the draft Agreement, the parties will meet to determine what effect, if any, those changes would have on the coordinated operation.

Very truly yours,

J. B. Allred
J. T. Williams

AGREED:

Robert Reynolds
R. L. Reynolds, Pres. Dir.
General Chairman

ma8

Carrier's Ex P ,Page 1

AGREEMENT

Between

CSX TRANSPORTATION, INC.

and its

Employees represented by the

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (DISTRICT NO. 19)

EFFECTIVE OCTOBER 1, 1994

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SCOPE RULE

It is understood that this Agreement shall apply to those who perform the work specified in this Agreement in the Maintenance of Equipment, Maintenance of Way and all other Departments of this Company wherein work covered by this Agreement is performed.

RULE 1 - HOURS OF SERVICE

An eight (8) hour period shall, under provisions hereinafter set out, be the regular work day. Regular work day and work week hours shall be bulletined. All employees coming under the provisions of this Agreement, except as otherwise provided in this schedule of rules, or as may hereafter be legally established between the carrier and the employees, shall be paid on the hourly basis.

ESTABLISHMENT OF SHORTER WORK WEEK:

NOTE: *The expressions "positions" and "work" refer to service, duties, or operations necessary to be performed on the specified number of days per week, and not to the work week of individual employees.*

(a) **GENERAL** - This Carrier will establish, for all employees represented by the organization signatory hereto, subject to the exceptions contained in this rule, a work week of 40 hours, consisting of five days of eight hours each, with two consecutive days off in each seven; the work weeks may be staggered in accordance with the carrier's operational requirements; so far as practicable the days off shall be Saturday and Sunday. The foregoing work week rule is subject to the provisions which follow:

(b) **FIVE-DAY POSITIONS** - Where the nature of the work is such that employees will be needed five days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(c) **SIX-DAY POSITIONS** - Where the nature of the work is such that employees will be needed six days each week, the rest days will be either Saturday and Sunday or Sunday and Monday.

(d) **SEVEN-DAY POSITIONS** - On positions which are filled seven days per week, any two consecutive days may be the rest days with the presumption in favor of Saturday and Sunday.

(e) **REGULAR RELIEF ASSIGNMENTS** - All possible regular relief assignments with five days of work and two consecutive rest days will be established to do the work

necessary on rest days of assignments in six or seven-day service or combination thereof, or to perform relief work on certain days and such types of other work on other days as may be assigned under individual agreements.

Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class in the same seniority district, provided they take the starting times, duties and work locations of the employee or employees whom they are relieving.

(f) **DEVIATION FROM MONDAY-FRIDAY WEEK** - If in positions or work extending over a period of five days per week, an operational problem arises which the carrier contends cannot be met under the provisions of paragraph (b) of this rule, and requires that some of such employees work Tuesday to Saturday instead of Monday to Friday, and the employees contend the contrary, if the parties fail to agree thereon, and the carrier nevertheless puts such assignments into effect, the dispute may be processed as a grievance or claim under the rules agreement.

(g) **NONCONSECUTIVE REST DAYS** - The typical work week is to be one with two consecutive days off and it is the carrier's obligation to grant this. Therefore, when an operating problem is met which may affect the consecutiveness of the rest days of positions or assignments covered by paragraphs (c), (d) and (e), the following procedures shall be used:

(1) All possible regular relief positions shall be established pursuant to paragraph (e) of this rule.

(2) Possible use of rest days other than Saturday and Sunday, by agreement or in accordance with other provisions of this agreement.

(3) Efforts will be made by the parties to agree on the accumulation of rest time and the granting of longer consecutive rest periods.

(4) Other suitable or practicable plans which may be suggested by either of the parties shall be considered and efforts made to come to an agreement thereon.

(5) If the foregoing does not solve the problem, then some of the relief men may be given nonconsecutive rest days.

(6) If after all the foregoing has been done there still remains service which can only be performed by requiring employees to work in excess of five days per week, the number of regular assignments necessary to avoid this may be made with two nonconsecutive days off.

(7) The least desirable solution of the problem would be to work some regular employees on the sixth or seventh days at overtime rates and thus withhold work from additional relief men.

(8) If the parties are in disagreement over the necessity of splitting the rest days on any such assignments, the carrier may nevertheless put the assignments into effect subject to the right of employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the carrier to prove that its operational requirements would be impaired if it did not split the rest days in question and that this could be avoided only by working certain employees in excess of five days a week.

(h) **REST DAYS OF FURLOUGHED EMPLOYEES** - To the extent furloughed men may be utilized under applicable agreements or practices, their days off need not be consecutive; if they take the assignment of a regular employee they will have as their days off the regular days off of that assignment.

(i) **BEGINNING OF WORK WEEK** - The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work and for unassigned employees shall mean a period of seven consecutive days starting with Monday.

(j) **SUNDAY WORK** - The elimination of punitive rates does not contemplate the reinstatement of work on Sunday which can be dispensed with. Changes in amount or nature of traffic or business and seasonal fluctuations must be taken into account. This is not to be taken to mean, however, that types of work which have not been needed on Sundays will hereafter be assigned on Sunday. The intent is to recognize that the number of people on necessary Sunday work may change.

(k) **WORK ON UNASSIGNED DAYS** - When work is required by the carrier to be performed on a day which is not a part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

RULE 2 - ASSIGNMENT OF SHIFTS

(a) When one shift is employed, the starting time shall be 7:00 AM CSXT time, or as may be agreed upon at any shop by the Company and the Machinist local committee. The time and length of the lunch period shall be arranged by mutual agreement.

(b) Where two shifts are employed, the starting time of the first shift shall be governed by item (a) of this rule, and the second shift shall start immediately following the close of the first shift or as may be agreed upon at any shop by the Company and the

Machinist local committee. The time and length of the lunch period shall be arranged by mutual agreement.

(c) Where three shifts are employed, the starting time of the first shift shall be governed by item (a) of this rule, and the starting time of each of the other shifts shall be regulated accordingly. Each shift shall consist of eight consecutive hours including an allowance of twenty minutes for lunch within the limits of the fifth hour.

Uniform Commencing and Quitting Time: The time established for commencing and quitting work for all men on each shift in either the Car or Locomotive Department shall be the same at the respective points but where three shifts are worked by running repair forces and two shifts by back shop forces, the quitting time of the first shift and the commencing and quitting time of the back shop forces will be governed by the provisions of item (b) of this rule.

Exception: It is agreed that three eight-hour shifts may be established under the provisions of item (c) of this rule for the employees necessary to the continuous operation of power houses, mill wright gangs, heat treating plants, train yards, running repair and inspection forces, without extending the provisions of item (c) of this rule to the balance of shop forces.

RULE 3 - LUNCH PERIOD

Employees required to work during, or any part of, the lunch period shall receive pay for the length of the lunch period regularly taken at point employed at straight time and will be allowed necessary time to procure lunch (not to exceed thirty (30) minutes) without loss of time.

This does not apply where employees are allowed the twenty (20) minutes for lunch without deduction therefor.

RULE 4 - OVERTIME - PAYMENT AND DISTRIBUTION

PAYMENT OF OVERTIME

(a) All overtime continuous with regular bulletined hours will be paid for at the rate of time and one-half until relieved, except as may be provided in rules hereinafter set out.

(b) Overtime provisions - Work in excess of 40 straight time hours in any work week shall be paid for at one and one-half times the basic straight time rate except where such work is performed by an employee due to moving from one assignment to another or to or from a furloughed list, or where days off are being accumulated under paragraph (g) of Rule 1.

(c) Payment for service on rest days -

(1) Service rendered by an employee on his assigned rest day or days will be paid for under the call rule when such service is not a part of any assignment.

(2) In all cases other than those specified in paragraph (1), service rendered by an employee on his assigned rest day or days will be paid for at the overtime rate with a minimum of eight (8) hours unless released at his own request. Where vacancies are not known sufficiently in advance to permit employees to report at the beginning of the shift they will be allowed to complete the balance of the day at overtime rate but not less than is provided under the call rule. Employees will be notified as soon as possible of such vacancies.

(d) Work performed on the legal holidays as listed in Rule 6 (provided when any of the above holidays falls on Sunday, the day observed by the state, nation or proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half. Employees regularly assigned to work on holidays, or those called to take the place of such employees, will be allowed to complete the balance of the day unless released at their own request. Those who are called will be advised as soon as possible after vacancies become known.

(e) The following will govern with respect to paying third shift employees for holiday service:

(1) Pay third shift which begins at the close of the second shift, the day preceding a holiday, pro rata time for time worked;

(2) Pay third shift which begins at close of second shift, holidays, rate and one-half for time worked.

(f) Except as provided in Paragraph (i) of this rule, employees worked more than five days in a work week shall be paid one and one-half times the basic straight time rate for work on the sixth and seventh days of their work weeks, except where such work is performed by an employee due to moving from one assignment to another, or to or from a furloughed list, or where days off are being accumulated under paragraph (g) of Rule 1.

(g) There shall be no overtime on overtime; neither shall overtime hours paid for, other than hours not in excess of eight paid for at overtime rates on holidays or for changing shifts, be utilized in computing the 40 hours per week, nor shall time paid for in the nature of arbitraries or special allowances such as attending court, deadheading, travel time, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computation leading to overtime.

(h) Except as otherwise provided for in this rule, all time worked beyond 16 hours service (the 16 hours service to be computed within any 24-hour period from the regular starting time of the shift) shall be paid for at double time until relieved, provided that an employee who is relieved after working beyond 16 hours, but elects to continue to work his regular shift, or the remainder of his regular shift, shall be paid at the regular rate applicable to his regular shift for any part of his shift worked after relieved.

(i) Service performed by a regularly assigned hourly rated employee on the second rest day of his assignment shall be paid at double the basic straight time rate provided he has worked all the hours of his assignment in that work week and has worked on the first rest day of his work week, except that emergency work paid for under the call rules will not be counted as qualifying service under this rule, nor will it be paid for under the provisions hereof.

(j) An employee doubling over shall have his regular lunch period as provided in Rule 5(b), then work straight through the remainder of the shift, without taking a lunch period at the time the men composing the regular shift take their lunch period.

(k) For employees notified or called after working their regular shift on the day preceding their assigned rest days (or the day preceding a holiday for employees not assigned to work on holidays) to work another shift not continuous with their regularly assigned shift, the application of double time, paragraph (h), will be computed from the starting time of the shift so called or notified to work.

(l) After such an employee completes an assignment for which so called or notified and is relieved for 5 hours or more, if again called to fill another shift on his rest days (or holiday), double time will not apply until the expiration of 16 hours from the starting time of that shift.

(m) For one so notified or called, and relieved at the starting time of or during his regular shift on the day following his rest days or a holiday, straight time will apply for the remainder of his shift, if worked, and all overtime thereafter will be computed from the starting time of his shift in accordance with the understandings and past practice under this rule.

(n) For employees called in emergency (not to work a shift in place of an absentee or to augment the force) on their rest days or on holidays, the double time provisions of the rule will be applied from the starting time on the day so called of the shift to which regularly assigned. For example: One assigned to the first shift, whose rest days are Wednesday and Thursday, called 2 hours after working his shift on Tuesday, or at 5:00 PM, and worked 16 hours, would be paid 8 hours double time computed from the starting time of his Tuesday shift; but if called at the same time on Wednesday, and worked 16 hours, he would be paid rate and one-half for the 16 hours, as he did not work beyond 16 hours computed from the starting time on Wednesday of the first shift.

DISTRIBUTION OF OVERTIME

(a) Employees who have worked overtime shall not be laid off during their regular working hours to equalize the time.

(b) **Work on Unassigned Days.** Where work is required by the carrier to be performed on a day which is not part of any assignment, it may be performed by an available unassigned employee who will otherwise not have 40 hours of work that week; in all other cases by the regular employee.

(c) Record will be kept of overtime worked and men called with the purpose in view of distributing the overtime equally.

(d) There will be an overtime call board (or call list) established for the respective crafts or classes at the various shops or in the various departments or subdepartments, as may be agreed upon locally to meet service requirements. Employees who volunteer for overtime service will have their names placed on a board and preferably be called in turn. Overtime call list will be kept under lock and key and made available to employees when necessary.

(e) There will be, as near as possible, an equal distribution of overtime between employees who voluntarily sign the overtime call lists.

(f) It is not intended that an employee, who is not fully qualified, will put his name on the overtime call list, but it is expected that a sufficient number of competent men will volunteer to properly take care of the work.

(g) Should there not be sufficient number of employees volunteer to properly take care of the work, any employee who may be called must respond at the time called, unless there is some good and sufficient reason why he cannot respond.

(h) Regular running repair employees will not be expected to participate in back shop overtime and road work, except in emergency.

(i) Back shop employees will not be expected to participate in regular running repair employees overtime (holidays are to be considered as overtime), except when necessity arises.

(j) An employee refusing call in his turn will lose the turn the same as if he had responded. An employee called for work for which he is not qualified will retain his place on the call board or list.

(k) It is understood that past practice will continue with respect to calling men for overtime who are assigned to special services, such as repairs to coal elevator and power plant machinery, etc.

Understanding: An employee filling a foreman or supervisory vacancy must return to work as a machinist and work one shift before being eligible for calls from the machinists' overtime list.

RULE 5 - OVERTIME - CALLS AND CONTINUOUS SERVICE

(a) For continuous service after regular working hours, employees will be paid time and one-half on the actual minute basis. For forty minutes or less continuous service after bulletin hours, one hour straight time will be allowed.

(b) Employees shall not be required to work more than two hours without being permitted to go to meals. Time taken for meals will not terminate the continuous service period and will be paid for up to thirty (30) minutes.

- This means that if it is feasible to procure meal in 30 minutes or less, they will be allowed actual time, but if more than 30 minutes is required, only 30 minutes will be paid for.

(c) Employees called or required to report for work, and reporting, will be allowed a minimum of four (4) hours for two (2) hours and forty (40) minutes or less, and will be required to do only such work as called for or other emergency work which may have developed after they were called, and cannot be performed by the regular force in time to avoid delays to train movement.

- This paragraph means than an employee called or required to report for work, and reporting, will be allowed a minimum of four hours pay at straight time for two hours and forty minutes service, or less, from time called. Included in the two hours and forty minutes there shall be the time necessary for the employee called to present himself for duty, but in no case shall this allowance exceed one hour.

(d) Employees will be allowed time and one-half on minute basis for services performed continuously in advance of the regular working period with a minimum of one hour - the advance period to be not more than one hour.

- The provision in this paragraph, "... the advance period to be not more than one hour," means that an employee may be started to work one hour or less before his regular starting time, and paid rate and one-half on the

minute basis with a minimum of one hour for forty minutes service or less, but, if started in excess of one hour before his regular starting time, he will be paid a call.

RULE 6 - HOLIDAYS

(a) Subject to the qualifying requirements contained in Section (b) hereof, and to the conditions hereinafter provided, each hourly and daily rated employee shall receive eight hours' pay at the pro rata hourly rate for each of the following enumerated holidays:

New Year's Day	Thanksgiving Day
Washington's Birthday	Day after Thanksgiving
Good Friday	Christmas Eve
Memorial Day	Christmas Day
Fourth of July	New Year's Eve
Labor Day	

(1) Holiday pay for regularly assigned employees shall be at the pro rata rate of the position to which assigned.

(2) For other than regularly assigned employees, if the holiday falls on a day on which he would otherwise be assigned to work, he shall, if consistent with the requirements of the service, be given the day off and receive eight hours' pay at the pro rata rate of the position which he otherwise would have worked. If the holiday falls on a day other than a day on which he otherwise would have worked, he shall receive eight hours' pay at the pro rata hourly rate of the position on which compensation last accrued to him prior to the holiday.

(3) Subject to the applicable qualifying requirements in Section (b) hereof, other than regularly assigned employees shall be eligible for the paid holidays or pay in lieu thereof provided for in paragraph (2) above, provided (1) compensation for service paid him by the carrier is credited to 11 or more of the 30 calendar days immediately preceding the holiday and (2) he has had a seniority date for at least 60 calendar days or has 60 calendar days of continuous active service preceding the holiday beginning with the first day of compensated service provided employment was not terminated prior to the holiday by resignation, for cause, retirement, death, non-compliance with a union shop agreement, or disapproval of application for employment.

(b) A regularly assigned employee shall qualify for the holiday pay provided in Section (1) hereof if compensation paid him by the carrier is credited to the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a

regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday.

Except as provided in the following paragraph, all others for whom holiday pay is provided in Section (a) hereof shall qualify for such holiday pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by the carrier is credited; or
(ii) Such employee is available for service.

NOTE: "Available" as used in subsection (ii) above is interpreted by the parties to mean that an employee is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service.

For the purposes of Section (a), other than regularly assigned employees who are relieving regularly assigned employees on the same assignment on both the work day preceding and the workday following the holiday, will have the workweek of the incumbent of the assigned position and will be subject to the same qualifying requirements respecting service and availability on the workdays preceding and following the holiday as apply to the employee whom he is relieving.

NOTE: Compensation paid under sick-leave rules or practices will not be considered as compensation for purposes of this rule.

(c) The parties to this agreement may, by mutual agreement, change the days (but not the number of days) that shall be observed as holidays, for the purposes of existing rules and agreements.

(d) When any of the eleven recognized holidays enumerated in Section (a) above, or any day which by agreement, or by law or proclamation of the State or Nation, has been substituted or is observed in place of any of such holidays, falls during an hourly or daily rated employee's vacation period, he shall, in addition to his vacation compensation, receive the holiday pay provided for therein, provided he meets the qualification requirements specified. The "workdays" and "days" immediately preceding and following the vacation period shall be considered the "workdays" and "days" preceding and following the holiday for such qualification purposes.

(e) The work day or day immediately preceding or following a personal leave day or day on which the employee receives jury duty pay or bereavement leave is to be considered as the qualifying day for holiday purposes.

(f) Existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on a holiday are not changed hereby, except that under no circumstances will an employee be allowed, in addition to his holiday pay, more than one time and one-half payment for service performed by him on a holiday.

(g) The holiday pay qualifications for Christmas Eve - Christmas shall also be applicable to the Thanksgiving Day - day after Thanksgiving Day and the New Year's Eve - New Year's Day holidays.

(1) This means that an employee who meets all other qualifying requirements will qualify for holiday pay for both holidays if on the "workday" or the "day", as the case may be, immediately preceding the first holiday he fulfills the qualifying requirements applicable to the "workday" or the "day" before the holiday and on the "workday" or "day," as the case may be, immediately following the second holiday he fulfills the qualifying requirements applicable to the "workday" or the "day" after the holiday.

(2) An employee who does not qualify for holiday pay for both consecutive holidays may qualify for holiday pay for either one or the other under the provisions applicable to holidays generally.

(h) In addition to their established monthly compensation, employees performing service on the day after Thanksgiving Day on a monthly rated position (the rate of which is predicated on an all-service performed basis) shall receive eight hours' pay at the equivalent straight time rate.

(i) A monthly rated employee occupying a 5-day assignment on a position with Friday as an assigned rest day also shall receive eight hours' pay at the equivalent straight time rate for the day after Thanksgiving Day, provided compensation paid such employee by the Carrier is credited to the work days immediately preceding Thanksgiving Day and immediately following the day after Thanksgiving Day.

(j) Except as specifically provided in paragraph (g) above, existing rules and practices thereunder governing whether an employee works on a holiday and the payment for work performed on a holiday are extended to apply to the day after Thanksgiving Day and New Year's Eve (the day before New Year's Day is observed) in the same manner as to other holidays.

RULE 7 - OVERTIME - CHANGING SHIFTS

(a) Except as provided in paragraph (b) of this rule, employees changed from one shift to another will be paid overtime rates for the first shift of each change. Employees

working two shifts or more on a new shift shall be considered transferred. This will not apply when shifts are exchanged at the request of the employees involved.

(b) An employee holding a relief assignment will not be paid overtime rates for changing shifts to perform the work on the shifts included in his assignment. If such employee is required to change shifts for any other reason, this exception shall not apply to such other shift changes.

(Interpretation of Rule 7)

This rule provides that an employee changing shifts due to exercising his seniority rights, or at the request of the employee, will be paid at his regular rate when changing shifts, instead of being allowed time and one-half time for the first shift of such change.

An employee transferred from one shift to another by direction of the Management will be paid time and one-half rate for time worked on the new shift the first day of the change. If he works new shift two or more days he is considered transferred and will be paid straight time for the straight time hours after the first day. If returned to his old shift or any other shift, he will then be entitled to time and one-half rate for the first day of such change.

An employee changing shifts through the exercise of his seniority rights, caused by reduction in force, will be allowed time and one-half for the first shift of the change where he loses a day's pay thereby. For illustration, an employee on third shift working 11:00 PM to 7:00 AM is caught in a furlough and his seniority entitled him to job on first shift, 7:00 AM to 3:00 PM. If he goes to work the same day, working 16 consecutive hours, he will receive straight time rate for work on that shift, but if he does not go to work until 7:00 AM the following day, thereby losing one day's pay, he will receive time and one-half for the first day's work on the changed shift.

RULE 8 - ROAD SERVICE - HOURLY

(a) Employees regularly assigned to road work whose tour of duty is regular and who leave and return to home station daily shall be paid continuous time from the date of leaving the home station to the time they return whether working, waiting or traveling, exclusive of the meal period, as follows: Straight time for work performed during regular hours and overtime rates for work performed during overtime hours, with straight time for all hours traveling and waiting. The starting time to be not earlier than 6:00 AM nor later than 8:00 AM. Where two or more shifts are worked, the starting time will be regulated accordingly.

EXCEPTION: In case where the schedule trains interfere with the starting time, an agreement may be entered into by Carrier's highest designated officer and the General Chairman concerned.

(b) Where meals or lodging are not furnished by the railroad or when the service requirements make the purchase of meals and/or lodging necessary while away from home point, employees will be paid necessary expenses.

RULE 8½ - ROAD SERVICE - MONTHLY

Employees regularly assigned to perform road work and paid on a monthly basis shall be governed by the following:

(a) No overtime is allowed for time worked in excess of eight hours per day; on the other hand, no time is to be deducted unless the employee lays off of his own accord.

(b) Such employees will be assigned one regular rest day per week, Sunday if possible. If called or required to report for work on such assigned rest day, Rules 4 and 9 shall apply to such service. Ordinary maintenance or construction work not heretofore required on Sundays and holidays will not be required on the sixth day of the work week or on holidays, but the monthly rate will compensate for all other service rendered on such sixth day or holidays. Overtime herein provided for the seventh day shall apply from midnight of the sixth day to midnight of the seventh day.

(c) The monthly rate of pay, the hours on which the monthly rate is based and the straight time hourly rate for any monthly rated position is subject to mutual agreement between the Carrier and the General Chairman.

(d) The regularly assigned road men under the provisions of this rule may be used, when at home point, to perform shop work in connection with work of their regular assignments.

(e) Where meals and lodging are not furnished by the railroad, or when the service requirements make the purchase of meals and lodging necessary while away from home point, employees will be paid necessary expenses.

(f) If it is found that this rule does not produce adequate compensation for certain of these positions by reason of the occupants thereof being required to work excessive hours, the salary for these positions may be taken up for adjustment.

RULE 9 - EMERGENCY SERVICE - ROAD

(a) An employee regularly assigned at a shop, engine house, repair track, or inspection point, when called for emergency road service away from such shop, engine house, repair track or inspection point, will be paid from the time called to leave home station, until his return for all service rendered in accordance with the practice at home station, and will be paid straight time rate for straight time hours and overtime rates for overtime hours for all time waiting or traveling.

(b) If during the time on the road, a man is relieved from duty and permitted to go to bed for five (5) or more hours, such relief will not be paid for; provided that in no case shall he be paid for a total of less than eight (8) hours each calendar day, when such irregular service prevents the employee from making his regular daily hours at home station. Where meals and lodging are not provided by railroad, actual necessary expenses will be allowed. When an employee is required to go to shops for tools or material before leaving home station, he will be paid for the time necessary to cover such service.

(c) Wrecking service employees will be paid in accordance with this rule.

RULE 10 - FILLING VACANCIES

(a) When an employee is required to fill the place of another employee receiving a higher rate of pay, he shall receive the higher rate; but if required to fill temporarily the place of another employee receiving a lower rate, his rate will not be changed.

(b) Any regularly assigned employee who is used to fill a vacation vacancy on another position and works such position for 5 consecutive days will be required to observe the rest days of the position on which used before he may return to and resume service on his regular assignment or be permitted to work another vacancy; it being understood that employees may not request to move to a vacation vacancy after the vacancy commences. The same is to apply to all resultant vacancies brought about by the vacation vacancy.

RULE 11 - PROMOTION TO FOREMAN

PROMOTION TO FOREMAN

(a) When selecting foremen, employees will be given consideration for promotion, and if selection is made from employees, proficiency and seniority will govern, the

company to be the judge of proficiency. It is the policy of the company to promote its own men, and only when competent employees cannot be found in the ranks or when competent employees will not accept vacancies or new positions will it be the disposition of the company to vary from this policy.

(b) Employees promoted to official or semi-official positions shall retain their seniority at the point they hold seniority at the time of their promotion, and should they continue to accumulate seniority, it will be applicable to that point, irrespective of any change in location during their tenure as officials.

(c) Seniority Retention

(1) Effective January 1, 1988, all employees promoted subsequent thereto to official, supervisory, or excepted positions from crafts or classes represented by IAM shall be required to maintain their IAM membership or pay an appropriate monthly fee, not to exceed monthly union dues, in order to retain and continue to accumulate seniority. A supervisor whose payments are delinquent shall be given a written notice by the appropriate General Chairman of the amount owed and ninety (90) days from the date of such notice to cure the delinquency in order to avoid seniority forfeiture.

(2) Employees promoted prior to January 1, 1988 to official, supervisory or excepted positions from crafts or classes represented by IAM shall retain their current seniority but shall be required to pay regular monthly dues or an appropriate monthly fee, not to exceed monthly union dues, in order to accumulate additional seniority.

(d) Employees accepting promotion to supervisory or official positions will lose their right to the job they left, and upon return to work of the trade, will be governed by the following:

Involuntary return:

(1) If a supervisor's position is abolished and the incumbent of the abolished position is unable to hold a position as supervisor on the roster on which he holds supervisors' seniority, or if a supervisor whose position is abolished elects to forfeit seniority as supervisor, the following will apply:

a. The supervisor must exercise seniority to a Machinist Craft position within ten (10) days from the date the supervisor last works as a supervisor.

b. The supervisor who is exercising seniority to a Machinist Craft position must, within the ten (10) day period referred to in Section (a) above, give notice of his intention to exercise seniority to a Machinist's Craft position in time to permit giving the Machinists's Craft employee who stands to be affected five (5) working days' notice that

he will be reduced to furlough status as a result of the returning supervisor exercising seniority.

(2) A supervisor will not be permitted to exercise seniority to a Machinist Craft position in cases where a supervisor's position is abolished for a specific period, thirty (30) days or less, and he is notified at the time his position is abolished that it will be reestablished on a specified date.

Voluntary return:

Promoted employees who voluntarily return to their former Machinist Craft Classification will only be permitted to take whatever open position may be available to which their seniority entitles them; or, if no opening exists, may displace the junior employee of their class.

FILLING TEMPORARY FOREMAN VACANCIES

(a) Should an employee be assigned temporarily to fill the place of a foreman, he will be paid his own rate - straight-time rate for straight time hours and overtime rate for overtime hours - if greater than the foreman's rate; if it is not, he will get the foreman's rate. Said positions shall be filled only by mechanics of the respective craft in their departments.

(b) Employees who are assigned to fill the places of foremen will work the same number of hours as the foremen work, or may ordinarily be called upon to work, and it is understood that the employees' basic day will start at the hour of the foremen's starting time, and it is further understood that any time worked after the close of the first eight hours, plus the meal period, if any, after the foremen's starting time will be paid for under the overtime rule.

(c) An employee assigned temporarily to fill the place of a foreman will take the regularly assigned relief days of the foreman whose place he is assigned to fill. For one so assigned and paid his own rate under this rule and understandings, overtime rates will apply on the foreman's regular relief days, if worked. For one so assigned and paid the foreman's rate, time worked on the foreman's regular relief days will be compensated for under the applicable Supervisors' Agreement.

RULE 12 - TRANSFER RULE

Employees transferred from one point to another with a view of accepting a permanent transfer, will, after thirty (30) days, lose their seniority at the point they left, and their seniority at a point to which transferred will begin on date of transfer, seniority to govern. Employees will not be compelled to accept a permanent transfer to another point.

(a) An employee desiring to transfer to another point under this rule will secure transfer form (as shown below) which constitutes part of this rule from his supervisor and handle as indicated on the form.

(b) No employee will be transferred under this rule unless his services can be spared. If such an employee cannot be spared, he shall be so advised, with copy to the General Chairman of the craft; but he shall be given opportunity to transfer when he can be spared, if and when there is a vacancy at the point to which he wishes to transfer.

(c) One making application for transfer to another point under this rule thereby agrees that if, after reporting, but within the 30 day limit provided in this rule, he finds he does not desire to remain at the point to which transferring, but wishes to return to his home point, he must remain at the point until qualified employee can be secured to relieve him, and must, within the 30 days provided in this rule, give notice in writing to the one in charge at the point to which transferring, with copy to the officer in charge at his home point, and copy to the General Chairman of the craft, of his desire to return to his home point. He will establish and hold no seniority at the point to which transferring, but will continue to hold his seniority at his home point, even though he remains at point to which he applied for transfer under this rule more than 30 days.

(d) Applications received from employees desiring to transfer to another point under this rule and those received from furloughed employees seeking placement under Rule 13 of this Agreement will be given equal consideration, and, subject to Section (b) above of this Agreement, the qualified applicant having the greatest home point seniority shall be given preference for the vacancy or new job involved.

(e) This rule does not apply to apprentices, temporary promoted employees or others serving time in a training capacity.

(f) The employee must accept any position offered after being notified or forfeit all rights to any position applied for and must file a new form to be further considered for work at other points.

(g) All requests for transfer automatically expire at the close of business on December 31 each year. Employees whose requests have expired must file a new request to be further considered for transfer.

(h) All forms not properly completed will be returned to the employee if possible.

RULE 13 - USE OF FURLOUGHED EMPLOYEES, OTHER POINTS

While employees are furloughed, if men are needed at any other point, they will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company. Qualifications and seniority to govern all cases.

(a) Furloughed employees desiring to be considered for vacancies or new positions at seniority points other than the one at which they hold seniority, will obtain form as shown below, which has been made a part of this rule, from their supervisor, complete, and forward to the address shown on the form, and will furnish copy to their General Chairman and to their Supervisor. Employees will be notified of vacancies or new positions at the point or points for which application has been made to which their seniority entitles them and for which they are qualified. The employee must accept any position offered after being notified or forfeit all rights to any position applied for and must file a new form to be further considered for work at other points. When a vacancy is being filled, it will be offered first to those furloughed employees holding seniority on the former property where the vacancy exists with a seniority date as of the date of this agreement, and then to other employees of CSXT, by seniority.

(b) Employees accepting a job under this Understanding agree that if they should desire for any reason to give up such job, they will remain on the job to which assigned until the next senior employee can be located and reports, or until other relief can be provided.

(c) It is understood that this procedure fully meets the requirements with respect to giving furloughed employees preference for employment at other than their home point. Should it develop that, through error or oversight on either side, an improper assignment has been made, such improper assignment may, if brought up within sixty days, be handled for correction in accordance with the rules for handling grievances, but it is agreed that no claim for pay for services not rendered will be made or entertained as result of such error.

(d) Employees working at a point, who are recalled at another point at which they hold rights to work or who are recalled at their home point where they hold seniority must elect at which point they prefer to work. If one so recalled elects to remain at the point at which working, their name will be removed from the list, or roster, at the point to which recalled, and will lose the right to work at that point; on the other hand, if the employee elects to accept the call, and gives up the job then being worked, the employee's name will be dropped from the roster at the point left and will relinquish all rights to work there.

(e) Applications received from furloughed employees seeking placement under this rule and those received from employees desiring to transfer to another point under Rule 12 of this Agreement will be given equal consideration, and the applicant having the greatest home point seniority will be given preference for the vacancy or new job involved.

(f) This rule does not apply to apprentices, temporary promoted employees or others serving time in a training capacity.

(g) All requests for transfer automatically expire at the close of business on December 31 of each year. Employees whose requests have expired must file a new request to be further considered for transfer.

(h) All forms not properly completed will be returned to the employee if possible.

STANDARD FORM FOR TRANSFER

To: Mechanical Operations Dept. (J-340) Date: _____
CSX Transportation
500 Water Street
Jacksonville, FL 32202
FAX - (904) 359-3385

My craft is _____.

I am presently (check one): ___ holding regular assignment ___ furloughed

as (Craft) _____ at (Locn.) _____ on (Railroad) _____.

I desire to be considered for position of _____ at the following point(s) ("System" requests are not acceptable):

_____ _____

_____ _____

I presently hold seniority as (Craft) _____ at (Locn.) _____

on (Railroad) _____ dating from (Date) _____.

Note 1 - This form is not applicable between departments or between crafts or classes.

Note 2 - I understand that failure to accept any position offered me after being notified will void this request and all rights to any position at my location applied for herein are forfeited. To be given further consideration for other positions at my location, a new request must be filed.

Note 3 - I also understand that if I file this request as a furloughed employee and I am subsequently recalled to a regular assignment, I must file a new request form if I desire to be given consideration for transfer to a permanent assignment at a seniority point other than where I am working.

Note 4 - I further understand that I am required to keep my employing officer advised of any changes in my address and telephone number.

Note 5 - This request automatically expires on December 31 of the current year.

Note 6 - Forms improperly completed will be returned to employee if possible.

Print or Type
Name _____ I. D. No. _____

Home Address _____ Phone No. (___)_____

Employee Signature _____

Copy to: _____ _____
(Employing Officer) (General Chairman)

RULE 14 - ABSENCE FROM WORK

(a) Laying Off

(1) Employees will not be permitted to lay off from work, for either partial or whole days, without first securing permission. Employees requesting to lay off for personal business or other just causes must furnish their supervisor a justifiable reason for the intended absence in sufficient detail to determine the nature of the stated need to be absent.

(2) It is not the intent of this Rule to require employees to reveal details of personal matters nor is it the intent to require employees to unduly verify just causes for absence. However, it is expected that employees will divulge the nature of the reason to lay off to the extent required to permit management to make a reasonable decision regarding the necessity to lay off and, where there is sufficient reason to suspect an abuse of this Rule, when requested the employee will, prior to the requested lay off time or upon return to duty, submit prima facie evidence to justify the lay off.

(b) Leave of Absence

(1) The arbitrary refusal of a reasonable amount of leave to employees when they can be spared, or failure to handle promptly cases of sickness or business matters of serious importance to the employees is an improper practice and may be handled as unjust treatment under these rules.

(2) An employee absent on leave, who engages in other employment, will lose his seniority unless special provision has been made therefor by the proper official and general chairman representing his craft. An employee absent on leave, whose place is filled by another employee, must give his foreman notice sufficiently in advance of the time that he will report for work to enable the foreman to transfer the one filling his place to his regular shift.

(3) Leave of absence other than for sickness in excess of 30 days shall be in writing, and copy will be furnished local committeeman of the craft.

(4) Notice sufficiently in advance of the time an absent employee on leave will report for work must be given the foreman to enable him to transfer the one filling the absent employee's place to his regular shift before returning to work.

(c) Absence

(1) Employees unavoidably kept from work will not be discriminated against. Employees detained from work on any day due to sickness, or any other good cause, shall notify their foreman as soon as possible but not later than 15 minutes prior to the regular starting time of the shift to which assigned unless prevented from doing so for reasons beyond the control of the employee, in which case such notification shall be furnished as soon as possible. Employees who fail to notify their foreman as required herein will be considered absent-no report unless a justifiable reason is furnished. When there is sufficient reason to suspect abuse of this Rule, when requested the employee will furnish prima facie evidence to substantiate the excuse.

(2) Employees absent 15 calendar days for any reason without permission or proper notification as required herein will forfeit all seniority and be removed from service. If the employee or the General Chairman of the Craft subsequently contends that the employee's name was removed from the roster improperly, a hearing will be held, with the Organization notified in advance thereof, to develop the full facts and make determination as to the merits of the employee's contention.

(3) Employees who are absent for any cause and have not arranged for a definite time to resume duty will not be permitted to go to work except on approval of their foreman, unless the employee notifies the foreman of intent to report for duty at least one (1) hour before the expiration of the regular quitting time of the shift to which assigned on the day before the day on which the employee intends to report for work.

(d) Tardiness

Employees reporting late without just cause will not be permitted to work the balance of the tour of duty except on approval of their foreman.

RULE 15 - RETURNING FROM ABSENCE

(a) An employee returning from written leave of absence, absence due to illness or injury, or vacation may –

(1) return to the last regularly assigned position held provided it has not been abolished, or senior employee has not exercised displacement rights thereon; or

(2) exercise seniority rights on any position bulletined during such absence, it being understood that an employee working any part of the bulletin period will not be eligible to exercise seniority under this section; or

(3) exercise seniority rights over junior employees provided his last regularly assigned position has been abolished or is occupied by a senior employee as a result of exercising displacement rights thereon.

The employee will exercise his choice (as prescribed in 1, 2, or 3) within twenty-four (24) hours after return to work from such absence.

(b) Employees displaced by employees returning from absences covered by the Rule and employees subsequently displaced will, without expense to the Carrier, exercise their seniority pursuant to Rule 27.

(c) This Rule will not apply to employees returning to position covered by this Agreement under Rule 11.

RULE 16 - PHYSICAL EXAMINATIONS

(a) An employee absent because of illness or off-duty injury will, when ready to return to work, notify his supervisor as soon as reasonably possible before the day he desires to return. If such absence is in excess of five (5) days, the employee may be required by the Company to furnish a report from his personal physician as to his physical ability to safely perform his normal duties. If such report is required, it will include a brief history of the illness or injury, diagnosis, duration of care, treatment and prognosis. The Company will furnish to the employee the necessary forms for use by the employee's physicians in making the required report.

(b) If physical examination is deemed necessary by the Company, it will be promptly arranged for by the Company at Company expense and a determination made within a reasonable period as to whether or not the employee is physically able to resume duty.

NOTE: *The term "within a reasonable period" will not be used to delay examination of an employee's decision as to his physical fitness to return to work. It contemplates a reasonably prompt examination and decision on the employee's physical fitness to return to work, but each case shall be determined on its own merits. If the employee or the duly authorized representative feels there has been unreasonable delay, the case may be progressed as a grievance or claim under provisions of the applicable working agreement.*

(c) If, under the terms of this agreement, an employee is required by the Company to travel from their point of employment for physical examination, the following shall be applicable:

(1) An employee required to travel in excess of a radius of thirty (30) miles from his point of employment will be reimbursed for any necessary travel expenses.

(2) Where meals and lodging are not provided by the Company, actual necessary expenses will be allowed.

(d) A physically disqualified employee will be notified by the Company doctor in writing of the specific disqualifying conditions.

When an employee protests his removal from service because of physical disqualification by the Company, the case will be handled as follows:

(1) The employee or his representative will file direct with Carrier's Highest Designated Officer such written protest of the disqualification. There must accompany the written protest a copy of the medical findings of the employee's personal physician who has been responsible for the primary care during the disability in question, such findings to include a brief history of the illness or injury, diagnosis, duration of care, treatment, prognosis and a statement of opinion by the employee's doctor. The employee's doctor and the Company doctor shall exchange medical data available to each of them and shall communicate or confer to determine if the difference can be resolved by them. If the two doctors are unable to resolve the case, they shall mutually agree upon a third or neutral doctor for disposition, who shall be a specialist in the disability for which the employee was physically disqualified.

(2) The neutral doctor shall have the benefit of the findings of the employee's doctor and the Company's doctor, and each of them may make such representation to the neutral as is felt pertinent to his examination and opinion. The Company's doctor shall provide the neutral with a statement defining normal duties, the representative may file with the neutral doctor a statement of any exceptions, with supporting evidence and will furnish copies to the Company's doctor and Carrier's Highest Designated Officer. The neutral doctor will examine the employee and render report of findings as promptly as reasonably practical within thirty (30) days after his selection, if possible. The neutral's findings, which shall be final and binding, except as provided herein, will set forth the physical condition of the employee and give opinion as to whether the employee is physically capable of safely performing the employee's normal duties.

(3) If the neutral doctor decides that the employee is fit to continue in service and safely perform the employee's normal duties, such neutral doctor shall also render a further opinion, as to whether such fitness existed at the time the employee was withheld from service. If the neutral doctor concludes that the employee will be compensated for actual loss of normal earnings during the period withheld for each working day withheld from assignment and will not be deprived of any other contractual benefit to which he may be eligible.

(4) If the decision is adverse to the employee and does not involve permanent type disability, but the employee's personal physician who has been responsible for his primary care during the disability in question later contends (limited to once within the three (3) year period commencing with date of disqualification by the neutral doctor) that the disqualifying condition has improved to the degree the employee can safely perform his normal duties and submits written evidence to support such contentions thereof (as described in paragraph (1)), the provisions of item (d)(1) and (2) may again be invoked by the employee's representative. Item (d)(3) will not be applicable. Consideration will be given request for further examination by a Company doctor provided good and sufficient reasons therefor are presented in writing to Carrier's Highest Designated Officer. If such consideration is given, the Company doctor's decision will be final and binding.

(5) The Company and the employee will take care of the expenses of their respective doctors and the expenses of the neutral (including such hospital, laboratory or X-ray costs as may be necessarily incurred) shall be borne on a 50/50 basis by the employee and the Company.

(e) An employee with more than sixty (60) days of compensated service will not be caused to lose time if taken off his assignment by the Company during regular working hours to undergo physical examination.

(f) Nothing contained herein is to be applied or interpreted in any manner to restrict in any way the Company's continued right to require physical examinations at any time it has sufficient reason to believe there has been a change in an employee's physical condition or that his ability to safely perform his normal duties is impaired.

RULE 17 - COMMITTEES

The Company will not discriminate against any employees who from time to time represent other employees and will grant them leave of absence when delegated to represent other employees.

RULE 18 - FAITHFUL SERVICE

Employees who have given long and faithful service in the employ of the Company, and who have become unable to perform arduous work, will, seniority being sufficient, be given preference of such light work in their line (or other duties mutually agreed to with local committee) as they are able to handle. They shall receive the rate of pay of the position to which they are assigned.

RULE 19 - ATTENDING COURT

When attending court as witnesses for the company, employees will receive a minimum of 8 hours time each week day, and 8 hours at rate and one-half for Saturdays, Sundays and holidays; either at home station, away from home or traveling. Time and one-half will be paid for traveling during overtime hours when employees are unable to secure sleeping car accommodations. Actual expenses will be allowed when away from home station, and necessary expenses will be allowed when at home. When necessary, the company will furnish transportation, and will be entitled to certificates for witness fees in all cases.

RULE 20 - JURY DUTY

When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount allowed him for jury service for each such day, excepting allowances paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

(a) An employee must furnish the Carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.

(b) The number of days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.

(c) No jury duty pay will be allowed for any day on which the employee is entitled to vacation or holiday pay.

(d) When an employee is excused from railroad service account of jury duty, the carrier shall have the option of determining whether or not the employee's regular position shall be blanked, notwithstanding the provisions of any other rules.

(e) Except as provided in paragraph (f), an employee will not be required to work on his assignment on days on which jury duty:

(1) ends within four hours of the start of his assignment; or

(2) is scheduled to begin during the hours of his assignment or within four hours of the beginning or ending of his assignment.

(f) On any day that an employee is released from jury duty and four or more hours of his work assignment remain, he will immediately inform his supervisor and report for work if advised to do so.

RULE 21 - BEREAVEMENT LEAVE

(a) Bereavement leave, not in excess of three calendar days, following the date of death, will be allowed in case of death of an employee's brother, sister, parent, child, spouse or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner. Any restrictions against blanking jobs or realigning forces will not be applicable when an employee is absent under this provision.

(b) Agreed upon Interpretations:

Q-1: How are the three calendar days to be determined?

A-1: An employee will have the following options in deciding when to take bereavement leave:

a) three consecutive calendar days, commencing with the day of death, when the death occurs prior to the time an employee is scheduled to report for duty;

b) three consecutive calendar days, ending the day of the funeral service; or

c) three consecutive calendar days, ending the day following the funeral service.

Q-2: Does the three (3) calendar days allowance pertain to each separate instance, or do the three (3) calendar days refer to a total of all instances?

A-2: Three days for each separate death; however, there is no pyramiding where a second death occurs within the three-day period covered by the first death.

Example: Employee has a work week of Monday to Friday - off days of Saturday and Sunday. His mother dies on Monday and his father dies on Tuesday. At a maximum, the employee would be eligible for bereavement on Tuesday, Wednesday, Thursday and Friday.

Q-3: An employee working from an extra board is granted bereavement leave on Wednesday, Thursday and Friday. Had he not taken bereavement leave he would have been available on the extra board, but would not have performed service on one of the days on which leave was taken. Is he eligible for two days or three days of bereavement pay?

A-3: A maximum of two days.

Q-4: Will a day on which a basic day's pay is allowed account bereavement leave serve as a qualifying day for holiday pay purposes?

A-4: No; however, the parties are in accord that bereavement leave non-availability should be considered the same as vacation non-availability and that the first work day preceding or following the employee's bereavement leave, as the case may be, should be considered as the qualifying day for holiday purposes.

Q-5: Would an employee be entitled to bereavement leave in connection with the death of a half-brother or half-sister, stepbrother or stepsister, stepparents or stepchildren?

A-5: Yes as to half-brother or half-sister, no as to stepbrother or stepsister, or stepparents or stepchildren. However, the Rule is applicable to a family relationship covered by the Rule through the legal adoption process.

RULE 22 - PERSONAL LEAVE DAYS

Section 1

A maximum of two days of personal leave will be provided on the following basis:

Employees who have met the qualifying vacation requirements during eight calendar years under vacation rules in effect on January 1, 1982, shall be entitled to one day of personal leave in subsequent calendar years;

Employees who have met the qualifying vacation requirements during seventeen calendar years under vacation rules in effect on January 1, 1982 shall be entitled to two days of personal leave in subsequent calendar years.

Section 2

(a) Personal leave days provided in Section 1 may be taken upon 48 hours' advance notice from the employee to the proper carrier officer provided, however, such days may

be taken only when consistent with the requirements of the carrier's service. It is not intended that this condition prevent an eligible employee from receiving personal leave days except where the request for leave is so late in a calendar year that service requirements prevent the employee's utilization of any personal leave days before the end of that year.

(b) Personal leave days will be paid for at the regular rate of the employee's position or the protected rate, whichever is higher.

(c) The personal leave days provided in Section 1 shall be forfeited if not taken during each calendar year. The carrier shall have the option to fill or not fill the position of an employee who is absent on a personal leave day. If the vacant position is filled, the rules of the agreement applicable thereto will apply. The carrier will have the right to distribute work on a position vacated among other employees covered by the agreement with the organization signatory hereto.

RULE 23- PAYING OFF

(a) Employees will be paid bi-weekly with pay days falling on alternate Fridays, except where State Laws provide a more desirable paying off condition. Employees will be afforded opportunity to secure their pay checks during their regular working hours if they desire.

(b) Should the regular Friday pay day fall on a holiday, employees will be paid on the preceding Thursday.

(c) When there is a shortage of one day's pay or more, if requested, a voucher will be issued to cover the shortage, otherwise the shortage will be carried over to the next pay period.

(d) Employees leaving the service of the company will be given pay voucher as promptly as possible.

(e) It is understood that insofar as employees who are on bi-weekly pay days are concerned, there would be no objection to the delivery of paychecks after the banks close on Thursday if the checks were available and ready for distribution. Such delivery would be to employees on their own time and the delivery on company time to employees on duty would not be made ahead of Friday. It was further understood that if there are occasions when the checks do not arrive in time to be available for delivery after bank closing on Thursday, there would be no complaints filed if the regular Friday pay dates were met. It was also understood that no exception was to be made for an employee whose rest days fell on either Thursday or Friday or who was going to be on vacation during the period in which the pay day fell.

(f) For employees sent out on the line of road to do work, expense accounts will be vouchered and handled monthly.

RULE 24 - TRANSPORTATION

Employees laid off account of reduction of force, who have secured a position on the line of road, will, upon application, be furnished free transportation to the point at which they have secured employment.

RULE 25 - REDUCTION IN FORCES

(a) When it becomes necessary to reduce expenses, the force at any point, or in any department or subdepartment thereof, shall be reduced, seniority to govern.

(b) Except as provided in Paragraph (f) of this Rule, five working days' notice will be given the men affected before reduction is made, and lists will be furnished the local committee.

(c) In the restoration of forces, senior laid off employees will be recalled:

(1) The employee will be sent a recall letter via CERTIFIED MAIL - RETURN RECEIPT REQUESTED to the last address on file with the Carrier, with copy to the local chairman, advising him that he is recalled to service and that he should report to a specified location at a designated time and date.

(2) Should the employee fail to notify the recalling officer of his intentions or fail to return to service within fifteen (15) days from receipt of such recall notice, his name will be removed from the Seniority Roster on which recalled and the employee notified accordingly by CERTIFIED MAIL -RETURN RECEIPT REQUESTED.

(3) If an employee or the General Chairman of the Craft subsequently contends that his name was removed from the Roster improperly, a hearing will be held, with the Organization notified in advance thereof, to develop the full facts and make determination as to the merits of the employee's contention.

A copy of the recall letter is reproduced below.

(d) The local committee will be furnished a list of men to be restored to service.

(e) When positions are abolished and subsequently restored within thirty (30) calendar days, the last regular assigned incumbents must return to their former positions unless:

(1) They have been displaced thereon by a senior employee under Rule 27.

(2) There is a senior qualified furloughed man entitled to recall ahead of the former incumbent.

When an employee returns to a reestablished position under this paragraph, all employees disturbed account the abolishment must return to their former assignment in the same manner as herein provided.

(f) (1) Rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions are hereby modified to eliminate any requirement for such notices under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire or labor dispute other than as covered by paragraph (2) below, provided that such conditions result in suspension of a carrier's operations in whole or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further understood and agreed that notwithstanding the foregoing, any employee who is affected by an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four hours' pay at the applicable rate for his position.

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

(g) Employees temporarily suspended to reduce the force will, under this rule, have the same rights as regards seniority as employees on leave of absence, except they may engage in any employment they may desire without making any special arrangements with either the company's representatives or the men's representatives.

STANDARD FORM TO BE USED
WHEN REDUCING FORCES

_____
Location

_____
Date

TO ALL CONCERNED:

The following position(s) will be abolished. Employees whose positions are abolished will be governed by the provisions of Rule 25.

_____ _____
Title of Position Incumbent

Effective: _____ _____
Time Date

The following employee(s) stand to be furloughed as a result of this force reduction:

_____

_____

_____
Supervisor In Charge

SAMPLE RECALL LETTER

(MAIL IN DUPLICATE)

* *

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

_____
(Location)

_____
(Date)

Mr./Ms. _____
_____
_____

Dear Mr./Ms. _____:

You are hereby recalled for work as _____ (Position); at _____ (Location), in accordance with the Rules of your Agreement. You are to arrange to report for service at _____ (Time), _____ (Day), _____ (Date).

In accordance with your Rules Agreement, unless you return to work or furnish a satisfactory explanation of your absence within fifteen (15) days from the date of receipt hereof, your name will be removed from the Seniority Roster on which recalled.

If you desire your record to indicate that you resigned from the Railway Company rather than forfeited seniority for failure to return to service on recall, please sign in the space provided below and return a signed copy of this letter in the enclosed pre-addressed, postpaid envelope in order that our records may be complete.

Very truly yours,

_____
(Recalling Officer)

* *

I hereby resign from the service of the Railway Company covered by the Roster on which recalled above.

_____
(Signature of Employee)

_____
(Date)

cc: _____, Local Chairman

SAMPLE

NOTICE TO EMPLOYEE

OF FAILURE TO RETURN TO SERVICE

ON RECALL AND NOTICE OF

FORFEITURE OF SENIORITY

(Location)_____

(Date)_____

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr./Ms. _____

_____

_____

Dear Mr./Ms. _____:

By letter dated _____ (Date), you were recalled for work as a _____ (Position) at _____ (Location), in accordance with the Rules of your Agreement. You were to arrange to report for service at _____ (Time), _____ (Day), on _____ (Date).

Since you have failed to respond to recall or furnish a satisfactory explanation for your absence, your name has been removed from the Seniority Roster on which recalled.

Very truly yours,

_____
(Recalling Officer)

cc: _____, Local Chairman

RULE 25½ - RELIEF WORK, FURLOUGHED EMPLOYEES

(a) The Company shall have the right to use furloughed employees to perform relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph (b) hereof their desire to be so used. This provision is not intended to supersede Rules or practices which permit employees to place themselves on vacancies on preferred positions in their Seniority Districts, it being understood, under these circumstances, that the furloughed employee will be used, if the vacancy is filled, on the last position that is to be filled. This does not supersede Rules that require the filling of temporary vacancies. It is also understood that Management retains the right to use the regular employee, under pertinent Rules of the Agreement, rather than call a furloughed employee.

(b) Furloughed employees, desiring to be considered available to perform such relief work will notify the proper Officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work. A furloughed employee may withdraw his written notice of willingness to perform such work at any time before being called for such service by giving written notice to that effect to the proper Carrier Officer, with copy to the local chairman. If such employee should again desire to be considered available for such service, notice to that effect --as outlined hereinabove -- must again be given in writing. Furloughed employees who would not at all times be available for such service will not be considered available for relief work under the provisions of this Rule. Furloughed employees so used will not be subject to Rules of the Agreement which require advance notice before reduction of force.

(c) Furloughed employees who have indicated their desire to participate in such relief work will be called in seniority order for this service.

(d) Employees who are on approved leave of absence will not be considered furloughed employees for purposes of this Rule.

(e) Furloughed employees shall in no manner be considered to have waived their rights to a regular assignment when opportunity therefor arises.

Understanding

(1) Employees covered by the Shop Crafts Agreement who are furloughed and make request for work under this rule will, when used, be subject to the following:

(a) Will not be considered available for service when they will be starting a second tour of duty within the same work day. A work day as used herein shall be a 24-hour period beginning with the starting time of the first shift.

(b) Will not be considered available for service when they will be working in excess of forty (40) straight time-hours within a work week. The term work week will begin with the starting time of the first shift on Wednesday.

(c) Will not be considered available when they have not been off duty one shift.

(2) Positions which are filled hereunder will be filled on a day-to-day basis.

(3) This rule provides further that furloughed employees who are not at all times available for work will not be considered as available for work under the rule.

(4) This Understanding may be canceled upon thirty (30) days written notice, either party to the other.

RULE 26 - SENIORITY

(a) The seniority of employees covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of Equipment Department
Maintenance of Way Department

Mechanics, helpers and apprentices of each craft shall have separate seniority rosters.

(b) Seniority will begin on the first date of compensated service, subject to the provisions of Appendix VI (Apprentice Agreement). In establishing seniority for new employees, it is understood that such seniority cannot be established until determination has been made of the rights of employees entitled to consideration under Rules 12 and 13 for a vacancy or new position existing at the time the new employee is hired.

(c) Seniority lists will be posted on bulletin boards, which are provided for in this agreement, as soon as possible after January 1 each year, and will be considered permanently established if not protested during the year in which the roster is posted. Seniority dates not protested then become the fixed seniority for each man on the roster and will be carried forward to succeeding rosters. Only changes or additions as may have been made during the preceding year may be protested. Neither the Management nor the Committees will receive any complaints for correction of seniority dates which are not handled during the year in which the roster is posted. Copies of the seniority lists will be furnished the Local Chairman and General Chairman at the time of posting on bulletin boards.

(d) (Med. Agmt. 12-18-87) The seniority of any employee whose seniority under an agreement with IAM is established after the effective date of this section and who is furloughed for 365 consecutive days will be terminated if such employee has less than three (3) years of seniority.

The "365 consecutive days" shall exclude any period during which a furloughed employee received compensation pursuant to an I.C.C. employee protection order or an employee protection agreement or arrangement.

RULE 27 - BULLETIN RULE

(a) Senior men in their respective classifications shall have the opportunity to exercise their seniority when vacancies occur, or new jobs are created, or when changes in forces occur involving increased hours, higher rates of pay, or changing from night to day shifts or vice versa. Due consideration will be given to men off on sick leave, vacation or leave of absence upon their return to work.

Seniority as mentioned in any of the rules of this agreement will govern when the employees desire to exercise such rights. If sufficient ability is shown by trial, senior applicants for vacancies or new positions shall be assigned.

(b) When any changes according to paragraph "a" are to be made, bulletins will be posted immediately calling for bids, such bulletins to remain open for a period of five days (Sample Bulletin attached). Employees desiring to bid on such jobs must do so within the five days' limit by making application to the office in writing with copy to the Local Chairman. Failure to comply with this provision will forfeit the claim of any bidder. The successful bidder will be assigned to the position no later than five days following the expiration of the advertised bulletin, preferably on the first day of the work week. If no bids are received within the five day limit, the senior unassigned man will be placed on the job. Permanent assignment will be made immediately after the five day limit.

> NOTE: Bids received from employees for positions advertised within the department in which employed will be accepted, provided the primary duties of the vacancy are not identical to those of the position presently held by the bidder.

(c) The practice of exercising seniority to displace junior employees by "ROLLING" or "BUMPING" is not permitted; however, an employee whose job is abolished or who may be displaced by other causes, will be permitted to exercise seniority on any job occupied by a junior employee on his seniority list.

(d) Acceptance of work at other shop points or at the same point where more than one roster is maintained between the time of layoff and being called back into the service at home seniority point, will not impair an employee's seniority standing. If an employee

makes the transfer permanent he will be dated as a new man from the day he started to work at the new seniority point of employment.

(e) Vacancies of long duration of thirty (30) days or longer arising as a result of absence of an employee due to serious illness, retirement account disability, etc., will be bulletined as permanent vacancies in accordance with Paragraph (b) of this rule. Upon return of the employee, he shall be privileged to exercise a displacement right under the provisions of Paragraph (c) of this rule. Any employee(s) affected shall in turn be privileged to exercise displacement rights.

STANDARD FORM OF BULLETIN

FOR BULLETINING JOBS PER RULE 27.

BULLETIN NO. _____

_____, _____, 19 _____
(Place) (Date) (Year)

The following position is hereby advertised for bids.

Employees desiring to bid for the position will make written application to the Supervisor in charge, with copy of his bid to the Local Chairman or his representative.

Bids will be received from _____ **to** _____, **inclusive.**

Title of Position _____

Location and Shift _____

Days of Assignment _____

Permanent or Temporary _____

Rate of Pay _____

Work consists in general of _____

_____

_____

(Signed) _____
(Supervisor in Charge)

RULE 28 - CLAIMS OR GRIEVANCES

(a) Should any employee subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the officers designated in this rule, in their respective order, by the duly authorized local committee or their representative, and if stenographic report of investigation is taken the committee shall be furnished a copy.

(b) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based (with the exception of any appeal concerning discipline. SEE RULE 29). Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(c) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance and the representative of the Carrier shall be notified in writing within that time, of the rejection of his decision. Failing to comply with this provision, the matter shall be considered as closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(d) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to.

(e) A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as

such alleged violations, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

(f) This rule recognizes the right of representatives of the Organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employees they represent.

(g) This agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier.

(h) This rule shall not apply to requests for leniency.

(i) Should the highest designated railroad official, or his duly authorized representative, and the General Chairman or his duly authorized representative, fail to agree, the case may then be handled in accordance with the Railway Labor Act.

(j) Prior to assertion of grievances as herein provided, and while questions of grievances are pending, there will be neither a shutdown by the employer nor a suspension of work by the employees.

(k) All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen. It is understood that "local committees" referred to in this rule will consist of a committeeman and a second or assistant committeeman (one or the other) if desired.

RULE 29 - DISCIPLINE

(a) Where the Carrier believes there may be cause for disciplining an employee, it shall notify the employee, in writing of the charges against him and of the time and place of a hearing, which shall be held within a reasonable time from the date of the notice, to investigate the said charge(s). The employee shall have the responsibility for producing any witnesses in his behalf and shall have the right to be represented at such investigation by his duly authorized representative.

(b) No employee will be disciplined without a fair hearing by a designated officer of the company. Suspension in proper cases pending a hearing, including cases not

requiring discipline as severe as dismissal, shall not be deemed a violation of these rules. If the judgement be in his favor, he shall be compensated for the wage loss, if any, suffered by him.

(c) If stenographic report of hearing is taken, the committee shall be furnished a copy.

NOTE: Neither Rule 28 nor Rule 29 attempts to obligate the carrier to refuse permission to an individual employee to present his own grievance, or, in hearing involving charges against him, to present his own case personally. The effect of these rules, when an individual employee presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier.

(d) When employees are required by direction of an officer to attend investigations outside of regular working hours as witnesses to develop the cause or causes of any detrimental occurrence, accidents, etc., in which the railroad or its employees, or the public, are involved, and to decide on corrective measures by discipline, or by change of practice if found faulty, and in general to advance the science of railroading, they will be paid as follows:

(1) For continuous time, before or after regular work period, they will be paid pro rata rate on the minute basis. It is understood, however, that should there be a break between the end of investigation and the employee's starting time, or between the employee's quitting time and the starting time of the investigation, such employees may be paid under this paragraph as though the investigation were continuous with their regular hours.

(2) For time required to act as witnesses not continuous with, before or after, regular work period, they will be paid pro rata rate on the minute basis from time required to report to time released, with a minimum of two pro rata hours.

(e) When investigation develops that one, or more, of those attending is responsible for the occurrence and subject to discipline, pay will not be allowed such one or ones.

(f) In the event discipline results from an investigation, claims and grievances resulting from such discipline will be appealed to the Carrier's highest designated officer within sixty (60) days from the date such decision is rendered. The Carrier's decision on the appeal shall be made within sixty (60) days of receipt of the appeal.

(g) Decisions by the Carrier's highest designated officer will be final and binding unless, within nine (9) months from the date of said officer's original decision, proceedings for further appeal are instituted before the National Railroad Adjustment Board or a Public Law Board and the Carrier officer is so notified.

(h) Any time limits provided herein may be extended by mutual agreement.

RULE 29½ - WAIVER OF HEARING

(a) After notice of the charge(s), but prior to the investigation, either charged employee or Carrier officer may request a meeting to discuss said charge(s). The employee's duly authorized representative shall have the right to be in attendance at this meeting. On the basis of such meeting, the employee and Carrier officer may reach agreement as to the proper assessment of guilt (if any) and discipline (if any).

(b) Any settlement agreement reached through Paragraph (a) above shall list the charge(s), the finding of fault, and the discipline to be rendered and shall be signed by the Carrier representative and by the employee, as parties to the agreement, and by the employee's duly authorized representative, as witness, to the agreement. Such agreement, signed by the parties, will be a waiver of a formal investigation. There will be no appeal.

Such settlement agreement shall have no value as precedent in subsequent matters involving other parties. No record shall be taken of the proceeds of such meeting(s) and failure to reach an agreement shall not be considered or referred to in further handling of the case.

RULE 30 - ASSIGNMENT OF WORK

(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per Rule 41 except foremen at points where no mechanics are employed. However, craft work performed by foremen or other supervisory employees employed on a shift shall not in the aggregate exceed 20 hours a week for one shift, 40 hours a week for two shifts, or 60 hours for all shifts.

If any question arises as to the amount of craft work being performed by supervisory employees, a joint check shall be made at the request of the General Chairmen of the Organizations affected. Any disputes over the application of this Rule shall be handled under the provision of Rule 28.

(b) This Rule does not prohibit foremen in the exercise of their duties to perform work.

(c) At points where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will so far as they are capable of doing so, perform the work of any craft not having a mechanic employed at that point. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of each craft, and any dispute over the designation of the craft to perform the available work shall be handled as follow: At the request of the General Chairman of any craft, the parties will undertake a joint check of the work done at the point. If the dispute is not resolved by Agreement, it shall be handled under the provisions of Rule 28 and pending the disposition of the dispute, the Carrier may proceed with or continue its designation.

RULE 31 - LEAD MECHANICS

(a) Mechanics employed as such and paid a rate in excess of the minimum, and who do a limited amount of supervising, are not prohibited from performing some of the work of their trade when not engaged in supervising. Special work such as, for example, tool room work, air brake work and work of similar character that cannot be properly handled by departmental foremen may be directed by a mechanic of the trade to whom the differential will be paid for this additional service.

(b) This shall not be interpreted to mean that Gang Foreman or Departmental Foreman will be used to perform the work of the trade except as otherwise provided for.

(c) This rule shall not be construed as requiring the Carrier to establish positions of leading mechanics or to retain such positions presently existing.

RULE 32 - RATES OF PAY

(a) Rates of Pay

The minimum and other rates of pay are those agreed to in conference between representative of the Carrier and representatives of the Employees, in conformity with the provisions of the Railway Labor Act, as amended.

(b) Skill Differentials

(1) Journeymen machinists who perform the work listed below shall receive a differential per hour above the minimum rate paid to journeymen machinists at the point employed for each hour actually spent performing the listed work as set forth below.

a. Existing differentials paid to journeymen machinists for performing lead mechanic work shall be increased to 50 cents per hour effective January 1, 1993.

b. Existing differentials paid to journeymen machinists for performing federal inspector or welding work shall be increased to 25 cents per hour effective January 1, 1993.

c. Journeymen machinists who perform the work of

Classroom instructor -
A machinist designated by carrier to provide classroom instruction;

EMD Turbocharger Room Work -
Rebuilding of EMD turbochargers in the designated rebuilding area for turbochargers;

Traveling Roadway Machinists -
Machinists that regularly perform maintenance of way field service; does not include any machinist in such service assigned in shops;

Precision Machine Operators -
Operators on precision machines such as the following: wheel truing machines, treadmill, axle lathes, wheel boring mills, engine line boring, traction motor line boring, wheel mounting press, engine lathe. This category does not include machines such as grinders, drill presses, punches, shears, threaders, saws, honing, and the like, hand-held tools or portable machines;

Governor Room Work -
Assemble and test mechanical engine governor in the governor room;

Air Room Work -
Assemble and test air brake valves in the air room;

Engine Rebuild -
Build-up of locomotive diesel engine (out of locomotive carbody);

Alignment of -
Main generators/alternators
Air Compressors (mechanical drive)
Auxiliary generators
Fan Drives/Equipment Blowers (mechanical drive);

Gear Trains - *Build-up locomotive gear trains*

shall receive a differential of 25 cents per hour, effective January 1, 1993. Effective January 1, 1994, this differential shall be increased to 50 cents per hour.

(2) When performing the above work for four (4) hours or less in any one day, employees will be paid the differential on an hourly basis with a minimum of one (1) hour; for more than four (4) hours in any one day, the differential will apply for that day.

(3) There shall be no compounding or pyramiding of the above differentials. Any existing differentials for the above listed work that exceed the amounts specified shall be preserved. The parties recognize and agree that this Article is limited solely to the matter of skill differentials and this Article and any actions pursuant to it will not be used by either party in any manner with respect to the interpretation or application of any rule or practice.

(c) Rate Progression

Machinist Helpers, upgraded Mechanics, Apprentices and student Mechanics entering service on and after the effective date of this Article shall be paid as follows for all service performed within the first sixty (60) calendar months of service:

(1) For the first twelve (12) calendar months of employment, new employees shall be paid 75% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered.

(2) For the second twelve (12) calendar months of employment, such employees shall be paid 80% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered.

(3) For the third twelve (12) calendar months of employment, such employees shall be paid 85% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered.

(4) For the fourth twelve (12) calendar months of employment, such employees shall be paid 90% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered.

(5) For the fifth twelve (12) calendar months of employment, such employees shall be paid 95% of the applicable rates of pay (including COLA) for the class and craft in which service is rendered.

(6) Any calendar month in which an employee does not render compensated service due to furlough, voluntary absence, suspension or dismissal shall not count toward completion of the sixty (60) month period.

(7) During any portion of the sixty (60) month period of employment in which an employee serves as an upgraded Mechanic, he shall be paid at the appropriate percentage of the applicable Mechanic rate.

(d) Intermodal Service Workers

With respect to Intermodal services, this Article shall be applicable to employees whose positions are engaged primarily in the inspection, repair and maintenance of equipment used to transfer containers, trailers and vehicles between rail and highway transportation modes at Carrier's Intermodal facilities.

(1) For positions described in this Section (d), the full rate of pay for employees who establish seniority subsequent to December 18, 1987, shall be 75% of the rate in effect as of November 30, 1985 and shall be subject to Paragraph (c), Rate Progression.

(2) If such a position is filled by an employee with less than 6 years of service and who has been furloughed for more than one year as of December 18, 1987, other than an employee subject to a protective Agreement or arrangement, such employee shall be compensated at the rate of 75% of the full rate of the position as of November 30, 1985 and, where applicable, shall also be subject to Article XI, Entry Rates, of the Agreement of December 11, 1981 or local rules governing entry rates.

(3) For Apprentices and student Mechanics falling within the purview of paragraphs (1) or (2) of this Section, the incremental rate of pay shall be 75% of the applicable incremental rate in effect as of November 30, 1985.

RULE 33 - CONDITIONS OF SHOP, ETC

Good drinking water and ice will be furnished. Sanitary drinking fountains will be provided where necessary. Pits and floors, lockers, toilets, and wash rooms will be kept in a clean, dry and sanitary condition. Shops, locker rooms and wash rooms will be lighted and heated in the best manner possible consistent with the source of heat and lights available at the point in question.

RULE 34 - TOOLS

(a) At shops and roundhouses equipped with electricity, electric light globes and extensions will be kept in tool rooms available for use. Employees engaged in work requiring flashlights will be furnished same.

(b) Crayons, soapstones, marking pencils, tool handles, saw files, motor bits, brace bits, cold chisels, bars, steel wrenches, steel sledges, hammers (not claw hammers), reamers, drills, taps, dies, lettering and striping pencils and brushes and batteries and bulbs will be furnished by the Company.

RULE 35 - COMPETENT HELP

Mechanics and apprentices will be furnished sufficient competent help.

RULE 36 - PERSONAL INJURIES

(a) Employees injured while at work will not be required to make accident reports before given medical attention. Medical attention will be given as quickly as possible. Employees will make accident report as early as practicable and will not be required to sign release pending settlement of the case. Claims for personal injuries may be handled with the Personal Injury Claim Department.

(b) Employees injured while on duty and who are required to visit the doctor during working hours may do so without loss of time.

RULE 37 - BULLETIN BOARDS

Bulletin Boards will be provided in each department where proper notices may be posted. This will be confined to only subjects in which the Management or Employees are concerned.

RULE 38 - PROTECTION OF EMPLOYEES

(a) Work on engines or cars outside of shops during inclement weather will be limited to actual necessity and then only if shop room or pits are not available. This does not apply to work in engine cabs or emergency work on engines or cabs set out for or attached to trains.

(b) When it is necessary to make repairs to engine boilers, tanks, cars or parts, they shall be cleaned before mechanics are required to work on same. This will also apply to cars undergoing general repairs.

(c) Employees will not be assigned to jobs when they will be exposed to sand blast and paint blowers while in operation.

(d) All acetylene or electric welding or cutting will be protected by a suitable screen when its use is required.

(e) Sufficient blowers and suction fans will be installed to take fumes out of shops.

(f) No employee will be required to work under locomotive or car without being protected by proper signals, which will not be removed except by men who place same. Where the nature of the work to be done requires it, locomotives and passenger cars will be placed over a pit, if available.

(g) The management, with the cooperation of employees, will keep shops and yards in a clean and sanitary condition and all machinery and tools in a safe and working condition.

(h) Men engaged in the handling of storage batteries and mixing acid must be provided with acid-proof rubber gloves, hip boots and aprons.

(i) Steam or water will not be blown off from locomotives in roundhouses to the extent that it will interfere with or inconvenience employees when possible to avoid it.

(j) When practicable, engines will be placed under smoke jacks before being fired up.

RULE 39 - CHECKING IN AND OUT

Employees required to check in and out and make out service cards will be allowed one minute for each hour actually worked on their own time.

RULE 40 - MACHINISTS' QUALIFICATIONS

Any man who has served an apprenticeship or has had four years experience at the machinists trade, and who, by his skill and experience, is qualified and capable of laying out and fitting together the metal parts of any machine or locomotive, with or without drawing, and competent to do either sizing, shaping, turning, boring, planing, grinding, finishing, or adjusting the metal parts of any machine or locomotive whatsoever shall constitute a machinist.

RULE 41 - CLASSIFICATION OF WORK

(a) Machinists' work shall consist of laying out, fitting, adjusting, shaping, boring, slotting, milling and grinding of metals used in building, assembling, maintaining, dismantling and installing locomotives and engines (operated by steam or other power), pumps, cranes, hoists, elevators, pneumatic and hydraulic tools and machinery, scale building, shafting and other shop machinery, ratchet and other skilled drilling and reaming; tool and die making, tool grinding and machine grinding; axle truing; axle, wheel and tire turning and boring; engine inspecting; air equipment, lubricator and injector work; removing, replacing, grinding, bolting and breaking of all joints on superheaters; oxy-acetylene, thermal and electric welding on work generally recognized as machinists' work; the operation of all machines used in such work, including drill presses and bolt threaders using a facing, boring or turning head or milling apparatus; and all other work generally recognized as machinists' work. On running repairs, machinists may connect or disconnect any wiring, coupling or pipe connections necessary to make or repair machinery or equipment.

(b) This rule shall not be construed to prevent engineers, firemen and cranemen of steam shovels, ditchers, clam shells, wrecking outfits, pile drivers and other similar equipment requiring repairs on line of road from making any repairs to such equipment as they are qualified to perform.

(c) Drilling, reaming and tapping with electric and air motors and ratchets in connection with machinists' work.

(d) Die making, repairing jacks and track drilling machines.

(e) Erecting and repairing shafting, including babbitting, except where this work is being done by other mechanics.

(f) Removing, replacing, lining and repairing locomotive tires.

(g) Fitting and erecting shoes, wedges, driving boxes and bottom end of spring saddles.

(h) Fitting and erecting trailer truck pedestals, boxes, bearings, and applying hub liners.

(i) Fitting and erecting guides, guide yokes, cross heads, main and side rods, rocker boxes, link and valve motion and steam chests.

(j) Engine inspecting, including all parts of engines and tenders.

(k) Fitting and bolting smoke box braces.

(l) Spring rigging work.

(m) Engine truck, trailer truck and driving brake work.

(n) Removing and applying cast iron, cast steel and wrought steel smoke box fronts and doors.

(o) Stripping, wheeling and unwheeling locomotives.

(p) Removing and replacing covers of auxiliary domes located on the top of locomotive boilers for convenience in entering boilers.

(q) Laying out, planing, slotting, fitting (and applying, when the design calls for the use of machines bolts) metal locomotive end sills.

(r) Machinists' work in connection with automatic train control on engines and cars.

RULE 42 - APPRENTICE WORK

Include regular and helper apprentices in connection with the work defined by Rule 41.

RULE 43 - MACHINIST HELPERS

Helpers' work shall consist of helping machinists and apprentices, operating drill presses (plain drilling) and bolt threaders not using facing, boring, or turning head or milling apparatus, wheel presses (on car, engine truck and tender truck wheels), nut tappers and facers, bolt pointing and centering machines, car brass boring machines, twist drill grinders; cranemen helpers on locomotive and car work; attending tool room,

machinery oiling, locomotive oiling, box packing, assisting in dismantling locomotives and engines, applying all couplings between engine and tender; locomotive tender and draft rigging work; except when performed by carmen, and all other work generally recognized as helpers' work.

RULE 44 - RUNNING REPAIRS AND DEAD WORK

(a) Machinists assigned to running repairs shall not be required to work on dead work at points where dead work forces are maintained except when there is not sufficient running repairs to keep them busy.

(b) Dead work means all work on an engine which cannot be handled within twenty-four (24) hours (computed after the time the work has been assigned) by the regularly assigned running-repair forces maintained at point where the question arises.

(c) Dead-work forces will not be assigned to perform running-repair work, except when the regularly assigned running-repair forces are unable to get engines out in time to prevent delay to train movement.

RULE 45 - WELDING

None but Machinists and Machinist Apprentices shall operate oxyacetylene, thermal, or electric welders utilized during the performance of Machinist work, as per Rule 41.

RULE 46 - INSURANCE

Agreements covering hospital, surgical and life insurance benefits in accordance with provisions of Travelers Group Policy Contract GA-23000 and Supplemental Sickness Benefits in accordance with the Provident Group Policy R-5000 will remain in full force and effect until changed in accordance with the provisions of the Railway Labor Act.

RULE 47 - APPLICANTS FOR EMPLOYMENT

(a) Applicants for employment will be required to make statement as to their ability and address of relatives and may be required to pass physical examination, at the expense of the Carrier, to determine their fitness to perform the service required of their craft or class.

(b) Employees promoted to, or men engaged for, positions that require them to distinguish signals or do flagging will be required to pass usual eyesight and hearing test before assigned to such service.

(c) The application of an employee entering the service will be approved or rejected within sixty days after commencing work. When an applicant is not notified to the contrary within sixty days, it will be understood that his application has been approved. If his application is not approved, he can be removed from the service during this sixty-day period without an investigation.

RULE 48 - DISTRIBUTION OF RULE BOOKS

The company will have printed in book form copies of these Rules and furnish a copy to each employee affected.

RULE 49 - WORK AT WRECKS

In case of wrecks where engines are disabled, Machinist and Helper, if necessary, shall accompany the wrecker. They will work under the direction of the wreck foreman.

RULE 50 - GENERAL

(a) The right to make Agreements covering rates of pay and working conditions, and to interpret and apply them, respectively, for the management and the employees herein covered, is retained by the parties signatory thereto. When settlement is not reached by negotiation, the matter concerned may be pursued by further handling under the provision of the Railway Labor Act.

(b) Carrier's Designated Officer and the General Chairman for the employees, have authority to reach decision on any dispute, grievance, controversy, or difference of opinion affecting this Agreement in any manner whatsoever, whether the case comes to them on appeal or otherwise. Decision reached on any such question by mutual agreement under this rule shall be final, and shall not be open to any question thereafter.

RULE 51 - SAVINGS CLAUSE

In printing this Agreement to include applicable parts of the several nationally negotiated Agreements and other memoranda, it is not the intention of the parties signatory hereto to change, or modify the application and/or interpretation thereto. Should a dispute arise through the omission of, or slight change in, language used in the National Agreement or original memorandum, the original language shall be controlling.

Additionally, should a Rule have been inadvertently omitted in the consolidation of the various Agreements, the applicable C&O Rule shall govern.

Furthermore, it is the intent of the parties to incorporate herein all applicable National Agreement rules, and it is understood that all such rules, if not specifically included herein, are incorporated by reference.

RULE 52 - GENDER CLAUSE

For convenience, all references to gender in this Agreement are made in the masculine gender. It is understood and agreed by the parties to this Agreement that references to masculine gender include both the masculine gender and the feminine gender.

In consolidating the Schedule Agreements of the involved former Railroads, it is recognized that in some instances the application of certain Rules and the assignment of certain work has been applied differently on the former Railroad Systems. Therefore, it is understood and agreed that the consolidated Agreement will not be used to change existing work practices relative to craft assignments on the former Railroads, unless specifically agreed to by the involved parties.

Signed at Atlanta, GA, this 7th day of September 1994.

FOR THE EMPLOYEES:

Robert Reynolds
R. L. Reynolds
President-Dir. General Chairman

Roger L Elmore
R. L. Elmore
General Chairman

J. A. Coker
J. A. Coker
General Chairman

FOR THE CARRIER:

R. H. Cockerham
R. H. Cockerham
Asst. Vice President Employee Relations

A. R. Males
Sr. Manager Employee Relations

APPENDIX I - VACATIONS

Vacation with pay will be granted to employees covered by this Agreement under and in accordance with the terms and provision of the Vacation Agreement dated Chicago, Illinois, December 17, 1941, and Supplemental Agreements dated February 23, 1945, August 21, 1954, August 19, 1960, November 20, 1964, February 4, 1965, September 27, 1967, September 2, 1969, October 7, 1971, December 2, 1978, December 11, 1981, and interpretations.

Article 1

(a) An annual vacation of five (5) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred twenty (120) days during the preceding calendar year.

(b) An annual vacation of ten (10) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred ten (110) days during the preceding calendar year and who has two (2) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred ten (110) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of two (2) of such years, not necessarily consecutive.

(c) An annual vacation of fifteen (15) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has eight (8) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of eight (8) of such years, not necessarily consecutive.

(d) An annual vacation of twenty (20) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has seventeen (17) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949) in each of seventeen (17) of such years, not necessarily consecutive.

(e) An annual vacation of twenty-five (25) consecutive work days with pay will be granted to each employee covered by this Agreement who renders compensated service on not less than one hundred (100) days during the preceding calendar year and who has twenty-five (25) or more years of continuous service and who, during such period of continuous service renders compensated service on not less than one hundred (100) days (133 days in the years 1950-1959 inclusive, 151 days in 1949 and 160 days in each of such years prior to 1949), in each of twenty-five (25) of such years, not necessarily consecutive.

(f) Paragraphs (a), (b), (c), (d) and (e) hereof shall be construed to grant weekly and monthly rated employees, whose rates contemplate more than five days of service each week, vacations of one, two, three, four or five work weeks.

(g) Service rendered under Agreements between a Carrier and one or more of the Non-Operating Organizations parties to the General Agreement of August 21, 1954, or to the General Agreement of August 19, 1960, shall be counted in computing days of compensated service and years of continuous service for vacation qualifying purposes under this Agreement.

(h) Calendar days in each current qualifying year on which an employee renders no service because of his own sickness or because of his own injury shall be included in computing days of compensated service and years of continuous service for vacation qualifying purposes on the basis of a maximum of ten (10) such days for an employee with less than three (3) years of service; a maximum of twenty (20) such days for an employee with three (3) but less than fifteen (15) years of service; and a maximum of thirty (30) such days for an employee with fifteen (15) or more years of service with the employing carrier.

(i) In instances where employees who have become members of the Armed Forces of the United States return to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, the time spent by such employees in the Armed Forces subsequent to their employment by the employing carrier will be credited as qualifying service in determining the length of vacations for which they may qualify upon their return to the service of the employing carrier.

(j) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year preceding his return to railroad service had rendered no compensated service or had rendered compensated service on fewer days than are required to qualify for a vacation in the calendar year of his return to railroad service, but could qualify for a vacation in the year of his return to railroad services if he had combined for qualifying purposes days on which he was in railroad service in such preceding calendar year with days in such year on which he was in the Armed Forces, he will be granted, in the calendar year

of his return to railroad service, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(k) In instances where an employee who has become a member of the Armed Forces of the United States returns to the service of the employing carrier in accordance with the Military Selective Service Act of 1967, as amended, and in the calendar year of his return to the railroad service renders compensated service on fewer days than are required to qualify for a vacation in the following calendar year, but could qualify for a vacation in such following calendar year if he had combined for qualifying purposes days on which he was in railroad service in the year of his return with days in such year on which he was in the Armed Forces, he will be granted, in such following calendar year, a vacation of such length as he could so qualify for under paragraphs (a), (b), (c), (d) or (e) and (i) hereof.

(l) An employee who is laid off and has no seniority date and no rights to accumulate seniority, who renders compensated service on not less than one hundred twenty (120) days in a calendar year and who returns to service in the following year for the same carrier will be granted the vacation in the year of his return. In the event such an employee does not return to service in the following year for the same carrier, he will be compensated in lieu of the vacation he has qualified for provided he files written request therefor to the employing officer, a copy of such request to be furnished to his local or general chairman.

Article 2.

An employee's vacation period will not be extended by reason of any of the eleven recognized holidays enumerated in Rule 5, or any day which by agreement has been substituted or is observed in place of any of those eleven holidays, or any holiday which by local agreement has been substituted therefor, falling within his vacation period.

Article 3.

The terms of this Agreement shall not be construed to deprive any employee of such additional vacation days as he may be entitled to receive under any existing Rule, understanding or custom, which additional vacation days shall be accorded under and in accordance with the terms of such existing Rule, understanding or custom.

Article 4.

(a) Vacations may be taken from January 1st to December 31st and due regard consistent with requirements of service shall be given to the desires and preferences of the employees in seniority order when fixing the dates for their vacations.

The local committee of each Organization signatory hereto and the Representatives of the Carrier will cooperate in assigning vacation dates.

(b) The Management may upon reasonable notice (of thirty (30) days or more, if possible, but in no event less than fifteen (15) days), require all or any number of employees in any plant, operation or facility, who are entitled to vacations to take vacations at the same time.

The local committee of each Organization affected signatory hereto and the proper representative of the Carrier will cooperate in the assignment of remaining forces.

Article 5.

Each employee who is entitled to vacation shall take same at the time assigned, and, while it is intended that the vacation date designated will be adhered to so far as practicable, the management shall have the right to defer same provided the employee so affected is given as much advance notice as possible; not less than ten (10) days' notice shall be given except when emergency conditions prevent. If it becomes necessary to advance the designated date, at least thirty (30) days' notice will be given affected employee.

If a carrier finds that it cannot release an employee for a vacation during the calendar year because of the requirements of the service, then such employee shall be paid in lieu of the vacation the allowance hereinafter provided.

Such employee shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

Article 6.

The Carriers will provide vacation relief workers but the vacation system shall not be used as a device to make unnecessary jobs for other workers. Where a vacation relief worker is not needed in a given instance and if failure to provide a vacation relief worker does not burden those employees remaining on the job, or burden the employee after his return from vacation, the Carrier shall not be required to provide such relief worker.

Article 7.

Allowances for each day for which an employee is entitled to a vacation with pay will be calculated on the following basis:

(a) An employee having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment.

(b) An employee paid a daily rate to cover all services rendered, including overtime, shall have no deduction made from his established daily rate on account of vacation allowances made pursuant to this Agreement.

(c) An employee paid a weekly or monthly rate shall have no deduction made from his compensation on account of vacation allowances made pursuant to this Agreement.

(d) An employee working on a piece-work or tonnage basis will be paid on the basis of the average earnings per day for the last two semi-monthly periods preceding the vacation, during which two periods such employee worked on as many as sixteen (16) different days.

(e) An employee not covered by Sections (a), (b), (c), or (d) of this Article will be paid on the basis of the average daily straight time compensation earned in the last pay period preceding the vacation during which he performed service.

Article 8.

The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Article 1 hereof. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, discharge, non-compliance with a union-shop agreement, or failure to return after furlough, he shall at the time of such termination be granted full vacation pay for vacation earned in the preceding year or years and not yet granted, and the vacation for the succeeding year if the employee has qualified therefore under Article 1. If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received shall be paid to such beneficiary as may have been designated, or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.

Article 9.

Vacations shall not be accumulated or carried over from one vacation year to another.

Article 10.

(a) An employee designated to fill an assignment of another employee on vacation will be paid the rate of such assignment or the rate of his own assignment, whichever is the greater; provided that if the assignment is filled by a regularly assigned vacation relief employee, such employee shall receive the rate of the relief position. If an employee receiving graded rates, based upon length of service and experience, is designated to fill an assignment of another employee in the same occupational classification receiving such graded rates who is on vacation, the rate of the relieving employee will be paid.

(b) Where work of vacationing employees is distributed among two or more employees, such employees will be paid their own respective rates. However, not more than the equivalent of twenty-five percent of the work load of a given vacationing employee can be distributed among fellow employees without the hiring of a relief worker unless a larger distribution of the work load is agreed to by the proper local union committee or official.

(c) No employee shall be paid less than his own normal compensation for the hours of his own assignment because of vacations to other employees.

Article 11.

While the intention of this Agreement is that the vacation period will be continuous, the vacation may, at the request of an employee, be given in installments if the management consents thereto.

Article 12.

(a) Except as otherwise provided in this Agreement, the Carrier shall not be required to assume greater expense because of granting a vacation than would be incurred if an employee were not granted a vacation and was paid in lieu therefor under the provision hereof. However, if a relief worker necessarily is put to substantial extra expense over and above that which the regular employee on vacation would incur if he had remained on the job, the relief worker shall be compensated in accordance with existing regular relief rules.

(b) As employees exercising their vacation privileges will be compensated under this Agreement during their absence on vacation, retaining their other rights as if they had remained at work, such absences from duty will not constitute "vacancies" in their positions under any Agreement. When the position of a vacationing employee is to be filled and regular relief employee is not utilized, effort will be made to observe the principle of seniority.

(c) A person other than a regularly assigned relief employee temporarily hired solely for vacation relief purposes will not establish seniority rights unless so used more so than 60 days in a calendar year. If a person so hired under the terms hereof acquires seniority rights, such rights will date from the day of original entry into service unless otherwise provided in existing Agreements.

Article 13.

The parties hereto having in mind conditions which exist or may arise in making provisions for vacations with pay agree that the duly authorized representatives of the employees and the proper officer of the carrier may make changes in the working rules or enter into additional written understandings to implement the purposes of this agreement, provided that such changes or understandings shall not be inconsistent with this Appendix.

Article 14.

It is understood and agreed that the vacations referred to herein may be taken in installments of one week. This does not alter or supersede any other provision of this Appendix.

Understanding: All vacation qualifying years earned in continuous service with CSXT regardless of former railroad will be counted as qualifying time for vacation purposes.

APPENDIX II - UNION SHOP AGREEMENT

Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all Machinist Craft employees of CSX Transportation, Inc. now or hereafter subject to the Rules and Working Conditions Agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such Agreements, become members of the Organization party to this Agreement representing their classification within sixty calendar days of the date they first perform compensated service as such employees after the effective date of this Agreement, and thereafter shall maintain membership in such Organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty days within a period of twelve consecutive calendar months. Nothing in this Agreement shall alter, enlarge or otherwise change the coverage of the present or future Rules and Working Conditions Agreements.

Section 2.

(a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their classification and who are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this Agreement so long as they remain furloughed or absent as herein provided, but they may do so at their option.

Should such employees return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such Agreements, be required to become and remain members of the Organization representing their classification within thirty-five calendar days from date of their return to such service.

(b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-service men shall not be terminated by reason of any of the provisions of this Agreement, but such employees shall, upon resumption of employment, be considered as new employees for the purpose of applying this Agreement.

(c) Employees who retain seniority under the Rules and Working. Conditions Agreements governing their classification and who, for reasons other than those specified in subsections (a) and (b) of this section, are not in service covered by such Agreements,

or leave such service, will not be required to maintain membership as provided in Section 1 of this Agreement so long as they are not in service covered by such Agreement, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the Organization representing their classification.

(d) Employees who retain seniority under the Rules and Working Conditions Agreements of their classification, who are members of an Organization signatory hereto representing that classification and who in accordance with the Rules and Working Conditions Agreement of that classification temporarily perform work in another class of service shall not be required to be members of another organization party hereto whose agreement covers the other classification until the date the employees hold regularly assigned positions within the scope of the Agreement covering such other class of service.

Section 3.

Nothing in this Agreement shall require an employee to become or to remain a member of the Organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this Agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time in the same organizational unit.

Section 4.

(a) Each employee covered by the provisions of this Agreement shall be considered by the CSXT, Inc. to have met the requirements of the Agreement unless and until the CSXT, Inc. is advised to the contrary in writing by the Organization. The Organization will notify CSXT, Inc. in writing in duplicate by Registered Mail or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is alleged has failed to comply with the terms of this Agreement and who the Organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by CSXT, Inc. and the Organizations involved and the form shall make provision for specifying the reasons for the allegation of non-compliance. Upon receipt of such notice, CSXT, Inc. will, within ten calendar days of such receipt, so notify the employee concerned in writing by Registered Mail or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the Organization. An employee so notified who disputes the fact

that he has failed to comply with the terms of this Agreement, shall within a period of ten calendar days from the date of receipt of such notice, request CSXT, Inc. in writing by Registered Mail or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request, CSXT, Inc. shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employee in writing with copy to the Organization, by Registered Mail or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A Representative of the Organization shall attend and participate in the hearing. The receipt by CSXT, Inc. of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of CSXT, Inc. is rendered.

In the event the employee concerned does not request a hearing as provided herein, the Carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the Organization, unless the Carrier and the Organization agree otherwise in writing.

(b) The Carrier shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with terms of this Agreement and shall render a decision within twenty calendar days from the date that the hearing is closed, and the employee and the Organization shall be promptly advised thereof in writing by Registered Mail or Certified Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this Agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision except as hereinafter provided or unless the Carrier and the Organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the Organization it may be appealed in writing, by Registered Mail or Certified Mail, Return Receipt Requested, directly to the Highest Officer of the Carrier designated to handle appeals under this Agreement. Such appeals must be received by such officer within ten calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered. The Carrier shall promptly notify the other party in writing of any such appeal, by Registered Mail or Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty calendar days of the date the notice of appeal is received, and the employee and the Organization shall be promptly advised thereof in writing by Registered Mail or Certified Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this Agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Carrier and the Organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten calendar days from the date of the decision the Organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 4(c) below. Any request for selection of neutral person as provided in Section 4(c) below shall operate to stay action on the termination of seniority and employment until not more than ten calendar days from the date decision is rendered by the neutral person.

(c) If within ten calendar days after the date of a decision on appeal by the highest officer of the Carrier designated to handle appeals under this Agreement the Organization or the employee involved requests such highest officer in writing by Registered Mail or Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Carrier designated to handle appeals under this Agreement or his designated Representative, the Chief Executive of the Organization or his designated Representative, and the employee involved or his Representative. If they are unable to agree upon the selection of a neutral person, any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Carrier, the Organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Carrier, the employee, and the Organization shall be promptly advised thereof in writing by Registered Mail or Certified Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Carrier and the Organization; if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Carrier, the Organization and the employee.

(d) The time periods specified in this section may be extended in individual cases by written agreement between the Carrier and the Organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between the Carrier and the Organization will not apply to cases arising under this Agreement.

(f) The General Chairman of the Organization shall notify the Carrier in writing of the title(s) and address(es) of its Representatives who are authorized to serve and receive the notices described in this Agreement. The Carrier shall notify the General Chairman

of the Organization in writing of the title(s) and address(es) of its Representatives who are authorized to receive and serve the notices described in this Agreement.

(g) In computing the time periods specified in this Agreement, the date on which a notice is received or decision rendered shall not be counted.

Section 5.

Other provisions of this Agreement to the contrary notwithstanding, the Carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The Carrier may not however, retain such employee in service under the provisions of this section for a period in excess of sixty calendar days from the date of the last decision rendered under the provisions of Section 4, or ninety calendar days from date of receipt of notice from the Organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this section shall not, during such extension, retain or acquire any seniority rights. The position will be advertised as vacant under the bulletining rules of the respective Agreements but the employee may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the Carrier and the Organization involved.

Section 6.

An employee whose seniority and employment under the Rules and Working Conditions Agreement is terminated pursuant to the provisions of this Agreement, or whose employment is extended under Section 5 shall have no time or money claims by reason thereof.

If the final determination under Section 4 of this Agreement is that an employee's seniority and employment in a classification shall be terminated, no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this Agreement shall arise or accrue during the period up to the expiration of the 60 or 90 day periods specified in Section 5, or while such determination may be stayed in a court, or while a discharged employee may be restored to service pursuant to judicial determination.

During such periods, no provision of any other Agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the Carrier predicated upon any action taken by the Carrier in applying or complying with this Agreement or upon an alleged violation, misapplication or non-compliance with any provision of this Agreement. If the final determination under Section 4 of this Agreement is that an employee's employment and seniority shall not be

terminated, his continuance in service shall give rise to no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this Agreement.

Section 7.

In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the Carrier under the provisions of this Agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Organization shall indemnify and save harmless the Carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; provided, however, that this section shall not apply to any case in which the Carrier involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case such Carrier acts in collusion with any employee; provided further, that the aforementioned liability shall not extend to the expense to the Carrier in defending suits by employees whose seniority and employment are terminated by the Carrier under the provisions of this Agreement.

Section 8.

An employee whose employment is terminated as a result of non-compliance with the provisions of this Agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Section 9.

The Carrier party to this Agreement shall periodically deduct from the wages of employees subject to this Agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such Organization, and shall pay the amount so deducted to such officer of the Organization as the Organization shall designate; provided, however, that the requirements of this section shall not be effective with respect to any individual employee until he shall have furnished the Carrier with a written assignment to the Organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this Agreement, whichever occurs sooner.

APPENDIX III - INCIDENTAL WORK RULE

Section 1.

The coverage of the Incidental Work Rule is expanded to include all shop craft employees represented by the organization party hereto and shall read as follows:

"Where a shop craft employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shop craft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incidental" when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.

"In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a 'preponderant part of the assignment.'

"If there is a dispute as to whether or not work comprises a 'preponderant part' of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work."

Section 2.

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

APPENDIX IV - PAYMENTS TO EMPLOYEES INJURED UNDER CERTAIN CIRCUMSTANCES.

Where employees sustain personal injuries or death under the conditions set forth in paragraph (a) below, the Carrier will provide and pay such employees, or their personal representative, the applicable amounts set forth in paragraph (b) below, subject to the provisions of other paragraphs in this Article.

(a) Covered Conditions

This Article is intended to cover accidents involving employees covered by this Agreement while such employees are riding in, boarding, or alighting from off-track vehicles authorized by the Carrier and are:

(1) deadheading under orders; or

(2) being transported at Carrier expense.

(b) Payments to be Made

In the event that any one of the losses enumerated in subparagraphs (1), (2) and (3) below, results from an injury sustained directly from an accident or commences within the time limits set forth in subparagraphs (1), (2) and (3) below, the Carrier will provide, subject to the terms and conditions herein contained, and less any amounts payable under Group Police Contract GA-23000 of The Traveler's Insurance Company or any other medical or insurance policy or plan paid for in its entirety by the Carrier, the following benefits:

(1) Accidental Death or Dismemberment

The Carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a);

Loss of Life	$150,000
Loss of Both Hands	$150,000
Loss of Both Feet	$150,000
Loss of Sight of Both Eyes	$150,000
Loss of One Hand and One Foot	$150,000
Loss of One Hand and Sight of One Eye	$150,000
Loss of One Foot and Sight of One Eye	$150,000
Loss of One Hand or One Foot or Sight of One Eye	$75,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $150,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident.

(2) Medical and Hospital Care

The Carrier will provide payment for the actual expense of medical and hospital care commencing within 120 days after an accident covered under paragraph (a) of injuries incurred as a result of such accident, subject to limitation of $3,000 for any employee for any one accident, less any amounts payable under Group Policy Contract GA-23000 of The Travelers Insurance Company or under any other medical or insurance policy or plan paid for in its entirety by the Carrier.

(3) Time Loss

The Carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) hereof and who is unable to work as a result thereof commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the Carrier for time actually lost, subject to a maximum payment of $150.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act.

(4) Aggregate Limit

The aggregate amount of payments to be made hereunder is limited to $1,000,000 for any one accident and the Carrier shall not be liable for any amount in excess of $1,000,000 for any one accident irrespective of the number of injuries or deaths which occur in or as a result of such accident. If the aggregate amount of payments otherwise payable hereunder exceeds the aggregate limit herein provided, the Carrier shall not be required to pay as respects each separate employee a greater proportion of such payments than the aggregate limit set forth herein bears to the aggregate amount of all such payments.

(c) Payment in Case of Accidental Death

Payment of the applicable amount for accidental death shall be made to the employee's personal representative for the benefit of the persons designated in, and according to the apportionment required by the Federal Employers Liability Act (45

U.S.C. 51 et seq., as amended), or if no such person survives the employee, for the benefit of his estate.

(d) Exclusions

Benefits provided under paragraph (b) shall not be payable for or under any of the following conditions:

(1) Intentionally self-inflicted injuries, suicide or any attempt thereat, while sane or insane;

(2) Declared or undeclared war or any act thereof;

(3) Illness, disease, or any bacterial infection other than bacterial infection occurring in consequence of an accidental cut or wound;

(4) Accident occurring while the employee driver is under the influence of alcohol or drugs, or if an employee passenger who is under the influence of alcohol or drugs in any way contributes to the cause of the accident;

(5) While an employee is a driver or an occupant of any conveyance engaged in any race or speed test;

(6) While an employee is commuting to and/or from his residence or place of business.

(e) Offset

It is intended that this Article is to provide a guaranteed recovery by an employee or his personal representative under the circumstances described, and that receipt of payment thereunder shall not bar the employee or his personal representative from pursuing any remedy under the Federal Employers Liability Act or any other Law; provided, however, that any amount received by such employee or his personal representative under this Article may be applied as an offset by the railroad against any recovery so obtained.

(f) Subrogation

The Carrier shall be subrogated to any right of recovery an employee or his personal representative may have against any party for loss to the extent that the Carrier has made payments pursuant to this Article.

The payments provided for above will be made, as above provided, for covered accidents on or after January 1, 1972.

It is understood that no benefits or payments will be due or payable to any employee or his personal representative unless such employee, or his personal representative, as the case may be, stipulates as follows:

"In consideration of the payment of any of the benefits provided in Article IV of the Agreement of October 7, 1971,

_____,
(Employee or personal representative)

agrees to be governed by all of the conditions and provisions said and set forth by Article IV."

Savings Clause

This Article supersedes as of January 1, 1972, any Agreement providing benefits of a type specified in paragraph (b) hereof under the conditions specified in paragraph (a) hereof; provided, however, any individual railroad party hereto, or any individual committee representing employees party hereto, may by advising the other party in writing by December 1, 1971, elect to preserve in its entirety an existing Agreement providing accident benefits of the type provided in this Article in lieu of this Article.

APPENDIX V - JURISDICTIONAL DISPUTE PROCEDURE

(a) It is agreed that no General Chairman, or other Officer, representative or member or the Organization will individually request Management to take work from one craft and give it to another craft.

(b) It is agreed that the Organizations will find a way to reach an agreement and settle any dispute that may arise between any two crafts involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to Management for conference to negotiate the acceptance by Management of the settlement thus made.

(c) It is agreed to and recognized that each craft shall perform the work which was generally recognized as work belonging to that craft prior to introduction of any new process, and that the introduction of a new process does not give any craft the right to claim the exclusive use of a process or tool, in order to secure for itself work which it did not formerly perform.

(d) If a disagreement arises between two or more crafts as to proper application of (c) above, then the craft performing the work at the time of the change of the process or tool shall continue to do the work until the Organizations involved have settled the dispute and have presented such settlement to the Management.

(e) After agreement on this question has been arrived at, it is desired that Carrier furnish necessary copies of same to proper Officers and representatives of Management; and, at the same time, the Organizations will furnish copies for their distribution to local lodges.

APPENDIX VI - APPRENTICES

SECTION I - RULES

All rules, Agreements and practices presently in effect and applicable to Machinist Apprentices in all departments of CSXT, Inc., wherein work covered by the Machinists' General Rules Agreements is performed are hereby revised and amended to give effect to the rules contained herein. The rules contained herein shall govern in all cases when, and if, in conflict with other rules or Agreements in effect except when these rules are revised by subsequent Agreements.

SECTION II - QUALIFICATION AND SELECTION OF APPRENTICES

(a) The selection of Apprentices by the Carrier shall be on the basis of background, experience and other factors relative to job performance. Apprentices will be selected without regard to race, creed, color, sex or national origin.

(b) Regular Apprentices shall serve six (6) training periods totaling 690 days. Each period shall consist of 115 days. Helper Apprentices shall serve four (4) training periods totaling 460 days. These training periods contemplate days of actual work on regular working days; however, all actual time worked shall be counted as actual hours in computing the 115-day periods, i.e., twelve (12) actual hours worked in one time card day shall be counted as 1½ days, 4 hours shall count as ½ day, etc., with 30 minutes or more counted as 1 hour and less than 30 minutes dropped. The training period for Helper apprentices contemplated 1½ years of experience as Helper (345 days of actual work performed counted as above) prior to becoming an Apprentice; therefore, Helper Apprentices who start their Apprenticeship with less than 1½ years of experience as Helper shall serve additional time during their Apprenticeship equal to the number of days they fall short of 1½ years' experience as Helpers.

(c) All Apprentices must be able to speak, read and write the English language and understand the first four rules of arithmetic.

(d) All Apprentices shall be subject to a probationary period of 115 working days, during which they may be dropped at any time they are determined by the Company to show insufficient aptitude or interest to learn the trade. Helper Apprentices who are dropped from the Program will be allowed to exercise their seniority as Helpers. However, when an Apprentice is to be dropped after the 61st day of the probationary period, 5 calendar days' notice will be given to the employee and the Local Chairman. Nothing in this Agreement shall be construed as prohibiting an Apprentice from being dismissed or dropped from the Apprenticeship Program through applicable discipline procedures for cause, subsequent to the probationary period.

(e) All Student Mechanics will be given a certificate indicating their successful completion of the prescribed course of training and recognition of their Journeyman Machinist status.

SECTION III - SENIORITY AND TRANSFERS

(a) Seniority

Apprentices will hold seniority as such among themselves as of the first day worked as Apprentice. Such seniority will be utilized only for the purposes of vacation selection and reductions in force. Helpers who hold seniority as such will retain and accumulate Helpers' seniority during their Apprenticeship; however, all such seniority shall automatically terminate upon the establishment of journeyman's seniority. Helper Apprentices will not be permitted to voluntarily revert to Helper status.

Apprentices shall, upon satisfactory completion of their Apprenticeship, establish seniority as Mechanic only at their "home" point (point of initial employment as Apprentice) as follows:

(1) Apprentices in service prior to the effective date of this Agreement shall establish seniority as Mechanic at home point retroactive to the date the apprentice first began service as an Apprentice provided that such retroactive seniority does not place the Apprentice in a roster position superior to that of a journeyman mechanic who established seniority as such prior to the effective date of this Agreement at the Apprentice's home point. In that event, the retroactive seniority date of the Apprentice will be the date immediately following the seniority date of the last journeyman mechanic who established seniority as such at that point.

(2) Apprentices entering service of the Carrier on and after the effective date of this Agreement shall establish seniority as Mechanic at home point retroactive to the date the Apprentice first began service as an Apprentice notwithstanding the fact that such retroactive seniority as Mechanic may place the Apprentice on the Apprentice's home point roster in a superior position to that of a bona-fide Mechanic entering service of the Carrier as such subsequent to the effective date of this Agreement.

(b) Transfers

Except as provided in this Agreement, Apprentices shall not be allowed to transfer from their "home" point (point of initial employment as Apprentice) unless special written provision is made therefore between the General Chairman and the appropriate Labor Relations Officer. An Apprentice working at a location other than his home point must, upon recall, return to his home point. Failure to return to home point within fifteen (15) days will result in forfeiture of all seniority as Apprentice. In the event an Apprentice completes his Apprenticeship while working at a location other than his home

point, he shall establish seniority in accordance with the provisions of Paragraph (a) of this Section III and shall, thereafter, be governed by the provisions of the Schedule Agreement.

SECTION IV - TRAINING

(a) Orientation - Basic Training

Upon entering the service of the Company, regular Apprentices shall spend 30 days of the first period at the point employed for orientation and basic training. This phase of the program may be extended, but not beyond a maximum of 60 days, dependent upon the progress of the employee, training capacity and scheduling at designated training centers, service requirements at the point of employment, etc.

(b) Technical Training

Technical training may be conducted at training facilities designated by the Company on any of the Carriers signatory hereto. The training center will be adequately equipped and staffed to provide academic and laboratory instruction encompassing the theory and practical application of the functions of the trade. All Apprentices employed subsequent to the effective date of this Agreement will spend not less than 10 nor more than 15 working days at a technical training center during each of the first, second, third and fourth periods with the actual time to be determined by the progress of the employee, training capacity and scheduling at the training center, service requirements, etc. In individual cases, however, the total technical training period (60) days, may be extended by a maximum of 15 work days with the extension in any period not to exceed 5 work days, if deemed necessary by management at the center.

Apprentices in service prior to the effective date of this Agreement may be sent to technical training facilities for training not previously received provided sufficient time remains in their Apprenticeship.

In the application of this Section 2, a "training facility" will be understood to mean designated Shops, Laboratories, or General Offices where appropriate technical training may be given.

(c) On-the-Job Training - Overtime

Upon completion of the technical training phases of the program, the Apprentice shall receive on-the-job training at his home point under the direction of a journeyman mechanic. Two Apprentices shall not be worked together as partners. It is understood

that as a student of the trade, the Apprentice will be performing productive work but the Apprentice shall not be used to fill positions normally occupied by a journeyman to the detriment of any journeyman on the roster at that point. An Apprentice shall not be permitted to work overtime unless all available mechanics on the overtime call list have been called. In the event it becomes necessary for Apprentices to work overtime, such overtime will be distributed in accordance with the Schedule Agreement and the Apprentice will be paid his own rate straight time for straight time hours and overtime for overtime hours in accordance with the Schedule Agreement.

(d) Training Schedules

For each point where Apprentices are employed or given Apprentice training, a training schedule shall be issued from time to time which will be designed as a guide to be followed as closely as possible. The training schedule shall include a specified number of work days to be spent in each particular gang or location and the skills to be acquired during such period. Upon completion of the specified number of work days, the Apprentice will be moved to the next location or gang unless mutual agreement is reached between the Local Officer and the Local Chairman that additional time in any particular location is needed. Copy of the training schedule and subsequent revisions shall be furnished to the Apprentice and the Local and General Chairmen.

The Local or General Chairman and the designated Company Officer shall review the work schedule(s) at least once each calendar year to assure that it is revised periodically to keep abreast of changing conditions.

It is recognized that because the facilities and work vary from point to point, the training schedules will vary accordingly in order to properly train the Apprentice for the work he is most likely to be required to perform as a Mechanic. However, each Apprentice will receive, at least, primary instruction and training in all possible branches of the trade.

(e) Hours and Days of Assignment

During the first two (2) periods, Apprentices will be assigned on the first shift, Monday through Friday, with rest days of Saturday and Sunday, if possible; otherwise the Apprentice may be assigned the same hours and days as journeymen mechanics at the point by agreement between the General Chairman and the appropriate Labor Relations Officer. During the technical training periods, the assignment shall be Monday through Friday on the first shift with compensation at the straight time rate regardless of the hours and days of regular assignment at home point. After the first two (2) periods and between the technical training periods in the third and succeeding periods, Apprentices may be assigned the same starting times, hours and work weeks to which journeyman mechanics are assigned at the facility; however, that not more than one Apprentice will be assigned to work under the direction of a journeyman mechanic at any given time.

If more than one (1) Apprentice is assigned at a point, the principle of seniority shall be observed with regard to preference to hours and days of assignment so long as there is no adverse affect on the training to be received. The Company will not be required to pay punitive rate or be put to any additional expense due to Apprentices changing shifts or days of assignment.

(f) Apprentice to Mechanic Ratio

The ratio of Apprentices to Mechanics shall not exceed one (1) Apprentice to five (5) journeymen mechanics at the facility unless otherwise agreed upon between the appropriate Labor Relations Officer and the General Chairman. If more than one (1) Apprentice is assigned at a point, the ratio of Apprentices to Mechanics shall not exceed one (1) Apprentice to five (5) journeyman mechanics at the facility on the second or third shifts unless otherwise agreed upon between the appropriate Labor Relations Officer and the General Chairman.

(g) Correspondence Instruction

Each Apprentice, including those upgraded to mechanic-tentative, will receive and complete a course of instruction on the technical subjects related to his trade, the cost of which shall be paid by the Company. The Company will pay for the cost of any drawing instruments and supplies which will become the property of the Apprentice upon satisfactory completion of the Apprenticeship. If the Apprenticeship is terminated for any reason prior to completion, the drawing instruments and unused supplies shall be returned to the Company in good condition or the cost may be deducted from the employee's wages due. Apprentices, including those upgraded to mechanic-tentative, must complete a minimum of two (2) lessons each month and receive a grade of 75% or more to be considered proficient.

(1) Apprentices who do not maintain the above schedule of two lessons each month, will be considered delinquent and not in good standing.

(2) Apprentices not in good standing and who are delinquent for one (1) or two (2) months can clear their records by completing and forwarding the lessons in arrears to the educational institution in addition to the two lessons required each month.

(3) Apprentices who are two (2) months delinquent in their lessons will be withheld from service until all delinquencies are cleared.

(4) Apprentices accumulating three (3) months of uncleared delinquencies will not be retained in the service as Apprentices. However, should the Apprentice or the General Chairman subsequently contend that the Apprentice's name was removed from the roster improperly, a hearing will be held, with the Organization notified in advance

thereof, to develop the full facts and make determination as to the merits of the employee's contention.

Apprentices who become delinquent under paragraphs (1), (2) and/or (3) above will be notified in writing with copy to the Local Chairman.

SECTION V - TEMPORARY PROMOTION TO JOURNEYMAN POSITION

(a) When a shortage of qualified Machinists exists, regular Apprentices, Helper Apprentices and Helpers may be promoted to a Machinist's position on a temporary basis without losing their respective seniority; however, they will not establish or accumulate seniority as Machinists. Such employees will be placed on a "Promoted" seniority roster in the order of their promotion and will be set back in the reverse order of their promotion.

(b) Helper Apprentices who have served one or more years of their training program will be promoted first, in accordance with their relative seniority standing on their seniority roster. Regular Apprentices who have served two or more years of their training program will be promoted second, in accordance with their relative standing on their seniority roster.

(c) Promoted employees will receive the Machinist's rate of pay.

(d) Employees temporarily promoted under provisions of this Agreement will be credited for all time worked as Machinists (excluding overtime) in computing their training period. If such credited time results in completing their periods of training and they are still employed as a Machinist, they will be included on the seniority roster for Machinists with seniority date, in line with applicable provisions of this Agreement.

SECTION VI - TRANSFERS, TRANSPORTATION AND EXPENSES

(a) Transfers

It is recognized that temporary transfers will be necessary to provide the Apprentice training in the various phases of the trade. When such a transfer is to a facility more than 30 miles from the Apprentice's home point (point of initial employment as Apprentice), fifteen calendar days' advance notice will be given, and transportation and expenses will be furnished as herein provided.

(b) Transportation

Transportation for the trips involved in transferring the Apprentice to the away-from-home point and for the return trips for the transfer back to home point will be furnished by the Carrier, or, at the Carrier's option, the Carrier's authorized rate per mile will be paid for the round trips. In addition, for the round trips, the Apprentice

shall be allowed the straight time hourly rate of pay while traveling during the regular working hours of his work week at home point. If instructed to travel outside of his regularly assigned work hours, the Apprentice will be allowed the straight time hourly rate of pay for such travel.

(c) Expenses (Meals and Lodging)

Reasonable and necessary meal and lodging expenses for the Apprentice while temporarily transferred as specified in this Section VI will be paid by the Company. The Company may, as its option:

(1) Allow reasonable and necessary actual expenses,

(2) Designate places of lodging and meals and have reasonable and necessary actual expenses billed direct to the Company, or

(3) Cover the employee's expenses through a combination of the above.

SECTION VII - RATES OF PAY

The Schedule of basic rates detailed in Rule 32 "Rates of Pay" is to be applied to those falling within the purview of this Appendix.

These rates will be subject to subsequent general wage increases in basic rates as negotiated.

SECTION VIII - EXPERIENCE CREDIT

(a) Employees entering the Apprentice program will not be given credit toward the completion of their 690 days required to establish journeyman's seniority for any knowledge or experience gained prior to entering the program or gained outside of the program, except as may be provided for by statute.

(b) It is understood that nothing in this Agreement is intended to restrict Carrier's right to employ journeymen.

SECTION IX

On or after the effective date of this Agreement, furloughed journeymen Machinists may displace regular Apprentices or Helper Apprentices only at the point furloughed; provided that under this rule furloughed Machinists of the Mechanical Department may not displace regular Apprentices or Helper Apprentices of the Engineering Department,

nor may furloughed Engineering Department Mechanics displace regular Apprentices or Helper Apprentices of the Mechanical Department. A student displaced while in classroom training must be displaced at the student's home point. Displacement of a student while in classroom training will be on a one-for-one basis; that is, if Carrier elects to retain in classroom training a Student who has been displaced, that Student shall not be subject to displacement by a second furloughed journeyman.

APPENDIX VII

June 1, 1994

Mr. R. L. Reynolds
Pres. & Dir. Gen. Chm.
International Association of Machinists
& Aerospace Workers
111 Park Road
Paducah, KY 42003

Mr. R. L. Elmore, General Chairman
International Association of Machinists
& Aerospace Workers
825 Prather Ridge Road
Bloomfield, KY 40008

Mr. J. A. Coker, General Chairman
International Association of Machinists
& Aerospace Workers
1642 Fairview Road
Stockbridge, GA 30281

Gentlemen:

This reflects our understanding that the provisions of the Agreement for Employee Protection dated January 1, 1976 (Master Transfer Agreement) and Mediation Agreement dated August 1, 1980 (EPA), originally executed on the former Chessie System properties, will be made applicable to the Machinist Craft on CSX Transportation, Inc., effective with the implementation of the consolidated working agreement between CSXT and IAM&AW.

Very truly yours,

J. T. Williams
Director-Employee Relations

AGREED:

_____
R. L. Reynolds, Pres. & Dir. Gen. Chair.

_____
J. A. Coker, General Chairman

_____
R. L. Elmore, General Chairman

APPENDIX VIII - EMPLOYEE PROTECTION AGREEMENT (EPA)

ARTICLE I - PURPOSE

The purpose of this Agreement is to provide an arrangement for more flexible utilization and repair of the locomotive fleet owned by the Carrier signatory hereto, known as CSX Transportation, Inc.; to provide protection and benefits for qualifying employees when such employees are deprived of employment except when furloughed because of conditions beyond the control of the Carrier such as flood, snowstorm, hurricane, tornado, earthquake, fire or strike and to provide other benefits and set forth conditions applicable to all employees represented by the Organization signatory hereto.

ARTICLE II - USE OF PROTECTED EMPLOYEES

Section 1. Extra and Relief Work

(a) The Carrier shall have the right to use furloughed employees eligible to receive an EPA to perform extra work and/or relief work on regular positions during an absence of a regularly assigned employee; however, management retains the right to use regular employees, rather than call a furloughed employee.

(b) Employees eligible to receive an EPA must be available to protect any temporary work of the craft, extra or relief, for which called within a 30 highway mile radius of the employee's residence and/or former place of regular employment.

(c) EPA employees may be assigned various starting times on various days and other than consecutive rest days; however, they will not be required to work more than one (1) tour of duty within a workday or more than five (5) workdays within a workweek.

> NOTE: A "workday" as used herein shall be a 24-hour period beginning with the starting time of the first shift at the location where the vacancy or extra work exists. A "workweek" as used herein shall be 7 consecutive calendar days beginning with the starting time of the first shift on Wednesday.

(d) Furloughed employees receiving an EPA who volunteer to be called to protect available extra and relief work will have their names placed on a volunteer list in the order of their home point (last point of regular assignment) seniority with the senior employee being called and accorded choice of the position(s) available, etc.

(e) Those employees receiving an EPA who do not voluntarily request available extra and relief work will be placed on a board for extra and relief work in seniority order and called for such work in rotating order with the purpose in view of equalizing hours offered under this Section.

(f) Employees receiving an EPA must be available for call one hour prior to and one hour following the starting times of 8-hour shifts consistent with other shifts worked at the point or points the employee is required to protect work. However, in no event will an EPA employee be required to be available for call more than six (6) hours in any 24 hour period.

(g) Employees called to fill a vacancy on a regular assignment which is known sufficiently in advance of the starting time of the shift will be called with the intent of filling the vacancy for the entire 8-hour period. Employees called to fill a vacancy on a regular assignment after the beginning of a shift will be paid from the time called (with a maximum of 1 hour to report), and when called and reporting will be allowed to complete the remainder of the shift and will be compensated no less than the amount which he would have otherwise received as an EPA unless the employee reports late or is released at his own request in which event pay will be allowed only for time actually worked.

(h) Employees called for extra work will be called for and assigned to an 8-hour shift consistent with other shifts worked at the point called.

(i) Extra work positions to be established or working for a period in excess of five (5) consecutive days or ten (10) calendar days within a calendar month on the same position will be established as regular assignments and furloughed employees recalled for such positions.

(j) A record will be maintained of calls for extra and/or relief work showing person calling, employee called, date, time, telephone number called and person receiving the call. Such record will be subject to review by the local committee or the General Chairman on request.

Section 2 - Intermittent Work

At outlying points where work requirements are intermittent, employees receiving an EPA may be assigned 8 hours within a spread of 12 hours.

ARTICLE III - ABSENCE RULES - (See Agreement Rules 14 and 15)

ARTICLE IV - ASSIGNMENT OF WORK

Article IV of the Agreement of September 25, 1964 (Mediation Case No. A-7030) is hereby revised to read as follows:

"At points or on shifts where there is not sufficient work to justify employing a mechanic of all crafts a mechanic or mechanics of other crafts employed at such

points or on such shifts will, so far as they are capable of doing so, perform the work of any craft. The preponderance of work to be performed on the shift shall determine the craft to be assigned. Any dispute as to whether or not there is sufficient work to justify employing a mechanic of the craft party to this Agreement at the point or on the shift shall, at the request of the General Chairman, be subject to a joint check of the work performed at the point or on the shift. Pending disposition of the dispute, the Carrier may proceed with or continue the work assignment."

ARTICLE V - EQUIPMENT UTILIZATION

Section 1. Locomotive Inspection and Repair

Carrier shall have the right to have scheduled and unscheduled locomotive inspection and running repair work performed at any location at the time the work becomes necessary subject to the following:

(a) Unscheduled locomotive running repair work necessary to return the locomotive to serviceable condition may be performed at any shop or repair facility located on the Carrier's property.

(b) Scheduled inspection, maintenance and running repair may be performed at any CSXT shop or repair facility where such work is performed without regard to equipment assignment subject to Paragraph (c) below.

(c) It is the purpose and intent of this Section to maintain a balance of work and equipment assigned to the shops so as not to permit the Carrier to circumvent the provisions of this Agreement which require notice in order to transfer work.

NOTE: If the Local Chairman should believe that there has been an imbalance of work, the Carrier will promptly furnish to him on request, the appropriate data to support the number of units assigned and the number of scheduled inspections performed during the previous quarter. It is intended that this quantity of work will be maintained within 5 percentile of that assigned to each location. Any imbalance of the lesser of 5% or 25 locomotives for any quarter will be corrected within the following quarter.

ARTICLE VI - PROTECTION

Section 1. Protected Employees

Any employee with 5 or more years of continuous service, or any employee who subsequently attains 5 or more years continuous service, in the Craft of the Organization signatory hereto who is furloughed for any reason after the effective date of this Agreement, except under conditions such as set forth in Article I above, will be

designated a "PROTECTED EMPLOYEE" and will be subject to an "EMPLOYEE PROTECTION ALLOWANCE" (EPA) and other conditions as hereinafter specified.

Section 2 - Employee protection allowances (EPA)

(a) Each protected employee, as described in Section 1 above, shall be accorded:

(1) For months during which benefits are payable to the employee under the Railroad Unemployment Insurance Act, supplemental unemployment benefits which in combination with benefits paid under the Railroad Unemployment Insurance Act (which combination is hereafter termed "aggregate unemployment benefit") will equal the employee protection allowance hereinafter referred to, or

(2) For any other period, an allowance hereinafter termed an "employee protection allowance". The "aggregate unemployment benefit" or "employee protection allowance" shall be based on length of service and shall be a daily allowance equivalent to 70% of the daily rate (the hourly rate multiplied by 8) of the position last worked subject to a maximum of 5 days per week.

(b) This Agreement establishes a non-governmental arrangement for unemployment benefits supplemental to the Railroad Unemployment Insurance Act, as now or hereafter amended. It is the purpose of this Agreement to supplement benefits payable under the Railroad Unemployment Insurance Act to the extent provided herein with respect to "aggregate unemployment benefits" and not to replace or duplicate them. The supplemental unemployment benefits will be paid during any period for which an employee is entitled to an aggregate unemployment benefit or EPA under the foregoing subsections of this Article. During the period benefits are payable under the Railroad Unemployment Insurance Act, supplemental unemployment benefits will be payable to such employee to the extent that such supplemental benefits in combination with benefits payable under the Railroad Unemployment Insurance Act will equal the "aggregate unemployment benefit" provided for in Paragraph (a) of this Section.

(c) It is contemplated herein that to the extent the benefits provided by the "aggregate unemployment benefit" are supplemental to those under RUIA, protected employees entitled to RUIA benefits will file for such benefits. In the event a protected employee referred to in this Section 2 is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of his or her failure to file for such unemployment benefits for purposes of application of the "aggregate unemployment benefit" or the EPA, they shall be considered the same as if they had filed for, and received, such unemployment benefits.

(d) Payments made by the Carrier pursuant to this Section, other than supplemental unemployment benefits included in aggregate unemployment benefits, shall be considered for the purposes of this Agreement as compensation under the Railroad Unemployment Insurance and Railroad Retirement Taxing Acts.

(e) Provided, however,

(1) No allowance will be due for the first furlough period, if the employee is furloughed, in any calendar year up to a maximum of 30 work days provided the employee is notified in writing of a definite recall date at the time of furlough and provided, further, that the employee is recalled on or before the specified recall date.

(2) No allowance will be due for any day that the employee is not available to protect any temporary work of the craft and class for which qualified within a radius of 30 highway miles of the employee's residence and/or last place of regular employment regardless of the reason not available provided the employee is called for such work in accordance with Article II of this Agreement.

(3) Any EPA due will be reduced by any amounts the employee may be eligible to receive from any state or federal agency or board provided unemployment compensation or sickness benefits.

(4) If an employee who is receiving an aggregate unemployment benefit or an EPA secures other employment, the aggregate unemployment benefit or EPA shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his aggregate unemployment benefit or EPA is based. However, under no circumstances will an employee who would otherwise be eligible for an aggregate unemployment benefit be entitled to an allowance in excess of the allowance due as an aggregate unemployment benefit. Attachment 1 to this Agreement shows the effect of earnings from other employment on the aggregate unemployment benefit and the EPA.

(f) Employees eligible to receive an aggregate unemployment benefit or EPA shall furnish the information, including other earnings, required on Form "A" (Weekly Machinist Craft Employee EPA Report) at a location and on a date specified by Carrier. If such information is furnished as required, allowances will be paid within 30 days of the specified date the information is due. Any employee failing to report other earnings in their entirety will forfeit all protection under this Agreement and be subject to discipline in accordance with the provisions of the Schedule Agreement.

(g) EPA's will be adjusted to include subsequent general wage increases (including COLA) as negotiated.

(h) The EPA will be applicable and payable to holidays in accordance with the provisions of the Agreement of August 21, 1954 as amended.

(i) No allowance will be due for a number of days in each month of protection equal to the average voluntary absence of the protected employee during the last 12 months of the employee's previous regular assignment, if such absences exceed 10 days in the 12-month period. In computing the number of days absent, paid absences (i.e., holidays, vacation days, days compensated under jury duty or bereavement pay rules, etc.) will be

excluded. Also excluded will be days in any period of absence for which the employee qualifies and receives railroad retirement sickness benefits.

(j) EPA's shall be subject to deduction of all applicable taxes, hospital association dues (where applicable), union dues and all other lawful deductions applicable to a regularly assigned employee.

(k) Under no circumstances will an employee be permitted to waive seniority rights under the Schedule Agreement and be entitled to an EPA.

(l) In the event the Carrier is required to make force reductions because of conditions beyond the control of the Carrier such as set forth in Article I, employees entitled to protection under this Agreement shall, if not recalled after the termination of the emergency, be entitled to receive the protection and benefits provided by this Agreement.

Section 3. Protection Period

(a) The protective period for each protected employee will be determined by the length of continuous service in the Machinist Craft in accordance with the following schedule:

Length of Service	Protection Period
5 but less than 10 years	12 calendar months
10 but less than 15 years	18 calendar months
15 but less than 20 years	24 calendar months
20 years or more	42 calendar months

NOTE: *For the purposes of this agreement the length of service of the employee shall be determined from the date the employee last acquired an employment status with the carrier in the Craft and the employee shall be given credit for one month's service for each month in which any service in the Craft is performed and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. If during a period of furlough an employee receives an EPA or accepts other regular employment under the provisions of Article VIII, Section 2, the employee shall be given credit for each such month as one month's service in the Craft. In determining length of service of an employee acting as an officer or other official representative of an employee organization, credit will be given for performing service while so engaged on leave of absence from the service of the Carrier.*

(b) The protective period set forth in Section 3(a) above shall be determined as of the date the employee is furloughed. If because of service on other than a regular bulletined assignment subsequent to his or her furlough, an employee becomes eligible for an EPA

or becomes eligible for an increased protective period, as set forth in Section 3(a) above, such protective period will not be applicable until the employee has been recalled or transferred to a regular assignment in excess of 30 days and, subsequently, furloughed.

(c) Any employee eligible for an EPA who is recalled or transferred to a regular assignment and who is subsequently furloughed within 30 calendar days from the date of recall or transfer shall return to the EPA status and be entitled to protection for the unused portion of the applicable protection period. If furloughed after 30 calendar days from the date of recall or transfer, the employee will, again, be subject to all provisions of this Agreement.

(d) All protection shall cease prior to expiration of the protection period in the event of the employee's resignation, death, retirement, attaining eligibility for Railroad Retirement without actuarial deduction at or after age 61, dismissal for justifiable cause, failure to report all earnings from other employment as required under Section 2 above, failure to return to service after being notified in accordance with the applicable Schedule Agreement, or failure to accept any offered comparable permanent position for which physically and mentally qualified which does not require a change in residence, as defined herein.

Section 4. Protection Under Other Agreements

There shall be no duplication of monetary or other benefits receivable by an employee under this Agreement and any other agreement or protective arrangement. In the event monetary or other benefits may be due an employee under this Agreement and other agreements or protective arrangements, the employee must elect, in writing with copy to the Local Chairman, within 10 days of notification by the Carrier, to retain protection provided by this Agreement or retain benefits available under any of the other agreements or protective arrangements. In the event an employee fails to make such election, he shall be subject to the provisions of this Agreement.

ARTICLE VII - FRINGE BENEFITS, VACATION, QUALIFICATION CREDIT

Section 1. Fringe Benefits

Furloughed employees receiving an EPA under this Agreement, will be accorded all benefits attached to their previous employment including but not limited to free transportation (subject to applicable regulations), pensions, hospitalization, insurance, etc., to the same degree accorded other employees in active service.

Section 2. Vacation Pay and Credits

An employee who is receiving an EPA who has unused vacation time for which he has qualified by virtue of having performed the required number of days of compensated service will not be deprived of such unused vacation time but vacation pay will be paid in lieu of the EPA for the vacation period. An employee receiving an EPA who returns to active service will, while continued in active service, be credited with the days on which the EPA was received as compensated service for vacation purposes and for purposes of determining length of service under Article VI, Section 3(a) above.

ARTICLE VIII - EMPLOYEE AND/OR WORK TRANSFERS

Section 1. Transfers of Work

Coordination of work and/or employees between two or more locations of the Carrier will be governed by the "AGREEMENT FOR EMPLOYEE PROTECTION, BENEFITS AND OTHER CONDITIONS APPLICABLE IN COORDINATIONS INVOLVING EMPLOYEES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND CSXT" (see Appendix IX), in lieu of Article I of the September 25, 1964 Agreement, as subsequently amended.

Section 2. EPA Employee Transfers

(a) Furloughed employees receiving an EPA under this Agreement may, at any time during their protection period, be offered comparable employment on regular positions for 30 calendar days or more, for which they are physically and mentally qualified, if such offer of employment does not infringe upon the rights of other employees under the working Agreement. If such offer of employment does not require a change in residence as defined in the Agreement specified in Section 1 above and the employee declines such offer of employment, all protection under this Agreement will be forfeited. If such employment would require a change in residence, the employee may elect to retain the EPA provided herein or elect to transfer under Article IV, Section 1 of the Agreement specified in Section 1 above.

(b) Such employees who desire to be considered for other employment in accordance with Paragraph (a) above shall so notify the proper Carrier officer in writing. Such other

employment may be offered initially to such employees in seniority order consistent with the employee's fitness and ability to perform such other service with Carrier. If a vacancy still exits, such other employment may be offered to employees who have indicated their desire to be considered in seniority order consistent with the employee's fitness and ability to perform such other service with the Carrier.

(c) If the employment requirements are not satisfied as set forth in Subsection (b) of this Section 2, such other employment with the Carrier may be offered to other employees who have not stated their desires in writing. Such other employment shall be offered, initially, in reverse seniority order to employees at the location where the vacancy exists and, then, in reverse seniority order to employees at other locations.

(d) Where no transfer of work is involved, EPA employees electing to transfer under this Agreement will be placed at the foot of the appropriate roster at the point to which transferred and will retain recall rights at the point from which furloughed until recalled in accordance with the Schedule Agreement applicable at the point from which furloughed at which time the employee must elect at which point seniority retention is desired with seniority being forfeited at the other point.

ARTICLE IX - DISPUTES UNDER THIS AGREEMENT

Section 1. Disputes

In the event any dispute or controversy arises between the Carrier and the labor organization signatory to this Agreement with respect to the interpretation or application of any provisions of this Agreement which cannot be settled by said Carrier and the labor organization, parties hereto within thirty (30) days after the dispute arises, such dispute may be referred by either party to a Public Law Board for adjudication or as otherwise agreed to by the parties.

To expedite adjudication of any dispute, it is further understood that such dispute will be handled by the General Chairman and the highest designated officer of the Carrier, or their duly authorized representatives, without regard to the standard rules of the Agreement governing the handling of claims and grievances. It is understood, however, that unless otherwise agreed to, the handling of any dispute between the General Chairman and the highest designated officer of the Carrier will be in accordance with Agreement rules with respect to the time limits provided therein.

Section 2. Arbitration

Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to a Public Law Board each party shall, within ten (10)

days, select a member or members of the Board and the members thus chosen shall endeavor to select a neutral member who shall serve as Chairman. Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten (10) days, either party may request the National Mediation Board to appoint the neutral member whose compensation and expenses shall be paid in accordance with existing laws. All other expenses shall be borne by the party incurring them. If any party fails to select its member of the Board within the prescribed time limit, the representative of such party signatory to this Agreement or his designated representative shall be deemed to be the selected member and the Committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The Committee shall meet within fifteen (15) days after selection or appointment of the neutral member and shall render its decision within sixty (60) days thereafter. The decision of the majority of the Board shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members on the Board, the decision of the neutral member shall be final and binding.

Attachment 1 to Employee Protection Agreement

In dealing with application of Article VI, Section 2(e)(4) it is possible that questions will arise as to application of the aggregate unemployment benefit (AUB) or EPA when an employee has earnings in "other employment", in view of the following language:

"(4) If an employee who is receiving an aggregate unemployment benefit or an EPA secures other employment, the aggregate unemployment benefit or EPA shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his aggregate unemployment benefit or EPA is based. However, under no circumstances will an employee who would otherwise be eligible for an aggregate unemployment benefit be entitled to an allowance in excess of the allowance due as an aggregate unemployment benefit. Attachment 1 to this Agreement shows the effect of outside earnings on the aggregate unemployment benefit and the EPA."

The following are hypothetical examples of the effect of earnings in other employment on such allowances:

Employee Eligible for an Aggregate Unemployment Benefit

$82.32 (Base Rate)	$60.00 (Other Earnings)	$32.62 (AUB)
X 70%	32.62 (AUB)	10.30 (Reduction)
57.62 (RUIA Payment to	92.62 (Sum Total)	$22.32 (Payment Due)
-25.00 which otherwise entitled	-82.32 (Base Rate)	
$32.62 (AUB Due)	$10.30 (Reduction)	

or

$35.00 (Other Earnings)
32.62 (AUB)
$67.62 (Sum Total)

Sum Total does not exceed the Base Rate - No deduction. However, in no event could an employee be entitled to payment in excess of $32.62.

Employee Eligible for an EPA

$82.32 (Base Rate)	$ 60.00 (Outside Earnings)	$57.62 (EPA)
X 70%	57.62 (EPA)	35.30 (Reduction)
$57.62 (EPA)	117.62 (Sum Total)	$22.32 (Payment Due)
	- 82.32 (Base Rate)	
	$ 35.30 (Reduction)	

Attachment 2 to Employee Protection Agreement

The following revisions to the EPA Agreement are equally applicable to all Machinist Craft employees receiving benefits on CSXT property:

(Rev. Eff. July 16, 1980):

In connection therewith, it was understood that any employee receiving benefits under the provisions of this Agreement accepting employment with a Carrier in a different class or craft, in order to protect their benefits under such Agreement, who are required, as a condition of such other employment, to become and maintain membership in a different union, shall continue membership in IAMAW through the plan set forth in the Dues Deduction Agreement of October 1, 1974 on C&O, B&O and WM for the duration of the protective period provided in the Agreement referred to above. However, during such protective period the Carrier will reimburse such employee, as a business expense, those legitimate dues, fees and assessments (other than penalty fees or assessments) incurred by the employee in order to become and maintain membership in such other union.

Reimbursement by the Carrier for such dues, fees and assessments shall be accomplished by the Carrier upon receipt by the Carrier of valid evidence that such dues, fees and assessments were paid by the employee. Such request for reimbursement will be submitted by the employee on appropriate forms designated by the Carrier.

(Rev. Eff. February 28, 1985):

It is agreed that when computing the "aggregate unemployment benefit" or "employee protection allowance" described in Article VI of the Agreement for a monthly rated employee, such allowance will be subject to a maximum of 6 days per week.

APPENDIX IX - MASTER TRANSFER AGREEMENT (MTA)

A G R E E M E N T

FOR EMPLOYEE PROTECTION, BENEFITS AND OTHER CONDITIONS APPLICABLE IN COORDINATIONS INVOLVING EMPLOYEES REPRESENTED BY INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

AND

CSX TRANSPORTATION, INC.

WHEREAS: CSXT and employees represented by International Association of Machinists and Aerospace Workers are desirous of reaching an agreement pursuant to Section 5 of the Washington Job Protection Agreement to be effective in the event of a coordination of operations, facilities and employees between any locations within CSXT.

IT IS AGREED:

ARTICLE I

Section 1

Affected employees of the Machinist Craft and their representatives shall be given a minimum of ninety (90) days' notice prior to the effective date of a coordination (by posting thereof on employee bulletin boards at locations affected, with a copy to the General Chairman and Local Chairmen) of any coordination of operations, facilities and employees between any two or more locations. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such coordination.

The date and place of a conference between the representatives of the Carrier and the General Chairman or his representative shall be agreed upon within ten (10) days and conference shall be held within thirty (30) days for the purpose of reviewing the matters contained in the notice and questions arising in connection therewith. The Carrier may, after compliance with the requirement of notice and conference, place the contemplated coordination into effect as hereinafter provided with the understanding that the rights of any employee under the provisions of this Agreement are not adversely affected thereby.

ARTICLE II

Section 1

Where a coordination of operations, facilities and employees results in a transfer of work and employees from one location to another, the selection of forces and assignment of employees shall be made on the following basis:

(a) Where there are no job abolishments involved in a coordination of operations and facilities specified in the ninety (90) day notice required by Article I hereof at the location to which work and employees are being transferred, additional positions established in the coordinated operation will accrue to those employees at the location from which work is to be transferred and positions are to be abolished; provided, however, that in the event the additional positions established in the coordinated operation exceed the number of positions abolished, those excess positions will accrue to employees at the location to which work is being transferred.

(b) Where job abolishments occur both at the location to which work is being transferred and at the location from which work is being transferred, because of the coordination specified in the ninety (90) day notice required by Article I hereof, employees at the location to which work is being transferred will fill the positions in the coordinated operation up to and equal to the number of positions in existence at that location at the time the ninety (90) day notice is served for the coordination. Positions established in the coordinated operation in excess of those that accrue to employees at the location to which work is being transferred will be filled by employees at the location from which work is being transferred.

(c) In the event employees at the location from which work is being transferred fail to accept positions to which they are entitled at the location to which work is being transferred, such unfilled positions shall then accrue to the employees at the latter location. Positions then unfilled will be filled by recall of furloughed employees, if any, and then by new hires.

Section 2

(a) Following conference as described in Article I, Section 1, notice will be posted at affected locations showing positions which are to be abolished as a result of the coordination. At the same time, positions to be established effective with the date of coordination in accordance with Article II, Section 1, will be bulletined for a period of fifteen (15) days. Successful bidders shall be entitled to the moving and real estate allowances outlined in Article IV, Section 1, where change of residence is involved as defined in Section 3 of Article IV.

(b) Where positions to be established in a coordinated operation accrue to a particular seniority roster, all employees holding assignments on that roster will be eligible to bid for the allocated positions. At the expiration of the fifteen (15) day

bulletin period, determination will be made of the employees who have bid and have been awarded a position in the coordinated operation. At the same time, determination will also be made of those employees whose jobs are being abolished as a result of the coordination and who, rather than bid on a position in the coordinated operation, have elected to exercise displacement rights over junior regularly assigned employees whose positions are not being abolished. Such employees will designate the positions on which they intend to exercise seniority rights, and junior employees to be affected thereby shall make the same determination.

It is not the intent of the Carrier to abolish positions or furlough employees in anticipation of or subsequent to a coordination solely for the purpose of depriving employees of protective benefits to which they might otherwise be entitled to under the provisions of this Agreement.

(c) In the event any positions advertised in the coordinated operation are not filled in accordance with Paragraph (b), employees whose positions are to be abolished and who have not bid on advertised positions in the coordinated operation or who do not have sufficient seniority or do not elect to exercise seniority on other positions on the roster, and employees who are to be displaced through the exercise of seniority as described in Paragraph (b) and are unable or elect not to exercise seniority on other positions on the roster, will be assigned to the unfilled position(s) in the coordinated operation. Unfilled positions which accrue to employees at the location to which work is being transferred will be assigned by recognizing the principle of seniority; unfilled positions which accrue to employees at the location from which work is being transferred will be assigned in the reverse order of seniority and employees so assigned will be subject to the moving and real estate allowances outlined in Article IV, Section 1, where change of residence is involved as defined in Section 3 of Article IV. Such assignment will be by letter signed by the appropriate Carrier officer with copies to the Local Chairman and General Chairman. An employee so assigned may, if the transfer requires a change of residence as defined in this Agreement, in lieu of transferring, elect to resign subject to the separation procedures of Article IV, Section 2. This election must be exercised within twenty (20) days from the date of written notification by written reply to the Carrier officer with copies to the Local Chairman and General Chairman. An employee assigned a position who does not elect to resign shall, if he fails to report to the position on the effective date of assignment, or as otherwise arranged with the Carrier officer having jurisdiction at the location where he is to report, except under circumstances beyond his control, forfeit protection under this Agreement.

(d) Junior employee(s) at the location from which work is being transferred will be assigned in accordance with Paragraph (c) until the position(s) are either filled or until the employees described in such Paragraph (c) are exhausted.

(e) Employees on leave of absence, absent account sickness and other approved absences, and also those whose names do not appear on any seniority roster whose claims for reinstatement are pending and are ultimately sustained, who return to service subsequent to the coordination, shall be entitled to whatever rights they may have had had they been present at the time of the coordination. When any such person described above returns to service and exercises seniority rights on a position to which he is

entitled, the junior protected employee who is adversely affected on the seniority roster to which they exercise their seniority shall revert to his previous status and be afforded such protection to which he would have been entitled had the absent employee been present at the time of the coordination. The number of protected employees shall not be increased nor decreased as a result of the return of an employee under this Section except as provided for in Article III, Section 3.

Section 3

(a) Employees whose jobs are abolished or who are displaced as a result thereof and who have been neither assigned new positions nor offered such positions pursuant to Section 2(a) above, and whose seniority is such that they are unable to hold a position on the seniority roster on which working at the time of coordination, and who are not offered a position under Paragraph (b) hereof, will be paid a dismissal allowance pursuant to Article III, Section 2. Such an employee, may, at his option, at the time of coordination, resign and be subject to a separation allowance computed in accordance with Section 9 of the Washington Job Protection Agreement.

(b) Employees described in Paragraph (a) may, at the time of coordination or thereafter during the six (6) year period following a coordination, be offered employment in their craft at any location, or comparable employment for which they are physically and mentally qualified, and which does not require a change in residence as defined in Article IV, Section 3, if such offer of employment does not infringe upon the rights of other employees under the working agreement. If they decline such offer of employment, they shall forfeit their protection under this Agreement.

Section 4

(a) Employees accepting transfers pursuant to Section 2, above, will have their seniority date, as it appears on the seniority roster at the point from which being transferred, dovetailed on the appropriate roster to which transferred upon reporting for work, and their names will be removed from the roster from which transferred. Where following this procedure results in two (2) or more employees having the same seniority date on the dovetailed roster, their respective positions on the roster will be determined by continuous service standing and then by lot.

(b) Employees transferring from one location to a coordinated operation at another location will be assigned positions at the latter location in accordance with bulletins advertising positions which accrue to such employees; thereafter, changes in the coordinated operation involving the filling of vacancies, abolishing or creating positions and reduction or restoration of force will be governed by application of the schedule agreement applicable at the location of the coordinated operation and the dovetailed seniority roster as provided for in Section 4(a), above.

(c) Employees transferred to other employment pursuant to Section 3(b) of this Article II shall establish seniority on the seniority roster to which assigned in accordance with the agreement rules covering the class of service in which employed; such

employees shall also retain seniority rights and recall rights on the roster on which working at the time of coordination. If recalled, they must accept such recall or forfeit all seniority on their previous roster and forfeit protection under this Agreement.

ARTICLE III

Section 1

(a) No employee involved in a particular coordination under this Agreement who is continued in service shall, for a period equal to his length of service, but not exceeding six (6) years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under applicable agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence (as defined in Article IV, Section 3), to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee during the last twelve (12) months in which he performed compensated service more than fifty (50) per centum of each of such months, based upon his normal work schedule, immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve (12), thereby producing the average monthly compensation (adjusted to include subsequent general wage increases) and average monthly time paid for which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation (adjusted to include subsequent general wage increases), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Section 2

(a) Any employee who is deprived of employment as a result of a coordination described by this Agreement shall be referred to as a "dismissed employee" and shall be paid a monthly dismissal allowance, for a period equal to his length of service but not exceeding six (6) years following the effective date of coordination, equivalent to one-twelfth (1/12) of the compensation received by him in the last twelve (12) months of his employment in which he performed compensated service more that fifty (50) per centum of each of such months, based upon his normal work schedule, prior to the date he is first deprived of employment as a result of the coordination. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service shall cease upon the effective day of reemployment as set forth in the recall notice. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of Section 1 of this Article III.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount of the dismissal allowance as computed under 2(a), above.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, or failure to return to service after being notified in accordance with the working agreement, or failure to accept a position offered pursuant to Article II, Section 3(b).

(e) In the application of Sections 1 and 2 of this Article III, overtime refused by an employee otherwise entitled to protective benefits will be credited against the employee only to the extent of such overtime that he stands to be called for under existing overtime rules. Such employee, must, however, mark up for overtime work or he will be treated for the purpose of determining protective payments as though he had requested such overtime.

Section 3

(a) Where employees transfer to a new location in a coordinated operation and have their seniority dovetailed in accordance with Article II, Section 4, resulting in a superior location on the roster to employees then regularly assigned at that location, junior employees holding regular assignments at the location on the day before the coordination, corresponding to the number of senior employees transferring to the coordinated operation, will be subject to the protective benefits set forth in this Article III. Such employees will be identified within thirty (30) days of the coordination and the General Chairman notified accordingly.

(b) (1) Notwithstanding any other provisions of this Article III, employees transferring to a new location in a coordinated operation and who are furloughed for any reason during the six (6) year period starting with the effective date of coordination, except when furloughed because of conditions beyond the control of the Carrier, such as flood, snowstorm, hurricane, tornado, earthquake, fire or strike, will be entitled to the protective benefits of Section 2 of this Article III.

(2) Employees acquiring protection under the provisions of Paragraph (a) of this Section as a result of the dovetailing procedure set forth therein, and who are furloughed for any reason during the six (6) year period starting with the effective date of coordination, except when furloughed because of conditions beyond the control of the Carrier, such as flood, snowstorm, hurricane, tornado, earthquake, fire or strike, will be entitled to the protective benefits of Section 2 of this Article III, except that such protective benefits will be 60% of the dismissal allowance provided therein. The dismissal allowance of any dismissed employee under these conditions who obtains other than Railroad employment shall be reduced only to the extent that his combined monthly earnings in such other employment and his dismissal allowance exceed 100% of the dismissal allowance as computed under Section 2(a) of this Article III. Example:

An employee has a dismissal allowance under Section 2(a) of $1,000.00 per month. Sixty percent (60%) of such allowance is $600.00 per month. He obtains other than Railroad employment and receives $700.000 per month. The total of 60% of his dismissal allowance ($600.00) plus outside employment ($700.00) is $1,300.00 per month, or $300.00 in excess of 100% of his dismissal allowance. His dismissal allowance, $600.00, will be reduced by $300.00 and he will receive $300.00 dismissal allowance for the month.

(3) When forces have been reduced under the emergency provisions contained in (1) and (2) above and thereafter operations are restored, employees whose services have been dispensed with must be recalled upon termination of the emergency. The guaranteed rate of compensation will not apply during the period an employee is so laid off.

Section 4

An employee affected by a coordination including any employee accepting other employment under this Agreement, will be accorded all benefits attached to his previous employment, including but not limited to free transportation, pensions, hospitalization, insurance, etc., to the same degree accorded other employees on his home road in active service except that the matter of free transportation shall be subject to applicable regulations.

Protection payments shall be subject to deduction of all applicable taxes, hospital association dues (where applicable), union dues and all other lawful deductions.

Section 5

An employee who is deprived of employment and is receiving a dismissal allowance under Article III, Section 2, and who has unused vacation time for which he has qualified by virtue of having performed the required number of days of compensated service will not be deprived of the unused vacation time, but vacation pay will be paid in lieu of dismissal allowance for the vacation period. Any employee receiving a dismissal allowance who returns to active service will, while he continues in active service, be credited with the period during which he received dismissal allowance as compensated service for vacation purposes.

Section 6

When an employee representative makes claim that an employee has been adversely affected by a coordination, Carrier shall, upon request, furnish duly authorized representative or representatives statement showing details of compensation for any period which is in question and in which the employee claims to have been adversely affected and the Carrier and such duly authorized representative or representatives will make available to each other any additional records and data bearing upon the claim.

ARTICLE IV

Section 1

(a) Employees electing to transfer to a new point of employment requiring a change of residence as a result of job offers made pursuant to Article II of this Agreement shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement (or as provided below) and in addition to such benefits shall receive five (5) working days instead of "two working days" provided by Section 10(a) and, shall receive an allowance for any and all other expenses in accordance with the following schedule:

(1) Effective with the date of transfer, an allowance of $500.00;

(2) At the end of 30 weeks of compensated employment, a second allowance of $500.00;

(3) At the end of 60 weeks of compensated employment, a third allowance of $500.00;

The initial allowance provided in (1) above will be paid promptly but in any event not to exceed thirty (30) days from date of transfer. Subsequent allowances provided in

(2) and (3) will be paid within five (5) days of the expiration of the time periods specified therein.

In the event of death or permanent disability, the affected employee or his estate shall be paid as if he had completed all the prescribed work periods.

(b) Any employee involved in a coordination covered by this Agreement who is retained in service who is required to change the point of his employment as a result of such coordination and is, therefore, required to change his place of residence, may, if he so elects, accept the provisions hereinafter set forth in this Section 1 in lieu of and in full settlement of any claim arising under Section 11(a) 1 and 2, of the so-called Washington Agreement.

(c) Upon the date of notice provided for in Article I, Section 1 hereof, if the employee owns his home or is under contract to purchase a home in the locality from which he is required to move in order to relocate in the locality to which he has been transferred, he shall be compensated by the Carrier at seven percent (7%) of the fair market value of the home in question; and, in addition thereto, ten percent (10%) of his equity of the fair market value of the home in question subject to a maximum equity of $20,000.00 in said home. The employee's equity in his home shall be determined as of the date of notice covering transfer of work plus any increase in equity resulting from normal monthly mortgage payments made between date of notice and effective date of transfer.

(d) An employee electing to claim the provisions set forth in this Section 1 must, within three (3) years from the effective date of the coordination, so notify the Carrier and upon presentation of proper forms to the employee by the Carrier, he must thereafter execute all necessary releases as full settlement of any claim against the Carrier under the provisions of Section 11(a) 1 and 2, of the Washington Agreement, and of this Section 1.

(e) Should a controversy arise in respect to the fair market value of the home, it shall be decided through joint conference between the employee involved and the Carrier; and in the event they are unable to agree, the dispute may be referred by either party to a Board of three (3) competent real estate appraisers, selected in the following manner: One to be selected by the employee and one by the Carrier, and the two selected shall endeavor to agree upon the third appraiser within ten (10) days, after their appointment or selection. Then, in the event of failure to agree, the Chairman of the Local Board of Realtors shall be requested to appoint the third appraiser. A decision of the majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expense of the Appraisal Board, if any, shall be borne equally by the employee involved and the Carrier. All other expenses shall be paid by the party incurring them (employee or Carrier) including the salary of the appraiser selected by such party.

(f) The Carrier will reimburse employees transferring to a new point of employment under this Agreement for the cost of acquiring license for one automobile, in the state in which he establishes residence incident to transfer, including the use tax and any cost of re-titling such automobile in such state.

(g) An employee transferring to a new point of employment in a coordinated operation will not be required to undergo physical examination incident to such transfer.

Section 2

(a) Employees declining to transfer to a new point of employment requiring a change in residence as a result of job offers made pursuant to Article II of this Agreement may terminate all seniority and employment relationships as of the effective date of the transfer or as otherwise agreed upon, and will be paid a separation allowance in accordance with the following schedule:

Length of Service	Separation Allowance
Less than one year	5 days' pay at rate of position last occupied for each month service was performed.
1 year and less than 2 years	3 months' pay
2 years and less than 3 years	6 months' pay
3 years and less than 5 years	9 months' pay
5 years and over	12 months' pay

(b) Length of service shall be computed as provided by Section 7 of the Washington Job Protection Agreement.

(c) In determining the above allowance, the specified number of months' pay shall correspond with the particular employee's earnings in an equal number of months immediately preceding his last date of compensated service.

(d) Employees who have attained age sixty-two (62) and who are qualified for Railroad Retirement benefits without actuarial reductions shall have any separation allowance reduced in accordance with the following schedule:

Age	Less
62	15%
63	25%
64	50%
65 and over	75%

For the purposes of this provision, ages shall be those shown in the records of the employing Carrier.

Section 3

In applying Sections 1 and 2 of this Article IV, as well as the other provisions of this Agreement, an employee will be considered as being required to change his residence when he is required to transfer to a new point of employment which is outside a radius of thirty (30) miles from his former work location and is also located further from his residence than is his former work location.

ARTICLE V

For the purpose of this Agreement, Section 13 of the Washington Job Protection Agreement shall be inapplicable and the following provisions shall apply to all disputes and controversies.

In the event any dispute or controversy arises between the Carrier and any labor organization signatory to this Agreement with respect to the interpretation or application of any provisions of this Agreement or of the Washington Job Protection Agreement (except as defined in Section II(d) thereof or Article IV, Section 1, of this Agreement as the case may be) or any implementing agreement which may be entered into by the parties signatory hereto which cannot be settled by said Carrier and the labor organization, parties hereto within thirty (30) days after the dispute arises, such dispute may be referred by either party to a Public Law Board for adjudication or as otherwise agreed to by the parties. However, this is not to be construed that such dispute must be resolved before the Carrier may implement a coordination under this Agreement.

To expedite adjudication of any dispute, it is further understood that such dispute will be handled by the General Chairman and the highest designated officer of the Carrier or their duly authorized representatives without regard to the standard rules of the Agreement governing the handling of claims and grievances. It is understood, however, that unless otherwise agreed to, the handling of any dispute between the General Chairman and the highest designated officer of the Carrier will be in accordance with Agreement rules with respect to the time limits provided therein.

ARTICLE VI

There shall be no duplication of monetary benefits receivable by an employee under this Agreement and any other agreement or protective arrangement. In the event monetary benefits may be due an employee under this Agreement and other agreements or protective arrangements, such employees shall, not later than thirty (30) days after having been so notified in writing by Carrier, with a copy to the General Chairman, make an election in writing as to whether he desires to retain the monetary benefits available to him under any of the other agreements or protective arrangements or to receive the monetary benefits provided under the provisions of this Agreement. In the

event the employee fails to make such election within the said 30-day period, he shall be entitled to the monetary benefits payable under the provisions of this Agreement, and the duplicating monetary benefits under any of the other agreements shall have no application to such employee. An employee eligible to receive monetary benefits under any of the other agreements shall, irrespective of the election made, be subject to and shall be governed by all of the other provisions of this Agreement.

In the event of any conflict between the provisions of this Agreement and prior employee protective agreements or protective arrangements, the provisions hereof shall govern as to all matters arising out of or incidental to coordinations of Carrier pursuant to this Agreement.

ARTICLE VII

MEMORANDUM OF UNDERSTANDING

RE: ARTICLE V - SECTION 1 - DISPUTES

PROCEDURE

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees represented by The International Association of Machinists and Aerospace Workers in connection with coordinations.

Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to a Public Law Board, each party shall within ten (10) days, select a member or members of the Board; and the members thus chosen shall endeavor to select a neutral member who shall serve as Chairman, in which event the compensation and expenses of the Chairman shall be borne equally by the parties to the proceeding. All other expenses shall be borne by the party incurring them. Should the members designated by the parties be unable to agree upon the appointment of the neutral member within ten (10) days, either party may request the National Mediation Board to appoint the neutral member, whose compensation and expenses shall be paid in accordance with existing laws. All other expenses shall be borne by the party incurring them. If any party fails to select its member of the Board within the prescribed time limit, the representative of such party signatory to this agreement or his designated representative shall be deemed to be the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. The Committee shall meet within fifteen (15) days after selection or appointment of the neutral member and shall render its decision within sixty (60) days thereafter. The decision of the majority of the Board shall be final and binding, except that in any case in which there is an unequal number of carrier and organization members of the Board, the decision of the neutral member shall be final and binding.

In the event of any dispute as to whether or not a particular employee was affected by a coordination described in this agreement, it shall be his or the General Chairman's obligation to identify the coordination and specify the pertinent facts of that coordination relied upon. It shall then be the carrier's burden to prove that factors other than a described coordination affected the employee.

ARTICLE VIII

MEMORANDUM OF UNDERSTANDING

RE: SUPERVISORY AND EXCEPTED PERSONNEL

This Memorandum of Understanding is attached to and made a part of the Agreement for Protection of Employees represented by the International Association of Machinists and Aerospace Workers in connection with coordinations of C&O, B&O, WM and SIRC operation, facilities and employees.

If, subsequent to the effective date of the Agreement to which this is attached, officials, supervisory or fully excepted personnel should exercise their seniority rights in a craft or class of employees protected under said Agreement, then, during the period such seniority is exercised, such officials, supervisory or fully excepted personnel shall be entitled to the same protection afforded by the said agreement to employees in the craft or class in which such seniority is exercised, and no employee subject to said Agreement shall be placed in a worse position with respect to compensation, rules, working conditions, fringe benefits, or rights and privileges pertaining thereto, by the return of the official, supervisory or fully excepted personnel to work under the schedule agreement.

Chessie System
Baltimore, Maryland 21201
January 14, 1976
File 167-9 SC

Mr. W. D. Snell, General Chairman
Intl. Assn. of Machinists & Aerospace Workers
P. O. Box 12161
Columbus, Ohio 43212

Dear Sir:

This has reference to previous discussions between us concerning the application of Agreement for Employe Protection, Benefits and other conditions applicable in coordinations involving Employes Represented by The International Association of Machinists and Aerospace Workers and The Chesapeake and Ohio Railway, The Baltimore and Ohio Railroad Company, The Western Maryland Railway Company and The Staten Island Railroad Corporation.

Article II, Section 3(b) of such Agreement reads:

> "(b) Employes described in Paragraph (a) may, at the time of coordination or thereafter during the six year period following a coordination, be offered employment in their craft on any of the Carriers signatory hereto, or comparable employment for which they are physically and mentally qualified on the Carrier on which employed at the time of coordination, and which does not require a change in residence as defined in Article IV, Section 3, if such offer of employment does not infringe upon the rights of other employes under the working agreement. If they decline such offer of employment, they shall forfeit their protection under this Agreement."

This will confirm our understanding that in the application of the foregoing, insofar as concerns Journeymen Machinists and/or Machinist Apprentices, such employes may, if they so desire, accept the offer of comparable employment but such election will be voluntary on their part and if they decline the offer of comparable employment, they shall not forfeit any protection under the Agreement.

This understanding shall not, however, apply to Machinist Helpers and such employes will be subject to the full application of Article II, Section 3(b) as cited hereinabove.

If this properly reflects your understanding, will you please indicate in the space provided, returning copy for our file.

Very truly yours,

/S/ D. S. Garda

ACCEPTED:

/S/ W. D. Snell, General Chairman
International Association of Machinists and Aerospace Workers

/S/ E. A. Pritzel, General Chairman
International Association of Machinists and Aerospace Workers

AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.

AND

ITS EMPLOYEES REPRESENTED BY THE

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

Section 1

A. Subject to the terms and conditions hereinafter set forth, the Carrier will establish positions known as "Traveling Service Mechanic" (TSM) for the purpose of performing line-of-road locomotive inspecting, repairing and servicing work.

TSM positions will accrue to qualified Machinists holding seniority as such on the Machinist Seniority Roster at the seniority point covering the position advertised.

B. TSM-qualified employees will be identified on the Machinist Seniority Rosters at various locations where service trucks are assigned. The locations proposed for initial assignment of service trucks are listed in Attachment "A" hereto. Such TSM qualified employees will be assigned the work of locomotive servicing, inspecting and running repair on locomotive units on line-of-road and at other locations, such as yards, service tracks, etc.

C. Transportation will be provided between home point and work locations.

D. When not being used on the service truck, employees will perform regular duties at their home station.

Section II

A. 1. The training of TSM employees will be determined, supplied and paid for by Carrier or designated Carrier agent.

2. Trainees must be able to demonstrate competence for the position within a reasonable period of time, not to exceed thirty days, or be dropped from further training. A trainee who is dropped from the training program or voluntarily withdraws from the training program may not again apply for training for a period of sixty (60) days from the date dropped or withdrawn.

The Carrier will provide training as required, including but not limited to, training in the following areas:

a. Safety/emergency procedures, including use of communications equipment.

b. Service operation, which includes servicing, inspecting and running repairs.

3. TSM employees must possess valid driver license.

4. Training time, including travel time, will be compensated at the regular straight time rate of pay. If the training facility is at a location other than the trainee's home point, the Carrier will reimburse the trainee for reasonable, necessary expenses incurred including mileage if the trainee is required to use his personal automobile vehicle for travel.

B. TSM employees will be required to comply with all applicable Federal certification/licensing requirements.

C. Once an employee has successfully completed all job requirements specified in Paragraph A of this Section, the employee will be identified on the applicable seniority roster as qualified for TSM position.

Section III

A. Regularly established route/trip assignments will be by bulletin to qualified TSM employees. In addition to the normal bulletin information, TSM bulletins will identify geographical areas to be covered by the assignment.

1. Consideration will be given to anticipated time requirements to minimize away from home rest periods.

2. When route/trip is made by "off duty employees," assignment will be by call from rotating call boards so as to equalize opportunity.

3. On scheduled runs, the TSM employee will be teamed up with a Traveling Service Supplyman (TSS). On unscheduled runs requiring only the recognized work of one craft, the required craft employee, TSM or TSS, will be called.

B. TSM vacancies on regular assignments or unscheduled runs will be filled first by qualified on-duty employees from the applicable overtime board or lists, followed by calling qualified off-duty employees, in accordance with Section III A(2).

C. Employees assigned to TSM service will be compensated as hereinafter set forth. However, all overtime service will be subject to the applicable overtime rules of the Schedule Agreement(s).

1. Straight time will be allowed for all hours traveling, waiting, and for work performed during the regularly assigned shift. Overtime rate will apply for traveling, waiting, and work performed prior to or following the regularly assigned shift.

2. Employees called for TSM service whose tour of duty is regular and who leave and return to home station daily, shall be paid continuous time from the time of leaving the home station to the time they return whether working, waiting or traveling, exclusive of the meal period.

3. No pay will be allowed for periods when employees are relieved from duty for rest in a motel or hotel and permitted to go to bed for five hours or more while away from home point.

4. Where employees are required to remain in the field overnight, hotel or motel lodging accommodations will be arranged and paid for by the Carrier, whenever possible. Where lodging is not provided by the company for employees required to remain in the away-from-home station overnight, actual necessary lodging expense will be allowed. Receipts will be required.

5. Employees required to remain away from their home point overnight will be paid a per diem allowance of $26.00 per day for meals for each day requiring an overnight stay. For any tour of duty, assignment or call exceeding ten (10) hours but not requiring an overnight stay, the employee will be paid a $13.00 per diem allowance. Per diem amounts will be adjusted from time to time as required to keep pace with inflation.

Section IV

A. Notices for changes in this agreement may be filed by either party to this agreement, in accordance with Section 6 of the Railway Labor Act.

B. Claims or grievances arising out of the application of this agreement may be handled by the general chairman directly with the Carrier's highest designated officer. However, the time limits of the applicable schedule agreement will remain in effect.

Signed at Jacksonville, FL, this 20th day of February 1992.

(Signatures Omitted)

Attachment A to Appendix X(CSXT Labor Agmt. No. 16-102-91)

PROPOSED SERVICE TRUCK LOCATIONS
AS OF JANUARY 1992

Atlanta, GA
Tampa, FL
Grand Rapids, MI

UNDERSTANDINGS TO APPENDIX X (CSXT LABOR AGMT. NO. 16-102-91)

Side Letter No. 1

It is understood and agreed that when the need for TSM employees arises or when it is deemed desirable to train TSM employees, a notice to that effect shall be posted on the appropriate bulletin board requesting all Machinists who wish to be trained as TSM employees to make written request to the officer issuing the bulletin, with copy to the Local Chairman.

Training for TSM positions will be open to all active Machinists on the appropriate seniority rosters and selection for such training will be in seniority order, providing qualifications are sufficient.

Regularly established TSM assignments will be bulletined and assigned to qualified employees in accordance with the individual bulletin rules in the respective collective bargaining agreement at the location where the assignments are bulletined. If no requests and/or bids are received for the involved training and/or positions, a sufficient number of Machinists will be trained and when qualified, will be awarded the required positions, in reverse order of seniority.

TSM employees will not be utilized to perform work on any former CSXT property not covered by their respective schedule Agreement nor will they perform work at any outlying point or location where Machinists are presently employed and performing such work. In an emergency, such as flood, snowstorm, hurricane, tornado, earthquake, fire, etc., however, the Carrier may utilize the service truck employees at such outlying points to augment the force so long as the emergency condition exists.

TSM employees will not be held over at locations away from home point during their regularly assigned rest days nor will they be assigned to work on their rest days unless called from the overtime board in accordance with applicable overtime rules.

Side Letter No. 2

In connection with the aforementioned agreement, as discussed, should the number of employees assigned to a service track as of the effective day of this agreement be reduced as a result of the inception of the locomotive service truck operation, the employee(s) ultimately affected thereby will be afforded protection under the provisions of Article I of the September 25, 1964 Agreement.

Side Letter No. 3

In connection with the Attachment A to the aforementioned agreement, it is agreed that on the first day of each quarter, a report will be sent to the representatives signatory to this agreement, listing the primary assignments of the service trucks, as well as the locations to which each vehicle is currently assigned to provide service.

Side Letter No. 4

It is understood that this Agreement does not extend any rights to the CMX service truck operators to perform any recognized machinist work in the servicing, inspection or repair of locomotives.

Side Letter No. 5

This will confirm our understanding that while working TSM and TSS employees at away-from-home locations, the TSM will be primarily responsible for mechanical inspections and minor repairs and the TSS will be primarily responsible for servicing and supplying locomotives. However, the TSM and TSS will perform required work as necessary to insure the work is performed safely and expediently.

Side Letter No. 6

With regard to Section III, Paragraph C2, this will confirm our understanding that the designated lunch period for TSM positions will be the same as at the service track, i.e., if the employees are receiving a paid lunch period on the service track, the TSM positions will be advertised in the same manner.

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CSX
TRANSPORTATION
Labor Relations Department

500 Water Street, J-455
Jacksonville FL 32202

J. H. Wilson, Senior Director
K. L. Mason, Director
N. V Nihoul, Manager
(904) 359-1208

August 9, 2001

File: 2178 – 12 CSXT

Mr. Richard P Branson,
Assistant Directing General Chairman
Sheet Metal Workers' International Association
2481 Akron Place, SE
Washington, DC 20020

Dear Mr. Branson:

This will serve to confirm our discussions regarding the application of the controlling agreement as addressed in Article III A of CSXT Labor Agreement No. 12-126-92. As you are aware, CSXT Labor Agreement No. 12-126-92 dealt with the coordination of Engineering Department equipment repair work throughout CSXT's system.

As we discussed, it is our collective desire that effective with the date of signing, as indicated below, that the controlling agreement regarding Roadway Mechanics, currently referred to in Article III as the IAM&AW former C&O Railway Company Agreement (Chesapeake District, reprint June 1, 1969) will be replaced with the Agreement between CSX Transportation, Inc., and its Employees represented by the International Association of Machinists and Aerospace Workers (District No. 19) effective October 1, 1994.

If this clearly reflects our understanding, please indicate by affixing your signature in the space provided below, including the date, returning same to this office for distribution.

Very truly yours,

J. H. Wilson

Senior Director – Labor Relations

R. P. Branson

R. P. Branson, Assistant Directing General Chairman
Sheet Metal Workers' International Association

8/23/01
(date)

Carrier's Ex R, Page 1

AGREEMENT

BETWEEN

THE BROTHERHOOD OFMAINTENANCE OF WAY EMPLOYES DIVISION OF THE

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

AND

CSX TRANSPORTATION, INC.

Effective January 15, 2006 Roadway Equipment Repairmen (Mechanics) represented by the System Federations or Divisions of the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters, identified below, will no longer perform work under the IAM&AW and former C&O Railway Company Agreement (Chesapeake District, reprinted June 1, 1969), but will instead perform work under the Agreement between CSX Transportation, Inc. and it's employees represented by the International Association of Machinists and Aerospace Workers (District No. 19) dated October 1, 1994. The BMWED recognizes that it will not be party to any future negotiations concerning the IAM&AW Agreement (District No. 19) dated October 1, 1994. However, CSXT agrees that it will not diminish in any way the current seniority rights of the BMWED Roadway Equipment Repairmen, or alter the current structure of the governing seniority rosters as previously established without agreement with the BMWED. CSXT further recognizes that this agreement will in no way diminish the fact that the BMWED Roadway Equipment Repairmen (Mechanics) will continue to be represented by the various BMWED/IBT Federations or Divisions providing representation prior to this agreement.

In consideration for this agreement, the following conditions will apply:

1) BMWED Mechanics will be placed under the daily meal allowance per diem under the same terms and conditions as the IAM represented Mechanics (reproduced as attachment A)

2) BMWED Mechanics will receive the same pay, including any skill or pay differentials currently, or subsequently provided mechanics covered under the IAM & AW National Agreement, the October 1, 1994 IAM & AW Agreement, or any subsequent agreement or arrangement effecting the IAM & AW mechanic's pay rates

File: 2178-12

3) BMWED Mechanics will receive a one-time lump sum payment in the amount of $1500 00, which will be disbursed within 30 days of the date of this Agreement. In consideration of this payment CSXT and the BMWED agree that the dispute over back pay for the .25 differential pay for BMWED represented mechanics will be considered settled and may no longer be referred to by either party.

This agreement is effective this the 16th day of January 2006.

For the Organization:

E. R. Brassell, General Chairman
Allied Eastern Federation – BMEWD

Jed Dodd, General Chairman
Pennsylvania Federation - BMWED

J. D. Knight, General Chairman
Seaboard Federation – BMWE

T. R. McCoy, Jr., General Chairman
Affiliated System Federation - BMWED

B. A. Winter, General Chairman
Consolidated Rail System Federation – BMWE

For the Carrier,

J. H. Wilson, Director
CSX Transportation

Attachment

File: 2178-12

Sheet Metal Workers' International Association
UNITED STATES DISTRICT COUNCIL OF RAILROADS

6322 Hackleburney Road
Blackshear, GA 31516
Phone (912) 449-4564
Fax (912) 449-8036
E-Mail wlamycrawford@bellsouth.net

LARRY CRAWFORD
General Chairman

Tuesday, January 31, 2006

Certified Mail Receipt Requested # 7000 1670 0004 2513 8387

Jim Wilson
Director Labor Relations
CSX Transportation
500 Water Street (J455)
Jacksonville, FL 32202

File: RWME 06-01

Dear Mr. Wilson:

As you are aware the Sheet Metal Workers' have taken the position that the Carrier should have applied the wages and benefit package that we accepted form the National Carriers Conference Committee signed April 4, 2005 to the Roadway Mechanics employed and represented by the Sheet Metal Workers International Association. The Carrier has disagreed and contends that the benefits negotiated by the International Association of Machinist and Aerospace workers was controlling and refused to change its position.

Several months ago I was contacted by the Director of Railroads of our International, Dewey Garland, who had been dealing with Vice President of Labor Relations, Ms Lisa Mancini, concerning this matter and asked to discuss the issue with you and set up a Public Law Board to resolve this case. You and I discussed the issues and decided to waive the pre hearing exchange of information and move toward getting the board established.

Since those discussions I have presented the Organizations Question and The Carrier has rejected it through discussions with Mr. Nihoul of your staff. We have agreed to accept Lynette Ross as the arbitrator and had agreed that we would each submit our own question. Mr. Nihoul has promised on several occasions to put the two questions in letter form and send to me for my signature and then to the mediation board for approval of the board. However each time we jointly agree on a letter he then sends it to the Carriers Legal Department who rejects it for one reason or another reason.

The most recent change was that he Carrier now wants to include the Brotherhood of Maintenance of Way, and the International Association of Machinist and Aerospace Workers organizations to the board and have a six (6) member panel (one from each of the three organizations and three from CSX) before the neutral . The Organization objects to this most recent position and rejects out right the idea that the other Organization's have any pertinent

position in this case. This dispute is simply a refusal of the Carrier to apply the Sheet Metal Workers National Agreement to the Sheet Metal Worker represented roadway mechanics. The dispute has no affect on either the BMWE or the IAM&AW.

I am therefore writing to advise that baring the recipe of a joint letter to the mediation board, stating the two questions, which Mr. Nihoul has, within ten (10) working days from receipt of this letter The Organization will request the National Mediation Board to proceed to establish a Public Law Board to resolve this dispute, with MS Ross as the neutral as we have agreed.

I await you prompt reply.

Sincerely,

Larry Crawford
General Chairman

Cc: Lisa Mancini # 7000 1670 0004 2513 8370
Dewey Garland
C. Fraley

CSX TRANSPORTATION

Labor Relations Department
500 Water Street, J-455
Jacksonville, FL 32202

J H Wilson, Director
N V Nihoul, Manager
(904) 359-1208

Certified Mail Return Receipt Request No. 7003 2260 0007 0736 3163

February 16, 2006

File: 2178-12

Mr. L. Crawford, General Chairman
Sheet Metal Workers' International Association
6322 Hacklebarney Road
Blackshear, Georgia

Dear Mr. Crawford:

I am writing in response to your letter dated January 31, 2006, and received by Labor Relations on February 8, 2006. In your letter you complain that the Carrier has not been agreeable to the establishment of a public law board to resolve a dispute whether wage increases in national agreements with the International Association or Machinists ("IAM") or the Sheet Metal Workers International Association ("SMWIA") apply to roadway mechanics who are members of your organization. You also state that, unless CSXT agrees to the creation of a public law board, you will request the National Mediation Board to establish such a board. Contrary to your suggestion, the Carrier has not been dragging its feet on submitting this dispute to arbitration. However, as the Carrier has previously explained to you, the exclusive arbitration forum for this dispute is an arbitration committee established pursuant to Article I, Section 11 of the New York Dock employee protective conditions. Moreover, it is these conditions which require that the Brotherhood of Maintenance of Way Employes ("BMWE") and IAM be notified of the arbitration and allowed to appoint a member to the committee if they do desire.

You state that the wage "dispute is simply a refusal of the Carrier to apply the Sheet Metal Workers National Agreement to Sheet Metal Worker represented roadway mechanics." This dispute involves the interpretation or application of the New York Dock implementing agreement under which roadway mechanic work was coordinated on the former properties that make up CSXT. This was a 1993 New York Dock Implementing Agreement, CSXT Labor Agreement No. 12-126-92. This Agreement placed all roadway mechanics under CSXT's collective bargaining agreements with the IAM applicable at Richmond, Virginia. Initially, this was the 1969 C&O-IAM Agreement. Contemporaneously with the 1993 New York Dock Implementing Agreement, CSXT negotiated a system agreement with IAM in 1994. Your Organization subsequently agreed in an August 1, 2001 Letter Agreement, that the 1994 IAM

Agreement would replace the 1969 C&O IAM Agreement as the agreement applicable to SMWIA-represented roadway mechanics.

The 1993 New York Dock Implementing Agreement is the basis for CSXT's position that its agreements with the IAM, including national wage agreements, govern the wages of SMWIA-represented roadway mechanics. You obviously disagree that the wage rates in the national agreements with IAM control. But, the resolution of this dispute clearly requires the interpretation or application of the 1993 New York Dock Implementing Agreement. Article I, Section 11(a) of the New York Dock conditions provides the exclusive arbitral forum for resolving such disputes. Section 11 provides that "[i]n the event the railroad and its employees or their representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, . . . it may be referred by either party to an arbitration committee." Precedents of the Interstate Commerce Commission and its successor agency, the Surface Transportation Board, and federal courts have made clear that arbitration of disputes involving the New York Dock conditions or agreements reached under those conditions is mandatory. Similarly, RLA Section 3 arbitration boards have recognized that they do not have jurisdiction to hear disputes involving New York Dock implementing agreements. See, e.g., Brotherhood of Locomotive Engineers and Gateway Western Ry., Award No. 25981, NRAB Fourth Div. at 2 (1993)(Dennis, Arb.) ("The Board has traditionally refused to accept jurisdiction of disputes that involve New York Dock Implementing Agreements.").

Section 11(b) further provides that "[i]n the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives." This dispute arguably involves more than one union, because it arises from the 1993 New York Dock Implementing Agreement to which IAM and BMWE, as well as SMWIA, are signatory. CSXT is proposing no more than what is required by law.

I would note that, while CSXT disagrees that this dispute would be within the jurisdiction of a public law board or other arbitration board set up under Section 3 of the Railway Labor Act, the RLA would require that the IAM and BMWE be given notice of an arbitration involving an agreement to which they are party.

Therefore, the Carrier cannot agree to the establishment of a public law board. To do so would be contrary to law. The Carrier remains willing to establish an arbitration committee pursuant to Section 11 of the New York Dock conditions and is agreeable to Arbitrator Ross as the neutral member of that committee. In that regard, this letter serves as CSXT's notice pursuant to Section 11(a) of CSXT's intent to refer this dispute to an

arbitration committee established under Section 11. CSXT is designating myself as the carrier member of the committee. Under Section 11, if you do not designate a member, you, as the General Chairman, are automatically designated by Section 11 as the SMWIA member of the arbitration committee. If after notice IAM or BMWE desire to name a member to the committee, CSXT will designate additional members so there is an even number of carrier and union members on the committee.

Please advise if you will be the SMWIA member of the Section 11 committee.

Sincerely yours,

J. H. Wilson

Director – Labor Relations

Attachment

cc: Mr. E. R. Brassell, General Chairman
Allied Eastern Federation BMWED

Mr. Jed Dodd, General Chairman
Pennsylvania Federation BMWED

Mr. R. G. Fink, General Chairman
International Association of Machinists and Aerospace Workers

Mr. J. D. Knight, General Chairman
Seaboard Federation BMWED

Mr. T. R. McCoy, General Chairman
Affiliated System Federation BMWED

B. A. Winter, General Chairman
Consolidated Rail System Federation BMWED

CSX TRANSPORTATION

January 8, 1993

Employee Relations
500 Water Street
Jacksonville, FL 32202

J. B. Allred, Director

R. D. Hiel, Senior Manager
(904) 359-1797

File: 217812 (ROA)
Letter of Understanding No. 2

Mr. J. W. Pugh, General Chairman
Brotherhood of Maintenance of Way Employees
Suite 1-A, Charter Federal Building
2706 Ogden Road, S. W.
Roanoke, Virginia 24014

Dear Sir:

This refers to the implementing Agreement covering the coordination of equipment repair work throughout the CSXT System.

This confirms our understanding that it is not the intent of Article VII, Section F, to deviate from the past practice on the former Clinchfield Railroad of reimbursing mechanics for meals.

Very truly yours,

J. B. Allred

AGREED:

J. W. Pugh

J. W. Pugh, Gen. Chairman
cl2

Carrier's Ex V, Page 1

CSX TRANSPORTATION

January 8, 1993

Employee Relations
500 Water Street
Jacksonville, FL 32202

J. B. Allred, Director

R. D. Etel, Senior Manager
(904) 359-1797

File: 217812 (ROA)
Letter of Understanding No. 3

Mr. J. R. Cook, General Chairman
CSX System Federation
Brotherhood of Maintenance of Way Employees
Post Office Box 278
Manistee, Michigan 49660

Dear Sir:

This refers to the implementing Agreement covering the coordination of equipment repair work throughout the CSXT System.

This confirms our understanding that the fifty (50) mile restriction regarding eligibility for relocation/real estate benefits (Article IX of the implementing Agreement) will be waived for any former RF&P Mechanic who is presently assigned to the shop at Fredericksburg, Virginia and who bids and is awarded a position at Richmond, Virginia.

Very truly yours,

J. B. Allred

AGREED:

J. R. Cook, Genl. Chairman

rfp1

Carrier's Ex. (W), Page 1

James Coker
Work Address
1642 Fairview Road
Stockbridge, GA 30281

Larry Crawford
6322 Hacklebarney Road
Blackshear, GA

Dear Sir,

This will confirm our discussion on November 5, 2005, concerning the representation of the Sheet Metal Worker Roadway Mechanics on CSX Transportation, who perform the repair of Roadway Maintenance Equipment.

As we discussed it was not the intent of the consolidation agreement governing the combining of the BMWE, SMWIA, and the IAM&AW mechanics into one roster that the wages were to be negotiated by the IAM&AW as you explained CSX is contending. The Agreement is very specific when it deals with the representation rights of the various Organizations. It clearly states that each Organization maintains the representation rights of its members as stated in Article X - Representation of the CSXT Labor Agreement NO. 12-126-92.

At the signing of the CSXT Labor Agreement, NO.12-126-92 it was not the intent of the IAM&AW to include the SMWIA represented roadway mechanics in the negotiation of wages and benefits of the IAM&AW contract negotiations. As with the previous historical agreements and practices each Organization negotiates wage and benefit package for their respective members.

The undersigned along with former General Chairman M.M. Jolly were the IAM&AW designated representatives during the negotiation of that agreement and never had any intention of negotiating wages and benefits for the SMWIA represented mechanics. It was only the intent of this agreement to have the IAM&AW Work Rules apply to all Roadway Mechanics.

Respectfully Submitted,

J.A. Coker
IAM&AW General Chairman
Retired

INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS

District Lodge No. 19

JOE R DUNCAN
President - Dir Gen Chairman
P O Box 324
201 Cumberland Street
Wartburg, TN 37887-0324
Telephone (423) 346-6733
Fax (423) 346-6729

REPLY TO Ronald G Fink
General Chairman
P O Box 324
210 Cumberland Street
Wartburg, TN 37887-0324
Telephone (423) 346- 6728
Fax (423) 346-6729
E-Mail lamrfink@highland net

August 19, 2005

Mr. Larry Crawford
SMWIA – General Chairman
6322 Hacklebarney Rd.
Blackshear, GA 31516

Dear Sir and Brother,

Per our conversations concerning the CSXT Labor Agreement #12-126-92 and the fact that your Organizations has settled their 2000 National Agreement. We had discussed if the Labor Agreement # 12-126-92 covered any concerns of the National Agreement for your Organization.

The current Labor Agreement 12-126-92 covers the working rules as signed and put into effect on January 29, 1993 and is clear in the language of Article X – **Representation,** that each Organization is able to represent its membership.

Any further help you need concerning this issue please contact me.

Ronald G. Fink

Ronald G Fink

General Chairman IAM&AW

Roger Elmore
125 Panther Ridge Road
Bloomfield, KY 40008
Phone (502) 673-3300

September 25, 2005

Larry Crawford
General Chairman
Sheet Metal Workers International Association
6322 Hacklebarney Road
Blackshear, GA

Dear Sir,

This will confirm our discussion on September 25, 2005 concerning the representation of the Sheet Metal Worker Roadway Mechanics on CSX Transportation, who perform the repair of Roadway Maintenance Equipment.

As we discussed it was not the intent of the consolidation agreement governing the combining of the BMWE, SMWIA, and the IAM&AW mechanics into one roster that the wages were to be negotiated by the IAM&AW as you explained CSX is contending. The Agreement is very specific when it deals with the representation rights of the various Organizations. It clearly states that each Organization maintains the representation rights of its members as stated in Article X – Representation of the CSXT Labor Agreement No. 12-126-92.

At the signing of the CSXT Labor Agreement No. 12-126-92, it was not the intent of the IAM&AW to include the SMWIA represented roadway mechanics in the negotiation of wages and benefits of the IAM&AW contract negotiations. As with the previous historical agreements and practices each Organization negotiates wage and benefit packages for their respective members.

Respectfully Submitted,

Roger Elmore

Roger Elmore
IAM&AW General Chairman
(Retired) 8-78 thru 8-2004

BEFORE A
NEW YORK DOCK ARBITRATION COMMITTEE
AND
PUBLIC LAW BOARD
APPOINTED PURSUANT TO SECTION 11 OF THE NEW YORK DOCK
EMPLOYEE PROTECTIVE CONDITIONS
AND
SECTION 3 SECOND OF THE RAILWAY LABOR ACT

CSX TRANSPORTATION, INC.,	)	
and	)	Neutral Member Lynette Ross
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION	)	

DECLARATION OF NOEL V. NIHOUL

I, Noel V. Nihoul, declare that the following facts are true based on personal knowledge and belief:

1. I currently am employed as a Manager Labor Relations with CSX Transportation, Inc. ("CSXT") in CSXT's Labor Relations Department. I have held my current position of Manager Labor Relations for CSXT since 2000, and previously held the position of Manager Labor Relations from 1994-1997. I was employed by the former Seaboard Coast Line Railroad on July 9, 1979 as a Roadway Mechanic and have also held other positions at CSXT.

2. Prior to my employment with CSXT as a Manager Labor Relations in 1994, I served as a union official for the Brotherhood of Maintenance of Way Employes ("BMWE"). I was a BMWE General Chairman for the former SCL Railroad (more specifically the former Atlantic Coast Line Railroad) at the time the 1993 New York Dock implementing agreement (the "Implementing Agreement") was negotiated between CSXT, the Sheet Metal Workers' International Association ("SMWIA"), the International Association of Machinists and Aerospace Workers

("IAM"), and the BMWE. In my capacity as a BMWE General Chairman, I was present at most of the negotiating sessions and participated in the negotiation of the 1993 New York Dock implementing agreement on behalf of BMWE.

3. I understand that SMWIA has taken the position in this arbitration that the 1993 Implementing Agreement was not intended to place roadway mechanics represented by SMWIA under the applicable CSXT-IAM collective bargaining agreement for purposes of wage increases, and that SMWIA has submitted letters from former IAM General Chairmen James Coker and Roger Elmore, and current IAM General Chairman Ronald Fink to that effect. None of these three individuals, however, were the principal negotiators for the IAM. The principal negotiator for IAM was Milton Jolly, who was then IAM General Chairman for the former Seaboard Coast Line. Mr. Jolly's office was in Jacksonville, so it was easy for him to attend the negotiation sessions. Current General Chairman Fink was not even a General Chairman during the time of the negotiations leading up to the 1993 Implementing Agreement, and would not have firsthand knowledge of the IAM's intent in entering into the Implementing Agreement.

4. As a BMWE General Chairman participating in the negotiations, my understanding was that the Implementing Agreement was intended to consolidate all roadway mechanics, including those represented by SMWIA and BMWE, under the applicable CSXT-IAM collective bargaining agreement for all purposes, including wage increases. My recollection is that the representation rights retained by each union were negotiated for retention of dues and membership purposes.

I declare that the foregoing is true and correct. Executed on February 21, 2007.

Noel V. Nihoul

Noel V. Nihoul

BEFORE A
NEW YORK DOCK ARBITRATION COMMITTEE
AND
PUBLIC LAW BOARD
APPOINTED PURSUANT TO SECTION 11 OF THE NEW YORK DOCK
EMPLOYEE PROTECTIVE CONDITIONS
AND
SECTION 3 SECOND OF THE RAILWAY LABOR ACT

CSX TRANSPORTATION, INC.,	
and	Neutral Member Lynette Ross
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION	

DECLARATION OF RICK HIEL

I, Rick Hiel, declare that the following facts are true based on personal knowledge and belief:

1. I am a Director Labor Relations of CSX Transportation, Inc. ("CSXT") in CSXT's Labor Relations Department. I have held the position of Director Labor Relations for CSXT since 2000. Prior to that time, I have held various positions in Labor Relations since 1984.

2. In my capacity as then-Senior Manager, Labor Relations, I was present at the negotiating sessions and participated in the negotiation of the 1993 New York Dock implementing agreement (the "Implementing Agreement") between CSXT, the Sheet Metal Workers' International Association ("SMWIA"), the International Association of Machinists and Aerospace Workers ("IAM"), and the Brotherhood of Maintenance of Way Employees ("BMWE"), as a representative for CSXT.

3. I understand that SMWIA has taken the position in this arbitration that the 1993 Implementing Agreement was not intended to place roadway mechanics represented by SMWIA

under the applicable CSXT-IAM collective bargaining agreement for purposes of wage increases, and that SMWIA has submitted letters from former IAM General Chairmen James Coker and Roger Elmore, and current IAM General Chairman Ronald Fink to that effect. None of these three individuals, however, were the principal negotiators for the IAM. The principal negotiator for IAM was Milton Jolly, who was then IAM General Chairman for the former Seaboard Coast Line. Mr. Jolly was senior to the other General Chairmen, and his office was located in Jacksonville, making it easy for him to attend the negotiation sessions. Current General Chairman Fink was not even a General Chairman at the time of the negotiation of the 1993 Implementing Agreement, and would not have firsthand knowledge of the IAM's intent in entering into the Implementing Agreement.

4. As CSXT's representative in the negotiations regarding the Implementing Agreement, my understanding was that it was intended to consolidate all roadway mechanics, including those represented by SMWIA and BMWE, under the applicable CSXT-IAM collective bargaining agreement for all purposes, including wage increases. CSXT's intent was that all roadway mechanics would work pursuant to the applicable CSXT-IAM collective bargaining agreement, as this consolidation was essential to having a coordinated workforce. Had the parties intended to exclude wage increases from the consolidation under the CSXT-IAM agreement, such an exclusion would have been specifically set forth in writing in the Implementing Agreement.

I declare that the foregoing is true and correct. Executed on February 21, 2007.

Rick Hiel

Rick Hiel

MACHINISTS

AGREEMENT

THIS AGREEMENT, made this 31st day of July, 1992, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Association of Machinists and Aerospace Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

Each employee subject to this Agreement who qualified for an annual vacation in the calendar year 1991 will be paid $2,000. Those employees who during the calendar year 1990 failed to qualify for an annual vacation in the calendar year 1991 will be paid a proportional share of that amount, based on the percentage of the qualifying period satisfied. This Section shall be applicable solely to those employees subject to this Agreement who had an employment relationship as of the date of this Agreement or who have retired or died subsequent to January 1, 1990. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section 2 - First General Wage Increase

Effective July 1, 1991, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 1991 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied as follows:

(a) Hourly Rates -

Add 3 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 2 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 3 - Second General Wage Increase

Effective July 1, 1993, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1993 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 2 hereof.

Section 4 - Third General Wage Increase

Effective July 1, 1994, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1994 for employees covered by this Agreement shall be increased in the amount of four (4) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 2 hereof.

ARTICLE II - COST-OF-LIVING PAYMENTS

PART A - Cost-of-Living Lump Sum Payments Through January 1, 1995

Section 1 - First Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1991 through March 31, 1992, will receive a lump sum payment of $1,019.00 within 60 days from the date of this Agreement.

Section 2 - Second Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 1,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1992 through September 30, 1992, will receive a lump sum payment on January 1, 1993 equal to the difference between (i) $1,019.00, and (ii) the lesser of $510.00 and one quarter of the amount, if any, by which the carriers' 1993 payment rate for foreign-to-occupation health benefits under the Railroad Employees National Health and Welfare Plan (the "Plan") exceeds the sum of (a) the amount of such payment rate for 1992 and (b) the amount per covered employee that will be taken during 1993 from that certain special account maintained at The Travelers Insurance Company known as the "Special Account Held in Connection with the Amount for the Close-Out Period" (the "Special Account") to pay or provide for Plan foreign-to-occupation health benefits.

Section 3 - Third Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1992 through September 30, 1993, will receive a lump sum payment on January 1, 1994 equal to the difference between (i) $1,049.00, and (ii) the lesser of $525.00 and one quarter of the amount, if any, by which the carriers' 1994 payment rate for foreign-to-occupation health benefits under the Plan exceeds the sum of (a) the amount of such payment rate for 1993 and (b) the amount per covered employee that will be taken during 1994 from the Special Account to pay or provide for Plan foreign-to-occupation health benefits.

Section 4 - Fourth Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1993 through September 30, 1994, will receive a lump sum payment on January 1, 1995 equal to the difference between (i) $727.00, and (ii) the lesser of $364.00 and one quarter of the amount, if any, by which the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan exceeds the amount of such payment rate for 1994.

Section 5 - Definition of Payment Rate for Foreign-to-Occupation Health Benefits

The carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan

benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 hereof.

Section 6 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in any of the respective periods described in Sections 1 through 4 than the minimum number set forth therein, the dollar amounts specified in Section 1 and clause (i) of Sections 2-4 thereof shall be adjusted by multiplying such amounts by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during the applicable measurement period divided by the defined minimum hours. For any such employee, the dollar amounts described in clause (ii) of Sections 2-4 shall not exceed one-half of the dollar amounts specified in clause (i) thereof, as adjusted pursuant to this Section.

Section 7 - Lump Sum Proration

In the case of any employee subject to wage progression or entry rates, the dollar amounts specified in Section 1 and clause (i) of Sections 2 through 4 shall be adjusted by multiplying such amounts by the weighted average entry rate percentage applicable to wages earned during the specified determination period. For any such employee, the dollar amounts described in clause (ii) of Sections 2 through 4 shall not exceed one-half of the dollar amounts specified in clause (i) thereof, as adjusted pursuant to this Section.

Section 8 - Eligibility for Receipt of Lump Sum Payments

The lump sum cost-of-living payments provided for in this Article will be payable to each employee subject to this Agreement who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payments. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

PART B - Cost-of-Living Allowance and Adjustments Thereto After January 1, 1995

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments Thereto

(a) A cost of living allowance will be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS CPI. The first such cost-of-living allowance shall be payable effective July 1, 1995 based, subject to paragraph (d), on the BLS CPI for September 1994 as compared with the BLS CPI for March 1995. Such allowance, and further cost-of-living adjustments thereto which will become effective as described below, will be based on the change in the BLS CPI during the respective measurement periods shown in the following

table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
September 1994	March 1995	July 1, 1995
March 1995	September 1995	January 1, 1996

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d) (i) Cap. In calculations under paragraph (e), the maximum increase in the BLS CPI that will be taken into account will be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 1995	3% of September 1994 CPI
January 1, 1996	6% of September 1994 CPI, less the increase from September 1994 to March 1995

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the BLS CPI in any measurement period shall be considered.

(iii) If the increase in the BLS CPI from the base month of September 1994 to the measurement month of March 1995 exceeds 3% of the

September base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment which will have become effective July 1, 1995 during such measurement period.

(iv) Any increase in the BLS CPI from the base month of September 1994 to the measurement month of September 1995 in excess of 6% of the September 1994 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the BLS CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion will not be counted.)

The cost-of-living allowance in effect on December 31, 1995 will be adjusted (increased or decreased) effective January 1, 1996 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the BLS CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December 31, 1995 if the BLS CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains above zero. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W Index during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W Index during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 1995 shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1994, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above. For the purpose of the foregoing calculation, the amount of any increase described in clause (ii) that has been taken into account in determining the amount received by the employee as a lump sum payment on January 1, 1995 shall not be taken into account.

(b) The cost-of-living allowance payable to each employee effective January 1, 1996, shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1996 payment rate for foreign-to-occupation health benefits under the Plan over the amount of such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above.

(c) The procedure specified in paragraph (b) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(d) The definition of the carriers' payment rate for foreign-to-occupation health benefits under the Plan set forth in Section 5 of Part A shall apply with respect to any year covered by this Section.

(e) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for in this Part will not become part of basic rates of pay. Such allowance will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number

of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory to this Agreement. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

Article III - HEALTH AND WELFARE PLAN

Effective as soon as practicable, but not later than January 1, 1993, a separate and distinct program applicable only to IAM represented employees and their dependents (hereinafter the "IAM PROGRAM") shall be established within the Railroad Employees National Health and Welfare Plan (hereafter the "PLAN").

The Joint Plan Committee shall not have jurisdiction over the "IAM PROGRAM" and the administration shall be by the National Carriers' Conference Committee (N.C.C.C.) jointly with representatives of the IAM.

The contributions and benefits provided under the "IAM PROGRAM" shall be the same as those provided under the "PLAN" as such "PLAN" contributions and benefits may evolve, be adapted or changed from time to time, and may not otherwise be changed except by agreement between the IAM and the N.C.C.C. during

the life of the Agreement, and all insurance coverage, administrative and other services rendered in connection with such benefits will be provided by the same insurance company or companies and by the same service provider or providers during the life of this Agreement.

The experience under the "IAM PROGRAM" shall be separately maintained and rated as to IAM represented employees and their dependents.

Nonetheless, the rates of contribution to the "PLAN" by the carriers per employee per month with respect to the "IAM PROGRAM" shall be the same as the rates applicable under the "PLAN" generally.

For the purposes of paying or providing for benefits through the use of such amounts as may at anytime be in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with the "PLAN," and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust, no distinction shall be made between the "PLAN" and the "IAM PROGRAM" subject to limitations of the "PLAN." The same shall hold true with respect to the crediting of such funds in accordance with clause (b) of Sections 3 and 4 of Article II, Part A, of this Agreement in calculating the cost of living offsets provided for in those Sections.

Any dispute between the N.C.C.C. and the IAM with respect to interpretation, application or administration of this Article shall be resolved by a neutral agreed to by the IAM and N.C.C.C.

In all respects not specifically addressed in this Article the "IAM PROGRAM" shall not differ from the "PLAN" generally, and the terms of the pertinent Agreement Articles applicable to the other organizations are attached hereto as Appendix I and incorporated herein by reference.

ARTICLE IV - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended effective January 1, 1982 (Sickness Agreement), shall be further amended as provided in this Article for periods of disability commencing on or after July 1, 1991.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on January 1, 1982 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning	$13.95 or more	$2,427 or more
Class II Employees Earning	$11.40 or more but less than $13.95	$1,984 or more but less than $2,427
Class III Employees Earning	Less than $11.40	Less than $1,984

Basic and Maximum Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$926	$674	$1,600
Class II	$749	$674	$1,423
Class III	$595	$674	$1,269

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,716
Class II	$1,525
Class III	$1,361

Section 2 - Plan Benefits During Initial Registration Period

An employee who is eligible to receive Plan benefits during his initial RUIA registration period shall receive from the Plan, for the fifth through the fourteenth days of disability in that period, the Basic Benefit specified in the Plan plus an amount equal to the total RUIA benefit that would have been payable to him for days of sickness in that period but for application of the initial waiting period mandated by existing law.

Section 3 - Adjustment of Plan Benefits During Imposed Agreement Term

Effective December 31, 1994, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

Section 4 - Administrative and Procedural Improvements

The parties have selected and established a subcommittee for the purpose of reviewing and making recommendations with respect to administrative and

procedural improvements that would expedite the handling and disposition of Plan claims without affecting the integrity of the Plan. The parties shall consider the subcommittee's recommendations at the earliest opportunity, but no later than sixty (60) days after the effective date of this Article, and shall use their best efforts to reach agreement on implementing such recommendations.

ARTICLE V - INCIDENTAL WORK RULE

Section 1

The coverage of the Incidental Work Rule is expanded to include all shopcraft employees represented by the organization party hereto and shall read as follows:

> Where a shopcraft employee or employees are performing a work assignment, the completion of which calls for the performance of "incidental work" (as hereinafter defined) covered by the classification of work or scope rules of another craft or crafts, such shopcraft employee or employees may be required, so far as they are capable, to perform such incidental work provided it does not comprise a preponderant part of the total amount of work involved in the assignment. Work shall be regarded as "incidental" when it involves the removal and replacing or the disconnecting and connecting of parts and appliances such as wires, piping, covers, shielding and other appurtenances from or near the main work assignment in order to accomplish that assignment, and shall include simple tasks that require neither special training nor special tools. Incidental work shall be considered to comprise a preponderant part of the assignment when the time normally required to accomplish it exceeds the time normally required to accomplish the main work assignment.
>
> In addition to the above, simple tasks may be assigned to any craft employee capable of performing them for a maximum of two hours per shift. Such hours are not to be considered when determining what constitutes a "preponderant part of the assignment."
>
> If there is a dispute as to whether or not work comprises a "preponderant part" of a work assignment the carrier may nevertheless assign the work as it feels it should be assigned and proceed or continue with the work and assignment in question; however, the Shop Committee may request that the assignment be timed by the parties to determine whether or not the time required to perform the incidental work exceeds the time required to perform the main work assignment. If it does, a claim will be honored by the carrier for the actual time at pro rata rates required to perform the incidental work.

Section 2

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

Section 3

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE VI - SUBCONTRACTING

Article II, Subcontracting, of the September 25, 1964 National Agreement, as amended, is further amended as follows to implement the report and recommendations of Presidential Emergency Board No. 219, as interpreted and clarified by Special Board 102-29, and that report and recommendations as well as the questions and answers that interpret and clarify them are specifically incorporated herein by reference:

Article II - Subcontracting

The work set forth in the classification of work rules of the crafts parties to the September 25, 1964 National Agreement, as so amended, and all other work historically performed and generally recognized as work of the crafts pursuant to such classification of work rules, will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II. The maintenance and repair of equipment which has been historically (not necessarily exclusively) maintained and repaired by a carrier's own employees, no matter how purchased or made available to the carrier, shall not be contracted out by the carrier except in the manner specified. In determining whether work falls within either of the preceding sentences, the practices at the facility involved will govern.

Section 1 - Applicable Criteria

Subcontracting of work, including unit exchange, will be done only when (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is

subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts.

Section 2 - Advance Notice - Submission of Data - Conference

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the General Chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data sufficient to enable the General Chairman to determine whether the contract is consistent with the criteria set forth above.

Advance notice shall not be required concerning minor transactions. A minor transaction is defined for purposes of notice as an item of repair requiring eight man-hours or less to perform (unless the parties agree on a different definition) and which occurs at a location where mechanics of the affected craft, specialized equipment, spare units or parts are not available or cannot be made available within a reasonable time.

The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action.

If no agreement is reached at the conference following the notification, either party may submit a demand for an expedited arbitration within five working days of the conference. Except in emergencies, the carrier shall not consummate a binding subcontract until the expedited procedures have been implemented and the arbitrator has determined that the subcontract is permissible, unless the parties agree otherwise. For this purpose, an "emergency" means an unforeseen combination of circumstances, or the resulting state, which calls for prompt or immediate action involving safety of the public, employees, and carriers' property or avoidance of unnecessary delay to carriers' operations.

Section 3 - Request for Information When No Advance Notice Given

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the

contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Disputes concerning a carrier's alleged failure to provide notice of intent or to provide sufficient supporting data in a timely manner in order that the general chairman may reasonably determine whether the criteria for subcontracting have been met, also may be submitted to a member of the arbitration panel, but not necessarily on an expedited basis. In the event the parties are unable to agree on a schedule for resolving such a dispute, the arbitrator shall establish the schedule.

Section 4 - Establishment of Subcontracting Expedited Arbitration Panels

The parties shall establish expedited panels of neutral arbitrators at strategic locations throughout the United States, either by carrier or region. Each such panel shall have exclusive jurisdiction of disputes on the carrier's system or in the applicable geographical region, as the case may be, under the provisions of Article II, Subcontracting, as amended by this Agreement. The members of each of those panels shall hear cases or a group of cases on a rotating basis. Arbitrators appointed to said panels shall serve for terms of two years provided they adhere to the prescribed time requirements concerning their responsibilities. These arbitrators shall be compensated for their services directly by the parties.

Section 5 - Consist

Six neutral arbitrators shall be selected for each subcontracting expedited arbitration panel, unless the parties shall agree to a different number.

Section 6 - Location

Hearings and other meetings of arbitrators from the subcontracting expedited arbitration panels shall be at strategic locations.

Section 7 - Referees

If the parties are unable to agree on the selection of all of the arbitrators making up a panel within 30 days from the date the parties establish a panel of neutral arbitrators, the NMB shall be requested to supply a list of 12 arbitrators within 5 days after the receipt of such request. By alternate striking of names, the parties shall reduce the list to six arbitrators who shall constitute the panel. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 8 - Filling Vacancies

Vacancies for subcontracting expedited arbitration panels shall be filled by following the same procedures as contained in Section 7 above.

Section 9 - Content of Presentations

The arbitrator shall not consider any evidence not exchanged by the parties at least 48 hours before the commencement of the hearing. Other rules governing the scope and content of the presentations to the Panels shall be established by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 10 - Procedure at Board Meetings

Upon receipt of a demand under Section 2 of this Article, the arbitrator shall schedule a hearing within three working days and conduct a hearing within five working days thereafter. The arbitrator shall conclude the hearing not more than 48 hours after it has commenced. The arbitrator shall issue an oral or written decision within two working days of the conclusion of the hearing. An oral decision shall be supplemented by a written one within two weeks of the conclusion of the hearing unless the parties waive that time requirement. Any of these time limits may be extended by mutual agreement of the parties. Procedural rules governing the record and hearings before the Panels shall be determined by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 11 - Remedy

(a) If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of this Article, which is sustained, the arbitrator's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

(b) If the arbitrator finds that the carrier violated the advance notice requirements of Section 2 [in non-emergency situations], the arbitrator shall award an amount equal to that produced by multiplying 50% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the carrier who would have done the work, provided however that where the carrier is found to have both failed to consult and wrongfully contracted out work, the multiplier shall be 10% rather than 50%. The amounts awarded in accordance with this paragraph shall be divided equally among the claimants, or otherwise distributed upon an equitable basis, as determined by the arbitrator.

Section 12 - Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination. The carrier agrees to apply the decision of an arbitrator in a case arising on the carrier's property which sustains a grievance to all substantially similar situations and the Organization agrees not to

bring any grievance which is substantially similar to a grievance denied on the carrier's property by the decision of the arbitrator.

Decisions of arbitrators rendered under this Article shall be subject to judicial enforcement and review in the same manner and subject to the same provisions which apply to awards of the National Railroad Adjustment Board.

Section 13 - Disputes Referred to Other Boards

Disputes arising under Article I, Employee Protection, Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing shall not be subject to the jurisdiction of any Subcontracting Expedited Arbitration Panel.

Disputes under Article II need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but can be handled directly with the highest officer in the interest of expeditious handling. This Article sets up special time limits to govern the handling of cases before the expedited arbitration panels, thus providing special procedures which are intended to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion through the expedited arbitration panels are not subject to the provisions of the standard Time Limit Rule.

If there should be any claims filed for wage loss on behalf of a named claimant arising out of an alleged violation of Article II - Subcontracting, such claims for wage loss should be filed promptly and within sixty days of the filing of the alleged violation of Article II - Subcontracting, with the same carrier officer as to whom such violation of Article II was directed by the General Chairman of the craft or crafts involved, or his representative. If such claim is a continuous one, it cannot begin to run prior to the date the claim is presented.

Failure to handle as set forth in the preceding paragraph shall not be considered as a precedent or waiver of the contentions of the carriers or employees as to other similar claims.

* * * *

Article VI (Resolution of Disputes) of the September 25, 1964 Agreement will no longer be applicable to disputes involving Articles I and II of such Agreement which arise subsequent to the effective date of this Agreement.

Disputes arising under Article I, Employee Protection, will continue to be handled on the property as in the past, i.e., they need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

ARTICLE VII - SKILL DIFFERENTIALS

Section 1 - Journeymen machinists who perform the work listed below shall receive a differential per hour above the minimum rate paid to journeymen machinists at the point employed for each hour actually spent performing the listed work as set forth below:

(a) Existing differentials paid to journeymen machinists for performing lead mechanic work shall be increased to 50 cents per hour effective January 1, 1993.

(b) Existing differentials paid to journeymen machinists for performing federal inspector or welding work shall be increased to 25 cents per hour effective January 1, 1993.

(c) Journeymen machinists who perform the work (as defined in Side Letter #15) of -

Classroom Instructor
EMD Turbocharger Room Work
Traveling Roadway Machinists
Precision Machine Operators
Governor Room Work
Air Room Work
Engine Rebuild
Alignment of -
  Main generators/alternators
  Air Compressors (mechanical drive)
  Auxiliary generators
  Fan Drives/Equipment Blowers (mechanical drive)
Gear Trains - Build-up locomotive gear trains

shall receive a differential of 25 cents per hour, effective January 1, 1993. Effective January 1, 1994, this differential shall be increased to 50 cents per hour.

Section 2 - When performing the above work for four (4) hours or less in any one day, employees will be paid the differential on an hourly basis with a minimum of one (1) hour; for more than four (4) hours in any one day, the differential will apply for that day.

Section 3 - There shall be no compounding or pyramiding of the above differentials. Any existing differentials for the above listed work that exceed the amounts specified shall be preserved. The parties recognize and agree that this Article is limited solely to the matter of skill differentials and this Article and any actions pursuant to it will not be used by either party in any manner with respect to the interpretation or application of any rule or practice.

ARTICLE VIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices served upon the carriers listed in Exhibit A by the organization signatory hereto dated on or about January 20, 1988 and April 18, 1988, and proposals served on or about April 9, 1984 and March 10, 1989 by the carriers for concurrent handling therewith. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1994 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Article, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal which might properly have been served when the last moratorium ended on July 1, 1988.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., July 31, 1992.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

FOR THE EMPLOYEES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS:

_____

Chairman

_____

_____

ARTICLE III - HEALTH AND WELFARE PLAN AND EARLY RETIREMENT MAJOR MEDICAL BENEFIT PLAN

Part A - Health and Welfare Plan

Section 1 - Continuation of Plan

The Railroad Employees National Health and Welfare Plan (the "Plan"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to the Plan will be offset by the expeditious use of such amounts as may at any time be in Special Account A or in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with the Plan and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in that certain special account maintained at The Travelers Insurance Company, known as the "Special Account Held in Connection with the Amount for the Close-Out Period," relating to the obligations of the Plan to pay, among other things, benefits incurred but not paid at the time of termination of the Plan in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $25 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $25 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

In the event that a carrier participating in the Plan defaults for any reason, including but not limited to bankruptcy, on its obligation to contribute to the Plan, and the carrier's participation in the Plan terminates, the carriers remaining in the Plan shall be liable for any Plan contribution that was required of the terminating carrier prior to the effective date of its termination, but not paid by it. The remaining carriers shall be obligated to make up in a timely fashion such unpaid contribution of the terminating carrier in pro rated amounts based upon their shares of Plan contributions for the month immediately prior to such default.

Section 2 - Change to Self-Insurance

Except for life insurance, accidental death and dismemberment insurance, and all benefits for residents of Canada, the Plan will be wholly self-insured and administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Joint Plan Committee

The Joint Policyholder Committee shall be renamed the Joint Plan Committee. This change in name shall not in any way change the functions and responsibilities of the Committee.

A neutral shall be retained by and at the expense of the Plan for the duration of this Agreement to consider and vote on any matter brought before the Joint Plan Committee (formerly the Joint Policyholder Committee), arising out of the interpretation, application or administration (including investment policy) of the Plan, but only if the Committee is deadlocked with respect to the matter. A deadlock shall occur whenever the carrier members of the Committee, who shall have a total of one vote regardless of their number, and the organization members of the Committee, who shall also have a total of one vote regardless of their number, do not resolve a matter by a vote of two to nil and either side declares a deadlock.

The Joint Plan Committee shall have the power to create such subcommittees as it deems appropriate and to choose a neutral chairman for such subcommittees, if desired.

Section 4 - Managed Care

Managed care networks that meet standards developed by the Joint Plan Committee, or a subcommittee thereof, concerning quality of care, access to health care providers, and cost-effectiveness, shall be established wherever feasible as soon as practicable. Until a managed care network is established in a given geographical area, individuals in that area who are covered by the Plan will have the comprehensive health care benefit coverage described in Section 5 of this Part A. Each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area will be enrolled in the network (along with his or her covered dependents) unless the employee provides timely written notice to his or her employer of an election to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than to be enrolled in the network. Any such employee who provides such timely written notice shall have an annual opportunity to revoke his or her election by providing a written notice of revocation to his or her employer at least sixty days prior to January 1 of the calendar year for which such revocation shall first become effective. Similarly, each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area and is thereafter enrolled in the network (along with his or her covered dependents) shall have an annual opportunity to elect to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than continue to be enrolled in the network. This election may be made by such an employee by providing written notice thereof to his or her employer at least sixty days prior to January 1 of the calendar year for which the election shall first become effective. Each employee hired after a managed care network is established in his or her geographic area (and his or her covered dependents) will be enrolled in the network and may not thereafter elect to be covered by the comprehensive benefits until the January 1 which falls on or after the first anniversary of his or her initial date of eligibility for Plan coverage. Employees who return to eligibility for Plan coverage within 24

months of loss of eligibility for Plan coverage and whose employment relationship has not terminated at any time prior to such return will be enrolled in the program of Plan benefits in which they were enrolled when their eligibility for Plan coverage was lost, and shall thereafter have the same rights of election as other employees whose eligibility for Plan coverage was not lost.

Covered individuals enrolled in a managed care network will have a point of service option allowing them to choose an out-of-network provider to perform any covered health care service that they need. The benefits provided by the Plan when a service is performed by an in-network provider and the benefits provided by the Plan when the service is performed by an out-of-network provider will be as described in the table below:

PLAN FEATURE	IN-NETWORK	OUT-OF-NETWORK†
Primary Care Physician Required	Yes	No
Annual Deductible		
Individual	None	$100
Family	None	$300
		Deductible applies to all covered expenses
Plan/Employee Coinsurance	100%/0%	75%/25%
Annual Out-of-Pocket Maximum (exclusive of deductible)		
Individual	None	$1,500
Family	None	$3,000
Maximum Lifetime Benefit	None	$1,000,000 ($5,000 annual restoration)
Special Maximum Lifetime Benefit for Mental Health	None	$100,000 lifetime ($500 annual restoration)
Hospital Charges (inpatient and outpatient)	100%	75%*
Ambulatory Surgery	100%	75%*
Emergency Room	100% after $15 employee copayment	75%

Inpatient Mental Health & Substance Abuse		
Benefit		
Hospital	100%	75%*
Alternative Care — Residential Treatment Center Inpatient or Partial Hospitalization/ Day Treatment	100%	75%*
Outpatient Mental Health & Substance Abuse	100% after $15 employee copayment per visit	75%*
Physician Services		
Surgery/Anesthesia	100%	75%*
Hospital Visits	100%	75%*
Office Visits	100% after $15 employee copayment	75%**
Diagnostic Tests	100%	75%*
Routine Physical	100% after $15 employee copayment	Not Covered
Well Baby Care	100% after $15 employee copayment	Not Covered
Skilled Nursing Facility Care	100%	75%*
Hospice Care	100%	75%*
Home Health Care	100%	75%*
Temporomandibular Joint Syndrome	100%	75%*
Birth Center	100%	75%*
Prescription Drugs (other than by mail order)	100% after $5 employee copayment for brand name ($3 for generic)	75%**

Mail Order Prescription Drugs (60-90 day supply of maintenance drugs only)	100% after $5 employee copayment	100% (not subject to regular deductible) after $5 employee co-payment (not counted toward regular deductible)**
Claim System	Paperless	Forms Required
Approval by Utilization Review/Large Case Management	Physician-initiated; included in network management	Required. If approval not given, benefits reduced by 20% (except for mental health and substance abuse care where benefits reduced by 50%) both before and after annual out-of-pocket maximum is reached, and amount of reduction is not counted toward that maximum.

† The medically necessary health care services for which out-of-network benefits will be paid are those listed in subparagraphs 1 through 7 of Part A, Section 5, of this Agreement.

* Benefits reduced by 20% if care is not approved by utilization review program.

♦ Benefits reduced by 50% if care is not approved by utilization review program.

** Benefits not generally subject to utilization review program but may be reviewable in specific circumstances with advance notice to the employee; in such cases, benefits reduced by 20% if care not approved by utilization review program.

At any time after the expiration of two years from the effective date of implementation of the first managed care network, either the carriers or the organizations may bring before the Joint Plan Committee for consideration a proposal to change the Plan's in-network or out-of-network benefits for the purpose of promoting an increase in the use of in-network providers by Plan participants.

Section 5 - Comprehensive Health Care Benefits

The comprehensive health care benefits provided under the Plan in geographical areas where managed care networks are not available to Plan participants and their dependents, and in cases where a Plan participant has elected to be covered, along with his or her dependents, by such comprehensive benefits rather than to be enrolled in a managed care network, shall be as

described below. Terms used in such description shall have the same meaning as they have in the Plan.

After satisfaction of an annual deductible of $100 per covered individual or $300 per family unit of three or more, the Plan will pay 85%, and the covered individual 15%, of certain health care expenses, up to an annual out-of-pocket maximum (which shall not include the deductible) of $1,500 per covered individual or $3,000 per family. The expenses counted toward the $3,000 annual family out-of-pocket maximum will include those, which are otherwise eligible, incurred on behalf of a covered employee and each of his or her covered dependents regardless of whether the employee or dependent has reached the $1,500 individual annual out-of-pocket maximum. Once the applicable annual out-of-pocket maximum has been reached, the Plan will pay 100% of such reasonable charges up to an overall lifetime maximum of $1 million per covered individual, restorable at a rate of $5,000 per year; provided, however, that there shall be a separate lifetime maximum of $100,000 per covered individual, restorable at a rate of $500 per year, for Plan benefits for the treatment of mental and/or nervous conditions and substance abuse. (Benefits counted for purposes of determining whether or not a lifetime maximum has been reached are all benefits paid under the Plan as amended by this Agreement and all Major Medical Expense Benefits paid under the Plan prior to such amendments.) The Plan will pay 85% of the reasonable charges for medically necessary health care services as follows:

1. All expenses that are "Covered Expenses" (as defined in the Plan) at any time under the current major medical expense benefits provisions of the Plan, and not within any exclusion from or limitation upon them, except that the exclusion for treatment of polio will be removed.

2. Expenses for mammograms described in American Cancer Society guidelines, childhood disease immunization, pap smears and colorectal cancer screening.

3. Donor expense benefits as now defined.

4. Jaw joint disorder benefits as now defined, and subject to the current exclusions from and limitation on them, except that the $50 separate lifetime cash deductible will be removed.

5. Home health care expense benefits as now defined, subject to the current exclusions from and limitation on them, except that the exclusion that governs if polio benefits are payable will be removed.

6. Treatment center expense benefits, subject to the current exclusions from and limitation on them, except that

   a. the separate $100 cash deductible per confinement will be removed in connection with benefits for transportation to a treatment center, and

   b. the separate $100 cash deductible per benefit period and the $40 maximum limitation on benefits per episode of treatment — all with regard to outpatient benefits — will be removed.

7. Expenses for the services of psychologists if benefits would be paid for such services had they been rendered by a physician.

The Plan will provide the same benefits to all employees eligible for Plan coverage, including those in their first year of such eligibility and those eligible for extended Plan coverage because of disability.

The Plan's comprehensive health care benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5.00 per prescription, 100% of the cost of prescriptions covering a 60-to-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100/$300 deductible and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Strengthened Utilization Review and Case Management

The Plan's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under the Plan: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where, pursuant to standards developed by the Joint Plan Committee, prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by the Plan incurs expenses without the requisite approval of the Plan's utilization review/case management contractor, such benefits as the Plan would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as the Plan would otherwise pay will be reduced by one-half. These reductions will continue to apply after the out-of-pocket maximum is reached, i.e., the 100% benefit will become 80% (or 50%, as the case may be) if approval by the utilization review/case management contractor is not obtained.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by the Joint Plan Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

Section 7 - Coordination of Benefits

The Plan's coordination of benefit rules shall be changed so that the Plan will pay no benefit to any covered individual that would cause the sum of the benefits paid by the Plan and by any other plan with which the Plan coordinates benefits to exceed (a) the maximum benefit available under the more generous of the Plan and such other plan, or (b) with respect only to spouses who are both covered as employees under the Plan (and the Dependents of such spouses), and to spouses one of whom is covered as an employee under the Plan and the other as a retired railroad employee under the Railroad Employees National Early Retirement Major Medical Benefit Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by the Plan.

Section 8 - Medicare Part B Premiums

Active employees currently covered by Medicare Part B and those who elect to enroll in Medicare Part B when they become eligible shall not be reimbursed for premiums they pay for such Part B Medicare participation unless Medicare is their primary payor of medical benefits.

Section 9 - Solicitation of Bids

As promptly as practicable, the Joint Plan Committee will solicit bids from qualified entities for the performance of (a) all managed care functions under the Plan, including without limitation the establishing and/or arranging for the use by individuals covered by the Plan of managed networks of health care providers in those geographical areas where it is feasible to do so, and (b) all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions. Hospital associations shall be incorporated into the managed care networks wherever appropriate.

Upon the expiration of three years from July 29, 1991 the Joint Plan Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management and/or managed care functions, unless the Committee unanimously determines not to seek bids for any one or more of the services involved in the administration of the Plan.

Part B - Early Retirement Major Medical Benefit Plan

Section 1 - Continuation of Plan

The Railroad Employees Early Retirement Major Medical Benefit Plan ("ERMA"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to ERMA will be

offset by the expeditious use of such amounts as may at any time be in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with ERMA and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in the special account maintained at The Travelers Insurance Company in connection with the obligations of ERMA to pay benefits incurred but not paid at the time of termination of ERMA, in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $1 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $1 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

Section 2 - Change to Self-Insurance

ERMA will be wholly self-insured. It will be administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Coordination of Benefits

ERMA's coordination of benefit rules shall be changed so that ERMA will pay no benefit to any covered individual that would cause the sum of the benefits paid by ERMA and by any other plan with which ERMA coordinates benefits to exceed (a) the maximum benefit available under the more generous of ERMA and such other plan, or (b) with respect only to spouses who are both covered as retired railroad employees under ERMA (and the Dependents of such spouses), and to spouses one of whom is covered as a retired railroad employee under ERMA and the other as an employee under the Railroad Employees National Health and Welfare Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by ERMA.

Section 4 - Strengthened Utilization Review and Case Management

ERMA's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under ERMA: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by ERMA incurs expenses without the requisite approval of ERMA's utilization review/case management contractor, such benefits

as ERMA would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as ERMA would otherwise pay will be reduced by one-half.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by mutual agreement between the Chairman of the Health and Welfare Committee, Cooperating Railway Labor Organization and of the National Carriers' Conference Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

The standards developed by the Joint Plan Committee for determining whether or not prior approval is feasible and cost-efficient under the Health and Welfare Plan shall be applied by the National Carriers' Conference Committee under ERMA, and the utilization review/case management contractor(s) selected by the Joint Plan Committee under the Health and Welfare Plan shall be selected by the National Carriers' Conference Committee under ERMA.

Section 5 - Mail Order Prescription Drug Benefit

The Plan's benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5 per prescription, 100% of the cost of each prescription covering a 60-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100 deductible, and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Solicitation of Bids

As promptly as practicable, the National Carriers' Conference Committee will solicit bids from qualified entities for the performance of all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions.

Upon the expiration of three years from July 29, 1991 the National Carriers' Conference Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management function, unless the Committee determines not to seek bids for any one or more of the services involved in the administration of the Plan.

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr
Chairman

D. P LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#1

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to the $2,000 lump sum payment provided for in Article I, Section 1 of this Agreement. In the case of an employee who was recalled from reserve status and performed active military service during 1990 as a result of the Persian Gulf crisis, such employee will be credited with 40 hours of compensated service (48 hours in the case of a monthly rated employee whose rate is predicated on an all-service performed basis) for each week of such military service for purposes of calculating eligibility for the lump sum amount provided he would otherwise have been in active service for the carrier.

Very truly yours,

C. I. Hopkins, Jr.

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CHARLES I HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#2

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to the Lump Sum Payment provided in Article I, Section 1 of the Agreement of this date.

This confirms our understanding that days during the year 1990 for which employees in a furloughed status received compensation pursuant to guarantees in protective agreements or arrangements shall be included in determining qualifications for the Lump Sum Payment.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

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CHARLES L HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G. F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#2A

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to the increase in wages provided for in Section 2 of Article I of the Agreement of this date.

It is understood that the retroactive portion of that wage increase will be paid within 60 days from the date of this Agreement. It is further understood that it shall be applied only to employees who continued their employment relationship under an agreement with the International Association of Machinists and Aerospace Workers up to the date of this Agreement or who retired or died subsequent to July 1, 1991.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

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CHARLES I HOPKINS, Jr
Chairman

D. P LEE
Vice Chairman and
General Counsel

G. F DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#3

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to the Lump Sum Payments provided in Articles I and II of the Agreement of this date.

All of the lump sum payments provided for in Article II are based in part on the number of straight time hours paid for that are credited to an employee for a particular period. However, the number of straight time hours so credited does not include any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements.

The inclusion of the term "guarantees in protective agreements or arrangements" in Article II means that an employee receiving such a guarantee will have included in the straight time hours used in calculating his lump sum payments under this Article all such hours paid for under any protective agreement or allowance provided, however, that in order to receive credit for such hours an employee must not be voluntarily absent from work, meaning that hours are not counted if an employee does not accept calls to report for work.

It is understood that any lump sum payment provided in Articles I and II of the Agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

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Chairman

D P. LEE
Vice Chairman and
General Counsel

G. F DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#4

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to the lump sum payments provided for in Article II of this Agreement.

Sections 1 to 4, inclusive, of Part A of Article II - Cost-of-Living Payments are structured so as to provide lump sum payments that are essentially based on the number of straight time hours credited to an employee during a specified 12-month base period. Section 8 provides that all of these lump sum payments are payable to an employee who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payment. Thus, for example, under Section 1 of Part A of Article II, except for an employee who has retired or died, the agreement requires that an employee have an employment relationship as of the date the payment is made (i.e., within 60 days from the date of this Agreement) in order to receive a lump sum payment which will be based essentially on the number of straight time hours credited to such employee during a period running from April 1, 1991 through March 31, 1992.

The intervals between the close of the measurement periods and the actual payments established in the December 18, 1987 National Agreement were in large part a convenience to the carriers in order that there be adequate time to make the necessary calculations.

In recognition of this, we again confirm the understanding that an individual having an employment relationship with a carrier on the last day of a particular measurement period will not be disqualified from receiving the lump sum (or portion thereof) provided for in the event his employment relationship is terminated following the last day of the measurement period but prior to the payment due date. For purposes of Section 1 only, this letter shall apply solely to those individuals having an employment relationship with the carrier on the date of this Agreement.

Very truly yours,

C. I. Hopkins, Jr.

NATIONAL RAILWAY LABOR CONFERENCE

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CHARLES L HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#5

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to Article III of this Agreement and specifically to Part A of Appendix I thereof dealing with the Railroad Employees National Health and Welfare Plan (the "Plan"), and in particular to one facet of the arrangements for funding the benefits provided for under the Plan.

It is understood that, insofar as carriers represented by the National Carriers' Conference Committee in connection with health and welfare matters but not in connection with wages and cost-of-living adjustments are concerned, the cost-of-living adjustments for 1993 and thereafter that may have already been agreed to by such carriers, or that may be agreed to in the future, shall be adjusted—unless the agreement involved, reached on an individual property basis, provides as a part of the wage settlement that the employees covered by it shall not share in any year-to-year increases in Plan costs—so that the employees covered by such agreements shall receive cost-of-living adjustments that are less (than they would otherwise receive) by an amount equal to the lesser of (i) one-quarter of the year-to-year increases in the carriers' payment rate for the foreign-to-occupation portion of health benefits under the Plan as defined in the Agreement referred to in the first paragraph of this letter and (ii) one-half of the amount, pro-rated where appropriate, they would otherwise receive.

If the parties involved are unable to reach agreement on the specific manner of making the adjustments, or on any other terms and conditions regarding the adjustments, it is understood that such dispute shall be submitted, upon the written notice by either party, to arbitration by a neutral arbitrator within thirty (30) days after such notice is transmitted by one party to the other. Should the parties involved fail to agree on selection of a neutral arbitrator within five (5) calendar days from the date the dispute is submitted to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternatively striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel. The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses should be paid for by the party incurring

them. The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator shall not accept oral testimony at the hearing, and no transcript of the hearing shall be made.

Each party, however, may present oral arguments at the hearing through its counsel or other designated representative. The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

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CHARLES I. HOPKINS, Jr.
Chairman

D. P LEE
Vice Chairman and
General Counsel

G. F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#6

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to Section 4 of Article IV - Supplemental Sickness of the Agreement of this date. The parties agree to accept the recommendations of the subcommittee referred to in that Section and intend to modify existing administrative procedures of the Supplemental Sickness Benefit Plan (Plan) within 60 days from the date of this Agreement, unless otherwise indicated, to provide as follows:

1. Plan benefits will commence for qualified employees after all certification requirements (i.e., claim application, employer certification, physician certification, and Railroad Unemployment Insurance eligibility) have been met and before the Railroad Retirement Board pays RUIA sickness benefits, providing the insurance company administering the Plan continues to have access to the Board's eligibility data base.

2. During the first thirty (30) days of a qualified disability, assuming all certification requirements have been met timely, Plan benefits will be paid covering the first fourteen (14) days of disability so that qualified disabled employees receive their first benefit checks on or about the thirtieth (30th) day of disability following their application for benefits. Benefit payments thereafter would follow the established thirty (30) day payment cycle.

3. Participating railroads, particularly those that have 500 or more employees enrolled in a Plan, will be urged to provide employee certification information through an established electronic certification process as promptly as possible.

Participating railroads that have had continuing difficulty in providing employee certification information on a timely basis will be urged to adopt procedures permitting employees to receive on-site employer certification of their eligibility. On-site employer certification procedures will be developed as reasonably promptly as possible, but not later than five months from the date of this Agreement. This relates to the development of "on-site employer certification procedures" under the revised supplemental sickness plan.

4. The hourly rates of pay used to define various Plan benefit amount classification will be automatically adjusted, during the moratorium periods of applicable national agreements, when rates of pay are adjusted for railroad employees covered by the Plan pursuant to such agreements. This modification will not change the benefits provided, but it will permit employer certification information to be provided more quickly.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

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CHARLES L HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#7

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This is to confirm our understanding regarding the resolution of disputes under Article II of the September 25, 1964 Agreement, as amended by Article VI of this Agreement.

Until the parties have established a forum or forums for before-the-fact arbitration of contracting out disputes, any such dispute will proceed on an after-the-fact basis, i.e., the carrier will be free to proceed forthwith with the contracting-out and any dispute may be progressed to a Public Law Board on an expedited basis, or any other forum on which the parties may mutually agree.

The parties shall meet promptly to reach agreement on language to implement the recommendations of Presidential Emergency Board 219, as interpreted and clarified by Special Board 102-29, on the procedures for arbitrating contracting-out disputes. If complete agreement on language is not reached by the parties by December 15, 1992, any party may refer any areas of disagreement to a Public Law Board, or any other forum on which the parties may mutually agree, for resolution on an expedited basis, provided that any disagreement over the uniform rate to be paid arbitrators shall be resolved by the Chairman of the National Mediation Board.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D. P LEE
Vice Chairman and
General Counsel

G. F DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#8

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to Article VI, Subcontracting, of the Agreement of this date and our understanding with respect to disputes arising on the former Southern Railway Company under the provisions of Articles I and II of the January 27, 1965 Agreement.

This will confirm our understanding that all disputes under Article I, Employee Protection, of that agreement shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

This will also confirm our understanding that Article II of the January 27, 1965 Agreement is amended to read identical to Article VI of the Agreement of this date.

It is further agreed that a single system subcontracting expedited arbitration panel shall be established in accordance with Article VI of the Agreement of this date, and such panel shall have exclusive jurisdiction of disputes arising on the former Southern Railway Company under the provisions of Article II of the January 27, 1965 Agreement, as amended by the Agreement of this date, and on Norfolk and Western Railway Company under the provisions of Article II of the September 25, 1964 Agreement, as amended by the Agreement of this date.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES L HOPKINS, Jr
Chairman

D. P LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#9

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This is to confirm our understanding that a synthesis of the September 25, 1964 Agreement, as amended, showing all changes made during this round of bargaining and all changes made in the past which remain in effect after this bargaining round shall be prepared by the parties as soon as possible.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G. F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#10

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This is to confirm our understanding that carriers not participating in national handling and therefore not subject to the revisions to the September 25, 1964 Agreement, as amended, shall continue to be bound by that Agreement as it existed prior to changes effectuated by the Agreement of this date.

Subcontracting disputes arising prior to the effective date of this Agreement shall continue to be handled in accordance with the dispute resolution procedures at the time the dispute arose.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W. WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#11

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C.

Dear Mr. Peterpaul:

This refers to Article VI, Subcontracting, of the Agreement of this date and will confirm our understanding that Electrical Power Purchase Agreements (EPPAs) and similar arrangements are within the scope of the September 25, 1964 Agreement, as amended.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W., WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D P. LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations

July 31, 1992

#12

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This refers to Article VI, Subcontracting, of the Agreement of this date and will confirm our understanding that the question of whether work on TTX cars by TTX employees should be allowed on tracks leased from a carrier is to be treated in the same manner as EPPAs.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES L HOPKINS, Jr.
Chairman

D P LEE
Vice Chairman and
General Counsel

G. F. DANIELS
Vice Chairman

R T Kelly
Director of Labor Relations

July 31, 1992

#13

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This confirms our understanding with respect to the Agreement of this date.

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation. This shall not be construed to preclude any party from relying on the Proceedings and Report of Presidential Emergency Board 220.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N W., WASHINGTON D C 20036/AREA CODE 202-862 7200

CHARLES I. HOPKINS, Jr
Chairman

D P LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#14

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Peterpaul:

This is to confirm our understanding that the amendments to the September 25, 1964 Agreement resulting from Article VI, Subcontracting of the Agreement of this date shall be applied only on those carriers party to the September 25, 1964 Agreement. Such amendments shall not be applied to affect subcontracting provisions in existing agreements on carriers not party to the September 25, 1964 Agreement, unless agreed otherwise between your organization and such non-party carrier(s).

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES L HOPKINS, Jr
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R T Kelly
Director of Labor Relations

July 31, 1992

#15

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Peterpaul:

This refers to Article VII, Skill Differentials, of the Agreement of this date. This is to confirm our understanding regarding certain of the terms used therein:

Classroom Instructor - A machinist designated by carrier to provide classroom instruction;

EMD Turbocharger Room Work - Rebuilding of EMD turbochargers in the designated rebuilding area for turbochargers;

Traveling Roadway Machinists - Machinists that regularly perform maintenance of way field service; does not include any machinist in such service assigned in shops;

Precision Machine Operators - Operators on precision machines such as the following: wheel truing machines, treadmills, axle lathes, wheel boring mills, engine line boring, traction motor line boring, wheel mounting press, engine lathe. This category does not include machines such as grinders, drill presses, punches, shears, threaders, saws, honing, and the like, hand-held tools or portable machines;

Governor Room Work - Assemble and test mechanical engine governor in the governor room;

Air Room Work - Assemble and test air brake valves in the air room;

Engine Rebuild - Build-up of locomotive diesel engine (out of locomotive car body);

Alignment of the following - Main generators/alternators, Air Compressors (mechanical drive), Auxiliary generators, Fan Drives/Equipment Blowers (mechanical drive);

Gear Trains - Build-up locomotive gear trains.

The parties agree that this letter is limited solely to implementation of Article VII - Skill Differentials of this Agreement and that it will not be used by either party in any manner with respect to the interpretation or application of any rule or practice.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON, D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#16

Mr. John F. Peterpaul, General Vice President
International Association of Machinists and
Aerospace Workers
1300 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Peterpaul:

This refers to Article VII, Skill Differentials, of the Agreement of this date and will confirm our understanding that its implementation is not intended to disrupt carrier operations or unnecessarily increase costs. In furtherance of that mutual intent the parties agree that:

1. Implementation of this Article will not require rebulletining of any existing position.

2. Application of differentials under this Article to non-full time assignments in which a differential is paid will not, in and of itself, require the establishment or advertisement of any position.

3. Employees seeking to qualify and train for work subject to a differential under this Article will qualify and train on own time for such work. Employees will be given reasonable cooperation from their supervisors to do so.

4. An employee bidding on an assignment subject to a differential under this Article must be qualified, or demonstrate qualifications to carrier on own time, for such assignment before expiration of bid period.

5. Prior to displacing onto a position subject to a differential under this Article, an employee must be qualified, or demonstrate qualifications to carrier on own time. This includes an employee returning from leave of absence, vacation, illness, etc. and seeking to displace onto a position that was bulletined during the employee's absence.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D. P. LEE
Vice Chairman and
General Counsel

G. F. DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

July 31, 1992

#17

Mr. J. F. Peterpaul
General Vice President
International Association
of Machinists & Aerospace Workers
1300 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036

Dear Mr. Peterpaul:

This refers to our discussions with respect to Article VII - Skill Differentials. During our discussion it was understood that sufficiently before January 1, 1993 the local IAM representative and appropriate carrier officer will jointly review the application of Article VII as to that particular property.

If, at any time a local IAM representative believes that there should be adjustments in the application of the differentials, he may contact the appropriate carrier officer and advise him of this matter and any information that supports his position. A carrier designee will schedule the matter for conference with the IAM representative. The parties will be free to make any adjustments that they jointly deem appropriate.

If the local question concerning the applicability of a skill differential to a position is not resolved between the local IAM representative and appropriate carrier officer the question will be referred to the General Chairman and chief mechanical officer or their respective designees for resolution.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

EXHIBIT A
(IAM)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED ON OR ABOUT JANUARY 20, 1988 OF DESIRE TO CHANGE EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH THEREIN (EPPA) AND NOTICES DATED ON OR ABOUT APRIL 18, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN APPENDICES "A," "B," "C" AND "D" THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMEN OR OTHER RECOGNIZED REPRESENTATIVES OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 10, 1989 FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Association of Machinists and Aerospace Workers.

Alameda Belt Line Railway
Alton & Southern
Atchison, Topeka & Santa Fe
Burlington Northern Railroad
1 - Canadian National Railways
  Great Lakes Region Lines in U.S.
  St. Lawrence Region Lines in U.S.
1 - Canadian Pacific Limited
CSX TRANSPORTATION:
  Baltimore and Ohio Railroad
  Baltimore and Ohio Chicago Terminal RR.
  Chesapeake and Ohio Railway
  Clinchfield Railroad
  Seaboard System Railroad
2 - Louisville and Nashville Railroad (former)
2 - Seaboard Coast Line Railroad (former)
  Western Maryland Railway Co.
3 - Chicago & Illinois Midland Railway
Chicago & North Western Trans. Co.
Colorado & Wyoming Railway
Consolidated Rail Corporation
Denver and Rio Grande Western Railroad
Duluth, Winnipeg & Pacific Railway
1 - Elgin, Joliet & Eastern Railway
1 - Grand Trunk Western Railroad
Houston Belt and Terminal Railway
Illinois Central Railroad
Kansas City Southern Railway
  Louisiana & Arkansas Railway
  Soo Line-KCS Joint Agency

1 - Kansas City Terminal Railway
4 - Lake Superior & Ishpeming Railroad
Manufacturers Railway
1 - Meridian & Bigbee Railroad
Missouri Pacific Railroad
1 - Galveston, Houston and Henderson Railroad
Missouri-Kansas-Texas Railroad
Oklahoma, Kansas & Texas Railroad
3 - Monongahela Railway
New Orleans Public Belt Railroad
1 - Norfolk and Portsmouth Belt Line Railroad
Norfolk Southern Railway Company
Alabama Great Southern Railroad
Atlantic and East Carolina Railway
Carolina & Northwestern Railway
Central of Georgia Railroad
Cincinnati, New Orleans & Texas Pacific Ry.
Georgia Southern and Florida Railway
Interstate Railroad
New Orleans Terminal Co.
Norfolk and Western Railway
St. Johns River Terminal Company
Tennessee, Alabama and Georgia Railway
Tennessee Railway
Oakland Terminal Railway
Ogden Union Railway and Depot Co.
Peoria & Pekin Union Railway
3 - Pittsburgh & Lake Erie Railroad
Port Terminal Railroad Association
Portland Terminal Railroad Company
Richmond, Fredericksburg & Potomac Railway
Sacramento Northern Railway
St. Louis Southwestern Railway
Southern Pacific Transportation Co.
Eastern Lines
Western Lines
Terminal Railroad Association of St. Louis
1 - Texas Mexican Railway
5 - Union Pacific Railroad
Western Pacific Railroad

NOTES:

1 - Health and Welfare only.
2 - Includes notices served by the organization on or about October 30, 1981 and proposals served by the carrier for concurrent handling therewith (NMB Case No. A-11071).
3 - Health and Welfare and Supplemental Sickness only.

4 - Excludes Health and Welfare and Supplemental Sickness.
5 - Includes former Spokane International Railroad employees.

- -

FOR THE CARRIERS:

FOR THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS:

Washington, D. C.
July 31, 1992

IMPOSED AGREEMENT

THIS IMPOSED AGREEMENT, made this 27th day of November, 1991, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the Sheet Metal Workers' International Association, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

Each employee subject to this Imposed Agreement who qualified for an annual vacation in the calendar year 1991 will be paid $2,000. Those employees who during the calendar year 1990 failed to qualify for an annual vacation in the calendar year 1991 will be paid a proportional share of that amount, based on the percentage of the qualifying period satisfied. This Section shall be applicable solely to those employees subject to this Imposed Agreement who had an employment relationship as of July 29, 1991 or who have retired or died subsequent to January 1, 1990. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section 2 - First General Wage Increase

Effective July 1, 1991, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 1991 for employees covered by this Imposed Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied as follows:

(a) Hourly Rates -

Add 3 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 2 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 3 - Second General Wage Increase

Effective July 1, 1993, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1993 for employees covered by this Imposed Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 2 hereof.

Section 4 - Third General Wage Increase

Effective July 1, 1994, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1994 for employees covered by this Imposed Agreement shall be increased in the amount of four (4) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 2 hereof.

ARTICLE II - COST-OF-LIVING PAYMENTS

PART A - Cost-of-Living Lump Sum Payments Through January 1, 1995

Section 1 - First Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1991 through March 31, 1992, will receive a lump sum payment on July 1, 1992 of $1,019.00.

Section 2 - Second Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 1,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1992 through September 30, 1992, will receive a lump sum payment on January 1, 1993 equal to the difference between (i) $1,019.00, and (ii) the lesser of $510.00 and one quarter of the amount, if any, by which the carriers' 1993 payment rate for foreign-to-occupation health benefits under the Railroad Employees National Health and Welfare Plan (the "Plan") exceeds the sum of (a) the amount of such payment rate for 1992 and (b) the amount per covered employee that will be taken during 1993 from that certain special account maintained at The Travelers Insurance Company known as the "Special Account Held in Connection with the Amount for the Close-Out Period" (the "Special Account") to pay or provide for Plan foreign-to-occupation health benefits.

Section 3 - Third Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1992 through September 30, 1993, will receive a lump sum payment on January 1, 1994 equal to the difference between (i) $1,049.00, and (ii) the lesser of $525.00 and one quarter of the amount, if any, by which the carriers' 1994 payment rate for foreign-to-occupation health benefits under the Plan exceeds the sum of (a) the amount of such payment rate for 1993 and (b) the amount per covered employee that will be taken during 1994 from the Special Account to pay or provide for Plan foreign-to-occupation health benefits.

Section 4 - Fourth Lump Sum Cost-of-Living Payment

Subject to Sections 6 and 7, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1993 through September 30, 1994, will receive a lump sum payment on January 1, 1995 equal to the difference between (i) $727.00, and (ii) the lesser of $364.00 and one quarter of the amount, if any, by which the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan exceeds the amount of such payment rate for 1994.

Section 5 - Definition of Payment Rate for Foreign-to-Occupation Health Benefits

The carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan

benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 hereof.

Section 6 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in any of the respective periods described in Sections 1 through 4 than the minimum number set forth therein, the dollar amounts specified in Section 1 and clause (i) of Sections 2-4 thereof shall be adjusted by multiplying such amounts by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during the applicable measurement period divided by the defined minimum hours. For any such employee, the dollar amounts described in clause (ii) of Sections 2-4 shall not exceed one-half of the dollar amounts specified in clause (i) thereof, as adjusted pursuant to this Section.

Section 7 - Lump Sum Proration

In the case of any employee subject to wage progression or entry rates, the dollar amounts specified in Section 1 and clause (i) of Sections 2 through 4 shall be adjusted by multiplying such amounts by the weighted average entry rate percentage applicable to wages earned during the specified determination period. For any such employee, the dollar amounts described in clause (ii) of Sections 2 through 4 shall not exceed one-half of the dollar amounts specified in clause (i) thereof, as adjusted pursuant to this Section.

Section 8 - Eligibility for Receipt of Lump Sum Payments

The lump sum cost-of-living payments provided for in this Article will be payable to each employee subject to this Imposed Agreement who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payments. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

PART B - Cost-of-Living Allowance and Adjustments Thereto After January 1, 1995

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments Thereto

(a) A cost of living allowance will be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS CPI. The first such cost-of-living allowance shall be payable effective July 1, 1995 based, subject to paragraph (d), on the BLS CPI for September 1994 as compared with the BLS CPI for March 1995. Such allowance, and further cost-of-living adjustments thereto which will become effective as described below, will be based on the change in the BLS CPI during the respective measurement periods shown in the following

table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment
September 1994	March 1995	July 1, 1995
March 1995	September 1995	January 1, 1996

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d) (i) Cap. In calculations under paragraph (e), the maximum increase in the BLS CPI that will be taken into account will be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 1995	3% of September 1994 CPI
January 1, 1996	6% of September 1994 CPI, less the increase from September 1994 to March 1995

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the BLS CPI in any measurement period shall be considered.

(iii) If the increase in the BLS CPI from the base month of September 1994 to the measurement month of March 1995 exceeds 3% of the

September base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment which will have become effective July 1, 1995 during such measurement period.

(iv) Any increase in the BLS CPI from the base month of September 1994 to the measurement month of September 1995 in excess of 6% of the September 1994 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the BLS CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion will not be counted.)

The cost-of-living allowance in effect on December 31, 1995 will be adjusted (increased or decreased) effective January 1, 1996 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the BLS CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December 31, 1995 if the BLS CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains above zero. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W Index during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W Index during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 1995 shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1994, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above. For the purpose of the foregoing calculation, the amount of any increase described in clause (ii) that has been taken into account in determining the amount received by the employee as a lump sum payment on January 1, 1995 shall not be taken into account.

(b) The cost-of-living allowance payable to each employee effective January 1, 1996, shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1996 payment rate for foreign-to-occupation health benefits under the Plan over the amount of such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above.

(c) The procedure specified in paragraph (b) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(d) The definition of the carriers' payment rate for foreign-to-occupation health benefits under the Plan set forth in Section 5 of Part A shall apply with respect to any year covered by this Section.

(e) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for in this Part will not become part of basic rates of pay. Such allowance will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number

of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory to this Imposed Agreement. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - HEALTH AND WELFARE PLAN AND EARLY RETIREMENT MAJOR MEDICAL BENEFIT PLAN

Part A - Health and Welfare Plan

Section 1 - Continuation of Plan

The Railroad Employees National Health and Welfare Plan (the "Plan"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to the Plan will be offset by the expeditious use of such amounts as may at any time be in Special Account A or in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with the Plan and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or

administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in that certain special account maintained at The Travelers Insurance Company, known as the "Special Account Held in Connection with the Amount for the Close-Out Period," relating to the obligations of the Plan to pay, among other things, benefits incurred but not paid at the time of termination of the Plan in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $25 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $25 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

In the event that a carrier participating in the Plan defaults for any reason, including but not limited to bankruptcy, on its obligation to contribute to the Plan, and the carrier's participation in the Plan terminates, the carriers remaining in the Plan shall be liable for any Plan contribution that was required of the terminating carrier prior to the effective date of its termination, but not paid by it. The remaining carriers shall be obligated to make up in a timely fashion such unpaid contribution of the terminating carrier in pro rated amounts based upon their shares of Plan contributions for the month immediately prior to such default.

Section 2 - Change to Self-Insurance

Except for life insurance, accidental death and dismemberment insurance, and all benefits for residents of Canada, the Plan will be wholly self-insured and administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Joint Plan Committee

The Joint Policyholder Committee shall be renamed the Joint Plan Committee. This change in name shall not in any way change the functions and responsibilities of the Committee.

A neutral shall be retained by and at the expense of the Plan for the duration of this Imposed Agreement to consider and vote on any matter brought before the Joint Plan Committee (formerly the Joint Policyholder Committee), arising out of the interpretation, application or administration (including investment policy) of the Plan, but only if the Committee is deadlocked with respect to the matter. A deadlock shall occur whenever the carrier members of the Committee, who shall have a total of one vote regardless of their number, and the organization members of the Committee, who shall also have a total of one vote regardless of their number, do not resolve a matter by a vote of two to nil and either side declares a deadlock.

If the members of the Joint Plan Committee cannot agree upon a neutral within 30 days of the date this Imposed Agreement becomes effective, either side may request the National Mediation Board to provide a list of seven persons from which the neutral shall be selected by the procedure of alternate striking. Joint Plan Committee members and the neutral shall, to the extent required by ERISA, be bonded at the expense of the Plan. The Joint Plan Committee shall have the power to create such subcommittees as it deems appropriate and to choose a neutral chairman for such subcommittees, if desired.

Section 4 - Managed Care

Managed care networks that meet standards developed by the Joint Plan Committee, or a subcommittee thereof, concerning quality of care, access to health care providers, and cost-effectiveness, shall be established wherever feasible as soon as practicable. Until a managed care network is established in a given geographical area, individuals in that area who are covered by the Plan will have the comprehensive health care benefit coverage described in Section 5 of this Part A. Each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area will be enrolled in the network (along with his or her covered dependents) unless the employee provides timely written notice to his or her employer of an election to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than to be enrolled in the network. Any such employee who provides such timely written notice shall have an annual opportunity to revoke his or her election by providing a written notice of revocation to his or her employer at least sixty days prior to January 1 of the calendar year for which such revocation shall first become effective. Similarly, each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area and is thereafter enrolled in the network (along with his or her covered dependents) shall have an annual opportunity to elect to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than continue to be enrolled in the network. This election may be made by such an employee by providing written notice thereof to his or her employer at least sixty days prior to January 1 of the calendar year for which the election shall first become effective. Each employee hired after a managed care network is established in his or her geographic area (and his or her covered dependents) will be enrolled in the network and may not thereafter elect to be covered by the comprehensive benefits until the January 1 which falls on or after the first anniversary of his or her initial date of eligibility for Plan coverage. Employees who return to eligibility for Plan coverage within 24 months of loss of eligibility for Plan coverage and whose employment relationship has not terminated at any time prior to such return will be enrolled in the program of Plan benefits in which they were enrolled when their eligibility for Plan coverage was lost, and shall thereafter have the same rights of election as other employees whose eligibility for Plan coverage was not lost.

Covered individuals enrolled in a managed care network will have a point of service option allowing them to choose an out-of-network provider to perform any covered health care service that they need. The benefits provided by the Plan when a service is performed by an in-network provider and the benefits provided by the Plan when the service is performed by an out-of-network provider will be as described in the table below:

PLAN FEATURE	IN-NETWORK	OUT-OF-NETWORK†
Primary Care Physician Required	Yes	No
Annual Deductible		
Individual	None	$100
Family	None	$300
		Deductible applies to all covered expenses
Plan/Employee Coinsurance	100%/0%	75%/25%
Annual Out-of-Pocket Maximum (exclusive of deductible)		
Individual	None	$1,500
Family	None	$3,000
Maximum Lifetime Benefit	None	$1,000,000 ($5,000 annual restoration)
Special Maximum Lifetime Benefit for Mental Health	None	$100,000 lifetime ($500 annual restoration)
Hospital Charges (inpatient and outpatient)	100%	75%*
Ambulatory Surgery	100%	75%*
Emergency Room	100% after $15 employee copayment	75%
Inpatient Mental Health & Substance Abuse		
Benefit		
Hospital	100%	75%*
Alternative Care -- Residential Treatment Center Inpatient or Partial Hospitalization/ Day Treatment	100%	75%*

Outpatient Mental Health & Substance Abuse	100% after $15 employee copayment per visit	75%*
Physician Services		
Surgery/Anesthesia	100%	75%*
Hospital Visits	100%	75%*
Office Visits	100% after $15 employee copayment	75%**
Diagnostic Tests	100%	75%*
Routine Physical	100% after $15 employee copayment	Not Covered
Well Baby Care	100% after $15 employee copayment	Not Covered
Skilled Nursing Facility Care	100%	75%*
Hospice Care	100%	75%*
Home Health Care	100%	75%*
Temporomandibular Joint Syndrome	100%	75%*
Birth Center	100%	75%*
Prescription Drugs (other than by mail order)	100% after $5 employee copayment for brand name ($3 for generic)	75%**
Mail Order Prescription Drugs (60-90 day supply of maintenance drugs only)	100% after $5 employee copayment	100% (not subject to regular deductible) after $5 employee co-payment (not counted toward regular deductible)**
Claim System	Paperless	Forms Required

Approval by Utilization Review/Large Case Management	Physician-initiated; included in network management	Required. If approval not given, benefits reduced by 20% (except for mental health and substance abuse care where benefits reduced by 50%) both before and after annual out-of-pocket maximum is reached, and amount of reduction is not counted toward that maximum.

† The medically necessary health care services for which out-of-network benefits will be paid are those listed in subparagraphs 1 through 7 of Part A, Section 5, of this Imposed Agreement.

* Benefits reduced by 20% if care is not approved by utilization review program.

♦ Benefits reduced by 50% if care is not approved by utilization review program.

** Benefits not generally subject to utilization review program but may be reviewable in specific circumstances with advance notice to the employee; in such cases, benefits reduced by 20% if care not approved by utilization review program.

At any time after the expiration of two years from the effective date of implementation of the first managed care network, either the carriers or the organizations may bring before the Joint Plan Committee for consideration a proposal to change the Plan's in-network or out-of-network benefits for the purpose of promoting an increase in the use of in-network providers by Plan participants.

Section 5 - Comprehensive Health Care Benefits

The comprehensive health care benefits provided under the Plan in geographical areas where managed care networks are not available to Plan participants and their dependents, and in cases where a Plan participant has elected to be covered, along with his or her dependents, by such comprehensive benefits rather than to be enrolled in a managed care network, shall be as described below. Terms used in such description shall have the same meaning as they have in the Plan.

After satisfaction of an annual deductible of $100 per covered individual or $300 per family unit of three or more, the Plan will pay 85%, and the covered individual 15%, of certain health care expenses, up to an annual out-of-pocket maximum (which shall not include the deductible) of $1,500 per covered individual or $3,000 per family. The expenses counted toward the $3,000 annual family out-of-pocket maximum will include those, which are otherwise eligible, incurred on behalf of a covered employee and each of his or her covered dependents regardless

of whether the employee or dependent has reached the $1,500 individual annual out-of-pocket maximum. Once the applicable annual out-of-pocket maximum has been reached, the Plan will pay 100% of such reasonable charges up to an overall lifetime maximum of $1 million per covered individual, restorable at a rate of $5,000 per year; provided, however, that there shall be a separate lifetime maximum of $100,000 per covered individual, restorable at a rate of $500 per year, for Plan benefits for the treatment of mental and/or nervous conditions and substance abuse. (Benefits counted for purposes of determining whether or not a lifetime maximum has been reached are all benefits paid under the Plan as amended by this Imposed Agreement and all Major Medical Expense Benefits paid under the Plan prior to such amendments.) The Plan will pay 85% of the reasonable charges for medically necessary health care services as follows:

1. All expenses that are "Covered Expenses" (as defined in the Plan) at any time under the current major medical expense benefits provisions of the Plan, and not within any exclusion from or limitation upon them, except that the exclusion for treatment of polio will be removed.

2. Expenses for mammograms described in American Cancer Society guidelines, childhood disease immunization, pap smears and colorectal cancer screening.

3. Donor expense benefits as now defined.

4. Jaw joint disorder benefits as now defined, and subject to the current exclusions from and limitation on them, except that the $50 separate lifetime cash deductible will be removed.

5. Home health care expense benefits as now defined, subject to the current exclusions from and limitation on them, except that the exclusion that governs if polio benefits are payable will be removed.

6. Treatment center expense benefits, subject to the current exclusions from and limitation on them, except that

   a. the separate $100 cash deductible per confinement will be removed in connection with benefits for transportation to a treatment center, and

   b. the separate $100 cash deductible per benefit period and the $40 maximum limitation on benefits per episode of treatment — all with regard to outpatient benefits — will be removed.

7. Expenses for the services of psychologists if benefits would be paid for such services had they been rendered by a physician.

The Plan will provide the same benefits to all employees eligible for Plan coverage, including those in their first year of such eligibility and those eligible for extended Plan coverage because of disability.

The Plan's comprehensive health care benefits will include, where permissible under applicable law, a mail order prescription drug benefit that

will reimburse a covered individual, after he or she pays $5.00 per prescription, 100% of the cost of prescriptions covering a 60-to-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100/$300 deductible and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Strengthened Utilization Review and Case Management

The Plan's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under the Plan: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where, pursuant to standards developed by the Joint Plan Committee, prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by the Plan incurs expenses without the requisite approval of the Plan's utilization review/case management contractor, such benefits as the Plan would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as the Plan would otherwise pay will be reduced by one-half. These reductions will continue to apply after the out-of-pocket maximum is reached, i.e., the 100% benefit will become 80% (or 50%, as the case may be) if approval by the utilization review/case management contractor is not obtained.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by the Joint Plan Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

Section 7 - Coordination of Benefits

The Plan's coordination of benefit rules shall be changed so that the Plan will pay no benefit to any covered individual that would cause the sum of the benefits paid by the Plan and by any other plan with which the Plan coordinates benefits to exceed (a) the maximum benefit available under the more generous of the Plan and such other plan, or (b) with respect only to spouses who are both covered as employees under the Plan (and the Dependents of such spouses), and to

spouses one of whom is covered as an employee under the Plan and the other as a retired railroad employee under the Railroad Employees National Early Retirement Major Medical Benefit Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by the Plan.

Section 8 - Medicare Part B Premiums

Active employees currently covered by Medicare Part B and those who elect to enroll in Medicare Part B when they become eligible shall not be reimbursed for premiums they pay for such Part B Medicare participation unless Medicare is their primary payor of medical benefits.

Section 9 - Solicitation of Bids

As promptly as practicable, the Joint Plan Committee will solicit bids from qualified entities for the performance of (a) all managed care functions under the Plan, including without limitation the establishing and/or arranging for the use by individuals covered by the Plan of managed networks of health care providers in those geographical areas where it is feasible to do so, and (b) all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions. Hospital associations shall be incorporated into the managed care networks wherever appropriate.

Upon the expiration of three years from the effective date of this Imposed Agreement, the Joint Plan Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management and/or managed care functions, unless the Committee unanimously determines not to seek bids for any one or more of the services involved in the administration of the Plan.

Part B - Early Retirement Major Medical Benefit Plan

Section 1 - Continuation of Plan

The Railroad Employees Early Retirement Major Medical Benefit Plan ("ERMA"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to ERMA will be offset by the expeditious use of such amounts as may at any time be in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with ERMA and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in the special account maintained at The Travelers Insurance Company in connection with the obligations of ERMA to pay benefits incurred but not paid at the time of termination of ERMA,

in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $1 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $1 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

Section 2 - Change to Self-Insurance

ERMA will be wholly self-insured. It will be administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Coordination of Benefits

ERMA's coordination of benefit rules shall be changed so that ERMA will pay no benefit to any covered individual that would cause the sum of the benefits paid by ERMA and by any other plan with which ERMA coordinates benefits to exceed (a) the maximum benefit available under the more generous of ERMA and such other plan, or (b) with respect only to spouses who are both covered as retired railroad employees under ERMA (and the Dependents of such spouses), and to spouses one of whom is covered as a retired railroad employee under ERMA and the other as an employee under the Railroad Employees National Health and Welfare Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by ERMA.

Section 4 - Strengthened Utilization Review and Case Management

ERMA's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under ERMA: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by ERMA incurs expenses without the requisite approval of ERMA's utilization review/case management contractor, such benefits as ERMA would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as ERMA would otherwise pay will be reduced by one-half.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the

utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by mutual agreement between the Chairman of the Health and Welfare Committee, Cooperating Railway Labor Organization and of the National Carriers' Conference Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

The standards developed by the Joint Plan Committee for determining whether or not prior approval is feasible and cost-efficient under the Health and Welfare Plan shall be applied by the National Carriers' Conference Committee under ERMA, and the utilization review/case management contractor(s) selected by the Joint Plan Committee under the Health and Welfare Plan shall be selected by the National Carriers' Conference Committee under ERMA.

Section 5 - Mail Order Prescription Drug Benefit

The Plan's benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5 per prescription, 100% of the cost of each prescription covering a 60-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100 deductible, and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Solicitation of Bids

As promptly as practicable, the National Carriers' Conference Committee will solicit bids from qualified entities for the performance of all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions.

Upon the expiration of three years from the date of this Imposed Agreement, the National Carriers' Conference Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management function, unless the Committee determines not to seek bids for any one or more of the services involved in the administration of the Plan.

ARTICLE IV - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended effective January 1, 1982 (Sickness Agreement), shall be further amended as provided in this Article for periods of disability commencing on or after July 1, 1991.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on January 1, 1982 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning	$13.95 or more	$2,427 or more
Class II Employees Earning	$11.40 or more but less than $13.95	$1,984 or more but less than $2,427
Class III Employees Earning	Less than $11.40	Less than $1,984

Basic and Maximum Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$926	$674	$1,600
Class II	$749	$674	$1,423
Class III	$595	$674	$1,269

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,716
Class II	$1,525
Class III	$1,361

Section 2 - Plan Benefits During Initial Registration Period

An employee who is eligible to receive Plan benefits during his initial RUIA registration period shall receive from the Plan, for the fifth through the fourteenth days of disability in that period, the Basic Benefit specified in the Plan plus an amount equal to the total RUIA benefit that would have been payable

to him for days of sickness in that period but for application of the initial waiting period mandated by existing law.

Section 3 - Adjustment of Plan Benefits During Imposed Agreement Term

Effective December 31, 1994, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

Section 4 - Administrative and Procedural Improvements

The parties have selected and established a subcommittee for the purpose of reviewing and making recommendations with respect to administrative and procedural improvements that would expedite the handling and disposition of Plan claims without affecting the integrity of the Plan. The parties shall consider the subcommittee's recommendations at the earliest opportunity, but no later than sixty (60) days after the effective date of this Article, and shall use their best efforts to reach agreement on implementing such recommendations.

ARTICLE V - SUBCONTRACTING

Article II, Subcontracting, of the September 25, 1964 National Agreement, as amended, is further amended as follows to implement the report and recommendations of Presidential Emergency Board No. 219, as interpreted and clarified by Special Board 102-29, and that report and recommendations as well as the questions and answers that interpret and clarify them are specifically incorporated herein by reference:

Article II - Subcontracting

The work set forth in the classification of work rules of the crafts parties to the Imposed Agreement or, in the scope rule if there is no classification of work rule, and all other work historically performed and generally recognized as work of the crafts pursuant to such classification of work rules or scope rules where applicable, will not be contracted except in accordance with the provisions of Sections 1 through 4 of this Article II. The maintenance and repair of equipment which has been historically (not necessarily exclusively) maintained and repaired by a carrier's own employees, no matter how purchased or made available to the carrier, shall not be contracted out by the carrier except in the manner specified. In determining whether work falls within either of the preceding sentences, the practices at the facility involved will govern.

Section 1 - Applicable Criteria

Subcontracting of work, including unit exchange, will be done only when genuinely unavoidable because (1) managerial skills are not available on the property but this criterion is not intended to permit subcontracting on the ground that there are not available a sufficient number of supervisory personnel possessing the skills normally held by such personnel; or (2) skilled manpower is not available on the property

from active or furloughed employees; or (3) essential equipment is not available on the property; or (4) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or (5) such work cannot be performed by the carrier except at a significantly greater cost, provided the cost advantage enjoyed by the subcontractor is not based on a standard of wages below that of the prevailing wages paid in the area for the type of work being performed and provided further that if work which is being performed by railroad employees in a railroad facility is subcontracted under this criterion, no employees regularly assigned at that facility at the time of the subcontracting will be furloughed as a result of such subcontracting. Unit exchange as used herein means the trading in of old or worn equipment or component parts, receiving in exchange new, upgraded or rebuilt parts, but does not include the purchase of new equipment or component parts. As to the purchase of component parts which a carrier had been manufacturing to a significant extent, such purchases will be subject to the terms and conditions of this Article II.

Section 2 - Advance Notice - Submission of Data - Conference

If the carrier decides that in the light of the criteria specified above it is necessary to subcontract work of a type currently performed by the employees, it shall give the General Chairman of the craft or crafts involved notice of intent to contract out and the reasons therefor, together with supporting data sufficient to enable the General Chairman to determine whether the contract is consistent with the criteria set forth above.

Advance notice shall not be required concerning minor transactions. A minor transaction is defined for purposes of notice as an item of repair requiring eight man-hours or less to perform (unless the parties agree on a different definition) and which occurs at a location where mechanics of the affected craft, specialized equipment, spare units or parts are not available or cannot be made available within a reasonable time.

The General Chairman or his designated representative will notify the carrier within ten days from the postmarked date of the notice of any desire to discuss the proposed action. Upon receipt of such notice the carrier shall give such representative of the organization at least ten days advance notice of a conference to discuss the proposed action.

If no agreement is reached at the conference following the notification, either party may submit a demand for an expedited arbitration within five working days of the conference. Except in emergencies, the carrier shall not consummate a binding subcontract until the expedited procedures have been implemented and the arbitrator has determined that the subcontract is permissible, unless the parties agree otherwise. For this purpose, an "emergency" means an unforeseen combination of circumstances, or the resulting state, which calls for prompt or immediate action involving safety of the public, employees, and carriers' property or avoidance of unnecessary delay to carriers' operations.

Section 3 - Request for Information When No Advance Notice Given

If the General Chairman of a craft requests the reasons and supporting data for the subcontracting of work for which no notice of intent has been given, in order to determine whether the contract is consistent with the criteria set forth above, such information shall be furnished him promptly. If a conference is requested by the General Chairman or his designated representative, it shall be arranged at a mutually acceptable time and place. Any dispute as to whether the contract is consistent with the criteria set forth in Section 1 may be processed to a conclusion as hereinafter provided.

Disputes concerning a carrier's alleged failure to provide notice of intent or to provide sufficient supporting data in a timely manner in order that the general chairman may reasonably determine whether the criteria for subcontracting have been met, also may be submitted to a member of the arbitration panel, but not necessarily on an expedited basis. In the event the parties are unable to agree on a schedule for resolving such a dispute, the arbitrator shall establish the schedule.

Section 4 - Establishment of Subcontracting Expedited Arbitration Panels

The parties shall establish expedited panels of neutral arbitrators at strategic locations throughout the United States, either by carrier or region. Each such panel shall have exclusive jurisdiction of disputes on the carrier's system or in the applicable geographical region, as the case may be, under the provisions of Article II, Subcontracting, as amended by this Imposed Agreement. The members of each of those panels shall hear cases or a group of cases on a rotating basis. Arbitrators appointed to said panels shall serve for terms of two years provided they adhere to the prescribed time requirements concerning their responsibilities. These arbitrators shall be compensated for their services directly by the parties.

Section 5 - Consist

Six neutral arbitrators shall be selected for each subcontracting expedited arbitration panel, unless the parties shall agree to a different number.

Section 6 - Location

Hearings and other meetings of arbitrators from the subcontracting expedited arbitration panels shall be at strategic locations.

Section 7 - Referees

If the parties are unable to agree on the selection of all of the arbitrators making up a panel within 30 days from the date the parties establish a panel of neutral arbitrators, the NMB shall be requested to supply a list of 12 arbitrators within 5 days after the receipt of such request. By alternate striking of names, the parties shall reduce the

list to six arbitrators who shall constitute the panel. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 8 - Filling Vacancies

Vacancies for subcontracting expedited arbitration panels shall be filled by following the same procedures as contained in Section 7 above.

Section 9 - Content of Presentations

The arbitrator shall not consider any evidence not exchanged by the parties at least 48 hours before the commencement of the hearing. Other rules governing the scope and content of the presentations to the Panels shall be established by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 10 - Procedure at Board Meetings

Upon receipt of a demand under Section 2 of this Article, the arbitrator shall schedule a hearing within three working days and conduct a hearing within five working days thereafter. The arbitrator shall conclude the hearing not more than 48 hours after it has commenced. The arbitrator shall issue an oral or written decision within two working days of the conclusion of the hearing. An oral decision shall be supplemented by a written one within two weeks of the conclusion of the hearing unless the parties waive that time requirement. Any of these time limits may be extended by mutual agreement of the parties. Procedural rules governing the record and hearings before the Panels shall be determined by further agreement of the parties or by the arbitrator if the parties fail to reach an agreement.

Section 11 - Remedy

(a) If there is a claim for wage loss on behalf of a named claimant, arising out of an alleged violation of this Article, which is sustained, the arbitrator's decision shall not exceed wages lost and other benefits necessary to make the employee whole.

(b) If the arbitrator finds that the carrier violated the advance notice requirements of Section 2 [in non-emergency situations], the arbitrator shall award an amount equal to that produced by multiplying 50% of the man-hours billed by the contractor by the weighted average of the straight-time hourly rates of pay of the employees of the carrier who would have done the work, provided however that where the carrier is found to have both failed to consult and wrongfully contracted out work, the multiplier shall be 10% rather than 50%. The amounts awarded in accordance with this paragraph shall be divided equally among the claimants, or otherwise distributed upon an equitable basis, as determined by the arbitrator.

Section 12 - Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination. The carrier agrees to apply the decision of an arbitrator in a case arising on the carrier's property which sustains a grievance to all substantially similar situations and the Organization agrees not to bring any grievance which is substantially similar to a grievance denied on the carrier's property by the decision of the arbitrator.

Decisions of arbitrators rendered under this Article shall be subject to judicial enforcement and review in the same manner and subject to the same provisions which apply to awards of the National Railroad Adjustment Board.

Section 13 - Disputes Referred to Other Boards

Disputes arising under Article I, Employee Protection, Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing shall not be subject to the jurisdiction of any Subcontracting Expedited Arbitration Panel.

Disputes under Article II need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but can be handled directly with the highest officer in the interest of expeditious handling. This Article sets up special time limits to govern the handling of cases before the expedited arbitration panels, thus providing special procedures which are intended to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion through the expedited arbitration panels are not subject to the provisions of the standard Time Limit Rule.

If there should be any claims filed for wage loss on behalf on a named claimant arising out of an alleged violations of Article II - Subcontracting, such claims for wage loss should be filed promptly and within sixty days of the filing of the alleged violation of Article II - Subcontracting, with the same carrier officer as to whom such violation of Article II was directed by the General Chairman of the craft or crafts involved, or his representative. If such claim is a continuous one, it cannot begin to run prior to the date the claim is presented.

Failure to handle as set forth in the preceding paragraph shall not be considered as a precedent or waiver of the contentions of the carriers or employees as to other similar claims.

* * * *

Article VI of the September 25, 1964 Agreement, as amended, is further amended to delete (a) all references to Article II - Subcontracting, and (b) Section 14 - Remedy (and to renumber the subsequent sections accordingly).

ARTICLE VI - JOINT SKILL ADJUSTMENT STUDY COMMITTEE

Section 1 - Upon notification by the organization of its intention to proceed, a Joint Skill Adjustment Study Committee shall be established within thirty (30) days, consisting of four partisan members--two representing the carriers and two representing the organization--and one neutral, who shall be Chairman. The parties shall jointly share the compensation and expenses of the neutral. The neutral shall be selected by the partisan members jointly or from a list supplied by the National Mediation Board within 30 days from this date.

Section 2 - The Committee will engage in a joint study and reach a determination of the need to adjust wages based upon skill and pay for similar work in other occupations. The Committee will be charged with the responsibility of determining if skill adjustments are appropriate for the following positions and/or functions: all sheet metal worker differentials, hostling. If the determination is in the affirmative the Committee will render findings in accordance with its determinations that will be binding upon the parties and implemented.

Section 3 - The Committee shall promptly establish its operating procedures, which will include the formulation of a schedule designed to expedite and enhance the opportunity to reach a final conclusion, at the earliest possible date, but not exceeding six (6) months, unless otherwise determined by the Committee. The Committee shall determine the procedures under which it will operate, schedule meetings and resolve any other questions that may arise. The Chairman shall have discretion to act as mediator at any time during these proceedings prior to the issuance of his findings. In the event the neutral is unable to continue or the partisan members unanimously concur that a successor should be appointed, the procedures set forth above shall be followed in selecting a replacement.

Section 4 - In the event the Chairman determines that the parties are unable to reach final conclusion the Chairman in consultation with the members shall promptly convene formal hearings on the matter. Thereafter, the neutral shall make final and binding findings for disposition of the issue.

Section 5 - The Committee shall terminate unless otherwise agreed to by the parties thirty (30) days from the date the findings have been made.

Section 6 - The parties recognize and agree that the information developed by the Committee will only be used for the purpose for which it was developed (i.e. The joint study) and that it will not be used by either party in handling claims or grievances.

ARTICLE VII - GENERAL PROVISIONS

Section 1 - Court Approval

This Imposed Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Imposed Agreement

(a) The purpose of this Imposed Agreement is to fix the general level of compensation during the period of the Imposed Agreement, and to settle the disputes growing out of the notices served upon the carriers listed in Exhibit A by the organization signatory hereto dated on or about April 2, 1984 and May 24, 1988, and proposals served on or about April 9, 1984 and March 8, 1989 by the carriers for concurrent handling therewith. This Imposed Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1994 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Imposed Agreement shall serve, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal for the purpose of changing the subject matter of the provisions of this Imposed Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Article, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Imposed Agreement shall serve or progress, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal which might properly have been served when the last moratorium ended on July 1, 1988.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., NOVEMBER 27, 1991.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION:

Director of Railroad Workers

FOR THE PARTICIPATING CARRIERS
LISTED IN EXHIBIT A: (Con't)

J. B. Dagnon

Jos. I. Flynn

R. A. Lane

Paul O. Lundberg

A. H. Nance

K. R. Peifer

T C Sheller

R. E. Swert

Th Watts

November 27, 1991

#1

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to the $2,000 lump sum payment provided for in Article I, Section 1 of this Imposed Agreement. In the case of an employee who was recalled from reserve status and performed active military service during 1990 as a result of the Persian Gulf crisis, such employee will be credited with 40 hours of compensated service (48 hours in the case of a monthly rated employee whose rate is predicated on an all-service performed basis) for each week of such military service for purposes of calculating eligibility for the lump sum amount provided he would otherwise have been in active service for the carrier.

Very truly yours,

C. I. Hopkins, Jr.

November 27, 1991

#2

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to the Lump Sum Payment provided in Article I, Section 1 of the Imposed Agreement of this date.

This confirms our understanding that days during the year 1990 for which employees in a furloughed status received compensation pursuant to guarantees in protective agreements or arrangements shall be included in determining qualifications for the Lump Sum Payment.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

D.C. Buchanan

November 21, 1991

#3

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to the increase in wages provided for in Section 2 of Article I of the Imposed Agreement of this date.

It is understood that the retroactive portion of that wage increase will be paid within 60 days from the date of this Imposed Agreement. It is further understood that it shall be applied only to employees who continued their employment relationship under an agreement with the Sheet Metal Workers' International Association up to July 29, 1991 or who retired or died subsequent to July 1, 1991.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

DC Buchanan

November 27, 1991

#4

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to the Lump Sum Payments provided in Articles I and II of the Imposed Agreement of this date.

All of the lump sum payments provided for in Article II are based in part on the number of straight time hours paid for that are credited to an employee for a particular period. However, the number of straight time hours so credited does not include any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements.

The inclusion of the term "guarantees in protective agreements or arrangements" in Article II means that an employee receiving such a guarantee will have included in the straight time hours used in calculating his lump sum payments under this Article all such hours paid for under any protective agreement or allowance provided, however, that in order to receive credit for such hours an employee must not be voluntarily absent from work, meaning that hours are not counted if an employee does not accept calls to report for work.

It is understood that any lump sum payment provided in Articles I and II of the Imposed Agreement of this date will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

D C Buchanan

November 27, 1991

#4A

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to the lump sum payments provided for in Article II of this Imposed Agreement.

Sections 1 to 4, inclusive, of Part A of Article II - Cost-of-Living Payments are structured so as to provide lump sum payments that are essentially based on the number of straight time hours credited to an employee during a specified 12-month base period. Section 8 provides that all of these lump sum payments are payable to an employee who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payment. Thus, for example, under Section 1 of Part A of Article II, except for an employee who has retired or died, the agreement requires that an employee have an employment relationship as of July 1, 1992 in order to receive a lump sum payment which will be based essentially on the number of straight time hours credited to such employee during a period running from April 1, 1991 through March 31, 1992.

The intervals between the close of the measurement periods and the actual payments established in the 1985-86 National Agreements were in large part a convenience to the carriers in order that there be adequate time to make the necessary calculations.

In recognition of this, we again confirm the understanding that an individual having an employment relationship with a carrier on the last day of a particular measurement period will not be disqualified from receiving the lump sum (or portion thereof) provided for in the event his employment relationship is terminated following the last day of the measurement period but prior to the payment due date.

Very truly yours,

C.I. Hopkins, Jr.

November 27, 1991

#5

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to Article III Part A of this Imposed Agreement dealing with the Railroad Employees National Health and Welfare Plan (the "Plan"), and in particular to one facet of the arrangements for funding the benefits provided for under the Plan.

It is understood that, insofar as carriers represented by the National Carriers' Conference Committee in connection with health and welfare matters but not in connection with wages and cost-of-living adjustments are concerned, the cost-of-living adjustments for 1993 and thereafter that may have already been agreed to by such carriers, or that may be agreed to in the future, shall be adjusted—unless the agreement involved, reached on an individual property basis, provides as a part of the wage settlement that the employees covered by it shall not share in any year-to-year increases in Plan costs—so that the employees covered by such agreements shall receive cost-of-living adjustments that are less (than they would otherwise receive) by an amount equal to the lesser of (i) one-quarter of the year-to-year increases in the carriers' payment rate for the foreign-to-occupation portion of health benefits under the Plan as defined in the Imposed Agreement referred to in the first paragraph of this letter and (ii) one-half of the amount, pro-rated where appropriate, they would otherwise receive.

If the parties involved are unable to reach agreement on the specific manner of making the adjustments, or on any other terms and conditions regarding the adjustments, it is understood that such dispute shall be submitted, upon the written notice by either party, to arbitration by a neutral arbitrator within thirty (30) days after such notice is transmitted by one party to the other. Should the parties involved fail to agree on selection of a neutral arbitrator within five (5) calendar days from the date the dispute is submitted to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternatively striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel. The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses should be paid for by the party incurring them. The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator shall not

accept oral testimony at the hearing, and no transcript of the hearing shall be made.

Each party, however, may present oral arguments at the hearing through its counsel or other designated representative. The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#6

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to Section 4 of Article IV - Supplemental Sickness of the Imposed Agreement of this date. The parties agree to accept the recommendations of the subcommittee referred to in that Section and intend to modify existing administrative procedures of the Supplemental Sickness Benefit Plan (Plan) within 60 days from the effective date of such Imposed Agreement, unless otherwise indicated, to provide as follows:

1. Plan benefits will commence for qualified employees after all certification requirements (i.e., claim application, employer certification, physician certification, and Railroad Unemployment Insurance eligibility) have been met and before the Railroad Retirement Board pays RUIA sickness benefits, providing the insurance company administering the Plan continues to have access to the Board's eligibility data base.

2. During the first thirty (30) days of a qualified disability, assuming all certification requirements have been met timely, Plan benefits will be paid covering the first fourteen (14) days of disability so that qualified disabled employees receive their first benefit checks on or about the thirtieth (30th) day of disability following their application for benefits. Benefit payments thereafter would follow the established thirty (30) day payment cycle.

3. Participating railroads, particularly those that have 500 or more employees enrolled in a Plan, will be urged to provide employee certification information through an established electronic certification process as promptly as possible.

Participating railroads that have had continuing difficulty in providing employee certification information on a timely basis will be urged to adopt procedures permitting employees to receive on-site employer certification of their eligibility. On-site employer certification procedures will be developed as reasonably promptly as possible, but not later than by May 1, 1992.

4. The hourly rates of pay used to define various Plan benefit amount classification will be automatically adjusted, during the moratorium periods of applicable national agreements, when rates of pay are adjusted for railroad employees covered by the Plan pursuant to such agreements. This modification will not change the benefits provided, but it will permit employer certification information to be provided more quickly.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

November 27, 1991

#7

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding regarding the resolution of disputes under Article II of the September 25, 1964 Agreement, as amended by Article V of this Imposed Agreement.

If the parties have not established a forum or forums for before-the-fact arbitration of contracting out disputes by July 29, 1991, any such dispute will proceed on an after-the-fact basis, i.e., the carrier will be free to proceed forthwith with the contracting-out and any dispute may be progressed to a Public Law Board on an expedited basis, or any other forum on which the parties may mutually agree.

The parties shall meet promptly to reach agreement on language to implement the recommendations of Presidential Emergency Board 219, as interpreted and clarified by Special Board 102-29, on the procedures for arbitrating contracting-out disputes. If complete agreement on language is not reached by the parties by December 15, 1991, the parties shall refer any areas of disagreement to Special Board 102-29 for resolution.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

DC Buchanan

November 27, 1991

#8

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to Article V, Subcontracting, of the Imposed Agreement of this date and our understanding with respect to disputes arising on the former Southern Railway Company under the provisions of Articles I and II of the January 27, 1965 Agreement.

This will confirm our understanding that Article II of the January 27, 1965 Agreement is amended to read identical to Article V of the Imposed Agreement of this date and that Special Board of Adjustment No. 570 shall have exclusive authority to resolve all disputes arising under the terms of Article I of the January 27, 1965 Agreement.

It is further agreed that a single system subcontracting expedited arbitration panel shall be established in accordance with Article V of the Imposed Agreement of this date, and such panel shall have exclusive jurisdiction of disputes arising on the former Southern Railway Company under the provisions of Article II of the January 27, 1965 Agreement, as amended by the Imposed Agreement of this date, and on Norfolk and Western Railway Company under the provisions of Article II of the September 25, 1964 Agreement, as amended by the Imposed Agreement of this date.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

November 27, 1991

#9

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding that a synthesis of the September 25, 1964 Agreement, as amended, showing all changes made during this round of bargaining and all changes made in the past which remain in effect after this bargaining round shall be prepared by the parties as soon as possible.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

DCBuchanan

November 27, 1991

#10

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding that the changes to Article VI of the September 25, 1964 Agreement, as amended, which result from the Imposed Agreement effective this date are accurately reflected in Exhibit A to this side letter.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

DC Buchanan

EXHIBIT A

ARTICLE VI - RESOLUTION OF DISPUTES

Section 1 - Establishment of Shop Craft Special Board of Adjustment

In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment, hereinafter referred to as "Board" is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection, of this agreement. The parties agree that such Board shall have exclusive authority to resolve all disputes arising under the terms of Article I of this Agreement. Awards of the Board shall be subject to judicial review by proceedings in the United States District Court in the same manner and subject to the same provisions that apply to awards of the National Railroad Adjustment Board.

(ARTICLE VI - RESOLUTION OF DISPUTES - Section 1 from
ARTICLE X - Part B. of December 4, 1978 Agreement)

Section 2 - Consist of Board

Whereas, Article VI of the September 25, 1964 Agreement provides for the resolution of disputes arising under Article I of said Agreement and Section 2 of Article VI sets forth the procedure for the composition of the Board established for the purpose of resolving such disputes; and under the terms of said section the Board is to consist of two members appointed by the organizations party to the Agreement, two members appointed by the carriers party to the Agreement and a fifth member, a referee, appointed from a panel of referees; and

Whereas, in November of 1964 following an exchange of letters it was further agreed by the parties to the Agreement to modify the terms of Section 2 of Article VI by providing that instead of two members each party would appoint three members with the understanding that in any function, two of three members thus appointed would serve; and

Whereas, in the Memorandum of Agreement dated May 31, 1974 and Mediation Agreement dated December 4, 1978, it was agreed by the parties to the agreement to further modify the appointment and functioning of partisan members by providing that instead of three members each party would appoint six members; two of the six persons designated to represent the organizations party to the Agreement would be appointed by International Association of Machinists and Aerospace Workers and Sheet Metal Workers' International Association respectively and the remaining four members would be appointed on behalf of the other four organizations party to the Agreement by the Railway Employes' Department, AFL-CIO; and whereas, on October 1, 1980, the Railway Employe's Department, AFL-CIO, was dissolved by appropriate action and ceased to have any status as an affiliation of Shop Craft Organizations or to have any authority to speak for or represent any organization or brotherhood; and

Whereas, the parties understand the importance of maintaining grievance machinery for the handling of disputes arising under the September 25, 1964 National Agreement in order to provide a means for the peaceful resolution of minor grievances under the Railway Labor Act; and

Whereas, in view of these considerations the organizations party to the Agreement have agreed upon a temporary procedure which is acceptable to the carriers party to the Agreement, for the appointment and functioning of partisan members of the Board under Section 2 of VI.

NOW, THEREFORE, it is agreed that effective October 1, 1980, partisan members of the Board under Section 2 of Article VI shall be appointed and function as follows:

1. Six members shall be appointed by the organizations party to the Agreement and six members shall be appointed by the carriers party to the Agreement. Of the six persons designated to represent the organizations party to the Agreement one shall be appointed by each of the following signatories: International Association of Machinists and Aerospace Workers; Sheet Metal Workers International Association; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood Railway Carmen of the United States and Canada; International Brotherhood of Electrical Workers, and International Brotherhood of Firemen and Oilers.

2. Each of the twelve partisan members of the Board so appointed shall have the right to sit in all proceedings of the Board. The organizations and the carriers party to the Agreement further agree, however, that in the handling of dispute cases before the Board a smaller panel of the twelve members may function and constitute a quorum for the resolution of such disputes, provided first, that at least one organization and one carrier member shall sit and function in all dispute cases before the Board; second, that regardless of the number of members sitting and functioning in dispute cases, the unit method of voting shall prevail and six votes shall be cast on behalf of the carrier and organization members respectively; third, that in any dispute involving employees represented by one of the signatory organizations, the appointee of that organization shall sit and function as a member of the Board.

It is agreed further that all disputes and grievances arising under Article I of the September 25, 1964 Agreement shall be handled on appeal from the property in accordance with the terms of this Agreement while it is in effect including those presently pending before Special Board of Adjustment 570, as well as any subsequently appealed to the Board.

This Memorandum of Agreement is a temporary measure intended to provide the parties with a continuing means for the peaceful resolution of such minor grievances under the Railway Labor Act pending further consideration of matters arising from the dissolution of Railway Employes Department.

(Section 2 of ARTICLE VI - RESOLUTION OF DISPUTES -.
from MEMORANDUM OF AGREEMENT dated November 17, 1980)

Section 3 - Appointment of Board Members

Appointment of the members of the Board shall be made by the respective parties within thirty days from the date of the signing of this agreement.

Section 4 - Location of Board Office

The Board shall have offices in the City of Chicago, Illinois.

Section 5 - Referees - Employee Protection

The parties agree to select a panel of six potential referees for the purpose of disposing of disputes before the Board arising under Article I of this agreement. Such selections shall be made within thirty (30) days from the date of the signing of this agreement. If the parties are unable to agree upon the selection of the panel of potential referees within the 30 days specified, the National Mediation Board shall be requested to name such referees as are necessary to fill the panel within 5 days after the receipt of such request.

Section 6 - Term of Office of Referees

The parties shall advise the National Mediation Board of the names of the potential referees selected, and the National Mediation Board shall notify those selected, and their successors, of their selection, informing them of the nature of their duties, the parties to the agreement and such information as it may deem advisable, and shall obtain their consent to serve as a panel member. Each panel member selected shall serve as a member until January 1, 1966, and until each succeeding January 1 thereafter unless written notice is served by the organizations or the carriers parties to the agreement, at least 60 days prior to January 1 in any year that he is no longer acceptable. Such notice shall be served by the moving parties upon the other parties to the agreement, the members of the Board and the National Mediation Board. If the referee in question shall then be acting as a referee in any case pending before the Board, he shall serve as a member of the Board until the completion of such case.

Section 7 - Filling Vacancies - Referees

In the event any panel member refuses to accept such appointment, dies, or becomes disabled so as to be unable to serve, is terminated in tenure as hereinabove provided, or a vacancy occurs in panel membership for any other reason, his name shall immediately be stricken from the list of potential referees. The members of the Board shall, within thirty days after a vacancy occurs, meet and select a successor for each member as may be necessary to restore the panel to full membership. If they are unable to agree upon a successor within thirty days after such meeting, he shall be appointed by the National Mediation Board.

Section 8 - Jurisdiction of Board

The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of Article I, Employee Protection.

Section 9 - Submission of Dispute

Any dispute arising under Article I, Employee Protection, of this agreement, not settled in direct negotiations may be submitted to the Board by either party, by notice to the other party and to the Board.

(Sections 3, 4, 5, 6, 7, 8, and 9 of ARTICLE VI - RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Section 10 - Time Limits for Submission

Within 60 days of the postmarked date of such notice, both parties shall send 15 copies of a written submission to their respective members of the Board. Copies of such submissions shall be exchanged at the initial meeting of the Board to consider the dispute.

(Section 10 of ARTICLE VI - RESOLUTION OF DISPUTES - from ARTICLE X - Part B. of December 4, 1978 Agreement)

Section 11 - Content of Submission

Each written submission shall be limited to the material submitted by the parties to the dispute on the property and shall include:

(a) The question or questions in issue;

(b) Statement of facts;

(c) Position of employee or employees and relief requested;

(d) Position of company and relief requested.

Section 12 - Failure of Agreement - Appointment of Referees

If the members of the Board are unable to resolve the dispute within twenty days from the postmarked date of such submission, either member of the Board may request the National Mediation Board to appoint a member of the panel of potential referees to sit with the Board. The National Mediation Board shall make the appointment within f ve days after receipt of such request and notify the members of the Board of such appointment promptly after it is made. Copies of both submissions shall promptly be made available to the referee.

Section 13 - Procedure at Board Meetings

The referee selected shall preside at meetings of the Board and shall be designated for the purpose of a case as the Chairman of the Board. The Board shall hold a meeting for the purpose of deciding the dispute within 15 days after the appointment of a referee. The Board shall consider the written submission and relevant agreements, and no oral testimony or other written material will be received. A majority vote of all members of the Board shall be required for a decision of the Board. A partisan member of the Board may in the absence of his partisan colleague vote on behalf of both. Decisions shall be made within thirty days from the date of such meeting.

(Sections 11, 12, and 13 of ARTICLE VI -
RESOLUTION OF DISPUTES - from September 25, 1964 Agreement)

Section 14 - Final and Binding Character

Decisions of the Board shall be final and binding upon the parties to the dispute. In the event an Award is in favor of an employee or employees, it shall specify a date on or before which there shall be compliance with the Award. In the event an Award is in favor of a carrier the Award shall include an order to the employee or employees stating such determination.

(Section 14 of ARTICLE VI - RESOLUTION OF DISPUTES
from ARTICLE X - Part B. of December 4, 1978 Agreement)

Section 15 - Extension of Time Limits

The time limits specified in this Article may be extended only by mutual agreement of the parties.

Section 16 - Records

The Board shall maintain a complete record of all matters submitted to it for its consideration and of all findings and decisions made by it.

Section 17 - Payment of Compensation

The parties hereto will assume the compensation, travel expense and other expense of the Board members selected by them. Unless other arrangements are made, the office, stenographic and other expenses of the Board, including compensation and expenses of the neutral members thereof, shall be shared equally by the parties.

Section 18 - Disputes Referred to Adjustment Board

Disputes arising under Article III, Assignment of Work - Use of Supervisors, Article IV, Outlying Points, and Article V, Coupling, Inspection and Testing, of this agreement, shall be handled in accordance with Section 3 of the Railway Labor Act, as amended.

(Sections 15, 16, 17, and the first paragraph of Section 18
of ARTICLE VI - RESOLUTION OF DISPUTES -
from September 25, 1964 Agreement)

Under the provisions of Article VI, Section 18, disputes arising under Article III - Assignment of Work, Article IV - Outlying Points, and Article V - Coupling, Inspection and Testing, are to be handled in accordance with Section 3 of the Railway Labor Act. It is clear that with respect to such disputes subject to handling under Section 3 of the Act any claim or grievance is subject to the time limits and procedural requirements of the Time Limit on Claims Rule.

A different situation exists with respect to disputes arising under Article I - Employee Protection. Article VI provides a "Shopcraft Special Board of Adjustment" for the purpose of adjusting and deciding disputes arising out of that Article (Article VI, Section 1), and specifically provides (Article VI, Section 8) that the Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances concerning the interpretation or application of that Article.

During our negotiations, it was understood by both parties that disputes under Article I need not be progressed in the "usual manner" as required under Section 3 of the Railway Labor Act, but could be handled directly with the highest officer in the interest of expeditious handling. Sections 10 through 13 set up special time limits to govern the handling of submissions to the Special Board, thus providing special procedures which are intended to supersede the provisions of the standard Time Limit Rule. Therefore, such disputes being processed to a conclusion through the Shop Craft Special Board are not subject to the provisions of the standard Time Limit Rule.

This understanding is a supplement to Article VI of the September 25, 1964 Agreement and will become effective as of this date.

(ARTICLE VI - Section 18, 2nd through 5th paragraphs
from MEMORANDUM OF UNDERSTANDING dated January 7, 1965)

November 27, 1991

#11

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding that carriers not participating in national handling and therefore not subject to the revisions to the September 25, 1964 Agreement, as amended, shall continue to be bound by that Agreement as it existed prior to changes effectuated by the Imposed Agreement of this date.

Subcontracting disputes arising prior to the effective date of this Imposed Agreement shall continue to be handled in accordance with the dispute resolution procedures at the time the dispute arose.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

D. C. Buchanan

November 27, 1991

#12

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to Article V, Subcontracting, of the Imposed Agreement of this date and will confirm our understanding that Electrical Power Purchase Agreements (EPPAs) and similar arrangements are within the scope of the September 25, 1964 Agreement, as amended.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

D.C. Buchanan

November 27, 1991

#12A

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This refers to Article V, Subcontracting, of the Imposed Agreement of this date and will confirm our understanding that the question of whether work on TTX cars by TTX employees should be allowed on tracks leased from a carrier is to be treated in the same manner as EPPAs.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

DC Buchanan

November 21, 1991

#13

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This confirms our understanding with respect to the Imposed Agreement of this date.

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Imposed Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Imposed Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation. This shall not be construed to preclude any party from relying on the Proceedings and Report of Presidential Emergency Board 219 and/or the Proceedings and Reports of Special Board 102-29.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C.I. Hopkins, Jr.

I agree:

DC Buchanan

Carrier's Ex OO, Page 54.

November 27, 1991

#14

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding that the amendments to the September 25, 1964 Agreement resulting from Article V, Subcontracting of the Imposed Agreement of this date shall be applied only on those carriers party to the September 25, 1964 Agreement. Such amendments shall not be applied to affect subcontracting provisions in existing agreements on carriers not party to the September 25, 1964 Agreement, unless agreed otherwise between your organization and such non-party carrier(s).

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

D. C. Buchanan

November 27, 1991

#15

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N. W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This is to confirm our understanding that the parties are bound by the recommendations of PEB 219 on the issue of Assignment of Mechanical and Shop Work set forth at page 94 of the PEB Report, as clarified by Special Board 102-29, and will interpret and apply those recommendations, as clarified, as if specifically set forth in the Imposed Agreement of this date. Any disputes as to the meaning and effect will be left to future agreement or determination under Section 3 of the Railway Labor Act.

This is also to confirm our understanding that the changes to the incidental work rule resulting from the aforesaid recommendations shall not be applied to assign work of employees represented by your organization to employees of any organization not a party to the same or substantially similar changes in the rule or rules governing assignment of mechanical and shop craft work, and vice-versa.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

D C Buchanan

EXHIBIT A
(SMWIA)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT APRIL 2, 1984, OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS PERTAINING TO THE HEALTH AND WELFARE PLAN IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN APPENDIX "B" THERETO AND NOTICES DATED ON OR ABOUT MAY 24, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN APPENDIX A - WAGES AND RULES, APPENDIX B - EMPLOYEE PROTECTION, APPENDIX C - PENSION TRUST, APPENDIX D - HEALTH AND WELFARE AND SUPPLEMENTAL SICKNESS BENEFITS AND APPENDIX E - LOCOMOTIVE ELECTRICL POWER THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 8, 1989 FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Sheet Metal Workers' International Association.

Alton & Southern Railway
Atchison, Topeka & Santa Fe Railway
Burlington Northern Railroad
CSX TRANSPORTATION:
  Baltimore and Ohio Railroad
  Baltimore and Ohio Chicago Terminal RR.
  Chesapeake and Ohio Railway
    Pere Marquette Railroad
  Clinchfield Railroad
  Seaboard System Railroad:
    Louisville and Nashville Railroad (former)
      incl. Monon
    Seaboard Coast Line Railroad (former)
Chicago & North Western Trans. Co.
Colorado & Wyoming Railway
Consolidated Rail Corporation
Denver and Rio Grande Western Railroad
Duluth, Winnipeg & Pacific Railway
1 - Elgin, Joliet & Eastern Railway
Houston Belt and Terminal Railway
Illinois Central Railroad
Kansas City Southern Railway
  Louisiana & Arkansas Railway
  Milwaukee (Soo Line)-KCS Joint Agency
1 - Kansas City Terminal Railway
Missouri Pacific Railroad
  Missouri-Kansas-Texas Railroad
2 - Monongahela Railway
1 - Montour Railroad
New Orleans Public Belt Railroad
1 - Norfolk and Portsmouth Belt Line Railroad

Norfolk Southern Railway Company
Alabama Great Southern Railroad
Atlantic and East Carolina Railway
Carolina & Northwestern Railway
Central of Georgia Railroad
Cincinnati, New Orleans & Texas Pacific Ry.
Georgia Southern and Florida Railway
Interstate Railroad
New Orleans Terminal Co.
Norfolk and Western Railway
St. Johns River Terminal Company
Tennessee, Alabama and Georgia Railway
Tennessee Railway
Peoria & Pekin Union Railway
2 - Pittsburgh & Lake Erie Railroad
Portland Terminal Railroad Company
Richmond, Fredericksburg & Potomac Railroad
St. Louis Southwestern Railway
Southern Pacific Transportation Co.:
Eastern Lines
Western Lines
Terminal Railroad Association of St. Louis
3 - Union Pacific Railroad

NOTES:

1 - Authorization limited to Health and Welfare proposals.
2 - Excludes Wage and Rules proposals.
3 - Includes Western Pacific Railroad employees.

- -

FOR THE CARRIERS:

FOR THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION:

Washington, D. C.

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D. P LEE
Vice Chairman and
General Counsel

G F DANIELS
Vice Chairman

R. T Kelly
Director of Labor Relations

December 11, 1991

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l. Association
1750 New York Avenue, N.W.
Washington, D. C. 20006

Dear Mr. Buchanan:

This confirms our understanding that the parties agree to extend the time limit set forth in Side Letter #7 for complete agreement on language on procedures for arbitrating contracting-out disputes to January 27, 1992. If complete agreement on such language is not reached by that date, any party may refer any areas of disagreement to a Public Law Board, or any other forum on which the parties may mutually agree, for resolution on an expedited basis, provided that any disagreement over the uniform rate to be paid arbitrators shall be resolved by the Chairman of the National Mediation Board.

Very truly yours,

C. I. Hopkins, Jr.

NATIONAL RAILWAY LABOR CONFERENCE

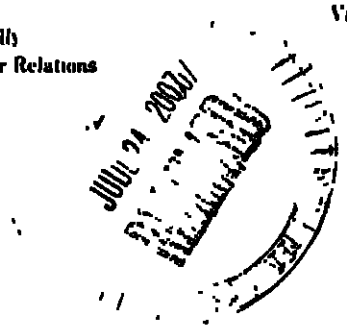
1901 L STREET N W WASHINGTON D C 20036/AREA CODE 202-862-7200

CHARLES I. HOPKINS, Jr.
Chairman

D P LEE
Vice Chairman and
General Counsel

G F. DANIELS
Vice Chairman

R. T. Kelly
Director of Labor Relations



February 11, 1992

CIRCULAR NO. 784-20 (BMWE)

TO MEMBER ROADS:

This has reference to our previous circulars in the 784 series relative to our attempts to reach accord with the representatives of the Brotherhood of Maintenance of Way Employes on language implementing the recommendations of PEB 219, as clarified and interpreted by Special Board 102-29.

In this connection, there is attached a document, dated February 6, 1992, entitled "IMPOSED AGREEMENT IN ACCORDANCE WITH THE PROVISIONS OF PUBLIC LAW 102-29, DATED JULY 29, 1991".

As stated on the cover page -

> 'This Imposed Agreement is based upon the provisions of Public Law 102-29, signed by the President on April 18, 1991, which declares that the report and recommendations of Presidential Emergency Board No. 219 as clarified and modified by Special Board 102-29 shall be binding effective July 29, 1991, on the participating carriers represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Maintenance of Way Employes."

Very truly yours,

R. T. KELLY

Director of Labor Relations

ENTERED
Office of Proceedings
JUL 24 2007
Part of
Public Record

February 6, 1992

IMPOSED AGREEMENT IN ACCORDANCE WITH THE
PROVISIONS OF PUBLIC LAW 102-29
JULY 29, 1991

The attached document represents the Imposed Agreement terms necessary to implement the report and recommendations of Presidential Emergency Board No. 219, dated January 15, 1991, as clarified and modified by Special Board No. 102-29.

This Imposed Agreement is based upon the provisions of Public Law 102-29, signed by the President on April 18, 1991, which declares that the report and recommendations of Presidential Emergency Board No. 219 as clarified and modified by Special Board 102-29 shall be binding effective July 29, 1991, on the participating carriers represented by the National Carriers' Conference Committee of the National Railway Labor Conference and certain of their employees represented by the Brotherhood of Maintenance of Way Employes.

Mac A. Fleming, President
Brotherhood of Maintenance of
Way Employes

C. I. Hopkins, Jr., Chairman
National Carriers' Conference
Committee

Carrier's Ex EE, Page 2

IMPOSED AGREEMENT
PURSUANT TO PUBLIC LAW 102-29
JULY 29, 1991

Between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the Brotherhood of Maintenance of Way Employes.

ARTICLE I - WAGES

Section 1 - Lump Sum Payment

Each employee subject to this Agreement imposed pursuant to Public Law No. 102-29, effective July 29, 1991, (hereinafter referred to as 'Agreement") who qualified for an annual vacation in the calendar year 1991 will be paid $2,000 within 60 days of the date of this Agreement. Those employees who during the calendar year 1990 failed to qualify for an annual vacation in the calendar year 1991 will be paid a proportional share of that amount, based on the percentage of the qualifying period satisfied. This Section shall be applicable solely to those employees subject to this Agreement who have an employment relationship as of the date of this Agreement or who have retired or died subsequent to January 1, 1990. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

Section 2 - First General Wage Increase

Effective July 1, 1991, all hourly, daily, weekly, and monthly rates of pay in effect on June 30, 1991 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 2 shall be applied as follows:

(a) Hourly Rates -

Add 3 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) through (d) above which end in fractions of a cent shall be rounded to the nearest whole cent. Fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Piece Work -

Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rates for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply.

(g) Deductions -

Insofar as concerns deductions, which may be made from the rates resulting from the increase herein granted, under Section 3 (m) of the Fair Labor Standards Act of 1938, they may continue to be made to the extent that such deductions were being legally made as of August 31, 1941.

(h) Application of Wage Increase -

The increase in wages provided for in this Section 2 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 3 - Second General Wage Increase

Effective July 1, 1993, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30, 1993 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 2 hereof.

Section 4 - Third General Wage Increase

Effective July 1, 1994, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30, 1994 for employees covered by this Agreement shall be increased in the amount of four (4) percent applied so as to give effect

to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 2 hereof.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Lump Sum Payments Through January 1, 1995

Section 1 - First Lump Sum Cost-of-Living Payment

Subject to Section 6, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the Interstate Commerce Commission as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1991 through March 31, 1992, will receive a lump sum payment on July 1, 1992 of $960.00.

Section 2 - Second Lump Sum Cost-of-Living Payment

Subject to Section 6, employees with 1,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period April 1, 1992 through September 30, 1992, will receive a lump sum payment on January 1, 1993 equal to the difference between (i) $960.00, and (ii) the lesser of $480.00 and one quarter of the amount, if any, by which the carriers' 1993 payment rate for foreign-to-occupation health benefits under the Railroad Employees National Health and Welfare Plan (the "Plan") exceeds the sum of (a) the amount of such payment rate for 1992 and (b) the amount per covered employee that will be taken during 1993 from that certain special account maintained at The Travelers Insurance Company known as the "Special Account Held in Connection with the Amount for the Close-Out Period" (the "Special Account") to pay or provide for Plan foreign-to-occupation health benefits.

Section 3 - Third Lump Sum Cost-of-Living Payment

Subject to Section 6, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1992 through September 30, 1993, will receive a lump sum payment on January 1, 1994 equal to the difference between (i) $988.00, and (ii) the lesser of $494.00 and one quarter of the amount, if any, by which the carriers' 1994 payment rate for foreign-to-occupation health benefits under the Plan exceeds the sum of (a) the amount of such payment rate for 1993 and (b) the amount per covered employee that will be taken during 1994 from the Special Account to pay or provide for Plan foreign-to-occupation health benefits.

Section 4 - Fourth Lump Sum Cost-of-Living Payment

Subject to Section 6, employees with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period October 1, 1993 through September 30, 1994, will receive a lump sum payment on January 1, 1995 equal to the difference between (i) $685.00, and (ii) the lesser of $343.00 and one quarter of the amount, if any, by which the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan exceeds the amount of such payment rate for 1994.

Section 5 - Definition of Payment Rate for Foreign-to-Occupation Health Benefits

The carriers' payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 hereof.

Section 6 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in any of the respective periods described in Sections 1 through 4 than the minimum number set forth therein, the dollar amounts specified in Section 1 and in clause (i) of Sections 2 through 4 thereof shall be adjusted by multiplying such amounts by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during such period divided by the defined minimum hours. For any such employee, the dollar amounts described in clause (ii) of Sections 2 through 4 shall not exceed one-half of the dollar amounts specified in clause (i) thereof, as adjusted pursuant to this Section.

Section 7 - Eligibility for Receipt of Lump Sum Payments

The lump sum cost-of-living payments provided for in this Article will be payable to each employee subject to this Agreement imposed pursuant to Public Law 102-29 who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payments. There shall be no duplication of lump sum payments by virtue of employment under an agreement with another organization.

PART B - Cost-of-Living Allowance and Adjustments Thereto After January 1, 1995

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments Thereto

(a) A cost-of-living allowance will be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the 'Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the BLS CPI. The first such cost-of-living allowance shall be payable effective July 1, 1995 based, subject to paragraph (d), on the BLS CPI for September 1994 as compared with the BLS CPI for March 1995. Such allowance, and further cost-of-living adjustments thereto which will become effective as described below, will be based on the change in the BLS CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods		Effective Date
Base Month	Measurement Month	of Adjustment
September 1994	March 1995	July 1, 1995
March 1995	September 1995	January 1, 1996

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable for all years subsequent to those specified during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum increase in the BLS CPI that will be taken into account will be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 1995	3% of September 1994 CPI
January 1, 1996	6% of September 1994 CPI, less the increase from September 1994 to March 1995

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule will be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the BLS CPI in any measurement period shall be considered.

(iii) If the increase in the BLS CPI from the base month of September 1994 to the measurement month of March 1995 exceeds 3% of the September base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living allowance which will have become effective July 1, 1995 during such measurement period.

(iv) Any increase in the BLS CPI from the base month of September 1994 to the measurement month of September 1995 in excess of 6% of the September 1994 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the BLS CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion will not be counted.)

The cost-of-living allowance in effect on December 31, 1995 will be adjusted (increased or decreased) effective January 1, 1996 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the BLS CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December 31, 1995 if the BLS CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom if the index will have been lower at the end than at the beginning of the measurement period, but only to the extent the allowance remains at zero or above. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W Index during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W Index during such measurement period.

Section 2 - Application of Section 1 Cost-of-Living Allowance

The cost-of-living allowance provided for by Section 1 of Part B of this Article will be payable as provided in Section 3 and will not become part of basic rates of pay. Such allowance and the adjustments thereto will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Piece Work - Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rate for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply. In the absence of any definite rule governing, the equivalent of the hourly amount of the cost-of-living allowance shall be added to the established unit piece-work price.

(f) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (e), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours,

required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

Section 3 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 1995 shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1995 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1994, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above. For the purpose of the foregoing calculation, the amount of any increase described in clause (ii) that has been taken into account in determining the amount received by the employee as a lump sum payment on January 1, 1995 shall not be taken into account.

(b) The cost-of-living allowance payable to each employee effective January 1, 1996, shall be equal to the difference between (i) the cost-of-living allowance in effect on that date pursuant to Section 1 of this Part, and (ii) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1996 payment rate for foreign-to-occupation health benefits under the Plan over the amount of such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, but not more than one-half of the amount specified in clause (i) above.

(c) The procedure specified in paragraph (b) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(d) The definition of the carriers' payment rate for foreign-to-occupation health benefits under the Plan set forth in Section 5 of Part A shall apply with respect to any year covered by this Section.

(e) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - HEALTH AND WELFARE PLAN AND EARLY RETIREMENT MAJOR MEDICAL BENEFIT PLAN

Part A - Health and Welfare Plan

Section 1 - Continuation of Plan

The Railroad Employees National Health and Welfare Plan (the "Plan"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to the Plan will be offset by the expeditious use of such amounts as may at any time be in Special Account A or in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with the Plan and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in that certain special account maintained at The Travelers Insurance Company, known as the "Special Account Held in Connection with the Amount for the Close-Out Period," relating to the obligations of the Plan to pay, among other things, benefits incurred but not paid at the time of termination of the Plan in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $25 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $25 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

In the event that a carrier participating in the Plan defaults for any reason, including but not limited to bankruptcy, on its obligation to contribute to the Plan, and the carrier's participation in the Plan terminates, the carriers remaining in the Plan shall be liable for any Plan contribution that was required of the terminating carrier prior to the effective date of its termination, but not paid by it. The remaining carriers shall be obligated to make up in a timely fashion such unpaid contribution of the terminating carrier in pro rated amounts based upon their shares of Plan contributions for the month immediately prior to such default.

Section 2 - Change to Self-Insurance

Except for life insurance, accidental death and dismemberment insurance, and all benefits for residents of Canada, the Plan will be wholly self-insured and administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Joint Plan Committee

The Joint Policyholder Committee shall be renamed the Joint Plan Committee. This change in name shall not in any way change the functions and

responsibilities of the Committee.

A neutral shall be retained by and at the expense of the Plan for the duration of this Agreement to consider and vote on any matter brought before the Joint Plan Committee (formerly the Joint Policyholder Committee), arising out of the interpretation, application or administration (including investment policy) of the Plan, but only if the Committee is deadlocked with respect to the matter. A deadlock shall occur whenever the carrier members of the Committee, who shall have a total of one vote regardless of their number, and the organization members of the Committee, who shall also have a total of one vote regardless of their number, do not resolve a matter by a vote of two to nil and either side declares a deadlock.

If the members of the Joint Plan Committee cannot agree upon a neutral within 30 days of the date this Agreement becomes effective, either side may request the National Mediation Board to provide a list of seven persons from which the neutral shall be selected by the procedure of alternate striking. Joint Plan Committee members and the neutral shall, to the extent required by ERISA, be bonded at the expense of the Plan. The Joint Plan Committee shall have the power to create such subcommittees as it deems appropriate and to choose a neutral chairman for such subcommittees, if desired.

Section 4 - Managed Care

Managed care networks that meet standards developed by the Joint Plan Committee, or a subcommittee thereof, concerning quality of care, access to health care providers, and cost-effectiveness, shall be established wherever feasible as soon as practicable. Until a managed care network is established in a given geographical area, individuals in that area who are covered by the Plan will have the comprehensive health care benefit coverage described in Section 5 of this Part A. Each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area will be enrolled in the network (along with his or her covered dependents) unless the employee provides timely written notice to his or her employer of an election to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than to be enrolled in the network. Any such employee who provides such timely written notice shall have an annual opportunity to revoke his or her election by providing a written notice of revocation to his or her employer at least sixty days prior to January 1 of the calendar year for which such revocation shall first become effective. Similarly, each employee in a given geographical area who is a Plan participant at the time a managed care network is established in that area and is thereafter enrolled in the network (along with his or her covered dependents) shall have an annual opportunity to elect to have (along with his or her covered dependents) the comprehensive health care benefit coverage rather than continue to be enrolled in the network. This election may be made by such an employee by providing written notice thereof to his or her employer at least sixty days prior to January 1 of the calendar year for which the election shall first become effective. Each employee hired after a managed care network is established in his or her geographic area (and his or her covered dependents) will be enrolled in the network and may not thereafter elect to be covered by the comprehensive benefits until the January 1 which falls on or after the first anniversary of his or her initial date of eligibility for

Plan coverage. Employees who return to eligibility for Plan coverage within 24 months of loss of eligibility for Plan coverage and whose employment relationship has not terminated at any time prior to such return will be enrolled in the program of Plan benefits in which they were enrolled when their eligibility for Plan coverage was lost, and shall thereafter have the same rights of election as other employees whose eligibility for Plan coverage was not lost.

Covered individuals enrolled in a managed care network will have a point of service option allowing them to choose an out-of-network provider to perform any covered health care service that they need. The benefits provided by the Plan when a service is performed by an in-network provider and the benefits provided by the Plan when the service is performed by an out-of-network provider will be as described in the table below:

PLAN FEATURE	IN-NETWORK	OUT-OF-NETWORK†
Primary Care Physician Required	Yes	No
Annual Deductible		
Individual	None	$100
Family	None	$300 Deductible applies to all covered expenses
Plan/Employee Coinsurance	100%/0%	75%/25%
Annual Out-of-Pocket Maximum (exclusive of deductible)		
Individual	None	$1,500
Family	None	$3,000
Maximum Lifetime Benefit	None	$1,000,000 ($5,000 annual restoration)
Special Maximum Lifetime Benefit for Mental Health	None	$100,000 lifetime ($500 annual restoration)
Hospital Charges (inpatient and outpatient)	100%	75%*
Ambulatory Surgery	100%	75%*
Emergency Room	100% after $15 employee copayment	75%

Inpatient Mental Health & Substance Abuse		
Benefit		
Hospital	100%	75%♦
Alternative Care -- Residential Treatment Center Inpatient or Partial Hospitalization/ Day Treatment	100%	75%♦
Outpatient Mental Health & Substance Abuse	100% after $15 employee copayment per visit	75%♦
Physician Services		
Surgery/Anesthesia	100%	75%*
Hospital Visits	100%	75%*
Office Visits	100% after $15 employee copayment	75%**
Diagnostic Tests	100%	75%*
Routine Physical	100% after $15 employee copayment	Not Covered
Well Baby Care	100% after $15 employee copayment	Not Covered
Skilled Nursing Facility Care	100%	75%*
Hospice Care	100%	75%*
Home Health Care	100%	75%*
Temporomandibular Joint Syndrome	100%	75%*
Birth Center	100%	75%*
Prescription Drugs (other than by mail order)	100% after $5 employee copayment for brand name ($3 for generic)	75%**

Mail Order Prescription Drugs (60-90 day supply of maintenance drugs only)	100% after $5 employee copayment	100% (not subject to regular deductible) after $5 employee co-payment (not counted toward regular deductible)**
Claim System	Paperless	Forms Required
Approval by Utilization Review/Large Case Management	Physician-initiated; included in network management	Required. If approval not given, benefits reduced by 20% (except for mental health and substance abuse care where benefits reduced by 50%) both before and after annual out-of-pocket maximum is reached, and amount of reduction is not counted toward that maximum.

† The medically necessary health care services for which out-of-network benefits will be paid are those listed in subparagraphs 1 through 7 of Part A, Section 5, of this Agreement.

* Benefits reduced by 20% if care is not approved by utilization review program.

♦ Benefits reduced by 50% if care is not approved by utilization review program.

** Benefits not generally subject to utilization review program but may be reviewable in specific circumstances with advance notice to the employee; in such cases, benefits reduced by 20% if care not approved by utilization review program.

At any time after the expiration of two years from the effective date of implementation of the first managed care network, either the carriers or the organizations may bring before the Joint Plan Committee for consideration a proposal to change the Plan's in-network or out-of-network benefits for the purpose of promoting an increase in the use of in-network providers by Plan participants.

Section 5 - Comprehensive Health Care Benefits

The comprehensive health care benefits provided under the Plan in geographical areas where managed care networks are not available to Plan participants and their dependents, and in cases where a Plan participant has elected to be covered, along with his or her dependents, by such comprehensive benefits rather than to be enrolled in a managed care network, shall be as described below. Terms used in such description shall have the same meaning as they have in the Plan.

After satisfaction of an annual deductible of $100 per covered individual or $300 per family unit of three or more, the Plan will pay 85%, and the covered individual 15%, of certain health care expenses, up to an annual out-of-pocket maximum (which shall not include the deductible) of $1,500 per covered individual or $3,000 per family. The expenses counted toward the $3,000 annual family out-of-pocket maximum will include those, which are otherwise eligible, incurred on behalf of a covered employee and each of his or her covered dependents regardless of whether the employee or dependent has reached the $1,500 individual annual out-of-pocket maximum. Once the applicable annual out-of-pocket maximum has been reached, the Plan will pay 100% of such reasonable charges up to an overall lifetime maximum of $1 million per covered individual, restorable at a rate of $5,000 per year; provided, however, that there shall be a separate lifetime maximum of $100,000 per covered individual, restorable at a rate of $500 per year, for Plan benefits for the treatment of mental and/or nervous conditions and substance abuse. (Benefits counted for purposes of determining whether or not a lifetime maximum has been reached are all benefits paid under the Plan as amended by this Agreement and all Major Medical Expense Benefits paid under the Plan prior to such amendments.) The Plan will pay 85% of the reasonable charges for medically necessary health care services as follows:

1. All expenses that are 'Covered Expenses' (as defined in the Plan) at any time under the current major medical expense benefits provisions of the Plan, and not within any exclusion from or limitation upon them, except that the exclusion for treatment of polio will be removed.

2. Expenses for mammograms described in American Cancer Society guidelines, childhood disease immunization, pap smears and colorectal cancer screening.

3. Donor expense benefits as now defined.

4. Jaw joint disorder benefits as now defined, and subject to the current exclusions from and limitation on them, except that the $50 separate lifetime cash deductible will be removed.

5. Home health care expense benefits as now defined, subject to the current exclusions from and limitation on them, except that the exclusion that governs if polio benefits are payable will be removed.

6. Treatment center expense benefits, subject to the current exclusions from and limitation on them, except that

   a. the separate $100 cash deductible per confinement will be removed in connection with benefits for transportation to a treatment center, and
   b. the separate $100 cash deductible per benefit period and the $40 maximum limitation on benefits per episode of treatment -- all with regard to outpatient benefits -- will be removed.

7. Expenses for the services of psychologists if benefits would be paid for such services had they been rendered by a physician.

The Plan will provide the same benefits to all employees eligible for Plan coverage, including those in their first year of such eligibility and those eligible for extended Plan coverage because of disability.

The Plan's comprehensive health care benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5.00 per prescription, 100% of the cost of prescriptions covering a 60-to-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100/$300 deductible and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Strengthened Utilization Review and Case Management

The Plan's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under the Plan: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where, pursuant to standards developed by the Joint Plan Committee, prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by the Plan incurs expenses without the requisite approval of the Plan's utilization review/case management contractor, such benefits as the Plan would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as the Plan would otherwise pay will be reduced by one-half. These reductions will continue to apply after the out-of-pocket maximum is reached, i.e., the 100% benefit will become 80% (or 50%, as the case may be) if approval by the utilization review/case management contractor is not obtained.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by the Joint Plan Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

Section 7 - Coordination of Benefits

The Plan's coordination of benefit rules shall be changed so that the Plan will pay no benefit to any covered individual that would cause the sum of the benefits paid by the Plan and by any other plan with which the Plan coordinates benefits to exceed (a) the maximum benefit available under the more generous of the Plan and such other plan, or (b) with respect only to spouses who are both covered as employees under the Plan (and the Dependents of such spouses), and to spouses one of whom is covered as an employee under the Plan and the other as a retired railroad employee under the Railroad Employees National Early Retirement Major Medical Benefit Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by the Plan.

Section 8 - Medicare Part B Premiums

Active employees currently covered by Medicare Part B and those who elect to enroll in Medicare Part B when they become eligible shall not be reimbursed for premiums they pay for such Part B Medicare participation unless Medicare is their primary payor of medical benefits.

Section 9 - Solicitation of Bids

As promptly as practicable, the Joint Plan Committee will solicit bids from qualified entities for the performance of (a) all managed care functions under the Plan, including without limitation the establishing and/or arranging for the use by individuals covered by the Plan of managed networks of health care providers in those geographical areas where it is feasible to do so, and (b) all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions. Hospital associations shall be incorporated into the managed care networks wherever appropriate.

Upon the expiration of three years from the effective date of this Agreement, the Joint Plan Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management and/or managed care functions, unless the Committee unanimously determines not to seek bids for any one or more of the services involved in the administration of the Plan.

Part B - Early Retirement Major Medical Benefit Plan

Section 1 - Continuation of Plan

The Railroad Employees Early Retirement Major Medical Benefit Plan ("ERMA"), modified as provided in this Part, will be continued subject to the provisions of the Railway Labor Act, as amended. Contributions to ERMA will be

offset by the expeditious use of such amounts as may at any time be in one or more special accounts or funds maintained by any insurer, third party administrator or other entity in connection with ERMA and by the use of funds held in trust that are not otherwise needed to pay claims, premiums, or administrative expenses that are payable from funds held in trust; provided, however, that such amounts as may at any time be in the special account maintained at The Travelers Insurance Company in connection with the obligations of ERMA to pay benefits incurred but not paid at the time of termination of ERMA, in the event such termination should occur, shall be used to pay or provide for Plan benefits as follows: one-third of the balance in such special account as of January 1, 1992, shall be used to pay or provide for benefits that become due and payable during 1992. One-half of the balance in such special account as of January 1, 1993, shall be used to pay or provide for benefits that become due and payable during 1993. All of the balance in such special account in excess of $1 million as of January 1, 1994, shall be used to pay or provide for benefits that become due and payable during 1994. The $1 million referred to in the preceding sentence shall be maintained by the Plan as a cash reserve to protect against adverse claims experience from year to year.

Section 2 - Change to Self-Insurance

ERMA will be wholly self-insured. It will be administered, under an administrative services only arrangement, by an insurance company or third party administrator.

Section 3 - Coordination of Benefits

ERMA's coordination of benefit rules shall be changed so that ERMA will pay no benefit to any covered individual that would cause the sum of the benefits paid by ERMA and by any other plan with which ERMA coordinates benefits to exceed (a) the maximum benefit available under the more generous of ERMA and such other plan, or (b) with respect only to spouses who are both covered as retired railroad employees under ERMA (and the Dependents of such spouses), and to spouses one of whom is covered as a retired railroad employee under ERMA and the other as an employee under the Railroad Employees National Health and Welfare Plan (and the Dependents of such spouses), 100% of the reasonable charges for services the expense of which is covered by ERMA.

Section 4 - Strengthened Utilization Review and Case Management

ERMA's current utilization review/case management contractor, and any successor, shall henceforth require that its prior approval be secured for the following services to the extent that benefits with respect to them are payable under ERMA: (a) all non-emergency confinements, and all lengths of stay, in any facility, (b) all home health care, and (c) all in-patient and out-patient procedures and treatment, except for any care where prior approval is not feasible or would not be cost-efficient. Approval may be withheld if the utilization review/case management contractor determines that a less intensive or more appropriate diagnostic or treatment alternative could be used.

If an individual covered by ERMA incurs expenses without the requisite approval of ERMA's utilization review/case management contractor, such benefits

as ERMA would otherwise pay will be reduced by one-fifth; provided, however, that if such unapproved expenses are incurred for the treatment of mental or nervous conditions or substance abuse, such benefits as ERMA would otherwise pay will be reduced by one-half.

When there is disagreement between an attending physician and the utilization review/case management contractor, the patient and/or attending physician, after all opportunities for appeal have been exhausted within the utilization review/case management contractor's organization, shall be afforded an opportunity to obtain a review (including if necessary, an examination) by an independent specialist physician. This independent physician, who shall be conveniently located and board certified in the appropriate specialty, shall be designated by a physician appointed for this purpose by mutual agreement between the Chairman of the Health and Welfare Committee, Cooperating Railway Labor Organization and of the National Carriers' Conference Committee. Neither physician may be an employee of or under contract to the utilization review/case management contractor. In the event of an appeal to a specialist described above, the utilization review/case management contractor shall bear the burden of convincing the specialist that the utilization review/case management contractor's determination was correct.

The standards developed by the Joint Plan Committee for determining whether or not prior approval is feasible and cost-efficient under the Health and Welfare Plan shall be applied by the National Carriers' Conference Committee under ERMA, and the utilization review/case management contractor(s) selected by the Joint Plan Committee under the Health and Welfare Plan shall be selected by the National Carriers' Conference Committee under ERMA.

Section 5 - Mail Order Prescription Drug Benefit

The Plan's benefits will include, where permissible under applicable law, a mail order prescription drug benefit that will reimburse a covered individual, after he or she pays $5 per prescription, 100% of the cost of each prescription covering a 60-90 day supply of maintenance drugs for such individual. This benefit will not be subject to, and the covered individual's $5.00 co-payment will not be counted against, the Plan's regular $100 deductible, and will be included only upon execution of appropriate contracts with vendors.

Section 6 - Solicitation of Bids

As promptly as practicable, the National Carriers' Conference Committee will solicit bids from qualified entities for the performance of all utilization review/case management functions under the Plan, including specialized utilization review/case management functions for mental health and substance abuse to assure expert determination of medical necessity and appropriateness of treatment and provider. The Committee will select one or more contractors, from among those that the Committee determines are likely to provide high-quality, cost-effective services, to perform such functions on behalf of the Plan. In the meantime, the Plan's current utilization review/case management contractor will continue to perform those functions.

Upon the expiration of three years from the date of this Agreement, the National Carriers' Conference Committee will solicit bids for all of the services involved in the administration of the Plan, including the utilization review/case management function, unless the Committee determines not to seek bids for any one or more of the services involved in the administration of the Plan.

ARTICLE IV - SUPPLEMENTAL SICKNESS

The January 9, 1980 Supplemental Sickness Benefit Agreement, as amended effective January 1, 1982 (Sickness Agreement), shall be further amended as provided in Sections 1 through 4 of this Article, for periods of disability commencing on or after July 1, 1991.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on January 1, 1982 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning	$13.33 or more	$2,319 or more
Class II Employees Earning	$12.24 or more but less than $13.33	Less than $2,319 but more than $2,130
Class III Employees Earning	Less than $12.24	Less than $2,130

Basic and Maximum Benefit Amount Per Month

	Basic	RUIA	Maximum
Class I	$ 890	$ 674	$ 1,564
Class II	793	674	1,467
Class III	687	674	1,361

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1678
Class II	$1572
Class III	$1459

Section 2 - Plan Benefits During Initial Registration Period

An employee who is eligible to receive Plan benefits during his initial RUIA registration period shall receive from the Plan, for the fifth through the fourteenth days of disability in that period, the Basic Benefit specified in the Plan plus an amount equal to the total RUIA benefit that would have been payable to him for days of sickness in that period but for application of the initial waiting period mandated by existing law.

Section 3 - Adjustment of Plan Benefits During Term of Agreement

Effective December 31, 1994, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

Section 4 - Administrative and Procedural Improvements

The parties have selected and established a subcommittee for the purpose of reviewing and making recommendations with respect to administrative and procedural improvements that would expedite the handling and disposition of Plan claims without affecting the integrity of the Plan. The parties shall consider the subcommittee's recommendations at the earliest opportunity and shall use their best efforts to reach agreement on implementing such recommendations.

ARTICLE V - EXPENSES AWAY FROM HOME

Section 1 - First Adjustment

Effective July 29, 1991, the allowances specified in the Award of Arbitration Board No. 298 (rendered September 30, 1967), as adjusted in various subsequent national agreements, shall be further adjusted as follows:

(a) The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) is increased from $13.75 per day to $17.00 per day;

(b) The meal allowances provided for in Article I, Sections B(1), B(2) and B(3) are increased from $3.25, $6.50, and $9.75 per day, respectively, to $4.00, $8.00, and $12.00 per day, respectively, and

(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased from $23.50 per day to $29.00 per day.

Section 2 - Second Adjustment

Effective December 1, 1994, the daily allowances specified in paragraphs (a), (b), and (c) of Section 1 above will be further adjusted to (a) $20.25; (b) $4.75, $9.50 and $14.50, respectively, and (c) $34.75.

Section 3 - Minimum Allowances

On carriers where expenses away from home are not determined by the allowances made pursuant to the Award of Arbitration Board No. 298, such allowances will not be less than those provided for in this Article.

ARTICLE VI - MEAL PERIOD

Section 1 - Regular Meal Period

Regular meal periods shall be observed at the work site or other convenient location between the beginning of the fourth hour and the beginning of the seventh hour computed from the assignment starting time, unless otherwise agreed upon by the carrier and the affected employees. The meal period shall not be less than thirty (30) minutes nor more than one (1) hour. Wash room facilities shall be provided where the job location requires a meal period to be observed at the work site.

Section 2 - When Regular Meal Period Not Observed

It is not the intent of this rule to allow the carriers to require employees to miss a meal period. Whenever the meal period cannot be observed within the prescribed time period because of unusual circumstances and is worked, affected employees shall be paid on a minute basis at the straight time rate and twenty (20) minutes in which to eat shall be granted at the first opportunity without deduction in pay.

Section 3 - Additional Meal Period

Employees required to render more than three (3) hours overtime service continuous with their regular assignment shall be accorded an additional meal period, the meal to be provided by the carrier. Subsequent meal periods, with meals provided by the carrier, shall be allowed at intervals of not more than six (6) hours computed from the end of the last meal period.

Section 4 - Preservation of Higher Payment

If an employee is currently entitled to a higher payment for working through a prescribed meal period, whether during a regular shift or on overtime, the current payment shall be preserved.

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Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE VII - RATE PROGRESSION - NEW HIRES

(a) Article III of the October 17, 1986 National Agreement is amended by adding the following provision to Section 1:

> (j) This Section shall not apply to foremen, mechanics and production gang members operating heavy, self-propelled equipment that requires skill and experience. Generally speaking, those excluded would occupy the highest rated positions, while those included would occupy lower rated positions. This Section shall continue to apply, however, to a production gang employee who operates machines that require less skill and experience, such as non self-propelled, hand-held, or portable machines.

(b) If the parties on a carrier are unable to agree as to whether a particular production gang assignment is subject to Article III, Section 1 (j) of the October 17, 1986 National Agreement, it may be referred to the Interpretation Committee established under Article XVIII of this Agreement.

ARTICLE VIII - WORK SITE REPORTING

Paid time for production crews* that work away from home shall start and end at the reporting site designated by the appropriate supervisor by the end of the previous day, provided the reporting site is accessible by automobile and has adequate off-highway parking. If a new highway site is more than 15 minutes travel time via the most direct highway route from the previous reporting site, paid time shall begin after fifteen minutes of travel time to the new reporting site from the carrier-designated lodging site for it, and from the new reporting site to the carrier-designated lodging site for it, on the first day only of such change in the reporting site.

In order that there shall be no duplication, time paid for in accordance with this Article shall not be included in determining compensation that may otherwise be due an employee for travel time under the Award of Arbitration Board No. 298, as amended, or similar provisions.

*/ Production crews include all supporting BMWE employees who are assigned to work with, or as part of, a production crew.

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Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE IX - STARTING TIME

Section 1 - Production Crews

The starting times for production crews* shall be between 4:00 a.m. and 11:00 a.m. and shall not be changed without thirty-six hours notice, except that forty-eight hours notice shall be given for a change which is greater than four hours. Starting times shall remain in effect for at least five consecutive days. The BMWE may contest the creation of new starting times through the arbitration procedure set forth in Article XVI. If a carrier wishes to start a crew so early that a convenient restaurant is not open, or end work so late that a meal cannot be obtained, it will be the responsibility of the carrier to provide a meal to those employees at the work site or other place appropriate, convenient and safe to its employees.

Section 2 - Alternative Flexible Starting Times

Other starting times may be agreed upon by the parties for production crews* or for regular assignments involving service which is affected by environmental conditions or governmental requirements or for work that must be coordinated with other operations in order to avoid substantial loss of right of way access time; however, no production crew* or regular assignment shall have a starting time between midnight and 4:00 a.m. If the parties fail to agree on such other starting times, the matter may be referred to arbitration in the manner described in Article XVI. Similar notice requirements regarding starting times, as described above, shall apply.

*/ Production crews include supporting BMWE forces who are directly involved. However, "directly involved" should be given the narrowest possible construction consistent with the efficient operation of the production crew.

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Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE X - ALTERNATIVE WORK WEEK AND REST DAYS

(a) Production crews* may be established consisting of five (5) eight (8) hour days followed by two (2) consecutive rest days. One of those rest days shall be either a Saturday or a Sunday, and both weekend days shall be designated as rest days where there is no need for weekend work.

(b) Production crews* may be established consisting of four (4) ten (10) hour days, followed by three (3) consecutive rest days, in lieu of five (5) eight

(8) hour days. The rest days of such compressed work week will include either Saturday or Sunday. However, where there is no carrier need for weekend work, production crews will be given both weekend days as rest days.

Note: * - Production crews include locally based supporting BMWE forces whose assignment is associated with that of a production crew to the extent that a different work week or rest days for such crews, on the one hand, and such supporting forces, on the other, would delay the work or otherwise interfere with its orderly progress.

- - - - - - - - - - - - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XI - INTRA-CRAFT WORK JURISDICTION

Employees will be allowed to perform incidental tasks which are directly related to the service being performed and which they are capable of performing, provided the tasks are within the jurisdiction of the BMWE. Compensation shall be at the applicable rate for the employee performing the service and shall not constitute a basis for any time claims by other employees. This provision is not intended to alter the establishment and manning of work forces accomplished in accordance with existing assignment, seniority, scope and classification rules.

- - - - - - - - - - - - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XII - COMBINING OR REALIGNING SENIORITY DISTRICTS

Section 1 - Notice

A carrier shall give at least thirty (30) days written notice to the affected employees and their bargaining representative of its desire to combine or realign seniority districts, including all carriers under common control, specifying the nature of the intended changes. The protection of the Interstate Commerce Act will continue to apply to all such combinations or realignments.

Section 2 - Arbitration

If the parties are unable to reach agreement within ninety (90) calendar days from the serving of the original notice, either party may submit the matter to final and binding arbitration in accordance with the terms of Article XVI.

- - - - - - - - - - - - - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XIII - REGIONAL AND SYSTEM-WIDE GANGS

(a) A carrier shall give at least ninety (90) days written notice to the involved employee representative(s) of its intention to establish regional or system-wide gangs for the purpose of working over specified territory of the carrier or throughout its territory (including all carriers under common control) to perform work that is programmed during any work season for more than one seniority district. The notice shall specify the terms and conditions the carrier proposes to apply.

(b) If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matter to final and binding arbitration in accordance with Article XVI.

(c) All subject matters contained in a carrier's proposal to establish regional or system-wide gangs, including the issue of how seniority rights of affected employees will be established, are subject to the expedited arbitration procedures provided for in Article XVI. BMWE counterproposals, that are subject matter related to a carrier's proposals regarding the establishment of regional or system-wide gangs are also within the arbitrator's jurisdiction.

- - - - - - - - - - - - - - - - - -

Nothing in this Article is intended to restrict any of the existing rights of a carrier.

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representative on or before such effective date.

ARTICLE XIV - WORK FORCE STABILIZATION

Adoption of Emergency Board Recommendations

The recommendations of Emergency Board No. 219 on Item 13, Work Force Stabilization, (pages 102-104 of its Report), as printed below, were imposed pursuant to Public Law No. 102-29.

Work Force Stabilization

Perhaps the most difficult issue presented is that of work force stabilization, and particularly how that relates to the Carriers' desire to establish efficient system-wide production gangs. The series of recommendations described below, the Board believes, offers the parties a singular opportunity to achieve their mutual goals.

A program should be established by each carrier effective at the beginning of the 1992 production season. The purpose of the program is to respond in some measure to the Organization's concern over seasonality of employment, which mainly affects production gangs, and the Carriers' desire to utilize such gang members to the fullest extent practicable. The Organization has stressed to the Board that its intention is not to have employees receive pay for not working but, rather, to provide bona fide work opportunities for its members.

Under this new scheme, each carrier will determine at the beginning of the production season the number and staffing of the gangs or crews that are to be covered. These gangs or crews are to be provided at least six (6) months' work in the calendar year or, if laid off by action of the carrier, paid a supplemental unemployment benefit for the remainder of the six-month period. The benefit level will be the same as that provided by the BMWE Supplemental Sickness Benefit program.

There are a number of obvious issues and concerns in developing and implementing this "guarantee" program and probably many more that are not obvious to this Board and that might not even be identified by the parties until they address the subject in a thoroughgoing way. For these reasons the Board recommends that there be established a Select Committee of the parties at the national level, with a neutral Chairman, to identify and resolve issues directly or by final and binding decisions by the neutral Chairman, if necessary. This will permit thoughtful deliberations on such matters as what gangs or crews are to be covered, whether a carrier should have added flexibility to enable it to provide more work opportunities to covered employees, whether there should be some commitment by the employee to remain on a covered crew for the duration of the production season, whether there should be provisions for forfeiture of the "guarantee" under certain conditions and other equally relevant questions that the parties may encounter.

Notwithstanding the current economic downturn and the competitive realities of the transportation marketplace, we are confident that the parties, with the assistance of the Select Committee, will be able to devise appropriate measures to be taken when economic adversity of any kind strikes a railroad. The Board, therefore, recommends further that the Committee, with the neutral chairman,

continue in existence to help ensure that the program is applied and utilized effectively and evolves to achieve its full potential. This program, in the Board's view, holds the promise of moderating seasonality of employment with little or no added cost to the Carriers. Of course, if it turns out to represent just an added cost burden to the carriers because of inability to utilize employees fully, the program cannot succeed. The parties, therefore, through their committee and assisted by the neutral, have the responsibility of fleshing out the program by incorporating features to assure that it serves its intended purpose. To this end we recommend that the Committee have maximum flexibility to establish conditions, adopt new rules, change old rules, and the like, with the neutral available to make binding decisions on any issue that the parties themselves cannot resolve.

ARTICLE XV - SELECT COMMITTEE

(a) Within sixty (60) days from the date of the Agreement, the parties shall establish a Select Committee to be comprised of an equal number of carrier and organization representatives. Within 15 days of its establishment, that Committee shall select a neutral to serve as Chairman. Absent agreement, the Committee shall promptly request appointment of such neutral by the National Mediation Board. The fees and expenses of the neutral shall be shared equally by the parties.

(b) The neutral Chairman shall convene the Committee promptly and assist the parties in attempting to resolve all issues before it, with due regard for the overall purposes of the program and the parties' needs and concerns. If the Committee fails to resolve all issues submitted to it within 120 days from the date of the Agreement, the neutral Chairman shall, no later that thirty (30) days thereafter, make final and binding determinations on all unresolved issues.

(c) The Committee shall have the authority to modify any applicable rules to the extent necessary to foster the overall objectives of reducing seasonality and minimizing under-utilization of employees.

(d) The Committee shall monitor implementation and application of this program on individual carriers in order to evaluate its effectiveness in meeting the parties' objectives and to make changes as necessary or desirable in light of the overall purposes of the program.

(e) The Committee shall retain jurisdiction to facilitate implementation and to resolve any issues that may arise, including those on individual carriers, striving to achieve uniformity to the extent practicable but accommodating relevant local considerations.

(f) The neutral Chairman shall be empowered to render final and binding decisions on any issues not resolved by the parties and, if he or she finds that the program is not effective in that it does not meet the goals described above, may cancel the program at any time after December 31, 1993.

ARTICLE XVI - ARBITRATION PROCEDURES - STARTING TIMES, COMBINING OR REALIGNING SENIORITY DISTRICTS, AND REGIONAL AND SYSTEM WIDE GANGS

Section 1 - Selection of Neutral Arbitrator

Should the parties fail to agree on selection of a neutral arbitrator within five (5) calendar days from the submission to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternately striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

Section 2 - Fees and Expenses

The fees and expenses of the neutral arbitrator should be borne equally by the parties, and all other expenses shall be paid for by the party incurring them.

Section 3 - Hearings

The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator shall not accept oral testimony at the hearing, and no transcript of the hearing shall be made. Each party, however, may present oral arguments at the hearing through its counsel or other designated representative.

Section 4 - Written Decision

The arbitrator shall render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

ARTICLE XVII - SUBCONTRACTING

The special arrangements governing subcontracting that are contained in Article VIII of the October 17, 1986 National Agreement are continued substantially unchanged. However, if either the organization or carrier believes that the other party is not cooperating in an attempt to resolve the matter, that party may refer the matter to the Interpretation Committee described in Article XVIII, for prompt consideration and any action deemed appropriate that is consistent with the spirit and intent of the Agreement. This may include a requirement that an Advisory Fact-Finding panel be established immediately, regardless whether the conditions described for establishing such a panel have been met. The parties shall share equally the fees and expenses of any neutral arbitrator who may be utilized.

The establishment of the Interpretation Committee is to avoid a carrier taking a position which is contrary to the spirit and intent of the PEB 219 recommendations. Since the union's right to make proposals regarding

subcontracting was referred to local handling under the peaceful procedures of the Railway Labor Act, there is no right on the part of any carrier to make offsetting proposals. If the theory regarding subcontracting rights as stated by the organization is a carrier position, any dispute regarding the interpretation of the subcontracting provisions recommended by PEB 219 shall be referred to the Interpretation Committee. A carrier that fails to agree to such a submission violates the Railway Labor Act with a loss of consequent protection.

ARTICLE XVIII - INTERPRETATION COMMITTEE

Disputes arising over the application or interpretation of this Agreement will be referred to a joint Interpretation Committee consisting of an equal number of representatives of both parties. The committee's jurisdiction shall not overlap those areas where other recommendations have provided for a specific dispute resolution mechanism.

Within ninety days of the effective date of the Agreement, the parties shall select a neutral person to serve with the committee, as needed. If the parties fail to agree upon such a neutral person, either party may request a list from the NMB of five potential arbitrators from which the parties should choose the arbitrator by alternately striking names from the list.

If a dispute is not resolved within sixty days of its submission to the committee, it may be referred to the neutral by either party for final and binding disposition. The fees and expenses of the arbitrator shall be borne equally by the parties.

ARTICLE XIX - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices served by the Brotherhood of Maintenance of Way Employes ("BMWE") upon the carriers listed in Exhibit A dated on or about April 2, 1984 and June 10, 1988 and proposals served on or about April 9, 1984 and March 8, 1989 by the carriers for concurrent handling therewith. This Agreement shall be construed as a separate Agreement by and on behalf of each of said carriers and their employees represented by the BMWE, and shall remain in effect through December 31, 1994 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) Except as provided in Section 2(c) of this Article, no party to this Agreement shall serve, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal for the purpose of changing the subject

matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in Section 2(a) of this Article, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) Proposals that may be pursued in accordance with the various Articles of this Agreement are not affected by Section 2(b). Such proposals may be progressed within, but not beyond, the specific procedures for peacefully resolving disputes provided for in the relevant Article of the Agreement that addresses such subject matters or in the Railway Labor Act, as amended.

(d) Except as provided in Section 2(c) of this Article, no party to this Agreement shall serve or progress, prior to November 1, 1994 (not to become effective before January 1, 1995), any notice or proposal which might properly have been served when the last moratorium ended on July 1, 1988.

July 29, 1991

#1

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the $2,000 lump sum payment provided for in Article I, Section 1 of the Agreement imposed pursuant to Public Law No. 102-29.

In the case of an employee who was recalled from reserve status and performed active military service during 1990 as a result of the Persian Gulf crisis, such employee will be credited with 40 hours of compensated service (48 hours in the case of a monthly rated employee whose rate is predicated on an all-service performed basis) for each week of such military service for purposes of calculating eligibility for the lump sum amount provided he would otherwise have been in active service for the carrier.

Very truly yours,

C. I. Hopkins, Jr.

July 29, 1991

#2

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the Lump Sum Payment provided for in Article I, Section 1 of the Agreement imposed pursuant to Public Law No. 102-29..

This confirms our understanding that days during the year 1990 for which employees in a furloughed status received compensation pursuant to guarantees in protective agreements or arrangements shall be included in determining qualifications for the Lump Sum Payment.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____
Mac A. Fleming

July 29, 1991

#3

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the increase in wages provided for in Section 2 of Article I of the Agreement imposed pursuant to Public Law No. 102-29.

It is understood that the retroactive portion of that wage increase will be paid within 60 days from the date of this Imposed Agreement. It is further understood that it shall be applied only to employees who have a current employment relationship under an agreement with the Brotherhood of Maintenance of Way Employes or who have retired or died subsequent to July 1, 1991.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____
Mac A. Fleming

July 29, 1991

#4

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the Lump Sum Payments provided in Articles I and II of the Agreement imposed pursuant to Public Law No. 102-29.

All of the lump sum payments provided for in Article II are based in part on the number of straight time hours paid for that are credited to an employee for a particular period. However, the number of straight time hours so credited does not include any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements.

The inclusion of the term 'guarantees in protective agreements or arrangements" in Article II means that an employee receiving such a guarantee will have included in the straight time hours used in calculating his lump sum payments under this Article all such hours paid for under any protective agreement or allowance provided, however, that in order to receive credit for such hours an employee must not be voluntarily absent from work, meaning that hours are not counted if an employee does not accept calls to report for work.

It is understood that any lump sum payment provided in Articles I and II will not be used to offset, construct or increase guarantees in protective agreements or arrangements.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____
Mac A. Fleming

July 29, 1991

#5

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the lump sum payments provided for in Article II of this Imposed Agreement.

Sections 1 to 4, inclusive, of Part A of Article II - Cost-of-Living Payments are structured so as to provide lump sum payments that are essentially based on the number of straight time hours credited to an employee during a specified 12-month base period. Section 7 provides that all of these lump sum payments are payable to an employee who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable base period used to determine the amount of such payment. Thus, for example, under Section 1 of Part A of Article II, except for an employee who has retired or died, the Imposed Agreement requires that an employee have an employment relationship as of July 1, 1992 in order to receive a lump sum payment which will be based essentially on the number of straight time hours credited to such employee during a period running from April 1, 1991 through March 31, 1992.

The intervals between the close of the measurement periods and the actualy payments established in the 1985-86 National Agreements were in large part a convenience to the carriers in order that there be adequate time to make the necessary calculations.

In recognition of this, we again confirm the understanding that an individual having an employment relationship with a carrier on the last day of a particular measurement period will not be disqualified from receiving the lump sum (or portion thereof) provided for in the event his employment relationship is terminated following the last day of the measurement period but prior to the payment due date.

Yours very truly,

C. I. Hopkins, Jr.

July 29, 1991

#6

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to Article III Part A of the Agreement imposed pursuant to Public Law No. 102-29, dealing with the Railroad Employees National Health and Welfare Plan (the "Plan"), and in particular to one facet of the arrangements for funding the benefits provided for under the Plan.

It is understood that, insofar as carriers represented by the National Carriers' Conference Committee in connection with health and welfare matters but not in connection with wages and cost-of-living adjustments are concerned, the cost-of-living adjustments for 1993 and thereafter that may have already been agreed to by such carriers, or that may be agreed to in the future, shall be adjusted--unless the agreement involved, reached on an individual property basis, provides as a part of the wage settlement that the employees covered by it shall not share in any year-to-year increases in Plan costs--so that the employees covered by such agreements shall receive cost-of-living adjustments that are less (than they would otherwise receive) by an amount equal to the lesser of (i) one-quarter of the year-to-year increases in the carriers' payment rate for the foreign-to-occupation portion of health benefits under the Plan as defined in the Imposed Agreement referred to in the first paragraph of this letter and (ii) the amount pro-rated where appropriate, they would otherwise receive.

If the parties involved are unable to reach agreement on the specific manner of making the adjustments, or on any other terms and conditions regarding the adjustments, it is understood that such dispute shall be submitted, upon the written notice by either party, to arbitration by a neutral arbitrator within thirty (30) days after such notice is transmitted by one party to the other. Should the parties involved fail to agree on selection of a neutral arbitrator within five (5) calendar days from the date the dispute is submitted to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose the arbitrator by alternatively striking names from the list. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel. The fees and expenses of the neutral arbitrator should be borne equally

by the parties, and all other expenses should be paid for by the party incurring them. The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him or her. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The arbitrator shall not accept oral testimony at the hearing, and no transcript of the hearing shall be made.

Each party, however, may present oral arguments at the hearing through its counsel or other designated representative. The arbitrator must render a written decision, which shall be final and binding, within thirty (30) calendar days from the date of the hearing.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

Mac A. Fleming

July 29, 1991

#7

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to Section 4 of Article IV - Supplemental Sickness of the Agreement imposed pursuant to Public Law No. 102-29. The parties agree to accept the recommendations of the subcommittee referred to in that Section and intend to modify existing administrative procedures of the Supplemental Sickness Benefit Plan (Plan) within 60 days from the effective date of such Imposed Agreement, unless otherwise indicated, to provide as follows:

1. Plan benefits will commence for qualified employees after all certification requirements (i.e., claim application, employer certification, physician certification, and Railroad Unemployment Insurance eligibility) have been met and before the Railroad Retirement Board pays RUIA sickness benefits, providing the insurance company administering the Plan continues to have access to the Board's eligibility data base.

2. During the first thirty (30) days of a qualified disability, assuming all certification requirements have been met timely, Plan benefits will be paid covering the first fourteen (14) days of disability so that qualified disabled employees receive their first benefit checks on or about the thirtieth (30th) day of disability following their application for benefits. Benefit payments thereafter would follow the established thirty (30) day payment cycle.

3. Participating railroads, particularly those that have 500 or more employees enrolled in a Plan, will be urged to provide employee certification information through an established electronic certification process as promptly as possible.

Participating railroads that have had continuing difficulty in providing employee certification information on a timely basis will be urged to adopt procedures permitting employees to receive on-site employer certification of their eligibility. On-site employer certification procedures will be developed as reasonably promptly as possible, but not later than by May 1, 1992.

4. The hourly rates of pay used to define various Plan benefit amount classification will be automatically adjusted, during the moratorium periods of applicable national agreements, when rates of pay are adjusted for railroad employees covered by the Plan pursuant to such agreements. This modification will not change the benefits provided, but it will permit employer certification information to be provided more quickly.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

Mac A. Fleming

July 29, 1991

#8

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to Article VIII - Work Site Reporting of the Agreement imposed pursuant to Public Law No. 102-29.

This will affirm the carriers' commitment that in the application of such Article, the carrier will not change the headquarters of supporting BMWE forces, as that term is defined in Article VIII, for the purpose of avoiding payment of away-from-home expenses to such supporting forces.

Very truly yours,

C. I. Hopkins, Jr.

July 29, 1991

#9

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to Article XIV - Work Force Stabilization, of the Agreement imposed pursuant to Public Law No. 102-29.

If, during a particular production season, there is insufficient scheduled production work to utilize fully a crew covered by Article XIV above, a carrier will not abolish or reduce section gang forces (or the equivalent on those properties where the term "section gang" is not used) in order to avoid payment of the supplemental unemployment benefits to such production crew members during that production season.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____

Mac A. Fleming

July 29, 1991

#10

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This confirms our understanding with respect to the Agreement imposed pursuant to Public Law No. 102-29.

The parties exchanged various proposals and drafts antecedent to the various Articles that appear in this Imposed Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Imposed Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation. This shall not be construed to preclude any party from relying on the Proceedings and Report of Presidential Emergency Board 219 and/or the Proceedings and Reports of Special Board 102-29.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

C. I. Hopkins, Jr.

I agree:

_____
Mac A. Fleming

July 29, 1991

#11

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, Michigan 48203-3596

Dear Mr. Fleming:

This refers to the eligibility of an employee, who was dismissed as of July 29, 1991, for the $2,000 lump sum payment provided for in Article I, Section 1 of the Agreement imposed pursuant to Public Law No. 102-29.

This confirms our understanding that entitlement to the $2,000 lump sum payment would depend upon the final outcome of the dismissed employee's claim for reinstatement through the claim and grievance procedure or ultimately in arbitration. Therefore, any applicable time limits for progressing claims for the $2,000 lump sum payment would not begin until after the dismissed employee's case was resolved through the claim and grievance procedure or arbitration.

Additionally, this will confirm our understanding that a dismissed employee who is subsequently reinstated without back pay or with only partial back pay may be entitled to the lump sum payment if reinstated with basic seniority unimpaired. However, such lump sum payment will be prorated on the basis of actual service performed during the base period prior to the employee's discharge, and/or back pay credited to the base period.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

C. I. Hopkins, Jr.

I agree:

_____

Mac A. Fleming

July 29, 1991

#12

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, MI 48203-3596

Dear Mr. Fleming:

This refers to our discussions concerning the various lump sum payments provided under Article II of the Agreement imposed pursuant to Public Law No. 102-29.

Essentially those provisions are structured in a manner that includes recognition of overtime hours in calculating the maximum amounts payable under those provisions, but includes only straight time hours paid for when determining the specific amount payable to an individual employee in any of the prescribed periods.

During our discussions, you pointed out the inequity that this application would have on a large numnber of BMWE represented employees whose work is seasonal rather than year round and who, during the period of the year they are actually employed, consistently work a relatively high number of overtime hours vis-a-vis straight time hours because such employees are assigned to gangs whose work is seasonal in nature.

This will confirm our understanding that for purposes of determining the amounts of lump sum payments provided in Article II of the Agreement imposed pursuant to Public Law No. 102-29 payable to employees otherwise eligible to receive such payments, whose work is seasonal in nature, overtime hours paid for shall be included on the basis of one hour for each overtime hour worked.

For purposes of determining what constitutes "seasonal employees' it is further agreed that the employees who work in eight (8) or less months in any of the time periods specified in Sections 1, 3 and 4 of Article II shall be considered seasonal employees for that particular period. For purposes of Section 2, a seasonal employee is one who works in four (4) or less months during the period covered by that section.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

C. I. Hopkins, Jr.

I agree:

_____

Mac A. Fleming

July 29, 1991

#13

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, MI 48203-3596

Dear Mr. Fleming:

This refers to Articles VI (Meal Period), VIII (Work Site Reporting), IX (Starting Time), X (Alternative Work Week and Rest Days), XI (Intra-Craft Work Jurisdiction), XII (Combining or Realigning Seniority Districts), and XIII (Regional and System-Wide Gangs) of the Agreement imposed pursuant to Public Law No. 102-29.

This will confirm our understanding that the carriers may exercise the savings clause prerogative set forth in each of the aforementioned Articles by notifying the authorized employee representative on or before December 15, 1991.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

C. I. Hopkins, Jr.

I agree:

_____
Mac A. Fleming

February 6, 1992

#14

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, MI 48203-3596

Dear Mr. Fleming:

This refers to our discussions concerning Exhibit A to the Imposed Agreement listing the railroads that are parties thereto.

Exhibit A as accepted and adopted by the Organization omits the Consolidated Rail Corporation whereas Exhibit A accepted and adopted by the carriers does include the Consolidated Rail Corporation. The difference is occasioned by the dispute between the parties as to whether that carrier and its BMWE represented employees are covered by and subject to the changes in the Railroad Employees National Health and Welfare Plan that became effective as the result of P.L. 102-29. That dispute currently is the subject of litigation and this confirms our understanding that the Imposed Agreement (including without limitation the reference in Article XIX, Section 2(a), to certain notices and proposals for concurrent handling), the letters attached to the Imposed Agreement, and the parties' respective Exhibit A's thereto are without prejudice to any party's position, and do not constitute any concession by any party with respect to its position, in the aforesaid dispute.

Our understanding of the parties' respective positions in the aforesaid dispute is as follows: The Organization's position is that, with respect to Consolidated Rail Corporation, the 1984 notices and proposals for concurrent handling referred to in Section 2(a) of Article XIX of the Imposed Agreement became invalid and of no force and effect following the service of the 1988 notices and proposals for concurrent handling. The carrier's position is that such 1984 notices and proposals for concurrent handling were not affected in any way by the service of the 1988 notices and proposals for concurrent handling.

Please indicate your agreement by signing your name in the space provided below.

Your very truly,

C. I. Hopkins, Jr.

I agree:

Mac A. Fleming

EXHIBIT A - As accepted and adopted by the carriers.
BMWE

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT APRIL 2, 1984, OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS PERTAINING TO THE HEALTH AND WELFARE PLAN TO THE EXTENT INDICATED IN PROPOSAL IDENTIFIED AS "APPENDIX B ' THERETO, AND NOTICES DATED ON OR ABOUT JUNE 10, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN ATTACHMENT A THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMAN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 8, 1989 FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Brotherhood of Maintenance of Way Employes.

Akron & Barberton Belt Railroad
Alton & Southern Railway
Atchison, Topeka & Santa Fe Railway
1 - Bessemer and Lake Erie Railroad
Burlington Northern Railroad
Canadian National Railways:
1 - Great Lakes Region Lines in U.S.
1 - St. Lawrence Region Lines in U.S.
2 - Canadian Pacific Limited
CSX TRANSPORTATION:
Atlanta & West Point Rail Road
Western Ry. of Alabama
Baltimore and Ohio Railroad
Baltimore and Ohio Chicago Terminal RR.
Chesapeake and Ohio Railway
Clinchfield Railroad
Seaboard System Railroad:
Georgia Railroad (former)
Louisville and Nashville Railroad (former)
incl. C&EI and Monon
Seaboard Coast Line Railroad (former)
Western Maryland Railway Co.
2 - Chicago & Illinois Midland Railway
Chicago & North Western Trans. Co.
Colorado & Wyoming Railway
1 - Consolidated Rail Corporation
Davenport, Rock Island and Northwestern Ry.
Denver and Rio Grande Western Railroad
1 - Denver Union Terminal Railway
Duluth, Winnipeg & Pacific Railway
Houston Belt and Terminal Railway
Illinois Central Railroad

Kansas City Southern Railway
Louisiana & Arkansas Railway
Milwaukee (Soo Line)-KCS Joint Agency
1 - Kansas City Terminal Railway
3 - Lake Superior & Ishpeming Railroad
Los Angeles Junction Railway
Manufacturers Railway
1 - Meridian & Bigbee Railroad
1 - Minnesota & Manitoba Railway
Missouri Pacific Railroad
Galveston, Houston and Henderson Railroad
4 - Missouri-Kansas-Texas Railroad
2 - Monongahela Railway
1 - Montour Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad
Norfolk and Western Railway
Norfolk Southern Railway Company
Alabama Great Southern Railroad
New Orleans & Northeastern Railroad
1 - Atlantic and East Carolina Railway
1 - Carolina & Northwestern Railway
Central of Georgia Railroad
Cincinnati, New Orleans & Texas Pacific Ry.
Georgia Northern Railway
Georgia Southern and Florida Railway
1 - Interstate Railroad
1 - Live Oak, Perry and South Georgia Railroad
New Orleans Terminal Co.
St. Johns River Terminal Company
Tennessee, Alabama & Georgia Railway
Tennessee Railway
Northern Indiana Commuter Transportation District
Northwestern Pacific Company
Peoria & Pekin Union Railway
2 - Pittsburgh & Lake Erie Railroad
2 - Pittsburgh, Chartiers & Youghiogheny Railway
Port Terminal Railroad Association
Portland Terminal Railroad Company
Richmond, Fredericksburg & Potomac Railroad
St. Louis Southwestern Railway
Southern Pacific Transportation Co.:
Eastern Lines
Western Lines
Terminal Railroad Association of St. Louis
1 - Texas Mexican Railway
Union Pacific Railroad
Western Pacific Railroad
Wichita Terminal Association
Yakima Valley Transportation Co.

NOTES:

1 - Authorization limited to Health and Welfare proposals.
2 - Excludes Wages and Rules.
3 - Excludes Health and Welfare.
4 - Includes Oklahoma, Kansas and Texas Railroad.

- -

FOR THE CARRIERS:

FOR THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Washington, D. C.

September 26, 1991

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, MI 48203-3596

Dear Mr. Fleming:

This refers to our discussions concerning the establishment of the Select Committee as provided under Article XV of the Agreement imposed pursuant to Public Law No. 102-29.

Article XV - Select Committe states in pertinent part:

> "(a) Within sixty (60) days from the date of the Agreement imposed pursuant to Public Law 102-29, the parties shall establish a Select Committee to be comprised of an equal number of carrier and organization representatives. Within fifteen (15) days of its establishment, that Committee shall select a neutral to serve as Chairman . . ."

This confirms our agreement to defer establishment of the Select Committee and, hence, a neutral to serve on that Committee at this time. However, either party retains the right to establish such Committee by giving the other party ten (10) days' notice of its intent to do so. In the event the Committee is established, the Committee shall select a neutral to serve as Chairman within fifteen (15) days of such date.

The parties reserve the right to agree on other, similar changes if appropriate.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

C. I. Hopkins, Jr.

I agree:

Mac A. Fleming

EXHIBIT A - As accepted and adopted by the Organization.
BMWE

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES, DATED ON OR ABOUT APRIL 2, 1984, OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS PERTAINING TO THE HEALTH AND WELFARE PLAN TO THE EXTENT INDICATED IN PROPOSAL IDENTIFIED AS "APPENDIX B ' THERETO, AND NOTICES DATED ON OR ABOUT JUNE 10, 1988 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE WITH THE PROPOSALS SET FORTH IN ATTACHMENT A THERETO, SERVED ON RAILROADS GENERALLY BY THE GENERAL CHAIRMAN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, AND PROPOSALS SERVED BY THE CARRIERS ON OR ABOUT APRIL 9, 1984 AND MARCH 8, 1989 FOR CONCURRENT HANDLING THEREWITH.

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Akron & Barberton Belt Railroad
Alton & Southern Railway
Atchison, Topeka & Santa Fe Railway
1 - Bessemer and Lake Erie Railroad
Burlington Northern Railroad
Canadian National Railways:
1 - Great Lakes Region Lines in U.S.
1 - St. Lawrence Region Lines in U.S.
2 - Canadian Pacific Limited
CSX TRANSPORTATION:
Atlanta & West Point Rail Road
Western Ry. of Alabama
Baltimore and Ohio Railroad
Baltimore and Ohio Chicago Terminal RR.
Chesapeake and Ohio Railway
Clinchfield Railroad
Seaboard System Railroad:
Georgia Railroad (former)
Louisville and Nashville Railroad (former)
incl. C&EI and Monon
Seaboard Coast Line Railroad (former)
Western Maryland Railway Co.
2 - Chicago & Illinois Midland Railway
Chicago & North Western Trans. Co.
Colorado & Wyoming Railway
Davenport, Rock Island and Northwestern Ry.
Denver and Rio Grande Western Railroad
1 - Denver Union Terminal Railway
Duluth, Winnipeg & Pacific Railway
Houston Belt and Terminal Railway
Illinois Central Railroad

Kansas City Southern Railway
Louisiana & Arkansas Railway
Milwaukee (Soo Line)-KCS Joint Agency
1 - Kansas City Terminal Railway
3 - Lake Superior & Ishpeming Railroad
Los Angeles Junction Railway
Manufacturers Railway
1 - Meridian & Bigbee Railroad
1 - Minnesota & Manitoba Railway
Missouri Pacific Railroad
Galveston, Houston and Henderson Railroad
4 - Missouri-Kansas-Texas Railroad
2 - Monongahela Railway
1 - Montour Railroad
New Orleans Public Belt Railroad
Norfolk and Portsmouth Belt Line Railroad
Norfolk and Western Railway
Norfolk Southern Railway Company
Alabama Great Southern Railroad
New Orleans & Northeastern Railroad
1 - Atlantic and East Carolina Railway
1 - Carolina & Northwestern Railway
Central of Georgia Railroad
Cincinnati, New Orleans & Texas Pacific Ry.
Georgia Northern Railway
Georgia Southern and Florida Railway
1 - Interstate Railroad
1 - Live Oak, Perry and South Georgia Railroad
New Orleans Terminal Co.
St. Johns River Terminal Company
Tennessee, Alabama & Georgia Railway
Tennessee Railway
Northern Indiana Commuter Transportation District
Northwestern Pacific Company
Peoria & Pekin Union Railway
2 - Pittsburgh & Lake Erie Railroad
2 - Pittsburgh, Chartiers & Youghiogheny Railway
Port Terminal Railroad Association
Portland Terminal Railroad Company
Richmond, Fredericksburg & Potomac Railroad
St. Louis Southwestern Railway
Southern Pacific Transportation Co.:
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Terminal Railroad Association of St. Louis
1 - Texas Mexican Railway
Union Pacific Railroad
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NOTES:

1 - Authorization limited to Health and Welfare proposals.
2 - Excludes Wages and Rules.
3 - Excludes Health and Welfare.
4 - Includes Oklahoma, Kansas and Texas Railroad.

- -

FOR THE CARRIERS:

FOR THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Washington, D. C.

September 26, 1991

Mr. Mac A. Fleming
President
Brotherhood of Maintenance of Way Employes
12050 Woodward Avenue
Detroit, MI 48203-3596

Dear Mr. Fleming:

This refers to our discussions concerning the establishment of the Select Committee as provided under Article XV of the Agreement imposed pursuant to Public Law No. 102-29.

Article XV - Select Committe states in pertinent part:

> "(a) Within sixty (60) days from the date of the Agreement imposed pursuant to Public Law 102-29, the parties shall establish a Select Committee to be comprised of an equal number of carrier and organization representatives. Within fifteen (15) days of its establishment, that Committee shall select a neutral to serve as Chairman . . ."

This confirms our agreement to defer establishment of the Select Committee and, hence, a neutral to serve on that Committee at this time. However, either party retains the right to establish such Committee by giving the other party ten (10) days' notice of its intent to do so. In the event the Committee is established, the Committee shall select a neutral to serve as Chairman within fifteen (15) days of such date.

The parties reserve the right to agree on other, similar changes if appropriate.

Please indicate your agreement by signing your name in the space provided below.

Yours very truly,

C. I. Hopkins, Jr.

I agree:

Mac A. Fleming

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N.W , WASHINGTON, D C. 20036/AREA CODE. 202-862-7200 FAX 202-862-7230

ROBERT F. ALLEN
Chairman

D. P. LEE
Vice Chairman and
General Counsel

A. K. GRADIA
Director of Labor Relations

October 1, 1996

CIRCULAR NO. 814-8

TO MEMBER ROADS:

This refers to our circulars in the above series in regard to the national wage and rules negotiations involving employees represented by the International Association of Machinists and Aerospace Workers.

With our Circular No. 814-4, we attached a copy of the tentative agreement with the IAM.

There is attached a copy of formal Mediation Agreement (NMB Case No. A-12769), dated August 27, 1996, which has now been executed, with a few technical changes.

As noted in our Circular No. 814-5, the 60 days provided for payment of the retroactive portion of the general wage increases and the signing bonus under Side Letter #1 will be calculated from August 27, with payment to be made as soon as possible and no later than October 26, 1996.

Yours very truly,

A. K. GRADIA

Director of Labor Relations

Attachment

IAM & AW
August 27, 1996

MEDIATION AGREEMENT, CASE A-12769

DATED AUGUST 27, 1996

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

MEDIATION AGREEMENT

THIS AGREEMENT, made this 27th day of August, 1996, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Association of Machinists and Aerospace Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On December 1, 1995, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 3-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3-1/2 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3-1/2 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3-1/2 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d),inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Signing Bonus

Subject to Sections 9 and 10, each employee with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period January 1, 1995 through December 31, 1995 will be paid, on the date of this Agreement, a Signing Bonus of four hundred dollars ($400.00).

Section 3 - Second General Wage Increase

Effective July 1, 1996, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1996 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1996, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1-3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by dividing $76.68 by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 4 - Third General Wage Increase

Effective July 1, 1997 all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1997 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 3) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 1 hereof.

Section 5 - Fourth General Wage Increase

Effective July 1, 1998, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1998 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1998, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1 3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by the following computation: one-quarter of the amount, if any, by which the carriers' payment rate for 1998 for foreign-to-occupation health benefits exceeds such payment rate for 1995, multiplied by one-and-one half, and then divided by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 6 - Fifth General Wage Increase

Effective July 1, 1999, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1999 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 5) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 6 shall be applied in the same manner as provided for in Section 1 hereof.

Section 7 - Definitions

The carriers' payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve (12) times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1, of the National Agreement made July 31, 1992.

Section 8 - Eligibility for Receipt of Signing Bonus

The Signing Bonus provided for in this Article will be payable to each employee subject to this Agreement who has an employment relationship as of the date such payment is payable, or has retired or died subsequent to the beginning of the

applicable calendar year used to determine the amount of such payment. There shall be no duplication of the Signing Bonus by virtue of employment under another agreement nor will such payments be used to offset, construct or increase guarantees in protective agreements or arrangements.

Section 9 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in the period described in Section 2 than the minimum number set forth therein, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during such period divided by the defined minimum hours.

Section 10 - Signing Bonus Proration

In the case of any employee subject to wage progression or entry rates, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the weighted average entry rate percentage applicable to wages earned during the specified determination period.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under National Agreement Made July 31, 1992

The nine-cent cost-of-living allowance in effect beginning July 1, 1995 pursuant to Article II, Part B of the National Agreement made July 31, 1992 shall be rolled in to basic rates of pay on November 30, 1995 and such Article II, Part B shall be eliminated at that time.

Part B - Cost-of-Living Allowance Through June 30, 2000 and Effective Date of Adjustment

(a) A cost-of-living allowance, calculated and applied in accordance with the provisions of Part C of this Article except as otherwise provided in this Part, shall be payable and rolled in to basic rates of pay on July 1, 2000.

(b) The measurement periods shall be as follows:

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
March 1995	March 1996	
plus		
March 1997	March 1998	July 1, 2000

The number of points change in the CPI during each of these measurement periods shall be added together before making the calculation described in Part C, Section 1(e) of this Article.

(c)(i) Floor. The minimum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Minimum CPI Increase That Shall Be Taken Into Account
July 1, 2000	4% of March 1995 CPI plus 4% of March 1997 CPI

(ii) Cap. The maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That Shall Be Taken Into Account
July 1, 2000	6% of March 1995 CPI plus 6% of March 1997 CPI

(d) The cost-of-living allowance payable to each employee and rolled in to basic rates of pay on July 1, 2000 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1998 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one half of the cost-of-living allowance effective on July 1, 2000 pursuant to this Part.

Part C - Cost of Living Allowance and Adjustments Thereto After July 1, 2000

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the

manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective January 1, 2001 based, subject to paragraph (d), on the CPI for March 2000 as compared with the CPI for September 1999 plus the CPI for September 2000 as compared with the CPI for March 2000. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods			
Base Month		Measurement Month	Effective Date of Adjustment
September 1999		March 2000*	
	plus		
March 2000		September 2000*	January 1, 2001
September 2000		March 2001	July 1, 2001

*The calculation described in Section 1(e) of this Section shall be made individually for each of these measurement periods and the resulting cents added together for the January 1, 2001 adjustment.

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
January 1, 2001	6% of September 1999 CPI
July 1, 2001	3% of September 2000 CPI
January 1, 2002	6% of September 2000 CPI less the increase from September 2000 to March 2001

Effective Dates of Adjustment and Maximum CPI Increases conforming to the July 1, 2001 and January 1, 2002 Adjustments in the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2000 to the measurement month of March 2001 exceeds 3% of the September 2000 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment based on the increase in the CPI from the base month of September 2000 to the measurement month of March 2001.

(iv) Any increase in the CPI from the base month of September 1999 to the measurement month of September 2000 in excess of 6% of the September 1999 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance in effect on June 30, 2001 will be adjusted (increased or decreased) effective July 1, 2001 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on June 30, 2001 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective January 1, 2001 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1999 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1998, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance based on the increase in the CPI from the base month of September 1999 to the measurement month of March 2000.

(b) The increase in the cost-of-living allowance effective July 1, 2001 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(c) The increase in the cost-of-living allowance effective January 1, 2002 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living

allowances payable in subsequent years during which this Article is in effect.

(e) The definition of the carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan set forth in Section 7 of Article I shall apply with respect to any year covered by this Section.

(f) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part C will be payable as provided in Section 2 of this Part and will not become part of basic rates of pay. Such allowance shall be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase shall be determined by the number of hours required to be paid for

by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part C

The arrangements set forth in Part C of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - DENTAL BENEFITS

Section 1 - Continuation of Plan

The benefits now provided under the Railroad Employees National Dental Plan (Dental Plan), modified as provided in Section 2 below, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

The following changes will be made effective as of January 1, 1999.

(a) The maximum benefit (exclusive of any benefits for orthodonture) which may be paid with respect to a covered employee or dependent in any calendar year beginning with calendar year 1999 will be increased from $1,000 to $1,500.

(b) The lifetime aggregate benefits payable for all orthodontic treatment rendered to a covered dependent, regardless of any interruption in service, will be increased from $750 to $1,000.

(c) The exclusion from coverage for implantology (including synthetic grafting) services will be deleted and dental implants and related services will be added to the list of Type C dental services for which the Plan pays benefits.

(d) Repair of existing dental implants will be added to the list of Type B dental services for which the Plan pays benefits.

(e) One application of sealants in any calendar year for dependent children under 14 years of age will be added to the list of Type A dental services for which the Plan pays benefits.

(f) The Plan will pay 80%, rather than 75%, of covered expenses for Type B dental services.

(g) The Plan will establish and maintain an 800 telephone number that employees and dependents may use to make inquiries regarding the Plan.

ARTICLE IV - VISION CARE

Section 1 - Establishment and Effective Date

The railroads will establish a Vision Care Plan to provide specified vision care benefits to employees and their dependents, to become effective January 1, 1999 and to continue thereafter subject to provisions of the Railway Labor Act, as amended, according to the following provisions:

(a) Eligibility and Coverage. Employees and their dependents will be eligible for coverage under the Plan beginning on the first day of the calendar month after the employee has completed a year of service for a participating railroad, but no earlier than the first day of January 1999. An eligible employee, along with his eligible dependents, will become covered under the Plan on the first day of the calendar month after he or she first renders compensated service, and will continue to be covered during the month following each month in which he or she renders compensated service or receives vacation pay.

(b) Managed Care. Managed vision care networks that meet standards developed by the National Carriers' Conference Committee concerning quality of care, access to providers and cost effectiveness shall be established wherever feasible. Employees who live in a geographical area where a managed vision care network has been established will be enrolled in the network along with their covered dependents. Employees enrolled in a managed vision care network will have a point-of-service option allowing them to choose an out-of-network provider to perform any vision care service covered by the Plan that they need. The benefits provided by the Plan when services are performed by in-network providers will be greater than the benefits provided by the Plan when the services are performed by providers who are not in-network providers, including providers in geographic areas where a managed vision care network has not been established. These two sets of benefits will be as described in the table below.

Plan Benefit	In-Network	Other Than In-Network
One vision examination per 12-month period.	100% of reasonable and customary charges	100% of reasonable and customary charges up to a $35 maximum
One set of frames of any kind per 24-month period	100% of reasonable and customary charges[1]	100% of reasonable and customary charges up to a $35 maximum
One set of two lenses of any kind, including contact lenses, per 24-month period.	100% of reasonable and customary charges[2]	100% of reasonable and customary charges up to the following maximums: up to $25 for single vision lenses up to $40 for bifocals up to $55 for trifocals up to $80 for lenticulars up to $210 for medically necessary contact lenses up to $105 for contact lenses that are not medically necessary
Where the employee or dependent requires only one lens	100% of reasonable and customary charges 2/	100% of reasonable and customary charges up to a maximum of one-half of the maximum benefit payable for a set of two lenses of the same kind

[1] Patients who select frames that exceed a wholesale allowance established under the program may be required to pay part of the cost of the frames selected.

[2] Patients may be required to pay part of the cost of spectacle lenses or lens characteristics that are not necessary for the patient's visual welfare. Moreover, patients who choose contact lenses in lieu of spectacles may be required to pay part of a contact lens evaluation fee and part of the cost of fitting and materials.

Section 2 - Administration

The Vision Care Plan will be administered by the National Carriers' Conference Committee, which will bear the same responsibilities and perform the same functions as it does with respect to The Railroad Employees National Dental Plan, including the development of detailed plan language describing the Plan's eligibility, coverage, benefit and other provisions.

ARTICLE V - HEALTH AND WELFARE

Section 1 - Continuation of Health and Welfare Plan

The separate and distinct program within the Railroad Employees National Health and Welfare Plan ("the Plan") applicable only to employees represented by the organization and their eligible dependents (IAM Program), modified as provided in this Article with respect to such employees and dependents, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

(a) The Comprehensive Health Care Benefit is amended to include one routine physical examination (including diagnostic testing and immunizations in connection with such examination) each calendar year for covered employees and their eligible dependents. Such CHCB benefit shall cover 100% of the Covered Expenses involved up to $150, and 75% of such Covered Expenses in excess of $150.

(b) Routine childhood (up to age 18) immunizations, including boosters, for Diphtheria, Pertussis or Tetanus (DPT), measles, mumps, rubella and polio shall be provided under the CHCB. This benefit is subject to the applicable deductible and percentage of covered expenses payable.

(c) Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(d) This Section shall become effective on January 1, 1999.

ARTICLE VI - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article IV of the July 31, 1992 National Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed for the period July 1, 1991 through December 31, 1994 under the terms of that Agreement. Enactment of the agreed-

upon RUIA legislation shall not cause the ratio of benefits to rates of pay to differ from that which existed for the period July 1, 1991 through December 31, 1994.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/94)	$15.39 or more	$2,678 or more
Class II Employees Earning (as of 12/31/94)	$12.57 or more but less than $15.39	$2,187 or more but less than $2,678
Class III Employees Earning (as of 12/31/94)	Less than $12.57	Less than $2,187

Basic and Maximum Benefit Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$982	$783	$1,765
Class II	$786	$783	$1,569
Class III	$617	$783	$1,400

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,893
Class II	$1,681
Class III	$1,500

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 1999, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE VII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle

the disputes growing out of the notices dated November 1, 1994 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1994, served by the organization upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1999 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal which might properly have been served when the last moratorium ended on January 1, 1995.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., THIS 27TH DAY OF AUGUST, 1996.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

James B. Dagnon

Kenneth L. Peifer

Hugh J. Salmon

FOR THE EMPLOYEES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS:

William L. Schein

August 27, 1996
#1

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1 and 3, and the signing bonus provided for in Article I, Section 2, of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases and the signing bonus as soon as possible and no later than sixty (60) days after the date of this Agreement, such payments to be made (on a property by property basis) in either two checks (one for the signing bonus and the other covering the retroactive portion of the general wage increases) or a single check with the amounts of the signing bonus and retroactive wage increase separately identified.

If a carrier finds it impossible to make such payments within that specified time period, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

August 27, 1996
#2

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This refers to the increase in wages provided for in Sections 1 and 3 of Article I of the Agreement of this date.

It is understood that the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to December 1, 1995.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

W. L. Scheri

August 27, 1996
#3

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This confirms our understanding with respect to the withdrawal by employees of a hospital association railroad represented by the organization signatory hereto from their hospital association.

1. Employees of a carrier working in any class or craft represented by the organization, and retirees who worked in such a class or craft immediately prior to their retirement and who are eligible for coverage under The Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA") but who are covered by a hospital association in lieu of coverage under ERMA pursuant to a commitment given to the railroad from which the retirees retired by the hospital association pursuant to Article V, Part B, Section 3, of the Mediation Agreement dated December 2, 1978, between railroads represented by the National Carriers' Conference Committee ("NCCC") and employees of such railroads represented by the labor organization, may transfer, as a group, from Hospital Association coverage to coverage under The Railroad Employees National Health & Welfare Plan (Plan) and ERMA upon written notice as provided herein, subject to satisfaction of the terms and conditions set forth in Attachment A hereto.

2. The organization shall provide written notice to the employing railroad, the hospital association, and the Joint Plan Committee of the Plan stating the effective date of such withdrawal, which must be the first day of a calendar month and cannot be less than thirty (30) days after the date such notice is received by the Joint Plan Committee. Individual employees and individual ERMA-eligible retirees shall not have an option to withdraw from hospital association coverage.

3. Upon the effective date of any such withdrawal, the hospital association railroad shall, for purposes of the Plan and ERMA, become a non-hospital association railroad with respect to

the labor organization, the withdrawn employees, and the withdrawn ERMA-eligible retirees. The effective date of such withdrawal must be the first day of a calendar month and cannot be less than thirty (30) days after the date such notice is received by the JPC.

4. The Joint Plan Committee shall see to it that such employees shall, as of such effective date, be covered under the Plan as employees of a non-hospital association railroad. The NCCC shall see to it that such retirees shall, as of such effective date, be covered under ERMA as retirees from a non-hospital association railroad.

5. The Labor Organizations currently offer the benefits of Metra Health Group Policy No. 23111 to their members who have retired from railroad service and their dependents. If, following the withdrawal from a hospital association, as provided herein, of employees only or, where ERMA-eligible retires are covered by the hospital association, of both employees and ERMA-eligible retirees, the hospital association terminates coverage that it had been providing at the time of such withdrawal to other former railroad craft employees, coverage under Policy No. 23111 will be offered to such other former railroad craft employees and their dependents.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

ATTACHMENT A

To effectuate a transfer from hospital association coverage to coverage under the separate and distinct program within the Railroad Employees National Health and Welfare Plan (Plan) applicable only to employees represented by the organization and their eligible dependents (IAM Program) and The Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA") pursuant to the side letter to which this Attachment is appended, the following terms and conditions must be satisfied:

1. The application to transfer to coverage under the Plan must be approved by the Joint Plan Committee.

2. The application to transfer to coverage under ERMA must be approved by the National Carriers' Conference Committee.

3. At least ten (10) days prior to the effective date of the transfer, the railroad that employs, or had employed at the time of their retirement, the employees and retirees to be transferred to coverage under the Plan and ERMA shall have received from each active employee, and from each furloughed employee drawing protection, represented by the labor organization involved written authorization allowing and instructing the railroad to deduct in substantially equal installments from two consecutive payroll periods beginning with the first payroll period ending after the effective date of transfer, as reimbursement to the railroad for transmittals made by it to the Plan and to ERMA in connection with the transfer of the employees and retirees to Plan and ERMA coverage, an amount equal to the quotient of (i) the sum of all of the money to be transmitted by the railroad to the Plan as "pickup" contributions for active and furloughed employees, other than the amount of such contributions made in connection with coverage for on-duty injuries, plus all of the money transmitted by the railroad to ERMA with respect to "pickup" contributions applicable to ERMA coverage for transferred retirees, divided by (ii) the number of active employees, and furloughed employees drawing protection, represented by the labor organization involved who will be transferred from hospital association to Plan coverage.

August 27, 1996
#4

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

During the negotiations that led to the Agreement of this date, the parties discussed issues related to the appropriate application of the differentials payable to certain employees pursuant to the terms of Article VII of the July 31, 1992 Agreement.

1. This will confirm our understanding that any of the differentials referenced above that by its terms is payable to a covered employee for each hour actually spent performing the work for which the differential is granted is not payable for any non-working time for which the employee receives remuneration, except as provided in paragraph 2.

2. Such differential shall be included in vacation pay with respect to any employee described in paragraph 1 who is regularly assigned to a position for which that differential is paid for the entire day.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

August 27, 1996
#5

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This will confirm our understanding reached in connection with the Agreement of this date to implement the recommendations of Presidential Emergency Board No. 230.

The parties agree that Article I of the September 25, 1964 Agreement (as attached hereto) applies to shopcraft employees on Conrail. Naturally, Conrail has the right to exclude shopcraft employees from the protective program it introduced. Shopcraft employees may not pyramid protective benefits provided by Conrail on the protection afforded by the aforementioned Article I.

Disputes arising under such Article I need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

Conrail and the organization will commence negotiations with respect to their differences regarding the application of the intracraft assignment rules governing machinists. If the parties fail to reach an agreement, the matter shall be submitted to binding arbitration.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

ARTICLE I - EMPLOYEE PROTECTION
of the September 25, 1964 National Agreement
(reprinted in its entirety)

- - - - -

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

a. Transfer of work;

b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;

c. Contracting out of work;

d. Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes; and,

g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier.

Section 4 -

The carrier shall give at least sixty (60) days (ninety (90) days in cases that will require a change of employee's residence) written notice of the abolition of jobs as a result of changes in operations for any of the reasons set forth in Section 2 hereof, by posting a notice on bulletin boards convenient to the interested employees and by sending certified mail notice to the General Chairmen of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes in operations, including an estimate of the number of employees of each class affected by the intended changes, and a full disclosure of all facts and circumstances bearing on the proposed discontinuance of positions. The date and place of a conference between representatives of the carrier and the General Chairman or his representative, at his option, to discuss the manner in which and the extent to which employees may be affected by the changes involved, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5 -

Any employee who is continued in service, but who is placed, as a result of a change in operations for any of the reasons set forth in Section 2 hereof, in a worse position with respect to compensation and rules governing working conditions, shall be accorded the benefits set forth in Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading as follows:

> Section 6(a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposed of this section as occupying the position which he elects to decline.
>
> (b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.
>
> (c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being heremafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Section 6 -

Any employee who is deprived of employment as a result of a change in operations for any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7(a) through (j) of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 7(a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

Length of Service	Period of Payment
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount, equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 7 -

Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 8 -

Any employee affected by a change in operations for any of the reasons set forth in Section 2 hereof shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees of the carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may obtained.

Section 9 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 10 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 10(a). Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 10 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 11 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 11(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman

of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 11 -

When positions are abolished as a result of changes in the carrier's operations for any of the reasons set forth in Section 2 hereof, and all or part of the work of the abolished positions is transferred to another location or locations, the selection and assignment of forces to perform the work in question shall be provided for by agreement of the General Chairman of the craft or crafts involved and the carrier establishing provisions appropriate for application in the particular case; provided however, that under the terms of the agreement sufficient employees will be required to accept employment within their classification so as to insure a force adequate to meet the carrier's requirements. In the event of failure to reach such agreement, the dispute may be submitted by either party for settlement as hereinafter provided.

Section 12 -

Any dispute with respect to the interpretation or application of the foregoing provisions of Sections 1 through 11 of this Article (except as defined in Section 10) with respect to job protection, including disputes as to whether a change in the carrier's operations is caused by one of the reasons set forth in Section 2 hereof, or is due to causes set forth in Section 3 hereof, and disputes as to the protective benefits to which an employee or employees may be entitled, need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

August 27, 1996
#6

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This will confirm our understanding reached in connection with the Agreement of this date.

The parties shall meet nationally at a mutually agreed upon date to discuss matters related to enhanced employment opportunities for employees represented by the organization who may be deprived of employment with a carrier as a result of a transaction authorized under 49 U.S.C. §10901 (or any successor provision) as to which labor protective conditions have not been imposed by any governmental authority.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

August 27, 1996
#7

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

In regard to our Agreement of this date in settlement of our respective Section 6 Notices of November 1994, this will confirm our understanding on the issue of subcontracting.

Pursuant to your request, the National Carriers' Conference Committee will meet with your designated representative(s) on an on-going basis for the purpose of finding new ways to enhance opportunities for performing machinist's work within the rail industry in lieu of subcontracting such work to non-railroad vendors and/or suppliers.

The carriers signatory to this Agreement recognize that as a result of recent mergers and other activities within the rail industry, it makes sense to review current subcontracting practices and policies and to work with their employees in discussing new and mutually satisfactory approaches to this issue.

Conferences to begin such discussions will commence no later than January 15, 1997. Such meetings will be held no less than once every three (3) months thereafter unless otherwise agreed.

If this reflects our understanding, please indicate your concurrence in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

August 27, 1996
#8

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This will confirm our understanding with respect to the subject of shift premiums.

1. Upon request of the organization, the parties shall meet nationally for the purpose of forming a Study Committee on this matter.

2. The Study Committee shall consist of three partisan members representing the carriers and three partisan members representing the organization. The parties shall assume the compensation and expenses of their respective partisan members.

3. The Study Committee shall meet promptly after its formation to establish its operating procedures and periodically thereafter.

4. The Study Committee shall comprehensively review the pertinent facts and issues and attempt to develop joint voluntary recommendations to the parties with regard to the propriety of shift premiums in the future.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

W. L. Scheri

August 27, 1996
#9

Mr. W. L. Scheri
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Scheri:

This confirms our understanding with respect to the Agreement of this date.

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

W. L. Scheri

EXHIBIT A
(IAM)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1994 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1994 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Association of Machinists and Aerospace Workers.

Alameda Belt Line Railway
Alton & Southern Railroad
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company - 1
The Belt Railway Company of Chicago - 1
Burlington Northern Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
  The Baltimore and Ohio Chicago Terminal R.R. Co.
  The Baltimore and Ohio Railroad Company (former)
  The Chesapeake and Ohio Railway Company (former)
  Clinchfield Railroad (former)
  Louisville and Nashville Railroad Company (former)
  Pere Marquette Railway Company (former)
  Seaboard Coast Line Railroad Company (former)
  Western Maryland Railway Company (former)
Galveston, Houston and Henderson Railroad
Houston Belt and Terminal Railway
The Kansas City Southern Railway Company
CP-Kansas City Southern Joint Agency
Lake Superior & Ishpeming Railroad Company - 2
Manufacturers Railway Company
Meridian & Bigbee Railroad Company - 1
Missouri-Kansas-Texas Railroad
Missouri Pacific Railroad
New Orleans Public Belt Railroad - 1

Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic & East Carolina Railway Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pacific Ry. Co.
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Norfolk & Western Railway Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Oakland Terminal Railway
Oklahoma, Kansas & Texas Railroad
Peoria and Pekin Union Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Sacramento Northern Railway
Terminal Railroad Association of St. Louis
Texas & Pacific Railway Company
Union Pacific Railroad
Spokane International Railroad
Western Pacific Railroad

NOTES:

1 - Health and Welfare and Supplemental Sickness only.

2 - Wages and Rules and Supplemental Sickness only.

- - - - -

FOR THE CARRIERS:

FOR THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS:

Washington, D.C.
August 27, 1996

SMWIA
September 12, 1996

MEDIATION AGREEMENT, CASE A-12772

DATED SEPTEMBER 12, 1996

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

MEDIATION AGREEMENT

THIS AGREEMENT, made this 12th day of September, 1996, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the Sheet Metal Workers' International Association, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On December 1, 1995, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 3-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3-1/2 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 3-1/2 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 3-1/2 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Signing Bonus

Subject to Sections 9 and 10, each employee with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period January 1, 1995 through December 31, 1995 will be paid, on the date of this Agreement, a Signing Bonus of four hundred dollars ($400.00).

Section 3 - Second General Wage Increase

Effective July 1, 1996, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1996 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1996, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1-3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by dividing $76.68 by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 4 - Third General Wage Increase

Effective July 1, 1997 all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1997 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 3) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 1 hereof.

Section 5 - Fourth General Wage Increase

Effective July 1, 1998, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1998 for employees covered by this Agreement shall be increased by one-and-three-quarters (1-3/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment, except that for the 12-month period beginning July 1, 1998, such rates shall be so increased by that percentage which is equal to the excess of (i) one-and-three-quarters (1 3/4) percent (expressed in cents per hour) over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) the cents per hour produced by the following computation: one-quarter of the amount, if any, by which the carriers' payment rate for 1998 for foreign-to-occupation health benefits exceeds such payment rate for 1995, multiplied by one-and-one half, and then divided by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available.

Section 6 - Fifth General Wage Increase

Effective July 1, 1999, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 1999 for employees covered by this Agreement (following termination of the 12-month period adjustment described in Section 5) shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 6 shall be applied in the same manner as provided for in Section 1 hereof.

Section 7 - Definitions

The carriers' payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve (12) times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1, of the Imposed Agreement made November 27, 1991.

Section 8 - Eligibility for Receipt of Signing Bonus

The Signing Bonus provided for in this Article will be payable to each employee subject to this Agreement who has an employment relationship as of the date such payment is payable,

or has retired or died subsequent to the beginning of the applicable calendar year used to determine the amount of such payment. There shall be no duplication of the Signing Bonus by virtue of employment under another agreement nor will such payment be used to offset, construct or increase guarantees in protective agreements or arrangements.

Section 9 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in the period described in Section 2 than the minimum number set forth therein, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during such period divided by the defined minimum hours.

Section 10 - Signing Bonus Proration

In the case of any employee subject to wage progression or entry rates, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the weighted average entry rate percentage applicable to wages earned during the specified determination period.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Imposed Agreement Dated November 27, 1991

The nine-cent cost-of-living allowance in effect beginning July 1, 1995 pursuant to Article II, Part B of the Imposed Agreement made November 27, 1991 shall be rolled in to basic rates of pay on November 30, 1995 and such Article II, Part B shall be eliminated at that time.

Part B - Cost-of-Living Allowance Through June 30, 2000 and Effective Date of Adjustment

(a) A cost-of-living allowance, calculated and applied in accordance with the provisions of Part C of this Article except as otherwise provided in this Part, shall be payable and rolled in to basic rates of pay on July 1, 2000.

(b) The measurement periods shall be as follows:

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
March 1995	March 1996	
plus		
March 1997	March 1998	July 1, 2000

The number of points change in the CPI during each of these measurement periods shall be added together before making the calculation described in Part C, Section 1(e) of this Article.

(c)(i) Floor. The minimum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Minimum CPI Increase That Shall Be Taken Into Account
July 1, 2000	4% of March 1995 CPI plus 4% of March 1997 CPI

(ii) Cap. The maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That Shall Be Taken Into Account
July 1, 2000	6% of March 1995 CPI plus 6% of March 1997 CPI

(d) The cost-of-living allowance payable to each employee and rolled in to basic rates of pay on July 1, 2000 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1998 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one half of the cost-of-living allowance effective on July 1, 2000 pursuant to this Part.

Part C - Cost of Living Allowance and Adjustments Thereto After July 1, 2000

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the

manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective January 1, 2001 based, subject to paragraph (d), on the CPI for March 2000 as compared with the CPI for September 1999 plus the CPI for September 2000 as compared with the CPI for March 2000. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods			
Base Month		Measurement Month	Effective Date of Adjustment
September 1999	plus	March 2000*	
March 2000		September 2000*	January 1, 2001
September 2000		March 2001	July 1, 2001

*The calculation described in Section 1(e) of this Section shall be made individually for each of these measurement periods and the resulting cents added together for the January 1, 2001 adjustment.

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance will apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that will be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
January 1, 2001	6% of September 1999 CPI
July 1, 2001	3% of September 2000 CPI
January 1, 2002	6% of September 2000 CPI less the increase from September 2000 to March 2001

Effective Dates of Adjustment and Maximum CPI Increases conforming to the July 1, 2001 and January 2, 2002 Adjustments in the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2000 to the measurement month of March 2001 exceeds 3% of the September 2000 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment based on the increase in the CPI from the base month of September 2000 to the measurement month of March 2001.

(iv) Any increase in the CPI from the base month of September 1999 to the measurement month of September 2000 in excess of 6% of the September 1999 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (d), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance in effect on June 30, 2001 will be adjusted (increased or decreased) effective July 1, 2001 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on June 30, 2001 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above. The same procedure will be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective January 1, 2001 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1999 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1998, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance based on the increase in the CPI from the base month of September 1999 to the measurement month of March 2000.

(b) The increase in the cost-of-living allowance effective July 1, 2001 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(c) The increase in the cost-of-living allowance effective January 1, 2002 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living

allowances payable in subsequent years during which this Article is in effect.

(e) The definition of the carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan set forth in Section 7 of Article I shall apply with respect to any year covered by this Section.

(f) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part C will be payable as provided in Section 2 of this Part and will not become part of basic rates of pay. Such allowance shall be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase shall be determined by the number of hours required to be paid for

by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part C

The arrangements set forth in Part C of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - DENTAL BENEFITS

Section 1 - Continuation of Plan

The benefits now provided under the Railroad Employees National Dental Plan (Dental Plan), modified as provided in Section 2 below, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

The following changes will be made effective as of January 1, 1999.

(a) The maximum benefit (exclusive of any benefits for orthodonture) which may be paid with respect to a covered employee or dependent in any calendar year beginning with calendar year 1999 will be increased from $1,000 to $1,500.

(b) The lifetime aggregate benefits payable for all orthodontic treatment rendered to a covered dependent, regardless of any interruption in service, will be increased from $750 to $1,000.

(c) The exclusion from coverage for implantology (including synthetic grafting) services will be deleted and dental implants and related services will be added to the list of Type C dental services for which the Plan pays benefits.

(d) Repair of existing dental implants will be added to the list of Type B dental services for which the Plan pays benefits.

(e) One application of sealants in any calendar year for dependent children under 14 years of age will be added to the list of Type A dental services for which the Plan pays benefits.

(f) The Plan will pay 80%, rather than 75%, of covered expenses for Type B dental services.

(g) The Plan will establish and maintain an 800 telephone number that employees and dependents may use to make inquiries regarding the Plan.

ARTICLE IV - VISION CARE

Section 1 - Establishment and Effective Date

The railroads will establish a Vision Care Plan to provide specified vision care benefits to employees and their dependents, to become effective January 1, 1999 and to continue thereafter subject to provisions of the Railway Labor Act, as amended, according to the following provisions:

(a) Eligibility and Coverage. Employees and their dependents will be eligible for coverage under the Plan beginning on the first day of the calendar month after the employee has completed a year of service for a participating railroad, but no earlier than the first day of January 1999. An eligible employee, along with his eligible dependents, will become covered under the Plan on the first day of the calendar month after he or she first renders compensated service, and will continue to be covered during the month following each month in which he or she renders compensated service or receives vacation pay.

(b) Managed Care. Managed vision care networks that meet standards developed by the National Carriers' Conference Committee concerning quality of care, access to providers and cost effectiveness shall be established wherever feasible. Employees who live in a geographical area where a managed vision care network has been established will be enrolled in the network along with their covered dependents. Employees enrolled in a managed vision care network will have a point-of-service option allowing them to choose an out-of-network provider to perform any vision care service covered by the Plan that they need. The benefits provided by the Plan when services are performed by in-network providers will be greater than the benefits provided by the Plan when the services are performed by providers who are not in-network providers, including providers in geographic areas where a managed vision care network has not been established. These two sets of benefits will be as described in the table below.

Plan Benefit	In-Network	Other Than In-Network
One vision examination per 12-month period.	100% of reasonable and customary charges	100% of reasonable and customary charges up to a $35 maximum
One set of frames of any kind per 24-month period	100% of reasonable and customary charges[1]	100% of reasonable and customary charges up to a $35 maximum
One set of two lenses of any kind, including contact lenses, per 24-month period.	100% of reasonable and customary charges[2]	100% of reasonable and customary charges up to the following maximums: up to $25 for single vision lenses up to $40 for bifocals up to $55 for trifocals up to $80 for lenticulars up to $210 for medically necessary contact lenses up to $105 for contact lenses that are not medically necessary
Where the employee or dependent requires only one lens	100% of reasonable and customary charges 2/	100% of reasonable and customary charges up to a maximum of one-half of the maximum benefit payable for a set of two lenses of the same kind

[1] Patients who select frames that exceed a wholesale allowance established under the program may be required to pay part of the cost of the frames selected.

[2] Patients may be required to pay part of the cost of spectacle lenses or lens characteristics that are not necessary for the patient's visual welfare. Moreover, patients who choose contact lenses in lieu of spectacles may be required to pay part of a contact lens evaluation fee and part of the cost of fitting and materials.

Section 2 - Administration

The Vision Care Plan will be administered by the National Carriers' Conference Committee, which will bear the same responsibilities and perform the same functions as it does with respect to The Railroad Employees National Dental Plan, including the development of detailed plan language describing the Plan's eligibility, coverage, benefit and other provisions.

ARTICLE V - HEALTH AND WELFARE PLAN

Section 1 - Continuation of Health and Welfare Plan

The Railroad Employees National Health and Welfare Plan ("the Plan") modified as provided in this Article with respect to employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Benefit Changes

(a) The Comprehensive Health Care Benefit is amended to include one routine physical examination (including diagnostic testing and immunizations in connection with such examination) each calendar year for covered employees and their eligible dependents. Such CHCB benefit shall cover 100% of the Covered Expenses involved up to $150, and 75% of such Covered Expenses in excess of $150.

(b) Routine childhood (up to age 18) immunizations, including boosters, for Diphtheria, Pertussis or Tetanus (DPT), measles, mumps, rubella and polio shall be provided under the CHCB. This benefit is subject to the applicable deductible and percentage of covered expenses payable.

(c) Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(d) This Section shall become effective on January 1, 1999.

ARTICLE VI - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article IV of the November 27, 1991 Imposed Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in

paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed for the period July 1, 1991 through December 31, 1994 under the terms of that Agreement. Enactment of the agreed-upon RUIA legislation shall not cause the ratio of benefits to rates of pay to differ from that which existed for the period July 1, 1991 through December 31, 1994.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/94)	$15.39 or more	$2,678 or more
Class II Employees Earning (as of 12/31/94)	$12.57 or more but less than $15.39	$2,187 or more but less than $2,678
Class III Employees Earning (as of 12/31/94)	Less than $12.57	Less than $2,187

Basic and Maximum Benefit Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$982	$783	$1,765
Class II	$786	$783	$1,569
Class III	$617	$783	$1,400

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,893
Class II	$1,681
Class III	$1,500

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 1999, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE VII - SENIORITY RETENTION

Section 1

Effective on the date of this Agreement, all employees promoted subsequent thereto to official, supervisory, or excepted positions from crafts or classes represented by the organization signatory hereto (collectively referred to as "supervisors") shall be required to pay an appropriate monthly fee, not to exceed monthly union dues, in order to retain and continue to accumulate seniority. A supervisor whose payments are delinquent shall be given a written notice by the appropriate General Chairman of the amount owed and ninety (90) days from the date of such notice to cure the delinquency in order to avoid seniority forfeiture.

Section 2

Employees promoted prior to the date of this Agreement to supervisory positions from crafts or classes represented by the organization signatory hereto shall retain their current seniority but shall be required to pay an appropriate monthly fee, not to exceed monthly union dues, in order to accumulate additional seniority.

Section 3

This Article shall become effective on the date of this Agreement except on such carriers where the organization representative may elect to preserve existing rules pertaining to employees retaining seniority after promotion to a supervisory position and so notifies the authorized carrier representative within thirty (30) days following the date of this Agreement.

ARTICLE VIII - SKILL DIFFERENTIAL

Section 1

The letter agreement dated October 13, 1993 is amended as provided below effective October 1, 1996:

(a) Paragraphs 2 and 3 are renumbered 3 and 4, respectively, and the following new paragraph is added:

"2. A differential of 25 cents per hour shall be paid to journeymen with a valid EPA certification for each hour actually spent removing ozone-depleting chemicals from air conditioning systems. When performing such work for four (4) hours or less in any one day, covered employees will be paid the differential on an hourly basis with a minimum of one (1) hour; for more than four (4) hours in any one day, the differential will apply for that day."

Section 2

This Article is not intended to restrict any of the existing rights of a carrier except as specifically provided herein.

Section 3

On a carrier where a differential in excess of 25 cents per hour is currently being paid to journeymen for the work described in Section 1 of this Article, the General Chairman may elect to preserve such existing differential by written notification to the appropriate carrier official within thirty (30) days after the date of this Agreement.

ARTICLE IX - RATE PROGRESSION

Effective on the date of this Agreement, Article III, Section 1(i) of the August 20, 1986 National Agreement is amended to read as follows:

"(i) The reduced rates provided by this Article are applicable to helpers, upgraded mechanics, apprentices, trainees and student mechanics."

ARTICLE X - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1994 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1994, served by the organization upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1999 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal for the purpose of changing the subject matter

of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal which might properly have been served when the last moratorium ended on January 1, 1995.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., THIS 12TH DAY OF SEPTEMBER, 1996.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION:

Director of Railroad Workers

September 12, 1996
#1

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1 and 3, and the signing bonus provided for in Article I, Section 2, of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases and the signing bonus as soon as possible and no later than sixty (60) days after the date of this Agreement, such payments to be made (on a property by property basis) in either two checks (one for the signing bonus and the other covering the retroactive portion of the general wage increases) or a single check with the amounts of the signing bonus and retroactive wage increase separately identified.

If a carrier finds it impossible to make such payments within that specified time period, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

September 12, 1996
#2

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This refers to the increase in wages provided for in Sections 1 and 3 of Article I of the Agreement of this date.

It is understood that the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to December 1, 1995.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

D. C. Buchanan

September 12, 1996
#3

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This confirms our understanding with respect to the withdrawal by employees of a hospital association railroad represented by the organization signatory hereto from their hospital association.

1. Employees of a carrier working in any class or craft represented by the organization, and retirees who worked in such a class or craft immediately prior to their retirement and who are eligible for coverage under The Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA") but who are covered by a hospital association in lieu of coverage under ERMA pursuant to a commitment given to the railroad from which the retirees retired by the hospital association pursuant to Article V, Part B, Section 3, of the Mediation Agreement dated December 4, 1978, between railroads represented by the National Carriers' Conference Committee ("NCCC") and employees of such railroads represented by the labor organization may transfer, as a group, from Hospital Association coverage to coverage under The Railroad Employees National Health & Welfare Plan (Plan) and ERMA upon written notice as provided herein, subject to satisfaction of the terms and conditions set forth in Attachment A hereto.

2. The organization shall provide written notice to the employing railroad, the hospital association, and the Joint Plan Committee of the Plan stating the effective date of such withdrawal, which must be the first day of a calendar month and cannot be less than thirty (30) days after the date such notice is received by the Joint Plan Committee. Individual employees and individual ERMA-eligible retirees shall not have an option to withdraw from hospital association coverage.

3. Upon the effective date of any such withdrawal, the hospital association railroad shall, for purposes of the Plan and ERMA, become a non-hospital association railroad with respect to the labor organization, the withdrawn employees, and the withdrawn ERMA-eligible retirees. The effective date of such withdrawal must be the first day of a calendar month and cannot be less than thirty (30) days after the date such notice is received by the JPC.

4. The Joint Plan Committee shall see to it that such employees shall, as of such effective date, be covered under the Plan as employees of a non-hospital association railroad. The NCCC shall see to it that such retirees shall, as of such effective date, be covered under ERMA as retirees from a non-hospital association railroad.

5. The Labor Organizations currently offer the benefits of Metra Health Group Policy No. 23111 to their members who have retired from railroad service and their dependents. If, following the withdrawal from a hospital association, as provided herein, of employees only or, where ERMA-eligible retires are covered by the hospital association, of both employees and ERMA-eligible retirees, the hospital association terminates coverage that it had been providing at the time of such withdrawal to other former railroad craft employees, coverage under Policy No. 23111 will be offered to such other former railroad craft employees and their dependents.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

D. C. Buchanan

ATTACHMENT A

To effectuate a transfer from hospital association coverage to coverage under The Railroad Employees National Health and Welfare Plan (the "Plan") and The Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA") pursuant to the side letter to which this Attachment is appended, the following terms and conditions must be satisfied:

1. The application to transfer to coverage under the Plan must be approved by the Joint Plan Committee.

2. The application to transfer to coverage under ERMA must be approved by the National Carriers' Conference Committee.

3. At least ten (10) days prior to the effective date of the transfer, the railroad that employs, or had employed at the time of their retirement, the employees and retirees to be transferred to coverage under the Plan and ERMA shall have received from each active employee, and from each furloughed employee drawing protection, represented by the labor organization involved written authorization allowing and instructing the railroad to deduct in substantially equal installments from two consecutive payroll periods beginning with the first payroll period ending after the effective date of transfer, as reimbursement to the railroad for transmittals made by it to the Plan and to ERMA in connection with the transfer of the employees and retirees to Plan and ERMA coverage, an amount equal to the quotient of (i) the sum of all of the money to be transmitted by the railroad to the Plan as "pickup" contributions for active and furloughed employees, other than the amount of such contributions made in connection with coverage for on-duty injuries, plus all of the money transmitted by the railroad to ERMA with respect to "pickup" contributions applicable to ERMA coverage for transferred retirees, divided by (ii) the number of active employees, and furloughed employees drawing protection, represented by the labor organization involved who will be transferred from hospital association to Plan coverage.

September 12, 1996
#4

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This will confirm our understanding reached in connection with the Agreement of this date to implement the recommendations of Presidential Emergency Board No. 230.

The parties agree that Article I of the September 25, 1964 Agreement (as attached hereto) applies to shopcraft employees on Conrail. Naturally, Conrail has the right to exclude shopcraft employees from the protective program it introduced. Shopcraft employees may not pyramid protective benefits provided by Conrail on the protection afforded by the aforementioned Article I.

Disputes arising under such Article I need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

R. F. Allen

Robert F. Allen

I agree:

D. C. Buchanan

D. C. Buchanan

ARTICLE I - EMPLOYEE PROTECTION
of the September 25, 1964 National Agreement
(reprinted in its entirety)

- - - - -

ARTICLE I - EMPLOYEE PROTECTION

Section 1 -

The purpose of this rule is to afford protective benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof, and, subject to the provisions of this Agreement, the carrier has and may exercise the right to introduce technological and operational changes except where such changes are clearly barred by existing rules or agreements.

Any job protection agreement which is now in effect on a particular railroad which is deemed by the authorized employee representatives to be more favorable than this Article with respect to a transaction such as those referred to in Section 2 hereof, may be preserved as to such transaction by the representatives so notifying the carrier within thirty days from the date of receipt of notice of such transaction, and the provisions of this Article will not apply with respect to such transaction.

None of the provisions of this Article shall apply to any transactions subject to approval by the Interstate Commerce Commission, if the approval order of the Commission contains equal or more favorable employee protection provisions, or to any transactions covered by the Washington Job Protection Agreement.

Section 2 -

The protective benefits of the Washington Job Protection Agreement of May, 1936, shall be applicable, as more specifically outlined below, with respect to employees who are deprived of employment or placed in a worse position with respect to compensation and rules governing working conditions as a result of any of the following changes in the operations of this individual carrier:

a. Transfer of work;

b. Abandonment, discontinuance for 6 months or more, or consolidation of facilities or services or portions thereof;

c. Contracting out of work;

d Lease or purchase of equipment or component parts thereof, the installation, operation, servicing or repairing of which is to be performed by the lessor or seller;

e. Voluntary or involuntary discontinuance of contracts;

f. Technological changes; and,

g. Trade-in or repurchase of equipment or unit exchange.

Section 3 -

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions in case of his resignation, death, retirement, dismissal for cause in accordance with existing agreements, or failure to work due to disability or discipline, or failure to obtain a position available to him in the exercise of his seniority rights in accordance with existing rules or agreements, or reductions in forces due to seasonal requirements, the layoff of temporary employees or a decline in a carrier's business, or for any other reason not covered by Section 2 hereof. In any dispute over whether an employee is deprived of employment or placed in a worse position with respect to his compensation and rules governing working conditions due to causes listed in Section 2 hereof or whether it is due to the causes listed in Section 3 hereof, the burden of proof shall be on the carrier.

Section 4 -

The carrier shall give at least sixty (60) days (ninety (90) days in cases that will require a change of employee's residence) written notice of the abolition of jobs as a result of changes in operations for any of the reasons set forth in Section 2 hereof, by posting a notice on bulletin boards convenient to the interested employees and by sending certified mail notice to the General Chairmen of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes in operations, including an estimate of the number of employees of each class affected by the intended changes, and a full disclosure of all facts and circumstances bearing on the proposed discontinuance of positions. The date and place of a conference between representatives of the carrier and the General Chairman or his representative, at his option, to discuss the manner in which and the extent to which employees may be affected by the changes involved, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5 -

Any employee who is continued in service, but who is placed, as a result of a change in operations for any of the reasons set forth in Section 2 hereof, in a worse position with respect to compensation and rules governing working conditions, shall be accorded the benefits set forth in Section 6(a), (b) and (c) of the Washington Job Protection Agreement of May, 1936, reading as follows:

> Section 6(a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposed of this section as occupying the position which he elects to decline.
>
> (b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.
>
> (c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Section 6 -

Any employee who is deprived of employment as a result of a change in operations for any of the reasons set forth in Section 2 hereof shall be accorded a monthly dismissal allowance in accordance with the terms and conditions set forth in Section 7(a) through (j) of the Washington Job Protection Agreement of May, 1936, reading as follows:

> Section 7(a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:
>
> | Length of Service | Period of Payment |
> |---|---|
> | 1 yr. and less than 2 yrs. | 6 months |
> | 2 yrs. " " " 3 " | 12 " |
> | 3 yrs. " " " 5 " | 18 " |
> | 5 yrs. " " " 10 " | 36 " |
> | 10 yrs. " " " 15 " | 48 " |
> | 15 yrs. and over | 60 " |
>
> In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount, equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.
>
> (b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or

2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 7 -

Any employee eligible to receive a monthly dismissal allowance under Section 6 hereof may, at his option at the time he becomes eligible, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the provisions of Section 9 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	Separation Allowance
1 year and less than 2 years	3 months' pay
2 years " " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 8 -

Any employee affected by a change in operations for any of the reasons set forth in Section 2 hereof shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees of the carrier, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may obtained.

Section 9 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 10 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 10(a). Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 10 -

Any employee who is retained in the service of the carrier, or who is later restored to service after being eligible to receive a monthly dismissal allowance, who is required to change the point of his employment as a result of a change in the carrier's operations for any of the reasons set forth in Section 2 hereof, and is, therefore, required to move his place of residence, shall be accorded the protective benefits set forth in Section 11 of the Washington Job Protection Agreement of May, 1936, reading as follows:

Section 11(a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman

of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 11 -

When positions are abolished as a result of changes in the carrier's operations for any of the reasons set forth in Section 2 hereof, and all or part of the work of the abolished positions is transferred to another location or locations, the selection and assignment of forces to perform the work in question shall be provided for by agreement of the General Chairman of the craft or crafts involved and the carrier establishing provisions appropriate for application in the particular case; provided however, that under the terms of the agreement sufficient employees will be required to accept employment within their classification so as to insure a force adequate to meet the carrier's requirements. In the event of failure to reach such agreement, the dispute may be submitted by either party for settlement as hereinafter provided.

Section 12 -

Any dispute with respect to the interpretation or application of the foregoing provisions of Sections 1 through 11 of this Article (except as defined in Section 10) with respect to job protection, including disputes as to whether a change in the carrier's operations is caused by one of the reasons set forth in Section 2 hereof, or is due to causes set forth in Section 3 hereof, and disputes as to the protective benefits to which an employee or employees may be entitled, need not be progressed in the "usual manner" but can be handled directly with the highest designated carrier officer. If such a dispute is not settled in direct negotiations, it shall be handled in accordance with the provisions of Section 3 of the Railway Labor Act, as amended.

September 12, 1996
#5

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This will confirm our understanding reached in connection with the Agreement of this date.

The parties shall meet nationally at a mutually agreed upon date to discuss matters related to enhanced employment opportunities for employees represented by the organization who may be deprived of employment with a carrier as a result of a transaction authorized under 49 U.S.C. §10901 (or any successor provision) as to which labor protective conditions have not been imposed by any governmental authority.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

D. C. Buchanan

September 12, 1996
#6

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

In regard to our Agreement of this date in settlement of our respective Section 6 Notices of November 1994, this will confirm our understanding on the issue of subcontracting.

Pursuant to your request, the National Carriers' Conference Committee will meet with your designated representative(s) on an on-going basis for the purpose of finding new ways to enhance opportunities for performing sheet metal work within the rail industry in lieu of subcontracting such work to non-railroad vendors and/or suppliers.

The carriers signatory to this Agreement recognize that as a result of recent mergers and other activities within the rail industry, it makes sense to review current subcontracting practices and policies and to work with their employees in discussing new and mutually satisfactory approaches to this issue.

Conferences to begin such discussions will commence no later than January 15, 1997. Such meetings will be held no less than once every three (3) months thereafter unless otherwise agreed.

If this reflects our understanding, please indicate your concurrence in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

D. C. Buchanan

September 12, 1996
#7

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This will confirm our understanding with respect to the subject of shift premiums.

1. Upon request of the organization, the parties shall meet nationally for the purpose of forming a Study Committee on this matter.

2. The Study Committee shall consist of three partisan members representing the carriers and three partisan members representing the organization. The parties shall assume the compensation and expenses of their respective partisan members.

3. The Study Committee shall meet promptly after its formation to establish its operating procedures and periodically thereafter.

4. The Study Committee shall comprehensively review the pertinent facts and issues and attempt to develop joint voluntary recommendations to the parties with regard to the propriety of shift premiums in the future.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

D. C. Buchanan

September 12, 1996
#8

Mr. D. C. Buchanan
Director of Railroad Workers
Sheet Metal Workers' Int'l Association
1750 New York Avenue
Washington, D.C. 20006

Dear Mr. Buchanan:

This confirms our understanding with respect to the Agreement of this date.

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

D. C. Buchanan

EXHIBIT A
(SMWIA)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1994 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1994 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Sheet Metal Workers' International Association.

Alameda Belt Line
Alton & Southern Railroad
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company - 1
The Belt Railway Company of Chicago - 1
Burlington Northern Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
- The Baltimore and Ohio Chicago Terminal Railroad Company
- The Baltimore and Ohio Railroad Company (former)
- The Chesapeake and Ohio Railway Company (former)
- Clinchfield Railroad (former)
- Louisville and Nashville Railroad Company (former)
- Pere Marquette Railway Company
- Seaboard Coast Line Railroad Company (former)

Houston Belt & Terminal
The Kansas City Southern Railway Company
- CP-Kansas City Southern Railway Company

Missouri Pacific Railroad
Norfolk Southern Railway Company
- The Alabama Great Southern Railroad Company
- Atlantic & East Carolina Railway Company
- Central of Georgia Railroad Company
- The Cincinnati, New Orleans & Texas Pacific Ry. Co.
- Georgia Southern and Florida Railway Company
- Interstate Railroad Company
- Norfolk & Western Railway Company
- Tennessee, Alabama and Georgia Railway Company
- Tennessee Railway Company

Oakland Terminal Railway
Peoria & Pekin Union
Portland Terminal
Terminal Railroad Association of St. Louis
Union Pacific Railroad
Missouri-Kansas-Texas Railroad (former)
Oklahoma, Kansas and Texas Railroad
Western Pacific Railroad

NOTES:

1 - Health and Welfare and Supplemental Sickness only.

- - - - -

FOR THE CARRIERS:

FOR THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION:

Washington, D.C.
September 12, 1996

BMWE
September 26, 1996

MEDIATION AGREEMENT
CASE A-12718, A-12718 Sub 1, Sub 1A, Sub 2,
Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8

DATED SEPTEMBER 26, 1996

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Case No. A-12718
A-12718 Sub 1
A-12718 Sub 1A
A-12718 Sub 2
A-12718 Sub 3
A-12718 Sub 4
A-12718 Sub 5
A-12718 Sub 6
A-12718 Sub 7
A-12718 Sub 8

MEDIATION AGREEMENT

THIS AGREEMENT, made this 26th day of September, 1996, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees of such carriers shown thereon and represented by the Brotherhood of Maintenance of Way Employes, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On December 1, 1995, all hourly, daily, weekly, and monthly rates of pay of employees covered by this Agreement in effect on the preceding day shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) **Hourly Rates** -

Add 3-1/2 percent to the existing hourly rates of pay.

(b) **Daily Rates** -

Add 3-1/2 percent to the existing daily rates of pay.

(c) **Weekly Rates** -

Add 3-1/2 percent to the existing weekly rates of pay.

(d) **Monthly Rates** -

Add 3-1/2 percent to the existing monthly rates of pay.

(e) **Disposition of Fractions** -

Rates of pay resulting from application of paragraphs (a) through (d) above which end in fractions of a cent shall be rounded to the nearest whole cent. Fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) **Piece Work** -

Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rates for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply.

(g) **Deductions** -

Insofar as concerns deductions, which may be made from the rates resulting from the increase herein granted, under Section 3(m) of the Fair Labor Standards Act of 1938, they may continue to be made to the extent that such deductions were being legally made as of August 31, 1941.

(h) **Application of Wage Increase** -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Signing Bonus

Subject to Sections 9 and 10, each employee with 2,000 or more straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) during the period January 1, 1995 through December 31, 1995 will be paid, on the date of this Agreement, a Signing Bonus of four hundred dollars ($400.00).

Section 3 - First Lump Sum Payment

On July 1, 1996, each employee will be paid a lump sum equal to the excess of (i) three (3) percent of the employee's compensation for 1995, excluding pay elements not subject to general wage increases under Section 1(h) of this Article and lump sums, over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) $76.68.

Section 4 - Second General Wage Increase

Effective July 1, 1997, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30, 1997 for employees covered by this Agreement shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 1 hereof.

Section 5 - Second Lump Sum Payment

On July 1, 1998, each employee will be paid a lump sum equal to the excess of (i) three-and-one-half (3-1/2) percent of the employee's compensation for 1997, excluding pay elements not subject to general wage increases under Section 1(h) of this Article and lump sums, over (ii) the lesser of (x) one-half of the amount described in clause (i) above and (y) one-and-one-half times one-quarter of the amount, if any, by which the carriers' payment rate for 1998 for foreign-to-occupation health benefits under the Plan exceeds such payment rate for 1995.

Section 6 - Third General Wage Increase

Effective July 1, 1999, all hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30, 1999 for employees covered by this Agreement shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 6 shall be applied in the same manner as provided for in Section 1 hereof.

Section 7 - Definition of Carriers' Payment Rate

The carrier's payment rate for any year for foreign-to-occupation health benefits under the Plan shall mean twelve times the payment made by the carriers to the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts

paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 of the Imposed Agreement dated February 6, 1992 (effective July 29, 1991) between the organization signatory hereto and the carriers represented by the National Carriers' Conference Committee (Imposed Agreement).

Section 8 - Eligibility for Receipt of Signing Bonus, Lump Sum Payments

The signing bonus and lump sum payments provided for in this Article shall be paid to each employee subject to this Agreement who has an employment relationship as of the date such payments are payable, or has retired or died subsequent to the beginning of the applicable calendar year used to determine the amount of such payment. There shall be no duplication of the signing bonus or lump sum payments by virtue of employment under another agreement nor will such payments be used to offset, construct or increase guarantees in protective agreements or arrangements.

Section 9 - Employees Working Less Than Full-Time

For employees who have fewer straight time hours (as defined) paid for in the period described in Section 2 than the minimum number set forth therein, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the number of straight time hours (including vacations, holidays, paid sick leave and guarantees in protective agreements or arrangements) for which the employee was paid during such period divided by the defined minimum hours.

Section 10 - Signing Bonus Proration

In the case of any employee subject to wage progression or entry rates, the dollar amount of the Signing Bonus specified in Section 2 shall be adjusted by multiplying such amount by the weighted average entry rate percentage applicable to wages earned during the specified determination period.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Imposed Agreement Dated February 6, 1992

The nine-cent cost-of-living allowance in effect beginning July 1, 1995 pursuant to Article II, Part B of the Imposed Agreement shall be rolled in to basic rates of pay on November 30, 1995 and such Article II, Part B shall be eliminated at that time.

Part B - Cost-of-Living Allowance Through January 1, 2000 and Effective Date of Adjustment

(a) A cost-of-living allowance, calculated and applied in accordance with the provisions of Part C of this Article except as otherwise provided in this Part, shall be payable and rolled in to basic rates of pay on December 31, 1999.

(b) The measurement periods shall be as follows:

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment
March 1995 plus March 1997	March 1996 March 1998	Dec. 31, 1999

The number of points change in the CPI during each of these measurement periods shall be added together before making the calculation described in Part C, Section 1(e) of this Article.

(c)(i) Floor. The minimum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Minimum CPI Increase That Shall Be Taken Into Account
Dec. 31, 1999	4% of March 1995 CPI plus 4% of March 1997 CPI

(ii) Cap. The maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That Shall Be Taken Into Account
Dec. 31, 1999	6% of March 1995 CPI plus 6% of March 1997 CPI

(d) The cost-of-living allowance payable to each employee and rolled in to basic rates of pay on December 31, 1999 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1998 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1995, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for

which statistics are available, and (y) one half of the cost-of-living allowance effective on December 31, 1999 pursuant to this Part.

Part C - Cost-of-Living Allowance and Adjustments Thereto After January 1, 2000

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost-of-living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective July 1, 2000 based, subject to paragraph (d), on the CPI for March 2000 as compared with the CPI for September 1999. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment
September 1999	March 2000	July 1, 2000
March 2000	September 2000	January 1, 2001

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance shall apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that shall be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 2000	3% of September 1999 CPI
January 1, 2001	6% of September 1999 CPI, less the increase from September 1999 to March 2000

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 1999 to the measurement month of March 2000 exceeds 3% of the September 1999 base index, the measurement period that shall be used for determining the cost-of-living adjustment to be effective the following January shall be the 12-month period from such base month of September; the increase in the index that shall be taken into account shall be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account shall be 6% of such September base index less the 3% mentioned in the preceding clause, to which shall be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment which shall have become effective July 1, 2000 during such measurement period.

(iv) Any increase in the CPI from the base month of September 1999 to the measurement month of September 2000 in excess of 6% of the September 1999 base index shall not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) shall be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (d), shall be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance in effect on December 31, 2000 shall be adjusted (increased or decreased) effective January 1, 2001 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division shall be dropped. The result of such division shall be added to the amount of the cost-of-living allowance in effect on December 31, 2000 if the CPI shall have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index shall have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above. The same procedure shall be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 2000 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-quarter of the increase, if any, in the carriers' 1999 payment rate for foreign-to-occupation health benefits under the Plan over such payment rate for 1998, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance effective July 1, 2000.

(b) The increase in the cost-of-living allowance effective January 1, 2001 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(c) The increase in the cost-of-living allowance effective July 1, 2001 pursuant to Section 1 of this Part shall be payable to each employee commencing on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(e) The definition of the carriers' payment rate for foreign-to-occupation health benefits under the Plan set forth in Section 7 of Article I shall apply with respect to any year covered by this Section.

(f) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part C will be payable as provided in Section 2 and will not become part of basic rates of pay. Such allowance and the adjustments thereto will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of

hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Piece Work - Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rate for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply. In the absence of any definite rule governing, the equivalent of the hourly amount of the cost-of-living allowance shall be added to the established unit piece-work price.

(f) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (e), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

Section 4 - Continuation of Part C

The arrangements set forth in Part C of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE III - EQUITY WAGE ADJUSTMENT

(a) Effective on the date of this Agreement, rates of pay of employees covered by this Agreement shall be increased in the amount of $.35 per hour. (See Side Letter No. 4)

(b) Effective on January 1, 2000, rates of pay of employees covered by this Agreement shall be increased in the amount of $.21 per hour.

(c) The Board has identified two examples of intercraft rate inequities where individuals perform the same work as members of another craft on a carrier and the other craft is compensated at a higher rate. The Sheet Metal Workers' International Association (SMWIA) Water Service Mechanic rate is higher than the BMWE Water Service Mechanic positions and the International Association of Machinists (IAM) Traveling Mechanic's rate is higher than the BMWE Equipment Maintainer, even though they do the same work. These positions are obviously skilled positions which should be part of the seventy percent group entitled to a $.50 differential. These positions, and any other intercraft inequities that the parties can

agree on should be corrected at the actual rate differential, if higher than the $.50 per hour differential. This subsection shall be implemented in accordance with Side Letter No. 5.

ARTICLE IV - RATE PROGRESSION

Section 1

Article III of the October 17, 1986 National Agreement (as amended), including all applicable Side Letters, and all other local rules governing entry rates are amended to provide that covered employees shall be paid at 90 percent of the applicable rates of pay (including COLA) for the first twelve (12) calendar months of employment and shall be paid at 95 percent of the applicable rates of pay (including COLA) for the second twelve (12) calendar months of employment for all service performed on positions covered by an agreement with the organization.

Section 2

Employees covered by the aforementioned Article III or local rules governing entry rates on the date of this Agreement shall be credited, for purposes of the application of Section 1, for all calendar months of employment rendered as of the effective date of this Article.

Section 3

This Article shall be effective ten (10) days after the date of this Agreement.

ARTICLE V - DENTAL BENEFITS

Section 1 - Continuation of Plan

The benefits now provided under the Railroad Employees National Dental Plan (Dental Plan), modified as provided in Section 2 below, will be continued subject to the provisions of the Railway Labor Act, as amended.

Section 2 - Eligibility

Existing eligibility requirements under the Dental Plan are amended, effective on October 1, 1996, to provide that in order for an employee and his eligible dependents to be covered for Covered Dental Expenses (as defined in the Dental Plan) during any calendar month by virtue of rendering compensated service or receiving vacation pay in the immediately preceding calendar month (the "qualifying month"), such employee must have rendered compensated service on, or received vacation pay for, an aggregate of at least

seven (7) calendar days during the applicable qualifying month. Existing Dental Plan provisions pertaining to eligibility for and termination of coverage not specifically amended by this Section shall continue in effect. (See Side Letter No. 6)

Section 3 - Benefit Changes

The following changes will be made effective as of January 1, 1999.

(a) The maximum benefit (exclusive of any benefits for orthodonture) which may be paid with respect to a covered employee or dependent in any calendar year beginning with calendar year 1999 will be increased from $1,000 to $1,500.

(b) The lifetime aggregate benefits payable for all orthodontic treatment rendered to a covered dependent, regardless of any interruption in service, will be increased from $750 to $1,000.

(c) The exclusion from coverage for implantology (including synthetic grafting) services will be deleted and dental implants and related services will be added to the list of Type C dental services for which the Plan pays benefits.

(d) Repair of existing dental implants will be added to the list of Type B dental services for which the Plan pays benefits.

(e) One application of sealants in any calendar year for dependent children under 14 years of age will be added to the list of Type A dental services for which the Plan pays benefits.

(f) The Plan will pay 80%, rather than 75%, of covered expenses for Type B dental services.

(g) The Plan will establish and maintain an 800 telephone number that employees and dependents may use to make inquiries regarding the Plan.

ARTICLE VI - VISION CARE

Section 1 - Establishment and Effective Date

The railroads will establish a Vision Care Plan to provide specified vision care benefits to employees and their dependents, to become effective January 1, 1999 and to continue thereafter subject to provisions of the Railway Labor Act, as amended, according to the following provisions:

(a) Eligibility and Coverage. Employees and their dependents will be eligible for coverage under the Plan beginning on the first

day of the calendar month after the employee has completed a year of service for a participating railroad, but no earlier than the first day of January 1999. An eligible employee who renders compensated service on, or receives vacation pay for, an aggregate of at least seven (7) calendar days in a calendar month will be covered under the Plan, along with his eligible dependents, during the immediately succeeding calendar month. (See Side Letter No. 6)

(b) Managed Care. Managed vision care networks that meet standards developed by the National Carriers' Conference Committee concerning quality of care, access to providers and cost effectiveness shall be established wherever feasible. Employees who live in a geographical area where a managed vision care network has been established will be enrolled in the network along with their covered dependents. Employees enrolled in a managed vision care network will have a point-of-service option allowing them to choose an out-of-network provider to perform any vision care service covered by the Plan that they need. The benefits provided by the Plan when services are performed by in-network providers will be greater than the benefits provided by the Plan when the services are performed by providers who are not in-network providers, including providers in geographic areas where a managed vision care network has not been established. These two sets of benefits will be as described in the table below.

Plan Benefit	In-Network	Other Than In-Network
One vision examination per 12-month period.	100% of reasonable and customary charges	100% of reasonable and customary charges up to a $35 maximum
One set of frames of any kind per 24-month period	100% of reasonable and customary charges[1]	100% of reasonable and customary charges up to a $35 maximum
One set of two lenses of any kind, including contact lenses, per 24-month period.	100% of reasonable and customary charges[2]	100% of reasonable and customary charges up to the following maximums: up to $25 for single vision lenses up to $40 for bifocals up to $55 for trifocals up to $80 for lenticulars up to $210 for medically necessary contact lenses up to $105 for contact lenses that are not medically necessary
Where the employee or dependent requires only one lens	100% of reasonable and customary charges 2/	100% of reasonable and customary charges up to a maximum of one-half of the maximum benefit payable for a set of two lenses of the same kind

[1] Patients who select frames that exceed a wholesale allowance established under the program may be required to pay part of the cost of the frames selected.

[2] Patients may be required to pay part of the cost of spectacle lenses or lens characteristics that are not necessary for the patient's visual welfare. Moreover, patients who choose contact lenses in lieu of spectacles may be required to pay part of a contact lens evaluation fee and part of the cost of fitting and materials.

Section 2 - Administration

The Vision Care Plan will be administered by the National Carriers' Conference Committee, which will bear the same responsibilities and perform the same functions as it does with respect to The Railroad Employees National Dental Plan, including the development of detailed plan language describing the Plan's eligibility, coverage, benefit and other provisions.

ARTICLE VII - NATIONAL HEALTH AND WELFARE PLAN

The Railroad Employees National Health and Welfare Plan ("the Plan") is amended, effective on October 1, 1996, as provided in this Section. In order for an Eligible Employee (as defined by the Plan) to continue to be covered by the Plan during any calendar month by virtue of rendering compensated service or receiving vacation pay in the immediately preceding calendar month (the "qualifying month"), such employee must have rendered compensated service on, or received vacation pay for, an aggregate of at least seven (7) calendar days during the applicable qualifying month. Existing Plan provisions pertaining to eligibility for and termination of coverage not specifically amended by this Section shall continue in effect. (See Side Letter No. 6)

ARTICLE VIII - VACATIONS

Effective January 1, 1997, employees shall be permitted to take one week of their vacation allowance per year in less than 40 hour increments, provided that such vacation days will be scheduled in accordance with existing rules on the carrier applicable to the scheduling of personal leave days.

ARTICLE IX - SUPPLEMENTAL SICKNESS

The January 9, 1980 Supplemental Sickness Benefit Agreement, as amended effective July 1, 1991 (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) Benefits shall be provided under the Plan established pursuant to the Sickness Agreement as set forth in paragraph (b). Enactment of the agreed-upon RUIA legislation shall not cause the ratio of benefits to rates of pay to differ from that which existed on December 31, 1994.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of December 31, 1994)	$14.71 or more	$2,560 or more
Class II Employees Earning (as of December 31, 1994)	$13.51 or more but less than $14.71	Less than $2,560 but more than $2,351
Class III Employees Earning (as of December 31, 1994)	Less than $13.51	Less than $2,351

Basic and Maximum Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$942	$783	$1,725
Class II	$835	$783	$1,618
Class III	$719	$783	$1,502

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$1,851
Class II	$1,736
Class III	$1,610

Section 2 - Adjustment of Plan Benefits During Agreement Term

Effective December 31, 1999, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE X - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article V of the Agreement of February 10, 1971, as amended ("1971 Agreement"), is further amended as follows effective on the date of this Agreement.

Section 1

Article V(a) of the 1971 Agreement is amended to read as follows:

"This Article is intended to cover accidents involving employees covered by this agreement while such employees are operating, riding in, boarding, or alighting from off-track vehicles authorized by the carrier and any accident which occurs while an employee is under pay."

Section 2

Article V(b)(1) of the 1971 Agreement shall be amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident.

Section 3

Article V(b)(3) of the 1971 Agreement shall be amended to read as follows:

(3) Time Loss

"That the carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the

carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act."

Section 4

Article V(b)(4) of the 1971 Agreement shall be amended by substituting the figure "$10,000,000" for the figure "$1,000,000" wherever the latter figure appears.

ARTICLE XI - SECTION 10901 TRANSACTIONS

Section 1

The railroads should provide at least a 60-day notice of intent to sell or lease a line of railroad to a purchaser under 49 U.S.C. §10901. During the 60-day period, the parties shall meet upon the request of the organization to discuss the planned transfer. The transaction agreement between the carrier and the purchaser should obligate the purchaser to give priority hiring consideration to employees of the selling carrier who work on the line. Further, the agreement between the carrier and purchaser should obligate the purchaser to assume a neutral stance in any union organizing effort undertaken by the organization. Should any recommendation in this paragraph be deemed contrary to the Railway Labor Act, the remaining recommendations shall continue in full force and effect.

Section 2

The selling carrier shall provide affected employees priority employment rights for other positions on the seller, both within craft and in other crafts where qualified. For access to positions within craft, the parties shall, at the request of the organization, develop a system seniority roster for use in such transactions in the same manner as that provided in the UTU and BLE national settlements. In addition, employees securing positions on the selling carrier which require a change in residence shall be eligible for up to $5,000 in relocation allowance, again in the same manner as provided in the UTU and BLE settlements.

Section 3

Employees who secure a position with the buyer should be provided with an opportunity to return to the seller during the first 12-month period. Employees displaced by the sale shall have recall rights on the seller's property, as a minimum, for a period equal to their company seniority.

ARTICLE XII - WORKFORCE STABILIZATION

Part A

Section 1 - The February 7, 1965 Agreement

Entitlement to certain elements of job security, currently available under the February 7, 1965 Agreement (Agreement), shall be upgraded, so that employees who have at least ten continuous years of service will be entitled to the protection.

Section 2

(a) Article I, Section 1 of the Agreement shall be amended to read as follows:

> "Section 1 - All employees, other than seasonal employees, who are in active service and who have or attain ten (10) or more years' of employment relationship will be retained in service subject to compensation as herein provided unless or until retired, discharged for cause, or otherwise removed by natural attrition. For the purpose of this Agreement, the term "active service" is defined to include all employees working, or holding an assignment, or in the process of transferring from one assignment to another (whether or not the date on which such ten or more years of employment relationship is acquired was a work day). An employee who is not regularly assigned on the date the employee is otherwise eligible to achieve protected status under this Section will be deemed to be protected on the first day assigned to a regular position in accordance with existing rules of the BMWE Agreement."

(b) Article I, Section 2, of the February 7, 1965 Agreement shall be amended to read as follows:

> "Section 2 - Seasonal employees, who had compensated service during each of the years 1995, 1996, and 1997 who otherwise meet the definition of "protected" employees under Section 1, will be offered employment in future years at least equivalent to what they performed in 1997 unless or until retired, discharged for cause, or otherwise removed by natural attrition."

(c) Article IV, Section 1, of the Agreement shall be amended to read as follows:

> "Section 1 - Subject to the provisions of Section 3 of this Article IV, protected employees who hold regularly assigned positions shall not be placed in a worse position with respect to compensation than the normal rate of compensation for said regularly assigned position as of the date they become protected; provided, however, that in addition thereto such compensation shall be adjusted to include subsequent wage

increases."

(d) Article V, paragraph 2 of the Agreement shall be amended to change the reference of a four hundred dollar ($400) transfer allowance to eight hundred dollars ($800).

Part B - Conrail Supplemental Unemployment Plan

Conrail shall adopt any modifications made to the Conrail Supplemental Unemployment Plan in Conrail's tentative agreement with the BRS. Other than any such modifications, we recommend that the organization's proposals be withdrawn.

Part C - Work Force Stabilization

The Work Force Stabilization (WFS) Program effective on January 18, 1994, and applied retroactively back to July 29, 1991 shall continue in effect for the new agreement, and shall entitle an employee initially assigned to a WFS gang when it starts its work during the production season for the calendar year, six months of WFS work benefits or WFS unemployment benefits, subject to the terms of the agreement.

ARTICLE XIII - EXPENSES AWAY FROM HOME

Section 1 - First Adjustment

The allowances specified in the Award of Arbitration Board No. 298 (rendered September 30, 1967), as adjusted in various subsequent national agreements, shall be further adjusted as follows:

(a) The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) is increased from $20.25 to $23.50 per day;

(b) The meal allowances provided for in Article I, Sections B(1), (B(2) and B(3) are increased from $4.75, $9.50, and $14.50 per day, respectively, to $6.25, $12.75, and $19.00 per day, respectively;, and

(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased from $34.75 per day to $42.50 per day.

Section 2 - Second Adjustment

Effective July 1, 1998, the daily allowances specified in paragraphs (a), (b), and (c) of Section 1 above will be further adjusted to (a) $26.75; (b) $7.00, $14.25, and $21.25, respectively, and (c) $48.00.

Section 3 - Minimum Allowance

On carriers where expenses away from home are not determined by the allowances made pursuant to the award of Arbitration Board No. 298, such allowances will not be less than those provided for in this Article.

Section 4

This Article shall become effective ten (10) days after the date of this Agreement.

ARTICLE XIV - TRAVEL ALLOWANCE

Section 1

(a) At the beginning of the work season employees are required to travel from their homes to the initial reporting location, and at the end of the season they will return home. This location could be hundreds of miles from their residences. During the work season the carriers' service may place them hundreds of miles away from home at the end of each work week. Accordingly, the carriers will pay each employee a minimum travel allowance as follows for all miles actually traveled by the most direct highway route for each round trip:

0 to 100 miles	$ 0.00
101 to 200 miles	$25.00
201 to 300 miles	$50.00
301 to 400 miles	$75.00
401 to 500 miles	$100.00

Additional $25.00 payments for each 100 mile increments.

(b) At the start up and break up of a gang, an allowance will be paid after 50 miles, with a payment of $12.50 for the mileage between 51 and 100 miles.

(c) Carriers may provide bus transportation for employees to their home area on weekends. Employees need not elect this option.

Section 2

For employees required to work over 400 miles from their residences the carrier shall provide, and these employees shall have the option of electing, an air travel transportation package to enable these employees to return to their families once every three weeks. Ground transportation from the work site to the away from home airport shall be provided by each carrier, and on the return trip the carrier shall provide ground transportation from the away from home airport to the lodging site. In dealing with programmed work, the employees and carrier may know how long the employees will be required to work beyond the 400 mile range, and the employer can

require the employees to give advanced notice of their intention to elect the air transportation option so that the carrier may take advantage of discounted air fares. Employees must make themselves available for work on at least ninety percent of the regularly scheduled work days during the three week period. And, they will not qualify for the travel allowance set forth in Section 1 during the three week period. Irrespective of the customary meal and lodging entitlement that employees have under their local agreements, when employees elect the air transportation option, they shall be entitled to meals and lodging during the two away-from-home weekends in the three-week cycle and they shall not be entitled to meals and lodging during the third weekend upon which they return home by air transportation.

Section 3

Nothing herein shall be construed to bar the parties from reaching mutual agreement on alternative arrangements.

Section 4

This Article shall become effective ten (10) days after the date of this Agreement except on such carriers where the organization representative may elect to preserve existing rules or practices pertaining to travel allowances by notification to the authorized carrier representative.

ARTICLE XV - SUBCONTRACTING

Section 1

The amount of subcontracting on a carrier, measured by the ratio of adjusted engineering department purchased services (such services reduced by costs not related to contracting) to the total engineering department budget for the five-year period 1992-1996, will not be increased without employee protective consequences. In the event that subcontracting increases beyond that level, any employee covered by this Agreement who is furloughed as a direct result of such increased subcontracting shall be provided New York Dock level protection for a dismissed employee, subject to the responsibilities associated with such protection.

Section 2

Existing rules concerning contracting out applicable to employees covered by this Agreement will remain in full effect.

ARTICLE XVI - PRODUCTION GANGS

Section 1

For purposes of Articles VIII, IX and X of the February 6, 1992 Imposed Agreement (Imposed Agreement), a production gang or crew is defined as a mobile and mechanized gang consisting of ten (10) or more employees.

Section 2

For purposes of applying Article XIII - Regional and System-Wide Gangs of the Imposed Agreement on those carriers which timely opted to create such gangs after the implementation of the recommendations of Presidential Emergency Board No. 219 ("covered carrier"), a regional and system-wide production gang shall be a gang that is heavily mechanized and mobile, continuously performing specific, programmed, major repair and replacement work utilizing a substantial (no fewer than twenty) number of employees.

Section 3

(a) A covered carrier shall give at least 60 days' written notice to the General Chairman or the General Chairmen of its intention to establish a regional or system-wide gang for the purpose of working over specified territory of the carrier or throughout its territory. The notice will include the number and staffing of the gang the carrier intends to operate during the work season, as well as identification of the location, beginning and ending mile post location of the work, starting and ending date of the project and the seniority districts involved.

If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matters set forth above to the final and binding arbitration procedures previously created for the resolution of this type of dispute.

(b) An individual who bids and is subsequently assigned to work on a regional and system-wide production gang established by a covered carrier may be held to that gang for a period of no more than 30 days. After such time, the employee will be entitled to bid for other jobs with the carrier, subject to the limitation that no more than ten percent of a gang may bid off during a one week period.

Section 4

Each employee assigned to a regional or system-wide production gang established by a covered carrier under this Article who does not leave the gang voluntarily for a period of at least six (6) months shall be entitled to a lump sum payment annually equal to five

percent of his or her compensation earned during the calendar year on that gang. Such compensation shall not exceed $1,000 and, it shall be paid within 30 days of the completion of the employee's service on the gang. If the carrier disbands the gang in less than six months, the carrier will be responsible for payment of the production incentive earned as of that date.

Section 5

Existing property-specific agreements on a covered carrier, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each covered carrier or sub-section of covered carrier property.

Section 6

This Article is intended to continue the use of regional and system gangs on carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to carriers which opted to operate under other local provisions.

Section 7

This Article shall become effective ten (10) days after the date of this Agreement.

ARTICLE XVII - WORK SITE REPORTING

Article VIII - Work Site Reporting of the Imposed Agreement is amended to restrict any unpaid time traveling between the carrier-designated lodging site and the work site to no more than thirty (30) minutes each way at the beginning and end of the work day.

ARTICLE XVIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1994 and served upon the organization by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1994 served by the organization signatory hereto upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf

of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 1999 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 1999 (not to become effective before January 1, 2000) any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 1999 (not to become effective before January 1, 2000), any notice or proposal which might properly have been served when the last moratorium ended on November 1, 1994.

(d) This Article will not bar management and committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C. THIS 26TH DAY OF SEPTEMBER, 1996.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

J.B. Dagnon

John / Flepr

K.R. Peifer

Hugh L. Salmon

R. Spenski

Ch. Watts

FOR THE EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Mac A. Fleming
President

ADDENDUM TO AGREEMENT

The parties have agreed to settle the issues described below by adopting the applicable recommendations of PEB No. 229 as set forth in its Report and Recommendations (Board Report). Each such issue is identified below by the numerical reference used by the Board and is intended to have effect on those properties where the local union committee had actually served a Section 6 Notice on the particular subject in question and such notice has not been withdrawn.

This Addendum is incorporated by reference and shall constitute a part of the Agreement of this date.

23. Retention of Seniority

Employees shall not be required to file their names and addresses with the carrier when furloughed to protect seniority. However, employees have the obligation to keep the carrier current as to their current address and telephone numbers.

The parties themselves should resolve what role, if any, the local committees may take in contacting furloughed employees who cannot be reached at their last address and the consequences of an employee's failure to provide a current address and telephone number.

24. Monthly Rated Positions

Monthly rated positions shall be converted to hourly rates on a cost neutral basis.

25. Printing Agreements

Each carrier shall print and distribute copies of their comprehensive agreement to all affected employees within 90 days after the parties have agreed and signed off on the agreement's contents.

26. Location of Meetings and Claims Conferences
31. Due Process Improvement Proposals
42. Expedited Arbitration Procedure for Discipline Case

A National Discipline Study Committee shall be formed within ninety days after the date of this Agreement. The Committee shall consist of a representative from each Class I railroad party to the Agreement and a corresponding organization representative from each such carrier. The parties shall select a third party facilitator to chair the Committee. If they are unable to agree they shall select a facilitator, through alternate striking, from a list of

five arbitrators provided by the National Mediation Board. The order of striking shall be determined by coin flip unless otherwise agreed by the parties. The parties shall share the cost of the facilitator equally.

The Committee shall undertake a study of all aspects of existing discipline rules on Class I railroads applicable to the organization and develop a uniform discipline rule for the entire craft represented by the organization. The Committee shall conclude its work within 90 days after its creation or as mutually agreed to by the parties. The uniform discipline rule developed shall be considered for adoption on each carrier represented on the Committee within thirty days after issuance of the rule.

27. Currency Conversion

Employees covered by this Agreement shall be paid in the equivalent of U.S. currency. The dollar rates set forth in the Agreement are U.S. dollars not Canadian dollars.

28. Camper Allowance

Some four hundred and fifty employees on the approved camper list are allowed to utilize campers on the Santa Fe. We believe that these employees should receive an increase in the camper allowance, but we are concerned over the economic impact resulting from the Carriers' assertion that the allowance extends for 60 days beyond the time they return to their home station and are no longer away from home. We recommend that the allowance be raised to $32. As the Carrier asserts, these individuals can elect to receive the per diem that is also available. The parties themselves, in the context of a more complete record, may wish to more fully discuss this matter and reach an accord on this issue.

29. Commercial Drivers License

In view of the recent award of the CDL differential, the Board does not recommend an increase in the differential at this time. However, the Board recommends limited cost of living adjustments, applying a formula similar to that applied to wage recommendations, to the existing CDL differential on January 1, 1997 and January 1, 1999. The only change from the formula applied to the wage recommendations is that the formula will use a single measurement period. The measurement period for the first adjustment will be from March 1995 to March 1996 and the second adjustment will be from March 1997 to March 1998. The Board recommends withdrawal of the organization's proposal that the differential be extended to FHWA issues.

See Side Letter No. 8 for process to resolve disputes over application and implementation.

30. Safety

Upon written request by the organization, the parties shall meet and attempt to develop a program, in conferences on each property, consistent with the following guiding principles:

(a) Joint, cooperative efforts at improving safety in the workplace, including training in safe work practices;

(b) Both organization and individual employee participation should be encouraged but not required. The parties will consult with each other concerning selection of participants. However, each party will have the ultimate responsibility for determining their respective participants.

(c) Efforts should focus on prevention of accidents or injuries and any other topic which might contribute to a safe workplace.

(d) The program should supplement, but not substitute for preexisting employee and/or union safety committee efforts on individual properties.

(e) Third party facilitation should be considered if joint decision making appears impaired.

(f) If no agreement is reached within six months upon carrier receipt of the written request, the parties shall establish a Board of Arbitration. The Board shall consist of three arbitrators. Each party shall select one arbitrator and those two arbitrators shall select a third arbitrator, who shall be the Chair of the Board. If the two arbitrators cannot agree on the choice of the third member, they shall select that arbitrator by a process of alternate strike from a list of seven provided by the National Mediation Board. The Board's jurisdiction shall be limited to the establishment of a joint Labor-Management cooperative safety program on safety and the issues of safety identified in the BMWE November 1, 1994 Section 6 Notice.

(g) For a period of sixty (60) days after the establishment of the Board the parties shall negotiate with the mediatory assistance of the members of the Board.

(h) If no agreement is reached within the sixty day period of mediation, the Board shall fashion an agreement between

the parties on the issues. The Board shall determine its rules of procedure and shall issue its award within 90 days of its creation.

(i) Each party will pay for the costs of their selected arbitrator and share the costs of the third arbitrator.

33. Selection of Positions

Amend Conrail Rule 3, Section 1 to provide that awards will be made using the order of sub-department, seniority district and then other seniority districts when no qualified bids are received from the respective roster.

46. Basic Day--Inclement Weather

Amend BN rule 25E in part (underscored language) as follows:

When hourly rated employees are required to report at usual starting time and place for the day's work, <u>including when employees are bused from their lodging site to the work site</u>, they will be allowed a minimum of three (3) hours at pro rata rate . . .

50. Monthly Rated Positions

Monthly rated positions (all services rendered basis) shall be converted to hourly rates on a cost neutral basis.

September 26, 1996
#1

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This confirms our understanding with respect to the general wage increase provided for in Article I, Section 1, the signing bonus provided for in Article I, Section 2, and the first lump sum payment provided for in Article I, Section 3 of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increase, the signing bonus, and the first lump sum as soon as possible and no later than sixty (60) days after the date of this Agreement.

If a carrier finds it impossible to make such payments within that specified time period, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

September 26, 1996
#2

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to the increase in wages provided for in Section 1 of Article I of the Agreement of this date.

It is understood that the retroactive portion of that wage increase shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to December 1, 1995.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#3

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to the Lump Sum Payments provided for in Article I of the Agreement of this date.

Sections 3 and 5 of Article I are structured so as to provide payments that are essentially based on the compensation earned by an employee during a specified calendar year. Section 8 provides that all of these payments are payable to an employee who has an employment relationship as of the dates such payments are made or has retired or died subsequent to the beginning of the applicable calendar year used to determine the amount of such payments. Thus, for example, under Section 3 of Article I, except for an employee who has retired or died, the Agreement requires that an employee have an employment relationship on July 1, 1996 in order to receive that Compensation Allowance payment.

The intervals between the close of the measurement periods and the actual payments established in the Imposed Agreement dated February 6, 1992 were in large measure a convenience to the carriers in order that there be adequate time to make the necessary calculations.

In recognition of this, we again confirm the understanding that an individual having an employment relationship with a carrier on the last day of a particular calendar year used to determine the amount of a payment under Section 3 and 5 of Article I will not be disqualified from receiving the payment provided for in the event his employment relationship is terminated following the last day of such calendar year but prior to the payment due date.

Yours very truly,

Robert F. Allen

September 26, 1996
#4

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding regarding Article III - Equity Wage Adjustment of the Agreement of this date.

Such Adjustment shall be applied effective November 30, 1995. This letter addresses payment of the retroactive portion of that Adjustment.

Each employee subject to this Agreement who has an employment relationship with the carrier on the date of the Agreement or who has retired, died or was discharged for cause subsequent to November 30, 1995 (eligible employee) shall receive a payment as provided below.

1. The amount payable to an eligible employee shall be equal to the additional amount that would have been paid to such individual for the period November 30, 1995 through the day preceding the date of this Agreement if his or her rate of pay had been increased in the amount of $.35 per hour on November 30, 1995.

2. The payment due hereunder to an eligible employee shall be payable in the first pay period following January 1, 1997.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#4A

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to the agreement concerning "Conrail issues" reached July 30, 1996 as it relates to Article I, Section 2 of the Mediation Agreement in Case No. A-12718 initialed July 22, 1996 (Mediation Agreement).

We agree that in addition to the Signing Bonus provided for in Article I, Section 2, Conrail Maintenance of Way employees will be entitled to receive a Supplemental Signing Bonus in lieu of the payment provided for in Side Letter No. 4 of the Mediation Agreement.

The Supplemental Signing Bonus will be calculated in the following manner. Each employee with 2,080 equivalent straight time hours paid for (not including any such hours reported to the ICC as constructive allowances except vacations, holidays, paid sick leave, paid military duty, bereavement, personal days, jury duty, and guarantees in protective agreements or arrangements) during the period commencing on October 15, 1995 and concluding on October 14, 1996 ("base period"), will be paid a Supplemental Signing Bonus of $640.00 in the first pay period following January 1, 1997.

For employees who have more than or fewer than 2,080 equivalent straight time hours paid for (as defined in the previous sentence) during the base period, the dollar amount of the Supplemental Signing Bonus shall be adjusted by multiplying such amount by the number of equivalent straight time hours for which the employee was paid during the base period divided by 2,080.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#4B

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to the agreement concerning "Conrail issues" reached July 30, 1996 as it relates to Article III - Equity Wage Adjustment of the Mediation Agreement in Case No. A-12718 initialed July 22, 1996 (Mediation Agreement) with respect to Conrail Maintenance of Way employees hired on or after January 1, 1996 who have an employment relationship with Conrail on the date of the Mediation Agreement or who has retired, died or was discharged for cause subsequent to January 1, 1996 ("eligible employee"). This letter addresses payment of the retroactive portion of that Adjustment.

Each eligible employee shall receive a payment equal to the additional amount that would have been paid to such individual for the period from the date of hire through the day preceding the date of the Mediation Agreement if his or her rate of pay had been increased in the amount of $.35 per hour on the date of hire. The payment due hereunder to an eligible employee shall be payable in the first pay period following January 1, 1997.

This payment is in lieu of the payment provided for in Letter #4A, which shall have no application to any eligible employee.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#5

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding reached in connection with the Agreement of this date.

1. Within sixty (60) days after the date of this Agreement, the organization shall notify the carrier's highest designated officer of any examples of situations in which an employee represented by the organization holds a position on a property that performs the same work as a member of another craft on the same property but is compensated at a rate of pay more than fifty (50) cents per hour lower ("rate inequity").

2. Any rate inequities mutually agreed to by the parties pursuant to paragraph one shall be adjusted as follows (whichever produces a higher rate of pay):

(i) to the regular pay rate of the other comparable craft position, or

(ii) by applying a $.50 per hour differential for all hours actually worked.

3. If the parties are unable to reach resolution, this matter shall be referred to a Public Law Board created under Section 3 of the Railway Labor Act.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#6

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding with respect to the application of the seven (7) calendar days per month eligibility requirement for benefit coverage under the health and welfare, dental and vision plans. The understanding is as follows:

1. Nothing contained in this letter shall in any way add to, diminish or alter existing rights and/or obligations of both carriers and employees with regard to eligibility requirements for benefit coverage for employees going on furlough, furloughed or returning from furlough.

2. An employee whose assignment commences on one (1) calendar day and ends on the following calendar day shall be deemed to have rendered compensated service on one (1) calendar day. This remains true even if the employee works overtime on that assignment during the following calendar day unless

(a) such employee's overtime on the following calendar day continues into his/her regularly scheduled work hours; or

(b) the employee's overtime on the following calendar day occurs on his/her rest day and such overtime continues into the hours of what would have been the employee's regular work day, based on the employee's assignment immediately preceding the rest day, had the rest day been a regular work day.

In the event 2(a) or 2(b) occurs the employee shall be deemed to have rendered compensated service on two (2) calendar days. If the overtime continues uninterrupted for more than two (2) calendar days, the same principles will apply in determining for purposes of benefit eligibility the number of calendar days on which the employee shall be deemed to have rendered compensated service.

3. An employee whose assignment commences on one (1) calendar day and ends on the following calendar day, and who then works another assignment during that following day shall be deemed to have rendered compensated service on two (2) calendar days.

4. An employee who works (or who reports to work but is instructed not to work by carrier because of inclement weather) on an eight (8) hours day's assignment shall be deemed to have rendered compensated service on one (1) calendar day for each calendar day s/he works such assignment or reports to work for such assignment but is instructed not to work because of inclement weather. An employee who works (or who reports to work but is instructed not to work by carrier because of inclement weather) on a ten (10) hours day's assignment in lieu of an eight (8) hour day's assignment will be deemed to have rendered compensated service on one and one-quarter (1.25) calendar days for each calendar day s/he works such assignment or reports to work for such assignment but is instructed not to work because of inclement weather. Similarly, an employee on assignment where the regular work day is programmed to consist of more than eight (8) hours (e.g. 9, 11, 12, 13 hours) shall be deemed to have rendered compensated service on one and on a fraction of another calendar day worked, on the same principle as described above.

5. An employee called in to work on his/her rest day shall be deemed to have rendered compensated service on one (1) calendar day.

6. A new employee who reports for duty on the first day allowed, who has less than seven (7) calendar days on which s/he is assigned to work remaining in the month, will be eligible for benefits in the following month provided the employee works all regularly assigned days in such month.

7. The change in eligibility requirements is not intended to alter current practices with respect to whether vacations, holidays, personal leave days, bereavement leave and jury duty are considered as days of compensated service for purposes of the health, dental and vision plans.

8. An employee who is called to military duty to respond to an emergency (e.g. The Gulf War) and as a result is not able to meet the seven (7) day eligibility requirement shall remain eligible for benefits for four (4) months after the month in which compensated service was last performed.

9. An employee who is suspended, dismissed or retires and, consequently, does not meet the seven (7) calendar days per month eligibility requirement shall receive the same extension of coverage as such person received prior to such change.

10. Any lapse in benefits occurring as a result of this eligibility change shall not continue beyond the month so affected, provided such employee meets the eligibility requirements governing

the immediately following month.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

R. F. Allen

Robert F. Allen

I agree:

M. A. Fleming

M. A. Fleming

September 26, 1996
#7

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding with respect to Article XII - Workforce Stabilization of the Agreement of this date.

As soon as practicable, but in no event later than October 1, 1998, the parties will review the pertinent provisions of the February 7, 1965 Agreement for the purpose of developing:

(i) a current document that incorporates the agreed-upon changes to that agreement that the parties have reached in the interim, including the aforementioned Article XII and any other appropriate conforming changes; and

(ii) alternative procedures for resolving disputes arising thereunder.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#8

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding regarding Item 29 - Commercial Drivers License in the Addendum to the Agreement of this date.

It is the carriers' position that on those carriers who do not have an existing differential for Commercial Drivers License, that Recommendation 29, Commercial Drivers License of PEB No. 229 does not establish a CDL differential. The BMWE contends that it does establish a CDL differential.

The parties have agreed to refer this matter to final and binding arbitration as provided herein.

The parties shall select a neutral person to serve as the arbitrator within thirty (30) days after the date of this Agreement. If the parties fail to agree upon such a neutral person within the aforementioned thirty days, either party may request a list from the National Mediation Board of seven (7) potential arbitrators from which the parties shall promptly choose the neutral by alternately striking names from the list. The order of striking shall be determined by coin flip except as otherwise agreed by the parties. The fees and expenses of the neutral person shall be borne equally by the parties, and all other expenses shall be paid for by the party incurring them.

Within ten (10) days after the arbitrator is selected, each party shall submit its statement of the question(s) at issue to the arbitrator, with a copy to the other party.

If this is consistent with your understanding of our agreement, please confirm by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#9

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This confirms our understanding in connection with the Agreement of this date.

The carrier shall provide protective clothing and equipment (except shoes) that it deems necessary for the protection of the safety and health of employees covered by this Agreement.

The parties may elect to address this matter in a more comprehensive manner in connection with the process regarding safety (item 30) identified in the Addendum to this Agreement.

Please indicate your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

September 26, 1996
#10

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This confirms our understanding with respect to the Agreement of this date.

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation. .

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

EXHIBIT A
(BMWE)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1994 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1994 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Brotherhood of Maintenance of Way Employes.

Alton & Southern Railroad
Atchison, Topeka and Santa Fe Railway Company
Bangor and Aroostook Railroad Company - 1
The Belt Railway Company of Chicago - 1
Burlington Northern Railroad Company
Camas Prairie Railroad Company
Chicago and North Western Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
- The Baltimore and Ohio Chicago Terminal Railroad Company
- The Baltimore and Ohio Railroad Company (former)
- The Chesapeake and Ohio Railway Company (former) (Northern and Southern Regions)
- Chicago and Eastern Illinois Railroad Company (former)
- Clinchfield Railroad (former)
- Louisville and Nashville Railroad Company (former)
- Monon Railroad (former)
- Richmond, Fredericksburg & Potomac Railway Company
- Seaboard Coast Line Railroad Company (former)
- Toledo Terminal Railroad Company (former)
- Western Maryland Railway Company (former)
- Western Railway of Alabama

Galveston, Houston and Henderson Railroad
Houston Belt and Terminal Railway
The Kansas City Southern Railway Company
- CP-Kansas City Southern Joint Agency

Lake Superior & Ishpeming Railroad Company - 2
Los Angeles Junction Railway
Manufacturers Railway Company

Meridian & Bigbee Railroad Company - 1
Missouri-Kansas-Texas Railroad
Oklahoma, Kansas & Texas Railroad
Missouri Pacific Railroad
New Orleans Public Belt Railroad - 1
Norfolk and Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic & East Carolina Railway Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pacific Railway Company
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Norfolk & Western Railway Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Northern Indiana Commuter Transportation District - 1
Peoria and Pekin Union Railway Company
The Pittsburgh, Chartiers & Youghiogheny Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Spokane International Railroad
Terminal Railroad Association of St. Louis
Union Pacific Railroad
Utah Railway Company
Western Pacific Railroad
Wichita Terminal Association

NOTES:

1 - Health and Welfare and Supplemental Sickness only.

2 - Wages and Rules and Supplemental Sickness only.

- -

FOR THE CARRIERS:

FOR THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Washington, D.C.
September 26, 1996

AGREED-TO QUESTIONS & ANSWERS
UNDER THE SEPTEMBER 26, 1996 BMWE NATIONAL AGREEMENT

Q.1 Article VIII permits one week of vacation to be taken in less than 40 hour increments provided such vacation days are scheduled in accordance with existing rules on a carrier governing personal leave days. How should the scheduling of such vacation days be handled?

A.1 The intent of the Article is to develop scheduling practices consistent with rules governing personal leave days on each particular carrier.

Q.2 What transactions are intended to be covered by Article XI?

A.2 Those transactions involving the sale or lease of property owned by a carrier party to this agreement to a person other than a rail carrier pursuant to 49 U.S.C. section 10901 and for which there is no statutory labor protection. Article XI is intended to cover the same transactions as are covered in the counterpart provisions (titled as "Enhanced Employment Opportunities") contained in the national agreements between the carriers and the operating craft organizations (UTU and BLE).

Q.3 Under Article XIV, Section 1, how would the travel allowance due to a covered employee be calculated under the following circumstances. The employee travels 151 miles from his residence to his initial reporting location by the most direct highway route. At the end of the first work week that employee drives home and back to the same work location. What travel allowance does that employee receive under Section 1?

A.3 The employee receives $25.00 for the start up trip from his residence to the initial reporting location at the beginning of the work season. He receives $75.00 for the end of first work week travel of 302 miles.

Q.4 Under Article XIV, Section 1(c), a carrier provides bus transportation to employees to their home area.

(a) May an employee covered by that provision decline the bus transportation?

(b) If such employee declines the bus transportation, does that declination make the employee ineligible for a travel allowance under Article XIV?

A.4 (a) Yes.

(b) No.

Q.5 Under Article XIV, Section 2, what does an employee electing the airline option receive for meals and lodging during the two away-from-home weekends in the three week cycle?

A.5 Such employee receives the meals and lodging entitlement provided under existing local agreements with respect to a work day. The employee is not entitled to meals and lodging for the weekend on which the employee returns home by air transportation.

Q.6 How should Article XIV, Section 2 be applied where employees are working a four 10-hour day work week or other alternative schedule?

A.6 Where those situations occur, carrier and organization representatives should meet locally and develop equivalent alternatives.

Q.7 How should Addendum Items 23, 24 and 50 be applied?

A.7 Addendum items 23, 24 and 50 must be handled locally.

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N W , WASHINGTON, D C 20036/AREA CODE· 202-862-7200 FAX 202-862-7230

ROBERT F. ALLEN
Chairman

D. P LEE
Vice Chairman and
General Counsel

A. K. GRADIA
Director of Labor Relations

November 6, 1996

CIRCULAR NO. 808-8

TO MEMBER ROADS:

In our Circular No. 808-7 we distributed a copy of the formal Mediation Agreement dated September 26, 1996 with the Brotherhood of Maintenance of Way Employes (1996 Agreement).

Article XII - Workforce Stabilization, Part A of that Agreement makes certain amendments to the February 7, 1965 National Agreement (Feb 7 Agreement). In connection with the implementation of that Article as well as Side Letter #7 to the 1996 Agreement, the organization and the carriers covered by such provisions have reached agreements regarding: (i) new procedures to resolve any dispute between the parties arising under the Feb 7 Agreement, as amended, and (ii) a "standstill" arrangement that creates a phase-in period (September 26-November 15, 1996) during which covered carriers will have no Feb 7 Agreement liability for compensation and certain employees will be deemed to have their protected status suspended rather than forfeited. Copies of these documents are attached.

Please contact this office if you have any questions regarding these matters.

Yours very truly,

A. K. GRADIA

Director of Labor Relations

AGREEMENT

WHEREAS, Article XII, Part A of the Mediation Agreement Case Nos. A-12718, (Sub 1, Sub 1A, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7 and Sub 8), dated September 26, 1996 ("September 26, 1996 Agreement"), between employees represented by the Brotherhood of Maintenance of Way Employes ("BMWE" or "the Union") and certain carriers represented by the National Carriers' Conference Committee ("NCCC") makes certain amendments to the Mediation Agreement, Case No. A-7128, dated February 7, 1965 ("February 7, 1965 Agreement"); and

WHEREAS, the carriers covered by Article XII, Part A, which are represented by the NCCC ("Covered Carriers" or "Carrier"), and the BMWE have concluded that the Disputes Committee procedures contained in Article VII of the February 7, 1965 Agreement should be revised, it is hereby

AGREED, that the following procedures will supersede the dispute resolution procedures set forth in and established under Article VII of the February 7, 1965 Agreement as regards any dispute between BMWE and the Covered Carriers arising under the February 7, 1965 Agreement, as amended.

I. Handling Of Claims:

A. Each Carrier shall designate an officer or officers to receive initial claims arising under either the February 7, 1965 Agreement or the Washington Job Protection Agreement of 1936 ("WJPA"). The Carrier shall notify the Union in writing of the names and addresses of

such designated officer or officers. All claims under the provisions of these Agreements shall be presented to the designated officer by the employee or his designated representative within sixty (60) days following the end of the calendar month in which the claim arose. The claim shall be barred if not presented within such period. The designated officer who received the claim shall deny or allow it within sixty (60) days from the date of its receipt. Any denial must be in writing and state the reasons for denial of the claim. If the designated officer fails to respond to the claim within the time provided, the claim shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims.

B. An appeal (including a request for conference) to the Carrier's highest designated officer to hear such claims may be taken by either the employee or his designated representative anytime up to sixty (60) days after the date of the claim's denial. A failure of the employee or his designated representative to make such an appeal shall close the matter,

but this shall not be considered as a precedent or waiver of the contentions of the employee or his designated representative as to other similar claims or grievances.

C. The parties shall confer regarding the appeal within thirty (30) days following the highest designated officer's receipt of the appeal and such officer shall respond, in writing, to the appeal within sixty (60) days following the date of the appeal conference. If the highest designated officer fails to respond to the appeal within the time provided, the claim shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims.

D. Any appeal denied by the Carrier's highest designated officer may be listed for resolution by the Special Board of Adjustment established in Article II, below. Any such appeal shall be taken within three (3) months of the date of the Carrier's denial of the appeal. A party's failure to list any appeal within the time limits specified in this section shall close that specific claim; however, failure to proceed to arbitration

shall not be considered as a precedent or waiver of the contentions of the party as to other similar claims.

II. Arbitration Committee

A. There shall be established a Special Board of Adjustment, in accordance with Section 3, Second of the Railway Labor Act, which shall be known as Special Board of Adjustment No. 1087, hereinafter referred to as the Board. This Board shall have jurisdiction to hear disputes arising under the Agreement of February 7, 1965 in Mediation Case No. 7218, as amended, and the WJPA. The Board shall not have the authority to add contractual terms or to change existing agreements governing rates of pay, rules and working conditions.

B. The Board shall consist of five members. Two members shall be selected by the Covered Carriers and shall be known as the "Carrier Members". Two members shall be selected by the BMWE and shall be known as the "Union Members". The third member, who shall be Chairman of the Board shall be a neutral person, unbiased as between the parties. The Carrier Members and the Union Members may be

changed at any time by the respective parties designating them upon notice to the other party.

C. The Carrier and Union Members shall confer within five days after the date of this Agreement for the purpose of selecting the Neutral Member of the Board. If the party members agree upon the Neutral Member and the person so agreed upon accepts the appointment, then such person shall serve as Chairman of the Board. If, within five (5) days after such first conference, the party members fail to agree upon the Neutral Member, either party may request the National Mediation Board ("NMB") to provide a list of seven (7) potential arbitrators from which the parties shall choose the Neutral Member by alternately striking names from the list, which first strike to be allocated to a party by a coin toss. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel nor shall they do anything to delay the striking process.

D. The Neutral Member initially chosen shall sit for a term of one year and that member's term may be renewed in one year increments by

agreement of the parties. Should the parties desire to change the Neutral Member, the procedures set forth in Section C, above shall be followed and the newly chosen Neutral Member shall sit for a term of one year and his or her term may be renewed in one year increments by agreement of the parties.

E. The compensation and expenses for the Carrier Members shall be borne by the Carriers. The compensation and expenses of the Union Members shall be borne by the BMWE. The compensation and expenses of the Neutral Member and all other expenses shall be borne half by the Carriers and half by the BMWE.

III. Arbitration Procedures

A. The employee or his designated representative may list a dispute for resolution before the Board by filing with the Carrier Members and the Chairman a notice of intent to submit an *ex parte* submission on the matter. The notice of intent must be filed within the time limits set forth in Article ID, above. The parties must exchange their submissions within sixty (60) days following the filing of the notice of intent.

B. The Board, upon its own motion, may accept and consider evidence relevant to the dispute not part of the handling of the dispute on the Carrier's property.

C. The Board shall conduct hearings whenever five (5) disputes have been listed or whenever six (6) months has elapsed since the last hearing and at least one dispute between the parties has been listed, whichever occurs first. Oral hearings are required on every dispute unless waived by the moving party. Parties to a hearing may be represented by counsel.

D. The Board shall issue a written award in the case submitted to it within thirty (30) days following the close of the hearing. Any three members of the Board shall be competent to render an award. Copies of the award shall be furnished to the parties to the dispute.

E. The Board shall have jurisdiction to render an interpretation of any award issued by it, provided that, any request for an interpretation must be filed, in writing, with the Board within ninety (90) days following the date of the award.

F. Awards of the Board shall be final and binding, subject to judicial enforcement or review under the provisions of Section 3 First (p) and (q), of the Railway Labor Act.

Signed this 25th day of October, 1996.

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

BY: M A Fleming Jr.

CARRIERS COVERED BY ARTICLE XII, PART A, REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE

BY: Chairman

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N W . WASHINGTON D C 20036/AREA CODE. 202-862-7200 FAX 202-862-7230

ROBERT F. ALLEN
Chairman

D. P. LEE
Vice Chairman and
General Counsel

A. K. GRADIA
Director of Labor Relations

October 23, 1996

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This is in reference to discussions between the parties regarding implementation of Article XII - Workforce Stabilization, Part A of the Mediation Agreement dated September 26, 1996, which became effective on that date. In connection with those discussions, the BMWE and the National Carriers' Conference Committee, as bargaining representative for those carriers subject to Article XII, Part A ("covered carrier"), have reached the following understandings.

1. A BMWE-represented employee of a covered carrier who is protected under the February 7, 1965 Agreement as amended ("Feb 7 Agreement") and who would be deemed to have forfeited his protected status pursuant to Article II of the Feb 7 Agreement as a result of any act or omission other than death, retirement, resignation or dismissal for cause that occurs during the period of September 26, 1996 through October 31, 1996 ("phase-in period"), shall be deemed to have his protected status suspended until November 1, 1996.

2. A covered carrier shall have no liability for compensation under the Feb 7 Agreement to any employee covered by paragraph 1 above for periods on and after November 1, 1996 based on any event that occurred during the phase-in period.

3. A covered carrier shall have no liability for compensation under the Feb 7 Agreement to any employee during the phase-in period.

If the foregoing accurately expresses the parties' understanding, please acknowledge by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

M. A. Fleming

NATIONAL RAILWAY LABOR CONFERENCE

1901 L STREET, N W., WASHINGTON D C 20036/AREA CODE 202-862-7200 FAX 202-862-7230

ROBERT F. ALLEN
Chairman

D P. LEE
Vice Chairman and
General Counsel

A K. GRADIA
Director of Labor Relations

October 25, 1996

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This is in reference to the Agreement of this date between the parties (October 25, 1996 Agreement) regarding procedures for the resolution of disputes arising under the February 7, 1965 National Agreement, as amended (Feb. 7 Agreement).

This will confirm our understanding that any dispute concerning the meaning or interpretation of the provisions of the Feb. 7 Agreement that is not adjusted on the property is within the exclusive jurisdiction of the Special Board of Adjustment established pursuant to the October 25, 1996 Agreement. Such disputes are not subject to rules and procedures governing the handling of claims (including time limit rules) and may be handled at any time directly between the General Chairman and the highest designated carrier officer.

If the foregoing accurately expresses the parties' understanding, please acknowledge by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

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ROBERT F. ALLEN
Chairman

D. P. LEE
Vice Chairman and
General Counsel

A. K. GRADIA
Director of Labor Relations

October 29, 1996

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This is in reference to our "Standstill Agreement" dated October 23, 1996 regarding implementation of Article XII - Workforce Stabilization, Part A of the Mediation Agreement dated September 26, 1996 and our agreement to extend the time period that it will cover to November 15, 1996.

This will confirm our understanding that:

1. The "phase-in period" as that term is used in the Standstill Agreement shall be September 26, 1996 through November 15, 1996; and

2. The suspension of protected status provided for under paragraph 1 of the Standstill Agreement will apply until November 16, 1996.

If the foregoing accurately expresses the parties' understanding, please acknowledge by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

M. A. Fleming

BMWE NATIONAL AGREEMENT
DATED MAY 31, 2001
SUMMARY OF TERMS

1. **Wages (Article I)**

3-1/2% GWI	January 1, 2001*
Four COLA-based Wage Increases (cents-per-hour)	July 1, 2001**
	July 1, 2002
	July 1, 2003
	July 1, 2004

*Retroactive portion to be paid as soon as practicable, and is subject to adjustment for COLA payments made on and after January 1, 2001. (See Article II, Part A, Section 1.)

**July 1, 2001 Wage Increase is 31 cents-per-hour. (See Side Letter #2, Attachment C.)

Health and Welfare Cost Sharing (Article I; Side Letter #2)

Each COLA-based Wage Increase subject to adjustment for employees' share of year-over-year increases in the carriers' payment rate for medical, vision, hearing, life insurance and accidental death and dismemberment benefits. (See Article I, Section 6 for definition of "payment rate" for any year.)

Employee's share of year-over-year cost increases***:

July 1, 2001	35%	(15.73 cents-per-hour)****
July 1, 2002	40%	
July 1, 2003	45%	
July 1, 2004	50%	

*** Capped at one-half of the COLA-based wage increase.

****See Attachment C to Side Letter No. 2.

2. **COLA (Article II)**

September 26, 1996 National Agreement COLA ("1996 COLA") eliminated effective January 1, 2001. (See Article II, Part A, Section 1.)

All 1996 COLA payments made on and after January 1, 2001 (i.e., 27 cents-per-hour) deducted from the retroactive portion of the January 1, 2001 GWI. (See Article II, Part A, Section 1.)

New COLA commencing July 1, 2005. Standard national agreement COLA language. Subject to adjustment every six months. (See Article II, Part B.)

New COLA subject to adjustment for employee cost sharing of benefit cost increases on same terms as COLA-based wage increases (i.e., 50% of year-over-year payment rate increase, capped at one-half of COLA amount). (See Article II, Part B, Section 2.)

3. **Alternative Compensation Program (Article III)**

Provides for parties, by mutual agreement, to implement alternatives to the compensation arrangements contained in the Agreement.

4. **Supplemental Sickness (Article IV)**

Provides for restoration of ratio of benefits to rates of pay as of December 31, 1999 and December 31, 2004. (Similar to such adjustments as provided in previous national agreements.)

New provision providing for continuation of Plan benefits for a specified period in the event of disagreement between employee's physician and the carrier's physician over the employee's medical fitness to return to work.

5. **Health and Welfare (Article V)**

Effective January 1, 2002:

National Plan continued with certain enhancements. (See Article V, Section 2(a) through (f).)

Prescription drug co-payment levels increased. (See Article V, Section 2(g).)

Hearing Benefit added. (See Article V, Section 2(i).)

Plan life insurance and accidental death and dismemberment benefits for active employees increased. (See Article V, Section 2(j).)

Vision Care Plan changed from Select to Standard arrangement. (See Article V, Section 3.)

6. **Expenses Away From Home (Article VI)**

Arb. Board No. 298 allowances adjusted as follows*:

July 1, 2002: Lodging - increased from $26.75 to $29.00 per day.

Meals - increased from $21.25 ($7.00, $14.25) to $23.00 ($7.50, $15.50) per day.

Maximum for meals and lodging: increased from $48.00 to $52.00 per day.

Jan. 1, 2005: Lodging - increased to $32.00 per day.

Meals - increased to $25.00 ($8.00, $17.00) per day.

Meals and Lodging maximum increased to $57.00 per day.

* Above amounts set floor for such expenses on carriers not covered by Arb. 298. (See Article VI, Section 3.)

7. **Travel Allowance (Article VII)**

Amends Section 1 of Article XIV of 1996 National Agreement to provide for use of employee's "Home Station" in lieu of his residence (for computing travel allowance due) if the employee's residence located outside of his carrier's system.

8. **Moratorium (Article VIII)**

Standard provision.

New notices may be served on or after November 1, 2004 (effective no earlier than January 1, 2005).

9. **Side Letters**

Side Letter #1	Improved access and exchange of information concerning employment status, union payments; meeting obligation at request of organization.
Side Letter#2	Cost-sharing of payment rate increases.
Side Letter#3	Adjustments to employee cost-sharing reductions in the event of subsequent fluctuations in carriers' payment rates.
Side Letter #4	Cost-sharing - changes in hospital association participation.
Side Letter #5	No prejudice - withdrawal of parties' proposals.
Side Letter#6	Standard antecedent drafts/proposals provision.
Unnumbered:	Crediting of vacation time for full time BMWE officers who return to active service (effective 1/1/02).

BMWE
MAY 31, 2001

AGREEMENT

DATED MAY 31, 2001

Between Railroads Represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

Employees of such Railroads represented by the

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MEDIATION AGREEMENT

THIS AGREEMENT, made this 31st day of May, 2001, by and between the participating carriers listed in Exhibit A attached hereto and hereby made a part hereof, and represented by the National Carriers' Conference Committee, and the employees of such carriers shown thereon and represented by the Brotherhood of Maintenance of Way Employes, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On January 1, 2001, all hourly, daily, weekly, and monthly rates of pay of employees covered by this Agreement in effect on the preceding day shall be increased in the amount of three-and-one-half (3-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 3-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 3-1/2 percent to the existing daily rates of pay.

(c) **Weekly Rates** -

Add 3-1/2 percent to the existing weekly rates of pay.

(d) **Monthly Rates** -

Add 3-1/2 percent to the existing monthly rates of pay.

(e) **Disposition of Fractions** -

Rates of pay resulting from application of paragraphs (a) through (d) above which end in fractions of a cent shall be rounded to the nearest whole cent. Fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) **Piece Work** -

Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rates for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply.

(g) **Deductions** -

Insofar as concerns deductions, which may be made from the rates resulting from the increase herein granted, under Section 3(m) of the Fair Labor Standards Act of 1938, they may continue to be made to the extent that such deductions were being legally made as of August 31, 1941.

(h) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Second General Wage Increase

(a) A cost-of-living wage adjustment, calculated in accordance with this subsection, shall be payable and rolled in to basic rates of pay on July 1,2001. Such wage adjustment shall be equal to the difference between (i) the cost-of-living wage adjustment calculated pursuant to Article II, Part B of this Agreement except as otherwise provided in subsection (b) hereof, and (ii) the lesser of (x) the cents per hour produced by dividing thirty-five (35) percent of the increase, if any, in the carriers' 2001 payment rate over such payment rate for 2000, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the amount referred to in (i) above.

(b) The measurement period for this cost-of-living wage adjustment shall be March 2000 to March 2001, and the provisions of Article II, Part B, Section 1(d) shall not be applicable.

(c) All hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30,2001 for employees covered by this Agreement shall be increased by the amount computed pursuant to subsection (a) applied so as to give effect to this increase irrespective of the method of payment. The

increase provided for in this Section 2 shall be applied in the same manner as provided for in Article II, Part B, Section 3.

Section 3 - Third General Wage Increase

(a) A cost-of-living wage adjustment, calculated in accordance with this subsection, shall be payable and rolled in to basic rates of pay on July 1,2002. Such wage adjustment shall be equal to the difference between (i) the cost-of-living wage adjustment calculated pursuant to Article II, Part B of this Agreement except as otherwise provided in subsection (b) hereof, and (ii) the lesser of (x) the cents per hour produced by dividing forty (40) percent of the increase, if any, in the carriers' 2002 payment rate over such payment rate for 2001, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the amount referred to in (i) above.

(b) The measurement period for this cost-of-living wage adjustment shall be March 2001 to March 2002, and the provisions of Article II, Part B, Section 1(d) shall not be applicable.

(c) All hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30,2002 for employees covered by this Agreement shall be increased by the amount computed pursuant to subsection (a) applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 3 shall be applied in the same manner as provided for in Section 2 (c) hereof.

Section 4 - Fourth General Wage Increase

(a) A cost-of-living wage adjustment, calculated in accordance with this subsection, shall be payable and rolled in to basic rates of pay on July 1,2003. Such wage adjustment shall be equal to the difference between (i) the cost-of-living wage adjustment calculated pursuant to Article II, Part

B of this Agreement except as otherwise provided in subsection (b) hereof, and (ii) the lesser of (x) the cents per hour produced by dividing forty-five (45) percent of the increase, if any, in the carriers' 2003 payment rate over such payment rate for 2002, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the amount referred to in (i) above.

(b) The measurement period for this cost-of-living wage adjustment shall be March 2002 to March 2003, and the provisions of Article II, Part B, Section 1(d) shall not be applicable.

(c) All hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30,2003 for employees covered by this Agreement shall be increased by the amount computed pursuant to subsection (a) applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 4 shall be applied in the same manner as provided for in Section 2(c) hereof.

Section 5 - Fifth General Wage Increase

(a) A cost-of-living wage adjustment, calculated in accordance with this subsection, shall be payable and rolled in to basic rates of pay on July 1,2004. Such wage adjustment shall be equal to the difference between (i) the cost-of-living wage adjustment calculated pursuant to Article II, Part B of this Agreement except as otherwise provided in subsection (b) hereof, and (ii) the lesser of (x) the cents per hour produced by dividing fifty (50) percent of the increase, if any, in the carriers' 2004 payment rate over such payment rate for 2003, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the amount referred to in (i) above.

(b) The measurement period for this cost-of-living wage adjustment

shall be March 2003 to March 2004, and the provisions of Article II, Part B, Section 1(d) shall not be applicable.

(c) All hourly, daily, weekly, monthly and piece-work rates of pay in effect on June 30,2004 for employees covered by this Agreement shall be increased by the amount computed pursuant to subsection (a) applied so as to give effect to this increase irrespective of the method of payment. The increase provided for in this Section 5 shall be applied in the same manner as provided for in Section 2(c) hereof.

Section 6 - Definitions

The carriers' payment rate ("payment rate") for any year means twelve times the sum of (a) the carriers' payments for foreign-to-occupation health benefits under the Plan per month (in such year) per employee who is fully covered for employee health benefits under the Plan, (b) the carriers' payments per month (in such year) per such employee to the Vision Care Plan and for the Hearing Benefit provided under Article V of this Agreement, and (c) the carriers' payments per month (in such year) per such employee for life insurance and accidental death and dismemberment benefits under the Plan. Carrier payments to the Plan for these purposes shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 of the Imposed Agreement dated February 6, 1992 (effective July 29, 1991) between the organization signatory hereto and the carriers represented by the National Carriers' Conference Committee.

ARTICLE II - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Agreement Dated September 26, 1996

Section 1

Article II, Part C of the Agreement dated September 26, 1996, which provides for a cost-of-living allowance beginning July 1, 2000, shall be eliminated effective January 1, 2001 Any amounts paid pursuant to that provision on or after January 1, 2001 shall be deducted from the general wage increase provided in Article I, Section 1 of this Agreement.

Section 2

Any local counterpart to the above-referenced Article II, Part C that is in effect on a carrier party to this Agreement shall be amended in the same manner as provided in Section 1.

Part B - Cost-of-Living Allowance and Adjustments Thereto After January 1, 2005

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost-of-living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective July 1, 2005 based, subject to paragraph (d), on the CPI for March 2005 as compared with the CPI for

September 2004. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (d)(iii), according to the formula set forth in paragraph (e).

Measurement Periods		
Base Month	Measurement Month	Effective Date of Adjustment
September 2004	March 2005	July 1, 2005
March 2005	September 2005	January 1, 2006

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b) While a cost-of-living allowance is in effect, such cost-of-living allowance shall apply to straight time, overtime, protected rates, vacations, holidays and personal leave days in the same manner as basic wage adjustments have been applied in the past, except that such allowance shall not apply to special allowances and arbitraries representing duplicate time payments.

(c) The amount of the cost-of-living allowance, if any, that shall be effective from one adjustment date to the next may be equal to, or greater or less than, the cost-of-living allowance in effect in the preceding adjustment period.

(d)(i) Cap. In calculations under paragraph (e), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 2005	3% of September 2004 CPI
January 1, 2006	6% of September 2004 CPI, less the increase from September 2004 to March 2005

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (e), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2004 to the measurement month of March 2005 exceeds 3% of the September 2004 base index, the measurement period that shall be used for determining the cost-of-living adjustment to be effective the following January shall be the 12-month period from such base month of September; the increase in the index that shall be taken into account shall be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account shall be 6% of such September base index less the 3% mentioned in the preceding clause, to which shall be added any residual tenths of points which had been dropped under paragraph (e) below in calculation of the cost-of-living adjustment which shall have become effective July 1, 2005 during such measurement period.

(iv) Any increase in the CPI from the base month of September 2004 to the measurement month of September 2005 in excess of 6% of the September 2004 base index shall not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) shall be applicable to all subsequent periods during which this Article is in effect.

(e) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (d), shall be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance in effect on December 31, 2005 shall be adjusted (increased or decreased) effective January 1, 2006 by the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (d), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division shall be dropped. The result of such division shall be added to the amount of the cost-of-living allowance in effect on December 31, 2005 if the CPI shall have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index shall have been lower at the end than at the beginning of the measurement period and then, only, to the extent that the allowance remains at zero or above. The same procedure shall be followed in applying subsequent adjustments.

(f) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect

the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance payable to each employee effective July 1, 2005 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-half of the increase, if any, in the carriers' 2005 payment rate over such payment rate for 2004, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance effective July 1, 2005.

(b) The cost-of-living allowance payable to each employee effective January 1, 2006 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-half of the increase, if any, in the carriers' 2006 payment rate over such payment rate for 2005, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance effective January 1, 2006.

(c) The cost-of-living allowance payable to each employee effective July 1, 2006 shall be equal to the difference between (i) the cost-of-living allowance effective on that date pursuant to Section 1 of this Part, and (ii) the lesser of (x) the cents per hour produced by dividing one-half of the increase, if any, in the carriers' 2006 payment rate over such payment rate for 2005, by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available, and (y) one-half of the cost-of-living allowance effective July 1, 2006. For the purpose of the foregoing calculation, credit shall be given for the amount of any annual

payment rate increases described in clause (ii) that have been taken into account in determining the amount received by each employee effective January 1, 2006.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

(e) The definition of the carriers' payment rate set forth in Section 6 of Article I shall apply with respect to any year covered by this Section.

(f) In making calculations under this Section, fractions of a cent shall be rounded to the nearest whole cent; fractions less than one-half cent shall be dropped and fractions of one-half cent or more shall be increased to the nearest full cent.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part B will be payable as provided in Section 2 and will not become part of basic rates of pay. Such allowance and the adjustments thereto will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by

dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Piece Work - Adjustment of piece-work rates of pay shall be based on the amount of increase applicable to the basic hourly rate for the class of work performed. Where piece-work rates of pay are in effect on carriers having special rules as to the application of any increase, or decrease, in such rates, such rules shall apply. In the absence of any definite rule governing, the equivalent of the hourly amount of the cost-of-living allowance shall be added to the established unit piece-work price.

(f) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (e), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase will be determined by the number of hours required to be paid for by the rules agreement.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the

Railway Labor Act.

ARTICLE III - OPTIONAL ALTERNATIVE COMPENSATION PROGRAM

Section 1

A carrier may offer employees, by notice addressed to their designated representative(s), alternative compensation arrangements. Such arrangements may include, for example, stock options, stock grants (including restricted stock), bonus programs based on carrier performance, and 401(k) plans. The proposed arrangement(s) may be implemented only by mutual agreement of the carrier and the appropriate representatives.

Section 2

The parties understand that no carrier may be compelled to offer any alternative compensation arrangement, and, conversely, the organization cannot be compelled to agree to any carrier proposal made under this Article.

ARTICLE IV - SUPPLEMENTAL SICKNESS

The January 9, 1980 Supplemental Sickness Benefit Agreement, as subsequently amended (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) Benefits shall be provided under the Plan established pursuant to the Sickness Agreement as set forth in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on December 31, 1999 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of December 31, 1999)	$17.36 or more	$3,021 or more
Class II Employees Earning (as of December 31, 1999)	$16.03 or more but less than $17.36	$2,789 or more, but less than $3,021
Class III Employees Earning (as of December 31, 1999)	Less than $16.03	Less than $2,789

Basic and Maximum Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$992	$1,044	$2,036
Class II	$873	$1,044	$1,917
Class III	$738	$1,044	$1,782

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$2,185
Class II	$2,054
Class III	$1,911

Section 2 - Adjustment of Plan Benefits During Agreement Term

Effective December 31, 2004, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

Section 3 - Return to Work

(a) When an employee's physician determines that the employee's disability (as that term is defined by the Plan) has ended and the employee is medically qualified to return to work, and the carrier's designated medical officer finds in his medical judgment that such employee is not medically qualified to return to work, the employee shall be promptly notified in writing. The employee's disability payments due under the Plan shall continue until the sooner of the date the employee is found to be medically qualified to return to service by the carrier's designated medical officer or the expiration of the twelve-month limitation on Plan benefits for such disability.

(b) Nothing contained herein shall be construed to extend the amount or duration of payments under the Plan to any employee beyond that currently provided.

ARTICLE V - HEALTH AND WELFARE PLAN

Section 1 - Continuation of Health and Welfare Plan

The Railroad Employees National Health and Welfare Plan ("the Plan"), modified as provided in this Article with respect to employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act.

Section 2 - Plan Benefit Changes

(a) The Plan's Comprehensive Health Care Benefit (CHCB) is amended to include one routine physical examination (including diagnostic testing and immunizations in connection with such examination) each calendar year for covered employees and their eligible dependents. Such CHCB benefit shall cover 100% of the Covered Expenses involved up to $150, and 75% of such Covered Expenses in excess of $150.

(b) Routine childhood (up to age 18) immunizations, including boosters, for Diphtheria, Pertussis or Tetanus (DPT), measles, mumps, rubella and polio shall be provided under the CHCB. This benefit is subject to the applicable deductible and percentage of Covered Expenses payable.

(c) In addition to the Plan's existing coverage for speech therapy, such therapy will be a Covered Expense under the CHCB and the Plan's Managed Medical Care Program ("MMCP"), when given to children under three years of age as part of a treatment for infantile autism, development delay, cerebral palsy, hearing impairment or major congenital anomalies that affect speech.

(d) Phenylketonurial blood tests ("PKU") will be a Covered Expense under the MMCP and the CHCB when given to infants under the age of one in a hospital or on an out-patient basis.

(e) The MMCP will continue to require a co-payment with respect to the first office visit by a participant or beneficiary to her obstetrician or gynecologist for treatment of a pregnancy but will not require a co-payment with respect to any subsequent visit to that obstetrician or gynecologist for treatment of the same pregnancy.

(f) The MMCP will not require a co-payment on behalf of a participant or beneficiary with respect to any visit to a physician's office solely for the administration of an allergy shot.

(g) The Plan's Prescription Drug Card Program co-payments per prescription are revised as follows: (i) Generic Drug - $5.00; (ii) Brand Name Drug - $10.00. The Plan's Mail Order Prescription Drug Program co-payment is revised as follows: (i) Generic Drug - $10.00; (ii) Brand Name Drug - $15.00.

(h) All of the benefits as changed herein will be subject to the Plan's generally applicable limitations, conditions and exclusions. Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(i) A Hearing Benefit will be provided. Such arrangement shall provide a Maximum Benefit of $600.00 annually for each covered person for covered expenses. Covered expenses shall consist of charges for medically necessary tests and examinations to establish whether and to what extent there is a hearing loss and charges for a permanent hearing aid that is medically necessary to restore lost hearing or help impaired hearing. Such Benefit may, at the carriers' option, be administered through the Plan or as a separate arrangement administered by the National Carriers' Conference Committee, and will include standard limitations, conditions and exclusions.

(j) The Plan life insurance benefit for active employees shall be increased to $20,000, and the Plan's maximum accidental death and dismemberment benefit for active employees shall be increased to $16,000.

(k) This Section shall become effective with respect to employees covered by this Agreement on January 1, 2002.

Section 3 - Vision Care

Effective January 1, 2002, the benefits provided under the Vision Care Plan shall be changed from the Select to the Standard arrangement.

ARTICLE VI - EXPENSES AWAY FROM HOME

Section 1 - First Adjustment

The allowances specified in the Award of Arbitration Board No. 298 (rendered September 30, 1967), as adjusted in various subsequent national agreements, shall be further adjusted as follows effective July 1, 2002:

(a) The maximum reimbursement for actual reasonable lodging expense provided for in Article I, Section A(3) is increased from $26.75 to $29.00 per day;

(b) The meal allowances provided for in Article I, Sections B(1), B(2) and B(3) are increased from $7.00, $14.25 and $21.25 per day, respectively, to $7.50, $15.50 and $23.00 per day, respectively; and

(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased from $48.00 per day to $52.00 per day.

Section 2 - Second Adjustment

Effective January 1, 2005, the daily allowances specified in paragraphs (a), (b), and (c) of Section 1 above will be further adjusted to (a) $32.00;

(b) $8.00, $17.00 and $25.00, respectively, and (c) $57.00.

Section 3 - Minimum Allowance

On carriers where expenses away from home are not determined by the allowances made pursuant to the Award of Arbitration Board No. 298, such allowances will not be less than those provided for in this Article.

ARTICLE VII - TRAVEL ALLOWANCE

Section 1

Article XIV - Travel Allowance of the September 26, 1996 National Agreement is amended by adding the following new subsection to Section 1 of that Article:

"(d) For purposes of this Section, an employee's Home Station (as defined below) shall be used in lieu of his residence if the employee's residence is located outside of the employing carrier's system (i.e., in a state (or location outside the continental United States) that does not contain a line of road directly operated and maintained by that carrier), except where his residence is closer to the work location than his Home Station. Home Station for this purpose shall mean a station, town or city listed in the carrier's timetable that is located nearest to the employee's residence."

Section 2

Any alternative arrangements to the above-referenced Article XIV that are in effect on a carrier party to this Agreement shall be amended in the same manner as provided in Section 1.

Section 3

This Article shall become effective ten (10) days after the date of this Agreement except on any carrier which elects to preserve existing rules and practices pertaining to Travel Allowances by notification to the authorized organization representative(s).

ARTICLE VIII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1999 and served upon the organization by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1999 served by the organization signatory hereto upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 2004 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 2004 (not to become effective before January 1, 2005) any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 2004 (not to become effective before January 1, 2005), any notice or proposal.

(d) This Article will not bar management and committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT Washington, DC **THIS** 31st **DAY OF** May, **2001.**

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Mac A. Fleming
President

May 31, 2001
#1

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

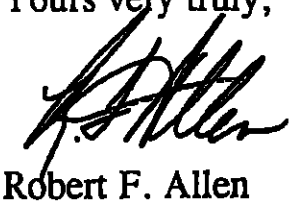
This refers to our discussions in connection with our National Agreement of this date (Agreement) and will confirm our understanding regarding certain employment information pertaining to BMWE members.

Within sixty (60) days after written request from the authorized BMWE representative(s) to a carrier covered by this Agreement, the parties shall meet to discuss ways in which information pertaining to BMWE members' employment status, union dues, fees and assessments, and BMWE Political League contributions can be accessed and exchanged more effectively. The carrier representatives shall include, to the extent feasible, individuals who are aware of the manner in which such information is developed and maintained on the carrier. The parties shall use their best efforts to reach accord on the information to be covered by this initiative.

The parties recognize the considerable variations that exist between carriers in this area and, accordingly, do not intend to require development of either new or uniform information systems solely for the purpose of complying with this letter of understanding.

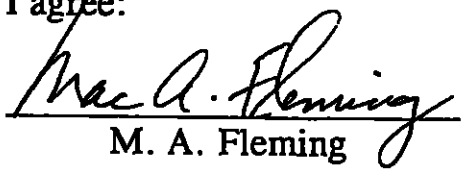
If this conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Yours very truly,



Robert F. Allen

I agree:



M. A. Fleming

May 31, 2001
#2

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to our discussions in connection with our National Agreement of this date (Agreement) and will confirm our understanding regarding the application of certain provisions of the cost-sharing arrangements set forth in Articles I and II of the Agreement.

1. Sections 2, 3, 4 and 5 of Article I and Section 2 of Part B of Article II provide, in part, for year over year payment rate increases to be divided by the average composite straight-time equivalent hours that are subject to wage increases for the latest year for which statistics are available (ACSTE Hours). The underscored phrase shall be applied as follows:

Cost-Sharing Year	ACSTE Hours for Calendar Year
2001	1999*
2002	2000
2003	2001
2004	2002
2005	2003**

* 2,547 hours.

** Same pattern followed in subsequent years in which Article II, Part B remains in effect without change by the parties.

2. The ACSTE Hours shall be based on all such hours for individuals who are employed by Class One carriers, and represented by labor organizations, that are participating in national bargaining in the current round.

3. For purposes of the computations described in Article I, Section 2 of the Agreement, it is agreed that:

a. The cost-of-living wage adjustment calculated pursuant to Article II, Part B except as otherwise provided in Article I, Section 2(b) is forty-seven (47) cents per hour. (See Attachment A for computation.)

b. The carriers' monthly payment rate for 2000 is $589.30, the carriers' monthly payment rate for 2001 is $684.71, and the total annual increase in carriers' payment rate is $1144.92. (See Attachment B for computation.)

c. The employee's share of the carriers' annual payment rate increase is sixteen (16) cents per hour. (See Attachment C for computation.)

d. The general wage increase under Section 2 effective July 1, 2001 is thirty-one (31) cents per hour. (See Attachment C for computation.)

4. Paragraph 3 is generally illustrative of the application of the cost-sharing provisions in the Agreement applicable to future years that are common to Article I, Section 2, recognizing that actual numbers will vary from year to year.

If this conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

ATTACHMENT A

1. Compute the difference between the March 2001 CPI-W and the March 2000 CPI-W:

March 2001 CPI-W	514.2
March 2000 CPI-W	500.0
	14.2 points

2. Divide the total points change by .3:

14.2 /.3 = 47.33 cents

Drop the fractional cents: 47 cents

ATTACHMENT B

ELEMENT	MONTHLY 2000	2001
FO Coverage	$550.60	$644.40
Life and AD&D	13.55	13.55
Vision	7.43	7.43
Hearing	0.0	0.0
Additions to Trust (w/o ODI)	17.72	19.33
PAYMENT RATE	$589.30	$684.71

INCREASE IN MONTHLY PAYMENT RATE, 2001 OVER 2000:

$684.71
-589.30
$95.41/month

INCREASE IN ANNUAL PAYMENT RATE, 2001 OVER 2000:

$95.41 x 12 = $1144.92/year

ATTACHMENT C

1. The "gross" cost-of-living wage adjustment (computed without taking into account the offset for the employees' share of the annual increase in health benefit costs) is 47 cents per hour. (See Attachment A)

2. The 47 cents/hour is subject to adjustment by the lesser of:

   (x) the cents per hour produced by dividing thirty-five percent of $1144.92 (the annual increase in the carriers' 2001 payment rate over the carriers' 2000 payment rate) (see Attachment B) by 2,547 (the applicable ACSTE Hours), and

   (y) one-half of 47 cents

3. The computation described in (x) produces 15.73 cents per hour, as shown below:

   $1144.92 x .35 = $400.72; $400.72/2,547 = 15.73 cents/hour

4. The offset is the lesser of (x) 15.73 cents or (y) 23.5 cents (one-half of 47 cents)

5. The cost-of-living wage adjustment effective July 1, 2001 is 31 cents per hour:

   47 cents - 15.73 cents = 31.27 cents per hour
   Rounded to nearest whole cent = 31 cents per hour

May 31, 2001
#3

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This will confirm our understanding with respect to Article I - Wages and Article II - Cost-of-Living Payments of our National Agreement of this date (Agreement). These Articles provide, in part, for employee sharing of a portion of any annual increases in the carriers' payment rate to provide certain benefits, as described in Article I, Section 6, through reductions in the amount of cost-of-living wage adjustments and allowances ("cost-sharing reductions") that would otherwise be payable.

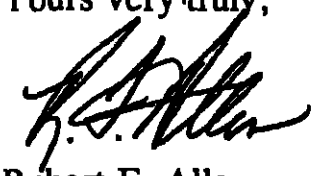
During our negotiations concerning these Articles, we discussed the matter of adjustments to such cost-sharing reductions in future years in the event that the carriers' payment rate fluctuates from year to year.

This will confirm our understanding that if a cost-sharing reduction is made under this Agreement because of an annual payment rate increase ("offset"), and if the payment rate in a subsequent year is less than the payment rate on which such offset was based, the amount of such offset shall be adjusted pro rata to reflect such decreased benefit costs. Such adjustment shall be made contemporaneously with any wage adjustment provided under

this Agreement and in no event shall take into account any portion of a payment rate below the year 2000 payment rate level. If the payment rate subsequently increases, the amount of offset previously adjusted shall be reinstated on a pro rata basis.

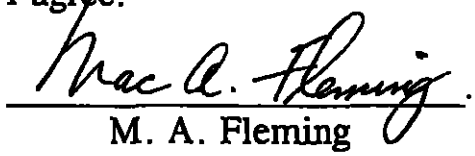
If this letter conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Yours very truly,



Robert F. Allen

I agree:



M. A. Fleming

May 31, 2001
#4

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This confirms our understanding in connection with our National Agreement of this date (Agreement).

For purposes of applying the Plan cost-sharing provisions set forth in the Agreement, the carriers' payment rate shall not include the excess, if any, of (a) the amount attributable to the first full calendar year of participation in the Plan by employees covered by this Agreement who as a group move from being employees whose employee benefits are provided by a hospital association to employees whose employee benefits are provided by the Plan, over (b) the hospital association dues offset that would have been paid by the carriers for the same period of time with respect to such employees had they not moved from hospital association employee coverage to Plan employee coverage; provided that such move becomes effective on or after the date of this Agreement and directly results from implementation of the cost-sharing provisions of this Agreement.

If this conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Yours very truly,

R. F. Allen

Robert F. Allen

I agree:

M. A. Fleming

M. A. Fleming

party's position in a future round of negotiations regarding the need, propriety, or legality of any such proposal.

If this conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

M. A. Fleming

May 31, 2001
#6

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This confirms our understanding with respect to our National Agreement of this date (Agreement).

The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

Please acknowledge your agreement by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

EXHIBIT A
(BMWE)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1999 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1999 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Brotherhood of Maintenance of Way Employes.

Alameda Belt Line Railway
Alton & Southern Railway Company
The Belt Railway Company of Chicago - 3
The Burlington Northern and Santa Fe Railway Company
Central California Traction Company
Consolidated Rail Corporation
CSX Transportation, Inc.
Duluth, Missabe & Iron Range Railway Company - 1
Elgin, Joliet and Eastern Railway Company - 1
The Kansas City Southern Railway Company
Lake Superior & Ishpeming Railroad Company - 4
Los Angeles Junction Railway Company

Manufacturers Railway Company
New Orleans Public Belt Railroad - 2
Norfolk & Portsmouth Belt Line Railroad Company
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic and East Carolina Railway Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pac. Ry. Co.
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Northeast Illinois Regional Commuter RR Corp (METRA) - 3
Northern Indiana Commuter Transportation District - 3
Peoria and Pekin Union Railway Company
Port Terminal Railroad Association
Portland Terminal Railroad Company
Terminal Railroad Association of St. Louis
The Texas Mexican Railway Company
Union Pacific Railroad Company
Utah Railway Company
Wichita Terminal Association

* * * * * *

Notes:

1 - Wages & Rules only

2 - Health & Welfare only

3 - Health & Welfare and Supplemental Sickness only

4 - Wages & Rules and Supplemental Sickness only

- -

FOR THE CARRIERS:

FOR THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES:

Washington, D.C.
May 31, 2001

May 31, 2001

Mr. Mac A. Fleming
President
Brotherhood of Maintenance
of Way Employes
26555 Evergreen Road
Suite 200
Southfield, MI 48076-4225

Dear Mr. Fleming:

This refers to our discussions in connection with our National Agreement of this date (Agreement) and will confirm our understanding regarding handling of annual vacation qualification for full time officials of your organization who return to active service with the employing carrier.

Effective January 1, 2002, a full time official of the Brotherhood of Maintenance of Way Employes who returns to active service with an employing carrier covered by the Agreement shall receive credit, for the purpose of the continuous service qualification requirements for an annual vacation under applicable vacation rules, for all service time as a full time BMWE official while on leave from the employing carrier.

This letter shall become effective ten days after the date of this Agreement except on such carriers where the organization representative may elect to preserve existing rules pertaining to such crediting of service time for organization officials by notification to the authorized carrier representative.

If this conforms with your understanding of our agreement, please acknowledge by signing your name in the space provided below.

Yours very truly,

Robert F. Allen

I agree:

M. A. Fleming

SMWIA
April 4, 2005

AGREEMENT

DATED APRIL 4, 2005

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

SHEET METAL WORKERS' INTERNATIONAL UNION

MEDIATION AGREEMENT

THIS AGREEMENT, made this 4th day of April, 2005, by and between the participating carriers listed in Exhibit A attached hereto and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the Sheet Metal Workers' International Association, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On June 30, 2002, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two-and-one-half (2-1/2) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 2-1/2 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 2-1/2 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 2-1/2 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 2-1/2 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Second General Wage Increase

Effective July 1, 2002, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2002 for employees covered by this Agreement shall be increased by three-and-one-half (3-1/2) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 3 - Third General Wage Increase

Effective July 1, 2003, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2003 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to

this increase irrespective of the method of payment.

Section 4 - Fourth General Wage Increase

Effective July 1, 2004, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2004 for employees covered by this Agreement shall be increased in the amount of three-and-one-quarter (3-1/4) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment

ARTICLE II - OPTIONAL ALTERNATIVE COMPENSATION PROGRAM

Section 1

A carrier, at its discretion, may offer employees alternative compensation arrangements in lieu of the general wage increases provided in Article I (in whole or part). Such arrangements may include, for example, stock options, stock grants (including restricted stock), bonus programs based on carrier performance, and 401(k) plans.

Section 2

(a) The following conditions shall govern implementation of alternative compensation arrangements pursuant to this Article:

(1) Carrier shall notify the appropriate organization representative(s) regarding its proposed alternative compensation arrangement(s). The parties shall meet promptly on such proposal and use their best efforts to reach agreement on implementation;

(2) The proposed arrangement(s) may be implemented only by mutual agreement of the carrier and the appropriate organization representative(s);

(3) The proposed arrangement(s) must be made available to the smallest employee grouping that can be reasonably administered.

(b) Nothing herein shall be construed to bar the parties from reaching mutual agreement on different terms or conditions pertaining to implementation of this Article.

ARTICLE III - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Article II, Part C of Agreement dated September 16, 1996

On October 1, 2001, twenty-seven (27) cents-per hour of the cost-of-living allowance payable pursuant to Article II, Part C of the Agreement dated October 9, 1996 ("Article II, Part C") shall be rolled in to basic rates of pay. Article II, Part C shall be eliminated effective June 30, 2002. Cost-of-living allowance payments made to employees for periods on or before June 30, 2002 shall be retained. Any cost-of-living allowance payments made to employees for periods on and after July 1, 2002 shall be recovered from any retroactive wage increase payments made under Article I.

Part B - Cost of Living Allowance and Adjustments Thereto After January 1, 2005

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective July 1, 2005 based, subject to paragraph (b), on the CPI for March 2005 as compared with the CPI for September 2004. Such allowance, and further cost-of-living adjustments thereto which shall become

effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (b)(iii), according to the formula set forth in paragraph (c).

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
September 2004	March 2005	July 1, 2005
March 2005	September 2005	January 1, 2006

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b)(i) Cap. In calculations under paragraph (c), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 2005	3% of September 2004 CPI
January 1, 2006	6% of September 2004 CPI, less the increase from September 2004 to March 2005

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (c), only fifty (50) percent of the increase in the CPI in any measurement period shall be

considered.

(iii) If the increase in the CPI from the base month of September 2004 to the measurement month of March 2005 exceeds 3% of the September 2004 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (c) below in calculation of the cost-of-living adjustment which shall have become effective July 1, 2005 during such measurement period.

(iv) Any increase in the CPI from the base month of September 2004 to the measurement month of September 2005 in excess of 6% of the September 2004 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(c) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (b), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance effective January 1, 2006 shall be the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (b), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December

31, 2005 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period, but in no event shall basic rates of pay be reduced below the levels in effect on June 30, 2005. If the result of such division requires a subtraction from basic rates of pay in effect on December 31, 2005, the employee cost-sharing contribution amount in effect on that date pursuant to Article IV, Part B, Section 1(e) of this Agreement shall be adjusted effective January 1, 2006 as appropriate to reflect such subtraction. The same procedure will be followed in applying subsequent adjustments.

(d) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance that becomes effective July 1, 2005 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(b) The increase in the cost-of-living allowance effective January 1, 2006 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(c) The increase in the cost-of-living allowance effective July 1, 2006 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part B will be payable as provided in Section 2 of this Part and will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the

increase shall be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE IV - HEALTH AND WELFARE

Part A - Plan Changes

Section 1 - Continuation of Health and Welfare Plan

The Railroad Employees National Health and Welfare Plan ("the Plan"), modified as provided in this Article with respect to employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act.

Section 2 - Plan Benefit Changes

(a) In addition to the Plan's existing coverage for speech therapy, such therapy will be a Covered Health Service under the CHCB and the Plan's Managed Medical Care Program ("MMCP"), when given to children under three years of age as part of a treatment for infantile autism, development delay, cerebral palsy, hearing impairment, or major congenital anomalies that affect speech.

(b) Phenylketonurial blood tests ("PKU") will be a Covered Health Service under the MMCP and the CHCB when given to infants under the age of one in a hospital or on an out-patient basis.

(c) The MMCP will continue to require a co-payment with respect to the first office visit by a participant or beneficiary to her obstetrician or gynecologist for treatment of a pregnancy but will not require a co-payment with respect to any subsequent visit to that obstetrician or gynecologist for treatment of the same pregnancy.

(d) The MMCP will not require a co-payment on behalf of a participant or beneficiary with respect to any visit to a physician's office solely for the administration of an allergy shot.

(e) A Hearing Benefit will be provided. Such arrangement shall provide a Maximum Benefit of $600.00 annually for each covered person for covered expenses. Covered expenses shall consist of charges for medically necessary tests and examinations to establish whether and to what extent there is a hearing loss and charges for a permanent hearing aid that is medically necessary to restore lost hearing or help impaired hearing. Such Benefit may, at the carriers' option, be administered through the Plan or as a separate arrangement administered by the National Carriers' Conference Committee, and will include standard limitations, conditions and exclusions.

(f) The Plan life insurance benefit for active employees shall be increased to $20,000, and the Plan's maximum accidental death and dismemberment benefit for active employees shall be increased to $16,000.

(g) All of the benefits as changed herein will be subject to the Plan's generally applicable limitations, conditions, and exclusions. Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(h) Each of the changes contained in this Section shall be implemented as soon as practicable.

Section 3 - Vision Care

The benefits provided under the Vision Care Plan shall be changed from the Select to the Standard arrangement as soon as practicable.

Section 4 - Plan Design Changes To Contain Costs

(a) The parties will promptly solicit bids from interested companies to provide those services to the Plan involving the Managed Medical Care Program ("MMCP") that are currently provided by Aetna U.S. Healthcare. The parties will evaluate the bids received and the capabilities of the companies making those bids and will accept such of them (or enter into negotiations with the bidding company or companies) as the parties deem appropriate.

(b) The parties will promptly research the existence, costs, benefits and services provided, outcomes and other relevant statistics of regional health maintenance organizations, and shall make participation in such of those organizations as the parties deem appropriate available as an option to individuals covered by the Plan.

(c) With respect to geographic areas where the Plan's MMCP is not currently available but where companies capable of administering the MMCP provide such services, the parties will solicit proposals from such companies to administer the MMCP, and will evaluate the proposals they receive and accept such of them (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(d) The parties will solicit proposals from pharmacy benefit managers who specialize in filling prescriptions for injectable medications and will accept one or more of such proposals (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(e) With respect to Plan participants and their beneficiaries who live in an area where they may choose between CHCB and MMCP coverage, such

Plan's participants and their beneficiaries shall no longer have a choice but shall be enrolled in the MMCP.

(f) The Individual and Family Out-of-Network Deductibles under the Plan's MMCP will be increased to $200 and $600, respectively.

(g) During a prescribed election period preceding the first day of the fourth full calendar month following the date of this Agreement and preceding each January 1 thereafter, employees may certify to the Plan or its designee in writing that they have health care coverage (which includes medical, prescription drug, and mental health/substance abuse benefits) under another group health plan or health insurance policy that they identify by name and, where applicable, by group number, and for that reason they elect to forego coverage for foreign-to-occupation health benefits for themselves and their dependents under the Plan and under any Hospital Association plan in which they participate. Such election is hereafter referred to as an "Opt-Out Election" and, where exercised, will eliminate an employer's obligation to make a contribution to the Plan and/or dues offset payment to a Hospital Association for foreign-to-occupation health benefits for the employee and his dependents.

Each employee who makes an Opt-Out Election will be paid by his employer $100 for each month that his employer is required to make a contribution to the Plan on his behalf for life insurance and accidental death and dismemberment benefits as a result of compensated service rendered, or vacation pay received, by the employee during the prior month; provided, however, that the employee's Opt-Out Election is in effect for the entire month.

If an event described below in the final paragraph of this subsection (g) occurs subsequent to an employee's Opt-Out Election, the employee may, upon providing the Plan or its designee with proof satisfactory to it of the occurrence of such event, revoke his or her Opt-Out Election. An employee may also revoke his or her Opt-Out Election by providing the Plan or its designee with proof satisfactory to it that, after the employee made the Opt-Out Election, a person became a dependent of the employee through a

marriage, birth, or adoption or placement for adoption. An employee who revokes an Opt-Out Election will, along with his or her dependents, be once again covered (effective the first day of the first month following such revocation that the employee and/or his dependents would have been covered but for the Opt-Out Election the employee had previously made) for foreign-to-occupation health benefits under the Plan or, in the case of an employee who is a member of a Hospital Association, by the Plan (for dependent coverage) and by the Hospital Association (for employee coverage). See Side Letter No. 7.

The following events are the events referred to in the immediately preceding paragraph:

(i) the employee loses eligibility under, or there is a termination of employer contributions for, the other coverage that allowed the employee to make the Opt-Out Election, or

(ii) if COBRA was the source of such other coverage, that COBRA coverage is exhausted.

(h) The Plan's Prescription Drug Card Program co-payments per prescription are revised as follows: (i) Generic Drug - $5.00; (ii) Brand Name Drug - $10.00. The Plan's Mail Order Prescription Drug Program co-payment per prescription is revised as follows: (i) Generic Drug - $10.00; (ii) Brand Name Drug - $15.00.

(i) The parties shall establish a new benefit package denominated as the Basic Health Care Benefit ("BHCB") that will be administered by one or more vendors. Participation in that arrangement shall be made available as an option to individuals covered by the Plan. The plan design for the BHCB shall be as provided in Attachment A hereto.

(j) Blue Cross Blue Shield programs selected by the parties will be made available for selection by employees choosing coverage under the MMCP in all areas where the MMCP is made available under the Plan and throughout the United States for selection by employees choosing coverage

under the CHCB.

(k) Each of the Plan design changes contained in this Section shall be implemented as soon as practicable except as otherwise provided.

Part B - Employee Cost Sharing of Plan Cost Increases

Section 1 - Employee Cost-Sharing Contributions

(a) Effective July 1, 2001, each employee covered by this Agreement shall contribute $33.39 per month to the Plan for each month that his employer is required to make a contribution to the Plan on his behalf for foreign-to-occupation health benefits coverage for himself and/or his dependents.

(b) Effective July 1, 2002, the per month employee cost-sharing contribution amount set forth in subsection (a) shall be changed to $81.18.

(c) Effective July 1, 2003, the per month employee cost-sharing contribution amount set forth in subsection (b) shall be changed to $91.38.

(d) Effective July 1, 2004, the per month employee cost-sharing contribution amount set forth in subsection (c) shall be changed to $100.00.

(e) Effective July 1, 2005, the per month employee cost-sharing contribution amount set forth in subsection (d) shall be increased by the lesser of (x) one-half of the increase, if any, in the carriers' 2005 monthly payment rate over such payment rate for 2004, and (y) one-half of the cost-of-living allowance effective July 1, 2005 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the average straight-time equivalent hours ("ASTE Hours") for calendar year 2003.

(f) Effective January 1, 2006, the per month employee cost-sharing contribution amount in effect on December 31, 2005 shall be increased by the lesser of (x) the sum of (i) one-half of the increase, if any, in the carriers' 2006 monthly payment rate over such payment rate for 2005, plus (ii) the

amount (if any) by which the number described in part (x) of subsection (e) of this Section exceeds the product described in part (y) of such subsection (e), and (y) one-half of the cost-of-living allowance effective January 1, 2006 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2004.

(g) Effective July 1, 2006, the per month employee cost-sharing contribution amount in effect on June 30, 2006 shall be increased by the lesser of (x) the amount (if any) by which the number described in part (x) of subsection (f) of this Section exceeds the product described in part (y) of such subsection (f), and (y) one-half of the cost-of-living allowance effective July 1, 2006 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2004.

(h) Effective January 1, 2007, the per month employee cost-sharing contribution amount in effect on December 31, 2006 shall be increased by the lesser of (x) the sum of (i) one-half of the increase, if any, in the carriers' 2007 monthly payment rate over such payment rate for 2006, plus (ii) the amount (if any) by which the number described in part (x) of subsection (g) of this Section exceeds the product described in part (y) of such subsection (g), and (y) one-half of the cost-of-living allowance effective January 1, 2007 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2005.

(i) The pattern specified in subsections (g), and (h) above shall be followed with respect to computation of adjustments to the amount of the employee cost sharing contribution in subsequent periods during which this Part is in effect.

(j) The carriers' payment rate for any year shall mean twelve times the sum of what the carriers' payments to the Plan would have been, in the absence of any employee contributions to the Plan, for foreign-to-occupation health benefits under the Plan per month (in such year) per employee. The carriers' monthly payment rate for any year shall mean the carriers' payment rate for that year divided by 12. An "employee" for these purposes is any employee who either (i) is fully covered for employee benefits under the Plan

or (ii) has elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which he participates. Carrier payments to the Plan for these purposes (x) shall include amounts paid pursuant to Section 3(g) of Part A of this Article IV to employees who elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which they participate, but (y) shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 of the November 27, 1991 National Agreement between the organization signatory hereto and the carriers represented by the National Carriers' Conference Committee.

(k) For the purpose of this Section, the ASTE Hours to be used shall be based on all such hours for individuals who are employed by Class One carriers that are participating in national bargaining in the round of negotiations that commenced January 1, 2000 and are working in crafts and classes represented by the Sheet Metal Workers' International Association.

(l) If the per month employee cost-sharing contribution amount ("cost-sharing amount") is increased for the period July 2005 through December 2005 or any subsequent periods and if a lower payment rate is established for the calendar year that immediately follows, then the cost-sharing amount shall be adjusted as appropriate to reflect such decreased benefit costs. Such adjustment shall be made effective January 1 of the calendar year for which such payment rate decrease is applicable and in no event shall take into account any portion of a payment rate below the payment rate level established for calendar year 2004. The cost-sharing amount shall also be subject to adjustment as provided in Article III, Part B, Section 1(c) of this Agreement.

Section 2 - Pre-Tax Contributions

Employee cost-sharing contributions made pursuant to this Part shall be

on a pre-tax basis, and in that connection a Section 125 cafeteria plan will be established pursuant to this Agreement.

Section 3 - Retroactive Contributions

Retroactive employee cost-sharing contributions payable for the period on and after July 1, 2001 shall be offset against any retroactive wage payments provided to the employee under Article I, Sections 1, 2, 3 and 4 of this Agreement.

Section 4 - Prospective Contributions

For months subsequent to the retroactive period covered by Section 3, at the employer's election, employee cost-sharing contributions may be made for the employee by the employee's employer. If that election is exercised, the employer shall then deduct the amount of such employee contributions from the employee's wages and retain the amounts so deducted as reimbursement for the employee contributions that the employer had made for the employee.

ARTICLE V - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as amended by Article VI of the September 12, 1996 National Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on December 31, 1999 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/99)	$17.77 or more	$3,092 or more
Class II Employees Earning (as of 12/31/99)	$14.53 or more but less than $17.77	$2,528 or more but less than $3,092
Class III Employees Earning (as of 12/31/99)	Less than $14.53	Less than $2,528

Basic and Maximum Benefit Amount Per Month

Classification	Basic	RUIA	Maximum
Class I	$1,101.50	$1,000.50	$2,102
Class II	$ 875.50	$1,000.50	$1,876
Class III	$ 679.50	$1,000.50	$1,680

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$2,255
Class II	$2,009
Class III	$1,801

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 2004, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE VI - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article IV of the May 12, 1972 SMWIA National Agreement, as amended by Article VIII of the December 4, 1978 SMWIA National Agreement, is further amended as follows effective the first day of the calendar month immediately following the date of this Agreement.

Section 1

Paragraph (b)(1) - Accidental Death or Dismemberment of the above-referenced Agreement provisions is amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident."

Section 2

Paragraph (b)(3) - Time Loss of the above-referenced Agreement provisions is amended to read as follows:

"(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act."

Section 3

Paragraph (b)(4) - Aggregate Limit of the above-referenced Agreement provisions is amended by raising such limit to $10,000,000.

ARTICLE VII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1999 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and notices dated on or subsequent to November 1, 1999, served by the organization upon such carriers. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect through December 31, 2004 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(b) No party to this Agreement shall serve, prior to November 1, 2004 (not to become effective before January 1, 2005), any notice or proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties cited in paragraph (a) of this Section, and any proposals in pending notices relating to such subject matters are hereby withdrawn.

(c) No party to this Agreement shall serve or progress, prior to November 1, 2004 (not to become effective before January 1, 2005), any notice or proposal.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

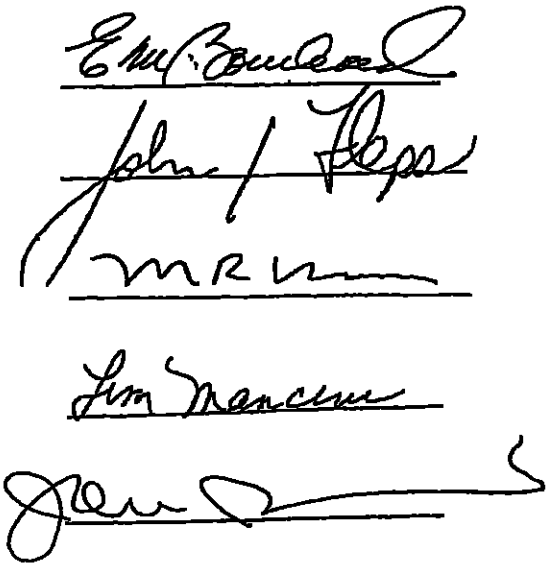
SIGNED AT WASHINGTON, D.C., THIS 4th DAY OF APRIL, 2005.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE:

Chairman

FOR THE EMPLOYEES REPRESENTED BY THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION:

Director of Railroad and Shipyard Workers



April 4, 2005
#1

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1, 2, 3 and 4 of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases as soon as possible and no later than sixty (60) days after the date of this Agreement.

If a carrier finds it impossible to make such payments by that date, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

April 4, 2005
#2

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This refers to the increase in wages provided for in Sections 1, 2, 3 and 4 of Article I of the Agreement of this date.

It is understood that (i) the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to June 30, 2002, and (ii) for the purposes of computing retroactive pay, the First General Wage Increase provided for in Section 1 shall be deemed to become effective at midnight on June 30, 2002.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

Dewey B. Garland

April 4, 2005
#3

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This will confirm our understanding with respect to the Agreement of this date (Agreement).

For the purpose of computation and application of the employee cost-sharing provisions contained in Article IV, Part B of the Agreement, for the period July 2005 through June 2006 and all subsequent periods, the payment rate used shall be (i) based on the costs of the Plan with respect to the employees covered by this Agreement (and employees who are (a) entitled to the same benefits (at the same levels), and (b) subject to the Plan design changes set forth in Article IV of this Agreement), and (ii) established for a calendar year on or before December 31 of the immediately preceding year and may be changed during such calendar year only if additional contributions are needed to fund Plan benefits and expenses with respect to SMWIA-represented employees that must be paid during such year.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

April 4, 2005
#4

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This confirms our understanding regarding the Agreement of this date.

Beginning with the first full calendar month immediately following the date of this Agreement in which an active employee receives his or her FO healthcare benefits from a Hospital Association and not from the National Health & Welfare Plan and makes a prospective Plan contribution pursuant to Article IV, Part B, Section 4, then, at the carrier's option, either:

(1) Such employee's monthly "cost-sharing contribution amount" referred to in Article IV, Part B Section 1 shall be reduced by the Reduction Factor; or

(2) The carrier shall pay the Hospital Association each month an amount equal to the Reduction Factor, provided that the Hospital Association that receives such payment has agreed to decrease the employee's dues by the same amount.

For purposes of this Side Letter, the term "Reduction Factor" means with respect to any given month, the smallest of:

(i) the monthly dues amount in effect on January 1, 2003 that was established by the Hospital Association for payment by an active employee,

(ii) the "cost-sharing contribution amount" for the month referred to in Article IV, Part B, Section 1, or

(iii) the monthly dues amount established by the Hospital Association for payment by an active employee in that month.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

April 4, 2005
#5

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This will confirm our understanding with respect to the Agreement of this date (Agreement).

The provisions of Article IV, Part A, Section 4(g) (Opt-Outs) and Part B (Employee Cost Sharing of Plan Cost Increases) are not applicable to employees covered by the Agreement who reside in Canada.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

April 4, 2005
#6

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

Article IV, Part A, Section 4(g) of the Agreement of this date (Agreement) provides employees with an option to opt out of coverage for foreign-to-occupation health benefits for themselves and their dependents under the Plan and under any Hospital Association plan in which they participate. This will confirm our understanding with respect to the intended application of that provision.

1. An employee who opts out will be opting out of FO health coverage only and (if he otherwise satisfies eligibility and coverage requirements) will continue to have on-duty injury coverage, coverage under the Dental and Vision Plans, and life and AD&D insurance coverage.

2. If a husband and wife are each covered by the Plan (or the NRC/UTU Plan or a Hospital Association) by virtue of railroad employment and either or both hold positions covered by this Agreement, an SMWIA-represented spouse may elect to opt out as provided in Section 4(g). If that election is made (and provided the other spouse remains so covered), (i) such SMWIA-represented spouse shall not receive the $100/month payment provided in Section 4(g) and shall not be required to make the employee cost-sharing contributions required under Article IV, Part B, and (ii) the Plan's coordination of benefits rules in effect on the date of this Agreement that are

applied when a husband and wife are covered under the Plan both as an Eligible Employee and as an Eligible Dependent shall continue to be applicable.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

Dewey B. Garland

April 4, 2005
#7

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This confirms our understanding with respect to the opt-out provision, Article IV, Part A, Section 4(g) of our Agreement of this date.

It is understood that for purposes of Section 9801(f) of the Internal Revenue Code, (i) any opt-out election shall be treated as a declination of coverage, or a failure to enroll, for foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which the employee making the election may participate, (ii) that the provisions of Section 9801(f) and the regulations thereunder shall govern how any individual covered by an election to opt-out may nonetheless become covered for foreign-to-occupation health benefits under the Plan or any Hospital Association plan prior to the next regular opt-out election period, (iii) that the terms of Article IV, Part A, Section 4(g) of our Agreement shall be interpreted and applied so as to be in compliance with Section 9801(f), and (iv) that the employer's payment of $100 per month to an employee who has elected to opt-out shall cease immediately upon the employee and/or his dependents or any one of his dependents becoming covered, pursuant to Section 9801(f), for foreign-to-occupation health benefits under the Plan or any Hospital Association plan.

Furthermore, and notwithstanding the above, the parties recognize that an employee may lose coverage under the health plan or health insurance policy that he or she relied upon in electing to forego coverage for foreign-to-

occupation health benefits under the Plan, and that such loss of coverage may be attributable to an event that is not listed in Section 9801(f) of the Internal Revenue Code and is beyond the control of the employee or of any member of his or her family. In such a case, and only to the extent permissible under Section 125 of the Internal Revenue Code: (a) the employee may ask his/her employer that his or her opt-out election be revoked; (b) the employer involved may in its discretion grant the request in the interest of fairness and equity; and (c) if the request is granted, the employee's opt-out election shall be treated as revoked as of the day the employer received the request.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

Dewey B. Garland

April 4, 2005
#8

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

This confirms our understanding regarding Article IV, Part B of the Agreement of this date.

1. If the initial deduction from an employee's wages for his monthly cost-sharing contribution pursuant to Article IV, Part B, Section 4 is scheduled to be made at the same time as the payroll deduction for the employee's union dues, the union dues deduction may be made on a subsequent date mutually agreeable to the parties.

2. Each carrier shall examine the feasibility of including in the standard payroll documents provided to its employees information concerning the cost of the Plan and the employee's cost sharing contributions. The results of that examination will be shared with the authorized organization representative and, if feasible, the parties shall use their best efforts to implement such arrangements.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

April 4, 2005
#9

Mr. Dewey B. Garland
Director of Railroad and Shipyard Workers
Sheet Metal Workers' International Association
1750 New York Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Garland:

During the negotiations leading to our National Agreement of this date, the organization sought an opportunity to pursue peaceful discussions locally during the term of this Agreement with respect to arrangements under which covered employees would be allowed to take a portion of their vacation in single day increments. This will confirm our understanding with respect to this matter.

At the request of the organization's designated representative(s), carrier officials shall meet at such times and locations as mutually agreed to discuss appropriate arrangements under which single day vacations would be authorized. It is expressly understood that existing rules, if any, pertaining to single day vacations shall be preserved except as otherwise altered by mutual agreement of the parties pursuant to the discussions contemplated by this Letter.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Dewey B. Garland

EXHIBIT A
(SMWIA)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1999 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1999 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the Sheet Metal Workers' International Association.

Alameda Belt Line
Alton & Southern Railway Company
The Belt Railway Company of Chicago - 2
Bessemer and Lake Erie Railroad - 1
The Burlington Northern and Santa Fe Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
- The Baltimore and Ohio Railroad Company (former)
- The Chesapeake and Ohio Railway Company (former)
- Clinchfield Railroad (former)
- Louisville and Nashville Railroad Company (former)
- Pere Marquette Railway Company (former)
- Seaboard Coast Line Railroad Company (former)
- The Baltimore and Ohio Chicago Terminal Railroad Company

Duluth, Missabe & Iron Range Railway Company - 1
Elgin, Joliet and Eastern Railway Company - 3
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic & East Carolina Railway Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pac. Ry. Co.
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Northeast Illinois Regional Commuter RR Corp (METRA) - 2
Oakland Terminal Railway Company
Terminal Railroad Association of St. Louis
Union Pacific Railroad

* * * * *

NOTES:

1 - Wages and Rules only

2 - Health and Welfare and Supplemental Sickness only

3 - Wages and Rules and Health & Welfare only

- - - - -

FOR THE CARRIERS:

FOR THE SMWIA:

April 4, 2005
Washington, D.C.

ATTACHMENT A

BASIC HEALTH CARE BENEFIT
PLAN DESIGN

Medical/MHSA	In-Network		Out-Network
Annual Deductible			
Individual		$300	
Family		$900	
Office Visits, ER, Urgent Care	70%		50%
Coinsurance	70%		50%
Annual Out-of-Pocket Max			
Individual		$2,500	
Family		$5,000	
Prescription Drugs			
Retail			
Generic	70%*		50%
Brand on Formulary	65%*		50%
Off Formulary	60%*		50%
Mail Order			
Generic	70%*		--
Brand on Formulary	65%*		--
Off Formulary	60%*		--
Monthly Contributions			
Jan 2005 – June 2005		$0 00	

Note Deductibles do not apply toward Annual Out-of-Pocket Max

* BHCB prescription drug benefit has an annual out-of-pocket maximum of $2,000 per individual and $4,000 per family

IAMAW
September 1, 2005

AGREEMENT

DATED SEPTEMBER 1, 2005

between railroads represented by the

NATIONAL CARRIERS' CONFERENCE COMMITTEE

and

employees of such railroads represented by the

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

MEDIATION AGREEMENT

THIS AGREEMENT, executed this 1st day of September, 2005 by and between the participating carriers listed in Exhibit A attached hereto and represented by the National Carriers' Conference Committee, and the employees shown thereon and represented by the International Association of Machinists and Aerospace Workers, witnesseth:

IT IS HEREBY AGREED:

ARTICLE I - WAGES

Section 1 - First General Wage Increase

On July 1, 2002, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of four (4) percent applied so as to give effect to this increase in pay irrespective of the method of payment. The increase provided for in this Section 1 shall be applied as follows:

(a) Hourly Rates -

Add 4 percent to the existing hourly rates of pay.

(b) Daily Rates -

Add 4 percent to the existing daily rates of pay.

(c) Weekly Rates -

Add 4 percent to the existing weekly rates of pay.

(d) Monthly Rates -

Add 4 percent to the existing monthly rates of pay.

(e) Disposition of Fractions -

Rates of pay resulting from application of paragraphs (a) to (d), inclusive, above which end in fractions of a cent shall be rounded to the nearest whole cent, fractions less than one-half cent shall be dropped, and fractions of one-half cent or more shall be increased to the nearest full cent.

(f) Application of Wage Increase -

The increase in wages provided for in this Section 1 shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and the labor organization party hereto. Special allowances not included in fixed hourly, daily, weekly or monthly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.

Section 2 - Second General Wage Increase

Effective July 1, 2003, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2003 for employees covered by this Agreement shall be increased by two-and-one-half (2-1/2) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 3 - Third General Wage Increase

Effective July 1, 2004, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2004 for employees covered by this Agreement shall be increased in the amount of three (3) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 4 - Fourth General Wage Increase

Effective July 1, 2005, all hourly, daily, weekly and monthly rates of pay in effect on June 30, 2005 for employees covered by this Agreement shall be increased in the amount of two-and-one-half (2-1/2) percent applied in the same manner as provided for in Section 1 hereof and applied so as to give effect to this increase irrespective of the method of payment.

Section 5 – Rate Adjustment

Effective November 15, 2007, all hourly, daily, weekly, and monthly rates of pay in effect on the preceding day for IAM-represented employees on carriers covered by this Agreement for Wages & Rules and Health & Welfare shall be increased in the amount of $.34 per hour.

ARTICLE II - OPTIONAL ALTERNATIVE COMPENSATION PROGRAM

Section 1

A carrier, at its discretion, may offer employees alternative compensation arrangements in lieu of the general wage increases provided in Article I (in whole or part). Such arrangements may include, for example, stock options, stock grants (including restricted stock), bonus programs based on carrier performance, and 401(k) plans.

Section 2

(a) The following conditions shall govern implementation of alternative compensation arrangements pursuant to this Article:

(1) Carrier shall notify the appropriate organization representative(s) regarding its proposed alternative compensation arrangement(s). The parties shall meet promptly on such proposal and use their best efforts to reach agreement on implementation;

(2) The proposed arrangement(s) may be implemented only by mutual agreement of the carrier and the appropriate organization representative(s);

(3) The proposed arrangement(s) must be made available to the smallest employee grouping that can be reasonably administered.

(b) Nothing herein shall be construed to bar the parties from reaching mutual agreement on different terms or conditions pertaining to implementation of this Article.

ARTICLE III - COST-OF-LIVING PAYMENTS

Part A - Cost-of-Living Payments Under Article II, Part C of Agreement dated August 27, 1996

Article II, Part C of the Mediation Agreement dated August 27, 1996 is eliminated effective June 30, 2002. The forty-eight (48) cents-per-hour cost-of-living allowance in effect on June 30, 2002 pursuant to such provision shall be rolled in to basic rates of pay on such date. Any cost-of-living allowance payments made to employees pursuant to such Article II, Part C for periods on and after July 1, 2002 shall be recovered from any retroactive wage increase payments made under Article I.

Part B - Cost of Living Allowance and Adjustments Thereto After January 1, 2006

Section 1 - Cost-of-Living Allowance and Effective Dates of Adjustments

(a) A cost of living allowance shall be payable in the manner set forth in and subject to the provisions of this Part, on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W)" (1967=100), U.S. Index, all items - unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor, and hereinafter referred to as the CPI. The first such cost-of-living allowance shall be payable effective July 1, 2006 based, subject to paragraph (b), on the CPI for March 2006 as compared with the CPI for September 2005. Such allowance, and further cost-of-living adjustments thereto which shall become effective as described below, shall be based on the change in the CPI during the respective measurement periods shown in the following table, subject to the exception provided in paragraph (b)(iii), according to the formula set forth in paragraph (c).

Measurement Periods

Base Month	Measurement Month	Effective Date of Adjustment
September 2005	March 2006	July 1, 2006
March 2006	September 2006	January 1, 2007

Measurement Periods and Effective Dates conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(b)(i) Cap. In calculations under paragraph (c), the maximum increase in the CPI that shall be taken into account shall be as follows:

Effective Date of Adjustment	Maximum CPI Increase That May Be Taken Into Account
July 1, 2006	3% of September 2005 CPI
January 1, 2007	6% of September 2005 CPI, less the increase from September 2005 to March 2006

Effective Dates of Adjustment and Maximum CPI Increases conforming to the above schedule shall be applicable to periods subsequent to those specified above during which this Article is in effect.

(ii) Limitation. In calculations under paragraph (c), only fifty (50) percent of the increase in the CPI in any measurement period shall be considered.

(iii) If the increase in the CPI from the base month of September 2005 to the measurement month of March 2006 exceeds 3% of the September 2005 base index, the measurement period that will be used for determining the cost-of-living adjustment to be effective the following January will be the 12-month period from such base month of September; the increase in the index that will be taken into account will be limited to that portion of the increase that is in excess of 3% of such September base index; and the maximum increase in that portion of the index that may be taken into account will be 6% of such September base index less the 3% mentioned in the preceding clause, to which will be added any residual tenths of points which had been dropped under paragraph (c) below in calculation of the cost-of-living adjustment which shall have become effective July 1, 2006 during such measurement period.

(iv) Any increase in the CPI from the base month of September 2005 to the measurement month of September 2006 in excess of 6% of the September 2005 base index will not be taken into account in the determination of subsequent cost-of-living adjustments.

(v) The procedure specified in subparagraphs (iii) and (iv) will be applicable to all subsequent periods during which this Article is in effect.

(c) Formula. The number of points change in the CPI during a measurement period, as limited by paragraph (b), will be converted into cents on the basis of one cent equals 0.3 full points. (By "0.3 full points" it is intended that any remainder of 0.1 point or 0.2 point of change after the conversion shall not be counted.)

The cost-of-living allowance effective January 1, 2007 shall be the whole number of cents produced by dividing by 0.3 the number of points (including tenths of points) change, as limited by paragraph (b), in the CPI during the applicable measurement period. Any residual tenths of a point resulting from such division will be dropped. The result of such division will be added to the amount of the cost-of-living allowance in effect on December 31, 2006 if the CPI will have been higher at the end than at the beginning of the measurement period, and subtracted therefrom only if the index will have been lower at the end than at the beginning of the measurement period, but in no event shall basic rates of pay be reduced below the levels in effect on June 30, 2006. If the result of such division requires a subtraction from basic rates of pay in effect on December 31, 2006, the employee cost-sharing contribution amount in effect on that date pursuant to Article IV, Part B, Section 1(c) of this Agreement shall be adjusted effective January 1, 2007 as appropriate to reflect such subtraction. The same procedure will be followed in applying subsequent adjustments.

(d) Continuance of the cost-of-living allowance and the adjustments thereto provided herein is dependent upon the availability of the official monthly BLS Consumer Price Index (CPI-W) calculated on the same basis as such Index, except that, if the Bureau of Labor Statistics, U.S. Department of Labor should, during the effective period of this Article, revise or change the methods or basic data used in calculating such Index in such a way as to affect the direct comparability of such revised or changed index with the CPI-W during a measurement period, then that Bureau shall be requested to

furnish a conversion factor designed to adjust the newly revised index to the basis of the CPI-W during such measurement period.

Section 2 - Payment of Cost-of-Living Allowances

(a) The cost-of-living allowance that becomes effective July 1, 2006 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(b) The increase in the cost-of-living allowance effective January 1, 2007 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(c) The increase in the cost-of-living allowance effective July 1, 2007 pursuant to Section 1 of this Part shall be rolled in to basic rates of pay on that date.

(d) The procedure specified in paragraphs (b) and (c) shall be followed with respect to computation of the cost-of-living allowances payable in subsequent years during which this Article is in effect.

Section 3 - Application of Cost-of-Living Allowances

The cost-of-living allowance provided for by Section 1 of this Part B will be payable as provided in Section 2 of this Part and will be applied as follows:

(a) Hourly Rates - Add the amount of the cost-of-living allowance to the hourly rate of pay produced by application of Article I.

(b) Daily Rates - Determine the equivalent hourly rate by dividing the established daily rate by the number of hours comprehended by the daily rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the daily rate shall be added to the daily rate produced by application of Article I.

(c) Weekly Rates - Determine the equivalent hourly rate by dividing the established weekly rate by the number of hours comprehended by the weekly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the weekly rate shall be added to the weekly rate produced by application of Article I.

(d) Monthly Rates - Determine the equivalent hourly rate by dividing the established monthly rate by the number of hours comprehended by the monthly rate. The amount of the cost-of-living allowance multiplied by the number of hours comprehended by the monthly rate shall be added to the monthly rate produced by application of Article I.

(e) Minimum Daily Increases - The increase in rates of pay described in paragraphs (a) through (d), inclusive, shall be not less than eight times the applicable increase per hour for each full time day of eight hours, required to be paid for by the rules agreement. In instances where under the existing rules agreement an employee is worked less than eight hours per day, the increase shall be determined by the number of hours required to be paid for by the rules agreement.

(f) Application of Wage Increases - The increase in wages produced by application of the cost-of-living allowances shall be applied in accordance with the wage or working conditions agreement in effect between each carrier and its employees represented by the Organization signatory hereto. Special allowances not included in said rates and arbitraries representing duplicate time payments will not be increased.

Section 4 - Continuation of Part B

The arrangements set forth in Part B of this Article shall remain in effect according to the terms thereof until revised by the parties pursuant to the Railway Labor Act.

ARTICLE IV - HEALTH AND WELFARE

Part A - Plan Changes

Section 1 - Continuation of Health and Welfare Plan

The separate and distinct program within the Railroad Employees National Health and Welfare Plan applicable only to employees represented by the organization and their eligible dependents ("the Plan"), modified as provided in this Article with respect to such employees and dependents, will be continued subject to the provisions of the Railway Labor Act.

Section 2 - Plan Benefit Changes

(a) In addition to the Plan's existing coverage for speech therapy, such therapy will be a Covered Health Service under the CHCB and the Plan's Managed Medical Care Program ("MMCP"), when given to children under three years of age as part of a treatment for infantile autism, development delay, cerebral palsy, hearing impairment, or major congenital anomalies that affect speech.

(b) Phenylketonurial blood tests ("PKU") will be a Covered Health Service under the MMCP and the CHCB when given to infants under the age of one in a hospital or on an out-patient basis.

(c) The MMCP will continue to require a co-payment with respect to the first office visit by a participant or beneficiary to her obstetrician or gynecologist for treatment of a pregnancy but will not require a co-payment with respect to any subsequent visit to that obstetrician or gynecologist for treatment of the same pregnancy.

(d) The MMCP will not require a co-payment on behalf of a participant or beneficiary with respect to any visit to a physician's office solely for the administration of an allergy shot.

(e) A Hearing Benefit will be provided. Such arrangement shall provide a Maximum Benefit of $600.00 annually for each covered person for covered expenses. Covered expenses shall consist of charges for medically necessary tests and examinations to establish whether and to what extent there is a hearing loss and charges for a permanent hearing aid that is medically necessary to restore lost hearing or help impaired hearing. Such Benefit may, at the carriers' option, be administered through the Plan or as a separate arrangement administered by the National Carriers' Conference Committee, and will include standard limitations, conditions and exclusions.

(f) The Plan life insurance benefit for active employees shall be increased to $20,000, and the Plan's maximum accidental death and dismemberment benefit for active employees shall be increased to $16,000.

(g) All of the benefits as changed herein will be subject to the Plan's generally applicable limitations, conditions, and exclusions. Existing Plan provisions not specifically amended by this Section shall continue in effect without change.

(h) Each of the changes contained in this Section shall be implemented as soon as practicable.

Section 3 - Vision Care

The benefits provided under the Vision Care Plan shall be changed from the Select to the Standard arrangement as soon as practicable.

Section 4 - Plan Design Changes To Contain Costs

(a) The parties will promptly solicit bids from interested companies to provide those services to the Plan involving the Managed Medical Care Program ("MMCP") that are currently provided by Aetna U.S. Healthcare. The parties will evaluate the bids received and the capabilities of the companies making those bids and will accept such of them (or enter into

negotiations with the bidding company or companies) as the parties deem appropriate.

(b) The parties will promptly research the existence, costs, benefits and services provided, outcomes and other relevant statistics of regional health maintenance organizations, and shall make participation in such of those organizations as the parties deem appropriate available as an option to individuals covered by the Plan.

(c) With respect to geographic areas where the Plan's MMCP is not currently available but where companies capable of administering the MMCP provide such services, the parties will solicit proposals from such companies to administer the MMCP, and will evaluate the proposals they receive and accept such of them (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(d) The parties will solicit proposals from pharmacy benefit managers who specialize in filling prescriptions for injectable medications and will accept one or more of such proposals (or enter into negotiations with the proposing company or companies) as the parties deem appropriate.

(e) With respect to Plan participants and their beneficiaries who live in an area where they may choose between CHCB and MMCP coverage, such Plan's participants and their beneficiaries shall no longer have a choice but shall be enrolled in the MMCP.

(f) The Individual and Family Out-of-Network Deductibles under the Plan's MMCP will be increased to $200 and $600, respectively.

(g) During a prescribed election period preceding January 1, 2006 and preceding each January 1 thereafter, employees may certify to the Plan or its designee in writing that they have health care coverage (which includes medical, prescription drug, and mental health/substance abuse benefits) under another group health plan or health insurance policy that they identify by name and, where applicable, by group number, and for that reason they elect

to forego coverage for foreign-to-occupation health benefits for themselves and their dependents under the Plan and under any Hospital Association plan in which they participate. Such election is hereafter referred to as an "Opt-Out Election" and, where exercised, will eliminate an employer's obligation to make a contribution to the Plan and/or dues offset payment to a Hospital Association for foreign-to-occupation health benefits for the employee and his dependents.

Each employee who makes an Opt-Out Election will be paid by his employer $100 for each month that his employer is required to make a contribution to the Plan on his behalf for life insurance and accidental death and dismemberment benefits as a result of compensated service rendered, or vacation pay received, by the employee during the prior month; provided, however, that the employee's Opt-Out Election is in effect for the entire month.

If an event described below in the final paragraph of this subsection (g) occurs subsequent to an employee's Opt-Out Election, the employee may, upon providing the Plan or its designee with proof satisfactory to it of the occurrence of such event, revoke his or her Opt-Out Election. An employee may also revoke his or her Opt-Out Election by providing the Plan or its designee with proof satisfactory to it that, after the employee made the Opt-Out Election, a person became a dependent of the employee through a marriage, birth, or adoption or placement for adoption. An employee who revokes an Opt-Out Election will, along with his or her dependents, be once again covered (effective the first day of the first month following such revocation that the employee and/or his dependents would have been covered but for the Opt-Out Election the employee had previously made) for foreign-to-occupation health benefits under the Plan or, in the case of an employee who is a member of a Hospital Association, by the Plan (for dependent coverage) and by the Hospital Association (for employee coverage). See Side Letter No. 7.

The following events are the events referred to in the immediately preceding paragraph:

(i) the employee loses eligibility under, or there is a termination of employer contributions for, the other coverage that allowed the employee to make the Opt-Out Election, or

(ii) if COBRA was the source of such other coverage, that COBRA coverage is exhausted.

(h) The Plan's Prescription Drug Card Program co-payments per prescription are revised as follows: (i) Generic Drug - $5.00; (ii) Brand Name Drug - $10.00. The Plan's Mail Order Prescription Drug Program co-payment per prescription is revised as follows: (i) Generic Drug - $10.00; (ii) Brand Name Drug - $15.00.

(i) The parties shall establish a new benefit package denominated as the Basic Health Care Benefit ("BHCB") that will be administered by one or more vendors. Participation in that arrangement shall be made available as an option to individuals covered by the Plan. The plan design for the BHCB shall be as provided in Attachment A hereto.

(j) Blue Cross Blue Shield programs selected by the parties will be made available for selection by employees choosing coverage under the MMCP in all areas where the MMCP is made available under the Plan and throughout the United States for selection by employees choosing coverage under the CHCB.

(k) Each of the Plan design changes contained in this Section shall be implemented as soon as practicable except as otherwise provided.

Part B - Employee Cost Sharing of Plan Cost Increases

Section 1 - Employee Cost-Sharing Contributions

(a) Each employee covered by this Agreement shall be required to make a monthly employee cost-sharing contribution to the Plan for each

month that his employer is required to make a contribution to the Plan on his behalf for foreign-to-occupation health benefits coverage for himself and/or his dependents beginning with the month of July of 2005.

(b) Effective July 1, 2005, the per month employee cost-sharing contribution amount shall be the sum of $100.00 plus the lesser of (x) one-half of the increase, if any, in the carriers' 2005 monthly payment rate over such payment rate for 2004, and (y) one-half of the increase in the average straight-time hourly rate of a machinist employed by the Class One carriers party to this Agreement produced by application of the general wage increase provided for in Article I, Section 4 of this Agreement, multiplied by one-twelfth of the average straight-time equivalent hours ("ASTE Hours") for calendar year 2003. It is understood that application of the foregoing formula will produce a monthly cost-sharing contribution amount of $106.11.

(c) Effective July 1, 2006, the per month employee cost-sharing contribution amount in effect on June 30, 2006 shall be increased by the lesser of (x) one-half of the increase, if any, in the carriers' 2006 monthly payment rate over such payment rate for 2005, and (y) one-half of the cost-of-living allowance effective July 1, 2006 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2004.

(d) Effective January 1, 2007, the per month employee cost-sharing contribution amount in effect on December 31, 2006 shall be increased by the lesser of (x) the sum of (i) one-half of the increase, if any, in the carriers' 2007 monthly payment rate over such payment rate for 2006, plus (ii) the amount (if any) by which the number described in part (x) of subsection (c) of this Section exceeds the product described in part (y) of such subsection (c), and (y) one-half of the cost-of-living allowance effective January 1, 2007 pursuant to Article III, Part B, Section 1(a), multiplied by one-twelfth of the ASTE Hours for calendar year 2005.

(e) Effective July 1, 2007, the per month employee cost-sharing contribution amount in effect on June 30, 2007 shall be increased by the

lesser of (x) the amount (if any) by which the number described in part (x) of subsection (d) of this Section exceeds the product described in part (y) of such subsection (d), and (y) one-half of the cost-of-living allowance effective July 1, 2007 pursuant to Article III, Part B, Section 1(a) multiplied by one-twelfth of the ASTE Hours for calendar year 2005.

(f) The pattern specified in subsections (d), and (e) above shall be followed with respect to computation of adjustments to the amount of the employee cost sharing contribution in subsequent periods during which this Part is in effect.

(g) The carriers' payment rate for any year shall mean twelve times the sum of what the carriers' payments to the Plan would have been, in the absence of any employee contributions to the Plan, for foreign-to-occupation health benefits under the Plan per month (in such year) per employee. The carriers' monthly payment rate for any year shall mean the carriers' payment rate for that year divided by 12. An "employee" for these purposes is any employee who either (i) is fully covered for employee benefits under the Plan or (ii) has elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which he participates. Carrier payments to the Plan for these purposes (x) shall include amounts paid pursuant to Section 3(g) of Part A of this Article IV to employees who elected to opt-out of foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which they participate, but (y) shall not include the amounts per such employee per month (in such year) taken from the Special Account, or from any other special account, fund or trust maintained in connection with the Plan, to pay or provide for current Plan benefits, or any amounts paid by remaining carriers to make up the unpaid contributions of terminating carriers pursuant to Article III, Part A, Section 1 of the July 31, 1992 National Agreement between the organization signatory hereto and the carriers represented by the National Carriers' Conference Committee.

(h) For the purpose of this Section, the ASTE Hours to be used shall be based on all such hours for individuals who are employed by Class One

carriers that are participating in national bargaining in the round of negotiations that commenced January 1, 2000 and are working in crafts and classes represented by the International Association of Machinists and Aerospace Workers.

(i) If the per month employee cost-sharing contribution amount ("cost-sharing amount") is increased for the period July 2006 through December 2006 or any subsequent periods and if a lower payment rate is established for the calendar year that immediately follows, then the cost-sharing amount shall be adjusted as appropriate to reflect such decreased benefit costs. Such adjustment shall be made effective January 1 of the calendar year for which such payment rate decrease is applicable and in no event shall take into account any portion of a payment rate below the payment rate level established for calendar year 2005. The cost-sharing amount shall also be subject to adjustment as provided in Article III, Part B, Section 1(c) of this Agreement.

Section 2 - Pre-Tax Contributions

Employee cost-sharing contributions made pursuant to this Part shall be on a pre-tax basis, and in that connection a Section 125 cafeteria plan will be established pursuant to this Agreement.

Section 3 – Employer Election

At the employer's election, employee cost-sharing contributions may be made for the employee by the employee's employer. If that election is exercised, the employer shall then deduct the amount of such employee contributions from the employee's wages and retain the amounts so deducted as reimbursement for the employee contributions that the employer had made for the employee.

ARTICLE V - SUPPLEMENTAL SICKNESS

The March 29, 1979 Supplemental Sickness Benefit Agreement, as

amended by Article VI of the August 27, 1996 National Agreement (Sickness Agreement), shall be further amended as provided in this Article.

Section 1 - Adjustment of Plan Benefits

(a) The benefits provided under the Plan established pursuant to the Sickness Agreement shall be adjusted as provided in paragraph (b) so as to restore the same ratio of benefits to rates of pay as existed on December 31, 1999 under the terms of that Agreement.

(b) Section 4 of the Sickness Agreement shall be revised as follows:

	Per Hour	Per Month
Class I Employees Earning (as of 12/31/99)	$17.77 or more	$3,092 or more
Class II Employees Earning (as of 12/31/99)	$14.53 or more but less than $17.77	$2,528 or more but less than $3,092
Class III Employees Earning (as of 12/31/99)	Less than $14.53	Less than $2,528

	Basic and Maximum Benefit Amount Per Month		
Classification	Basic	RUIA	Maximum
Class I	$1,101.50	$1,000.50	$2,102
Class II	$ 875.50	$1,000.50	$1,876
Class III	$ 679.50	$1,000.50	$1,680

Combined Benefit Limit

Classification	Maximum Monthly Amount
Class I	$2,255
Class II	$2,009
Class III	$1,801

Section 2 - Further Adjustment of Plan Benefits

Effective December 31, 2004, the benefits provided under the Plan shall be adjusted so as to restore the same ratio of benefits to rates of pay as existed on the effective date of this Article.

ARTICLE VI - OFF-TRACK VEHICLE ACCIDENT BENEFITS

Article IV of the October 7, 1971 RED National Agreement, as amended by Article VIII of the December 2, 1978 IAM National Agreement, is further amended as follows effective the first day of the calendar month immediately following the date of this Agreement.

Section 1

Paragraph (b)(1) - Accidental Death or Dismemberment of the above-referenced Agreement provisions is amended to read as follows:

"(1) Accidental Death or Dismemberment

The carrier will provide for loss of life or dismemberment occurring within 120 days after date of an accident covered in paragraph (a):

Loss of Life	$300,000
Loss of Both Hands	$300,000
Loss of Both Feet	$300,000
Loss of Sight of Both Eyes	$300,000
Loss of One Hand and One Foot	$300,000
Loss of One Hand and Sight of One Eye	$300,000
Loss of One Foot and Sight of One Eye	$300,000
Loss of One Hand or One Foot or Sight of One Eye	$150,000

"Loss" shall mean, with regard to hands and feet, dismemberment by severance through or above wrist or ankle joints; with regard to eyes, entire and irrecoverable loss of sight.

No more than $300,000 will be paid under this paragraph to any one employee or his personal representative as a result of any one accident."

Section 2

Paragraph (b)(3) - Time Loss of the above-referenced Agreement provisions is amended to read as follows:

"(3) Time Loss

The carrier will provide an employee who is injured as a result of an accident covered under paragraph (a) commencing within 30 days after such accident 80% of the employee's basic full-time weekly compensation from the carrier for time actually lost, subject to a maximum payment of $1,000.00 per week for time lost during a period of 156 continuous weeks following such accident provided, however, that such weekly payment shall be reduced by such amounts as the employee is entitled to receive as sickness benefits under provisions of the Railroad Unemployment Insurance Act."

Section 3

Paragraph(b)(4) - Aggregate Limit of the above-referenced Agreement provisions is amended by raising such limit to $10,000,000.

ARTICLE VII - GENERAL PROVISIONS

Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement, and to settle the disputes growing out of the notices dated November 1, 1999 and served upon the organization signatory hereto by the carriers listed in Exhibit A on that date, and all notices served by the organization upon such carriers on or after November 1, 1999 and prior to the date of this Agreement. This Agreement shall be construed as a separate agreement by and on behalf of each of said carriers and their employees represented by the organization signatory hereto, and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended ("RLA").

(b) The National Carriers' Conference Committee, on behalf of the carriers it represents, has served a national notice on the organization dated November 1, 2004 (effective January 1, 2005) proposing various changes to existing agreements. Such notice, and any other notices that may be served by or on behalf of such carriers upon the IAM on or after the date of this Agreement, are not covered by subsection (a) of this Section and may be progressed in accordance with the provisions of the RLA.

(c) The organization may serve notices on the carriers represented by the NCCC that propose changes to existing agreements at any time on or after the date of this Agreement and may progress such notices in accordance with the RLA, provided, however, that no compensation proposal for any period prior to January 1, 2006 may be served or progressed. Any such notices are not covered by subsection (a) of this Section.

(d) This Article will not bar management and Committees on individual railroads from agreeing upon any subject of mutual interest.

SIGNED AT WASHINGTON, D.C., THIS 1st DAY OF SEPTEMBER, 2005.

FOR THE PARTICIPATING CARRIERS LISTED IN EXHIBIT A REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE:

Robert F. Allen

Emerson Bouchard

John J. Fleps

Mark R. MacMahon

FOR THE EMPLOYEES REPRESENTED BY THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS:

Robert Roach, Jr.

Joe R. Duncan

Lisa Mancini

John J. Marchant

September 1, 2005
#1

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This confirms our understanding with respect to the general wage increases provided for in Article I, Sections 1, 2, 3 and 4 of the Agreement of this date.

The carriers will make all reasonable efforts to pay the retroactive portion of such general wage increases as soon as possible and no later than sixty (60) days after the date of this Agreement.

If a carrier finds it impossible to make such payments by that date, such carrier shall notify you in writing explaining why such payments have not been made and indicating when the payments will be made.

Very truly yours,

Robert F. Allen

September 1, 2005
#2

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This refers to the increase in wages provided for in Sections 1, 2, 3 and 4 of Article I of the Agreement of this date.

It is understood that the retroactive portion of those wage increases shall be applied only to employees who have an employment relationship with a carrier on the date of this Agreement or who retired or died subsequent to June 30, 2002.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#3

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach

This confirms our understanding with respect to the General Wage Increase effective July 1, 2005 provided pursuant to Article I, Section 4 of the Agreement of this date.

In the event that the NCCC negotiates a compensation arrangement for the year 2005 with other rail labor organizations that differs from Article I, Section 4, IAM will have the option to elect such alternative arrangement. For the purpose of this letter, such alternative arrangement shall be deemed to include all agreement provisions favorable to the carriers that were bargained in exchange for such compensation arrangement.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#4

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This confirms our understanding regarding the Agreement of this date.

Beginning with the first full calendar month immediately following the date of this Agreement in which an active employee receives his or her FO healthcare benefits from a Hospital Association and not from the National Health & Welfare Plan and makes a Plan contribution pursuant to Article IV, Part B, then, at the carrier's option, either:

(1) Such employee's monthly "cost-sharing contribution amount" referred to in Article IV, Part B Section 1 shall be reduced by the Reduction Factor; or

(2) The carrier shall pay the Hospital Association each month an amount equal to the Reduction Factor, provided that the Hospital Association that receives such payment has agreed to decrease the employee's dues by the same amount.

For purposes of this Side Letter, the term "Reduction Factor" means with respect to any given month, the smallest of:

(i) the monthly dues amount in effect on January 1, 2003 that was established by the Hospital Association for payment by an active employee,

(ii) the "cost-sharing contribution amount" for the month referred to in Article IV, Part B, Section 1, or

(iii) the monthly dues amount established by the Hospital Association for payment by an active employee in that month.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#5

Mr Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This will confirm our understanding with respect to the Agreement of this date.

The provisions of Article IV, Part A, Section 4(g) (Opt-Outs) and Part B (Employee Cost Sharing of Plan Cost Increases) are not applicable to employees covered by the Agreement who reside in Canada.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#6

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

Article IV, Part A, Section 4(g) of the Agreement of this date provides employees with an option to opt out of coverage for foreign-to-occupation health benefits for themselves and their dependents under the Plan and under any Hospital Association plan in which they participate. This will confirm our understanding with respect to the intended application of that provision.

1. An employee who opts out will be opting out of FO health coverage only and (if he otherwise satisfies eligibility and coverage requirements) will continue to have on-duty injury coverage, coverage under the Dental and Vision Plans, and life and AD&D insurance coverage.

2. If a husband and wife are each covered by the Plan (or the NRC/UTU Plan or a Hospital Association) by virtue of railroad employment and either or both hold positions covered by this Agreement, an IAM-represented spouse may elect to opt out as provided in Section 4(g). If that election is made (and provided the other spouse remains so covered), (i) such IAM-represented spouse shall not receive the $100/month payment provided in Section 4(g) and shall not be required to make the employee cost-sharing contributions required under Article IV, Part B, and (ii) the Plan's

coordination of benefits rules in effect on the date of this Agreement that are applied when a husband and wife are covered under the Plan both as an Eligible Employee and as an Eligible Dependent shall continue to be applicable.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#7

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This confirms our understanding with respect to the opt-out provision, Article IV, Part A, Section 4(g) of our Agreement of this date.

It is understood that for purposes of Section 9801(f) of the Internal Revenue Code, (i) any opt-out election shall be treated as a declination of coverage, or a failure to enroll, for foreign-to-occupation health benefits under the Plan and under any Hospital Association plan in which the employee making the election may participate, (ii) that the provisions of Section 9801(f) and the regulations thereunder shall govern how any individual covered by an election to opt-out may nonetheless become covered for foreign-to-occupation health benefits under the Plan or any Hospital Association plan prior to the next regular opt-out election period, (iii) that the terms of Article IV, Part A, Section 4(g) of our Agreement shall be interpreted and applied so as to be in compliance with Section 9801(f), and (iv) that the employer's payment of $100 per month to an employee who has elected to opt-out shall cease immediately upon the employee and/or his dependents or any one of his dependents becoming covered, pursuant to Section 9801(f), for foreign-to-occupation health benefits under the Plan or any Hospital Association plan.

Furthermore, and notwithstanding the above, the parties recognize that an employee may lose coverage under the health plan or health insurance policy that he or she relied upon in electing to forego coverage for foreign-to-occupation health benefits under the Plan, and that such loss of coverage may be attributable to an event that is not listed in Section 9801(f) of the Internal Revenue Code and is beyond the control of the employee or of any member of his or her family. In such a case, and only to the extent permissible under Section 125 of the Internal Revenue Code: (a) the employee may ask his/her employer that his or her opt-out election be revoked; (b) the employer involved may in its discretion grant the request in the interest of fairness and equity; and (c) if the request is granted, the employee's opt-out election shall be treated as revoked as of the day the employer received the request.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

September 1, 2005
#8

Mr. Robert Roach Jr.
General Vice President
International Association of
Machinists & Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Dear Mr. Roach:

This confirms our understanding regarding Article IV, Part B of the Agreement of this date.

1. If the initial deduction from an employee's wages for his monthly cost-sharing contribution pursuant to Article IV, Part B is scheduled to be made at the same time as the payroll deduction for the employee's union dues, the union dues deduction may be made on a subsequent date mutually agreeable to the parties.

2. Each carrier shall examine the feasibility of including in the standard payroll documents provided to its employees information concerning the cost of the Plan and the employee's cost sharing contributions. The results of that examination will be shared with the authorized organization representative and, if feasible, the parties shall use their best efforts to implement such arrangements.

Please acknowledge your agreement by signing your name in the space provided below.

Very truly yours,

Robert F. Allen

I agree:

Robert Roach Jr.

EXHIBIT A
(IAM)

RAILROADS REPRESENTED BY THE NATIONAL CARRIERS' CONFERENCE COMMITTEE IN CONNECTION WITH NOTICES DATED NOVEMBER 1, 1999 OF DESIRE TO REVISE AND SUPPLEMENT EXISTING AGREEMENTS IN ACCORDANCE THEREWITH, SERVED BY AND ON BEHALF OF SUCH CARRIERS UPON THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AND NOTICES DATED ON OR SUBSEQUENT TO NOVEMBER 1, 1999 AND SERVED ON SUCH CARRIERS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS N FOR CONCURRENT HANDLING THEREWITH.

Subject to indicated footnotes, this authorization is co-extensive with notices filed and with provisions of current schedule agreements applicable to employees represented by the International Association of Machinists and Aerospace Workers.

Alameda Belt Line
Alton & Southern Railway Company
The Belt Railway Company of Chicago - 3
Bessemer and Lake Erie Railroad - 1
The Burlington Northern and Santa Fe Railway Company
Consolidated Rail Corporation
CSX Transportation, Inc.
Duluth, Missabe & Iron Range Railway Company - 1
Elgin, Joliet and Eastern Railway Company - 4
Indiana Harbor Belt Railroad Company
The Kansas City Southern Railway Company

Lake Superior & Ishpeming Railroad Company – 5
Manufacturers Railway Company – 4
New Orleans Public Belt Railroad
Norfolk Southern Railway Company
The Alabama Great Southern Railroad Company
Atlantic & East Carolina Railway Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans & Texas Pac. Ry. Co.
Georgia Southern and Florida Railway Company
Interstate Railroad Company
Tennessee, Alabama and Georgia Railway Company
Tennessee Railway Company
Northeast Illinois Regional Commuter RR Corp (METRA) - 3
Oakland Terminal Railway Company
Peoria and Pekin Union Railway Company
Port Terminal Railroad Association
Terminal Railroad Association of St. Louis
The Texas Mexican Railway Company
Union Pacific Railroad

* * * * *

NOTES:

1 - Wages and Rules only

2 - Health and Welfare only

3 - Health and Welfare and Supplemental Sickness

4 - Wages and Rules and Health and Welfare only

5 - Wages and Rules and Supplemental Sickness only

- - - - -

FOR THE CARRIERS:

FOR THE IAM:

September 1, 2005
Washington, D.C.

ATTACHMENT A

BASIC HEALTH CARE BENEFIT
PLAN DESIGN

Medical/MHSA	In-Network		Out-Network
Annual Deductible			
Individual		$300	
Family		$900	
Office Visits, ER, Urgent Care	70%		50%
Coinsurance	70%		50%
Annual Out-of-Pocket Max			
Individual		$2,500	
Family		$5,000	
Prescription Drugs			
Retail			
Generic	70%*		50%
Brand on Formulary	65%*		50%
Off Formulary	60%*		50%
Mail Order			
Generic	70%*		--
Brand on Formulary	65%*		--
Off Formulary	60%*		--

Monthly Contributions

July 1, 2005 -June 30, 2006 $6 11

Note Deductibles do not apply toward Annual Out-of-Pocket Max

* BHCB prescription drug benefit has an annual out-of-pocket maximum of $2,000 per individual and $4,000 per family

H

United Transp. Union v. Surface Transp Bd C.A.D.C.,1997

United States Court of Appeals,District of Columbia Circuit

UNITED TRANSPORTATION UNION and Brotherhood of Locomotive Engineers, Petitioners,

v.

SURFACE TRANSPORTATION BOARD and United States of America, Respondents,

Railway Labor Executives' Association, et al., Intervenors.

No. 95-1621.

Argued Feb. 4, 1997.
Decided March 21, 1997.

Railroad unions petitioned for review of order of the Surface Transportation Board allowing abrogation of seniority terms of existing collective bargaining agreements as part of consolidation of former railroads into consolidated rail district. The Court of Appeals, Harry T. Edwards, Chief Judge, held that: (1) established seniority provisions are within category of interests that are subject to abrogation to effectuate an railroad transaction approved by the Interstate Commerce Commission (ICC), and (2) evidence supported finding that changes proposed by railroad were necessary to effectuate consolidation of railway operations approved by the ICC.

Petition denied.

West Headnotes

[1] Commerce 83 ⇐85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements. Most Cited Cases

When a proposed consolidation involves rail carriers, statute requires Interstate Commerce Commission (ICC) to impose labor-protective conditions on the transaction to insure a fair arrangement that will safeguard interest of adversely affected employees. 49 U.S.C.(1994 Ed.) § 11347.

[2] Commerce 83 ⇐85.7

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.1 Regulation of Carriers in General; Railroads and Pipe Lines
83k85.7 k. Combinations and Consolidations of Carriers; Agreements Most Cited Cases

Seniority provisions of collective bargaining agreement (CBA) are not within the compass of " rights, privileges, and benefits" protected absolutely by statute from power of Interstate Commerce Commission (ICC) to abrogate certain terms of collective bargaining agreement (CBA) as necessary to effectuate an ICC-approved railroad consolidation. 49 U.S.C.(1994 Ed.) § 11347

[3] Commerce 83 ⇐209

83 Commerce
83III Interstate Commerce Commission
83III(D) Judicial Enforcement
83k209 k. Hearing in General; Evidence. Most Cited Cases

Evidence supported arbitrator's factual finding that railroad's abrogation of terms of existing collective bargaining agreements (CBAs), in order to merge separate seniority rosters of former railroads into single seniority list for engineers and trainmen for entire consolidated rail district, was necessary to effectuate consolidation approved by the Interstate Commerce Commission (ICC).

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*1426 **397 On Petition for Review of an Order of the Surface Transportation Board.

William G. Mahoney, Washington, DC, argued the cause for petitioners, with whom John O'B. Clarke, Jr. and Richard S. Edelman were on the briefs.
Louis Mackall, V, Attorney, Surface Transportation Board, Washington, DC, argued the cause for respondents, with whom Henri F. Rush, General Counsel, was on the brief. John J. Powers, III and Robert J Wiggers, Attorneys, U.S. Department of Justice, entered appearances.
Ronald M. Johnson argued the cause and filed the brief for intervenor CSX Transportation, Inc.
Jeffrey S. Berlin, Mark E. Martin, Robert W. Blanchette, Washington, DC, and Kenneth P. Kolson, Vienna, VA, were on the brief for amicus curiae Association of American Railroads.

Before: EDWARDS, Chief Judge, HENDERSON and ROGERS, *Circuit Judges*.

Opinion for the Court filed by Chief Judge EDWARDS.HARRY T. EDWARDS, Chief Judge.
This case arises out of an effort by CSX Transportation, Inc. ("CSXT") to implement an approved merger of operations of portions of four former railroads into a new, consolidated rail district. In so doing, CSXT sought to abrogate terms of existing collective bargaining agreements (" CBAs") in order to merge separate seniority rosters from the former railways into single seniority lists for engineers and trainmen for the entire district and to place the employees of the consolidated district under one CBA. CSXT served notice on the United Transportation Union ("UTU") and the Brotherhood of Locomotive Engineers ("BLE") (jointly, "unions") of its intent to consolidate the various seniority districts. After negotiations between CSXT and the unions failed to produce an agreement implementing the proposed changes, the dispute was referred to arbitration. The arbitrator ruled in favor of CSXT, holding that the proposed changes are necessary to effectuate a transaction approved by the Interstate Commerce Commission ("ICC"); however, in light of this court's decision in *Railway Labor Executives' Ass'n v United States*, 987 F 2d 806, 814 (D.C.Cir 1993) (*Executives*), the arbitrator reserved for the Commission the question whether CSXT's proposed changes undermine " rights, privileges, and benefits" protected by 49 U.S.C § 11347 and the so-called "*New York Dock* rules " *See New York Dock Ry.-Control-Brooklyn E Dist. Terminal*, 360 I.C.C 60, *aff'd sub nom. New York Dock Ry v. United States*, 609 F.2d 83 (2d Cir.1979) (*New York Dock*).

Section 11347 incorporates the protections of the Rail Passenger Service Act, 45 U.S.C. § 565, which provides that, in transactions (such as railway consolidations) approved by the Commission,
protective arrangements shall include ... such provisions as may be necessary for **398 *1427 ... the preservation of rights, privileges, and benefits ... under existing collective bargaining agreements....

However, the Supreme Court and this court have made it clear that the ICC may abrogate certain terms of a CBA as necessary to effectuate an ICC-approved transaction. *See Norfolk & W. Ry. Co v. American Train Dispatchers Ass'n*, 499 U.S. 117, 127-28, 111 S.Ct. 1156, 1162-63, 113 L Ed.2d 95 (1991) (*Dispatchers*); *American Train Dispatchers Ass'n v. ICC*, 26 F.3d 1157, 1163-64 (D.C.Cir.1994) (*ATDA*); *Executives*, 987 F.2d at 814. The questions at issue here are (1) whether established seniority provisions are within the category of interests that are subject to abrogation, and, if so, (2) whether the changes proposed by CSXT are *necessary* to effectuate the consolidation of railway operations that had been approved by the ICC. The Commission answered affirmatively to each of these questions, and we can find no error in the agency's judgment.

The principal dispute in this case is over the meaning of "rights, privileges, and benefits," for the parties agree that any employment arrangement meeting this definition is fully protected, save for modifications achieved through collective bargaining. The Commission held that "the term ' rights, privileges, and benefits' means the 'so-called incidents of employment, or fringe benefits' ... and does not include scope or seniority provisions." *CSX Corp -Control-Chessie Sys, Inc. and Seaboard Coast Line Indus, Inc*, Finance Docket No. 28905 (Sub-No. 27) (Nov. 22, 1995) (*Commission decision*), *reprinted in* Joint Appendix (

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"J A.") 238 In light of the applicable statutory provisions and the judicial decisions construing them, we can find no basis to overturn the Commission's holding on this point.

Furthermore, the Commission did not err in upholding the arbitrator's finding that CSXT's proposed changes are *necessary* to effectuate an ICC-approved consolidation. The ICC found that " merging the separate seniority rosters into one will produce real efficiency benefits," *see id* at 13, *reprinted in* J A. 236, thus making clear the nexus between the proposed changes and the effectuation of an approved transaction found to be in the public interest.

On the record at hand, the petition for review must be denied.

I. Background

CSXT, a major rail carrier, is the product of various railroad mergers, all approved by the ICC.[FN1] CSXT had its genesis in the ICC's 1980 decision authorizing CSX Corporation to control two railroad holding companies. *See CSX Corp.-Control-Chessie Sys, Inc and Seaboard Coast Line Indus., Inc.*, 363 I.C.C. 521 (1980) (*CSX Control*). Over time, the operations of the railroad subsidiaries of Chessie System, Inc. ("Chessie") and Seaboard Coast Line Industries, Inc. ("SCLI") were merged together and, ultimately, became CSXT. CSXT has combined various operations, facilities, and workforces throughout portions of the former railroads that today constitute CSXT.

FN1. The ICC is the predecessor to the Surface Transportation Board ("STB"). Effective January 1, 1996, the Interstate Commerce Act ("ICA") was amended by the ICC Termination Act, thereby transferring all of the ICC's remaining functions to the STB *See* Pub L. No 104-88, 109 Stat. 803 (1995) A savings clause in the Termination Act, § 204, provides that matters arising before January 1, 1996 will continue to be governed by the ICA as it existed pre-amendment. We, therefore, will refer to the pre-amendment ICA. We note that § § 11341(a) and 11347 of the ICA were continued by the ICC Termination Act, but were renumbered, respectively, as §§ 11321(a) and 11326.

This case arises out of an attempt by CSXT to consolidate train operations, workforces, and facilities on portions of four former railroads-the Baltimore and Ohio Railroad("B&O"), Western Maryland Railway ("WM"), Chesapeake and Ohio Railway ("C&O"), and Richmond, Fredericksburg and Potomac Railway ("RF&P"). In 1993, CSXT decided to combine train operations, workforces, and facilities on the eastern portion of the former B&O with contiguous portions of the former RF&P, WM, and C&O to create the Eastern B&O Consolidated District. CSXT proposed to place all of the train crew employees working in the new, consolidated district on merged seniority rosters, with one *1428 **399 list for engineers and a separate list for trainmen.

At the time when the disputed proposals were advanced, CSXT had CBAs with the UTU and BLE covering each of the former railroads constituting the new district. The seniority rules in the CBA for each railroad generally required that work in that geographic region be performed by employees with seniority rights under that agreement. Under CSXT's proposed implementation plan for its consolidation of operations in the Eastern B&O District, CSXT could use any engineer or trainman to staff a train throughout the consolidated district, regardless of whether the territory was within the boundaries of the employee's railroad prior to consolidation.

On January 10, 1994, pursuant to Commission-mandated procedures under section 4 of the *New York Dock* rules, *see New York Dock*, 360 I C C. at 77, CSXT served notice on the unions of its intent to consolidate various seniority districts of its affiliate carriers. The unions refused to negotiate an implementing agreement concerning these changes. Because the unions and CSXT could not reach an agreement, the matter was

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referred to arbitration as required by section 4 of the *New York Dock* rules, *see New York Dock*, 360 I.C.C at 78.

A neutral arbitrator found (1) that the coordination proposed by CSXT was linked to an ICC-approved transaction; (2) that *New York Dock* arbitration was not barred by the terms of prior implementing agreements that made reference to Railway Labor Act ("RLA") bargaining, (3) that CSXT had shown that modification of existing CBAs was necessary; and (4) that the proposed changes to the existing CBAs could be made, provided, as required by section 2 of *New York Dock* rules implementing 49 U S.C. § 11347, they did not undermine protected " rights, privileges, and benefits." *See UTU v. CSX Transp, Inc*, (Apr. 21, 1995) (O'Brien, Arb), *reprinted in* Supplemental Appendix ("S.A.") 413. The arbitrator, in light of this court's decision in *Executives*, 987 F.2d at 814 (leaving for the Commission to determine in the first instance the scope of protected "rights, privileges, and benefits"), reserved for the Commission the question whether CSXT's proposed changes to the CBAs undermine protected "rights, privileges, and benefits." *See UTU v. CSX Transp, Inc.*, (Apr. 21, 1995) (O'Brien, Arb.), *reprinted in* S A. 413.

The unions petitioned the Commission to review and reverse the arbitrator's decision, *see* Petition of UTU and BLE, *CSX Corp -Control-Chessie System, Inc and Seaboard Coast Line Indus., Inc.*, Finance Docket No. 28905 (Sub-No. 27) (June 9, 1995), *reprinted in* J.A. 33, while CSXT requested the Commission to uphold the arbitrator's findings and, further, to find that CSXT's proposed changes to the CBAs did not undermine protected "rights, privileges, and benefits," *see* Petition of CSXT, *CSXT-Bhd of Locomotive Eng'rs and United Transp. Union*, Finance Docket No 28905 (Sub-No. 27) (June 9, 1995), *reprinted in* J.A. 7.

The Commission ruled in favor of CSXT *See Commission decision, reprinted in* J.A. 224-41. First, the ICC sustained the arbitrator's finding that CSXT's proposed coordination of train operations in the new, consolidated B&O Eastern District was linked to ICC-approved merger and control transactions. *See id.* at 8, *reprinted in* J.A. 231.

Second, the Commission upheld the arbitrator's finding that prior implementing agreements of CSXT do not require that CSXT accomplish the *coordination at issue here through* Railway Labor Act ("RLA") bargaining procedures, as CSXT's proposed changes involve a different (*i e*, greater) territory than that to which the prior agreements applied. *See id* at 10-12, *reprinted in* J.A. 233-35. The Commission also found that applying *New York Dock* rules in the instant case comports with the parties' prior implementing agreements. On several occasions, CSXT has consolidated operations within the territory of the former railroads and, without objection from the unions, applied *New York Dock* rules. *See id* Third, the Commission found that CSXT's proposed changes to seniority rights as established by CBAs were necessary to effectuate the ICC-approved transaction. The ICC also found that CSXT's proposed changes are not a device to transfer wealth from the employees ***1429 **400** to the railroad, and that the merging of the separate seniority districts will produce real efficiency benefits. *See id.* at 13, *reprinted in* J.A. 236. Finally, the ICC determined that CSXT's proposed changes do not involve "rights, privileges, and benefits" that are protected by 49 U S C. § 11347 and section 2 of the *New York Dock* rules. The Commission noted that "rights, privileges, and benefits" include only "the incidents of employment, ancillary emoluments or fringe benefits." *See id* at 14, *reprinted in* J.A. 237. The Commission concluded that the CBA provisions at issue in this case do not fall within the protected "rights, privileges, or benefits," as they involve scope and seniority changes of the type that consistently have been modified in the past in connection with consolidations. *See id.* at 15, *reprinted in* J.A. 238.

On January 4, 1996, the STB denied the unions' petition for an administrative stay. The unions then filed a petition for review in this court.

II. Analysis

The Supreme Court has made clear that, to effectuate an ICC-approved transaction, 49 U.S.C. § 11341(a) (1994) allows for the abrogation of terms

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in a CBA. *See Dispatchers,* 499 U.S. at 127-28, 111 S Ct. at 1162-63 [FN2] In this court's *Executives* decision, however, we pointed out that "§ 11347 [involving 'employee protective arrangements in transactions involving rail carriers'] on its face provides more, not less, generous labor protection than does § 11341(a)." 987 F.2d at 814. Thus, the court found that, with respect to transactions covered by section 11347, "the Commission may not modify a CBA willy-nilly." *Id* Nonetheless, the *Executives* decision is clear in recognizing that the Commission may modify CBAs as necessary to effectuate covered transactions:

> FN2. Section 11341(a) provides, in relevant part, that a carrier in an approved consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction." 49 U.S.C. § 11341(a) (1994).

The statute clearly mandates that "rights, privileges, and benefits" afforded employees under existing CBAs be preserved. Unless, however, every word of every CBA were thought to establish a right, privilege, or benefit for labor-an obviously absurd proposition-§ 565 (and hence § 11347) does seem to contemplate that the ICC may modify a CBA.
Id. at 814 (footnotes omitted). Subsequently, in *ATDA,* the court construed *Executives* as holding that "certain contractual provisions," *i.e.*, those treading upon any rights, privileges, or benefits in a CBA, "are immutable." 26 F.3d at 1163.

In this case, we face two main issues-(1) whether CSXT's proposed seniority changes involve terms of a CBA that are shielded absolutely from the ICC's abrogation authority and, if not, (2) whether the proposed changes are "necessary" to effectuate an ICC-approved transaction.[FN3]

> FN3. In their briefs, the unions also contend that, under previous implementing agreements, CSXT was required to make any modifications to CBAs for the former railroads comprising the new consolidated district through RLA procedures. On the record at hand, we find nothing in this claim that gives us pause or that would deter us from deferring to the Commission's judgment.
> We also note that, in a related case involving the same contract language at issue here (but a different consolidated district), a panel of this court is currently considering, and will address, whether the language requires application of RLA procedures. *See UTU v. STB,* No. 96-1201.

A. "Rights, Privileges, and Benefits"

The unions argue that the Commission erred in finding that CSXT's proposed merger of the seniority rosters in the consolidated district would not undermine protected rights. We disagree.

[1] When a proposed consolidation involves rail carriers, 49 U.S.C. § 11347 requires the Commission to impose labor-protective conditions on the transaction to ensure a "fair arrangement" that will safeguard the interests of adversely affected employees. *See Executives,* 987 F.2d at 813. In interpreting the safeguards required by § 11347, the Commission held in *New York Dock* that "[t]he rates of pay, rules, working conditions and all collective *1430 **401 bargaining and *other rights, privileges, and benefits* ... under applicable laws and/or existing collective bargaining agreements ... shall be preserved unless changed by future collective bargaining agreements." 360 I.C.C. at 84 (emphasis added). In other words, CBA terms that establish "rights, privileges, and benefits" may not be abrogated outside of collective bargaining.[FN4] Up until now, this broad conceptual framework has been clear, but the scope of the rights at issue has defied comprehension. Obviously confused, the court in *Executives* remanded that case to the Commission to allow the agency to explain the meaning of the phrase "rights, privileges, and benefits." *See* 987 F.2d at 814.

> FN4. No one has suggested that *seniority provisions* fall within the compass of "

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> rates of pay, rules, working conditions" under *New York Dock*, so the scope of this term is not an issue in this case. It is only the meaning of "other rights, privileges, and benefits" that is at issue.

[2] In this case, the Commission offers a definition. "rights, privileges, and benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits-as opposed to the more central aspects of the work itself-pay, rules and working conditions." *See Commission decision* at 14, *reprinted in* J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits " refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. *See id.* at 15, *reprinted in* J.A. 238 According to the Commission, seniority provisions are not within the compass of "rights, privileges, and benefits" protected absolutely from the Commission's abrogation authority. *See id.* On this point, the Commission notes that seniority provisions "have consistently been modified in the past in connection within [sic] consolidations This may be due to the fact that almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transactions." *Id.*

The Commission's interpretation is reasonable. *See American Train Dispatchers Ass'n v ICC*, 54 F 3d 842, 847-48 (D.C.Cir.1995) (holding that the ICC's interpretation of *New York Dock* rules is entitled to substantial deference by a reviewing court). Under the Commission's interpretation, "rights, privileges and benefits" are protected absolutely, while other employee interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue sacrifice of employee interests. In our view, this is exactly what was intended by Congress.

In this case, the only contested changes to the CBAs are seniority provisions covering the previously separate regions of rail service. When pressed at oral argument, the unions' counsel was forced to acknowledge that employees will lose no so-called " fringe benefits" by virtue of CSXT's proposed changes to the CBAs. Thus, the Commission committed no error in holding that CSXT's proposed changes do not undermine protected " rights, privileges, and benefits."

B. Necessity

[3] We next turn to the question whether CSXT's proposed changes to the seniority rosters were *necessary* to effectuate an ICC-approved transaction. The unions contend that the Commission erred in finding a nexus. We disagree.

1. Nexus Between Changes Sought and ICC-Approved Transaction

It is undisputed that the Commission has, through a series of decisions, approved CSXT's proposed consolidation of the Chessie and Seaboard subsidiaries as being in the public interest. *See CSX Control*, 363 I.C.C. at 521. Petitioners, however, contend that the Commission erred by finding that there is a nexus between CSXT's proposed changes to the seniority rosters and the ICC-approved transaction. They argue simply that the passage of time between the ICC approval in *CSX Control* and the proposal for changes to the seniority rosters has rendered *1431 **402 the two events unrelated. This argument is meritless.

The record clearly supports the Commission's affirmance of the arbitrator's factual finding that the proposed changes are linked to an approved transaction. As the Commission noted, CSXT has consolidated its operations gradually, often waiting until corporate entities were merged. The Chessie and Seaboard Coast subsidiaries were not fully merged until 1992. On this record, we are satisfied that the passage of time does not diminish a causal connection. *See CSX Corp.-Control-Chessie Sys., Inc. and Seaboard Coast Line Indus.*, 8 I.C.C.2d 715, 724 n. 14 (1992), *aff'd sub nom. ATDA*, 26

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F.3d at 1157

2. Transportation Benefit

In *Executives,* we held that, in addition to finding a nexus between the proposed changes and an ICC-approved transaction, "to satisfy the 'necessity' predicate for overriding a CBA, the ICC must find that the underlying transaction yields a transportation benefit to the public, 'not merely [a] transfer [of] wealth from employees to their employer.' 987 F 2d at 815 In other words, the benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain." *ATDA,* 26 F.3d at 1164 (quoting *Executives*).

CSXT argued, and the ICC accepted, that a consolidation of seniority rosters was necessary to effectuate the merger of the rail lines. This is both obvious on its face and was demonstrated by CSXT. First, there is little point in consolidating railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation. Second, CSXT demonstrated that changing crews at previous territorial boundaries of the former railroads, as would be required with separate seniority rosters, would increase costs and slow down transit times Improvements in efficiency generated by a consolidated seniority roster will reduce CSXT's cost of service, resulting in reduced rates to shippers and ultimately to consumers The unions offered no evidence to the arbitrator or Commission to challenge CSXT's contentions of improved efficiency. Indeed, at oral argument, the unions' counsel conceded that these efficiencies are not open to dispute. In short, the record supports the Commission's finding that CSXT's proposed changes to the CBAs are necessary to effectuate the ICC-approved transaction.

III. Conclusion

For the foregoing reasons, the petition for review is denied.

C A D.C ,1997.
United Transp. Union v. Surface Transp. Bd.
108 F.3d 1425, 154 L R.R.M. (BNA) 2818, 323 U S.App.D.C 396, 133 Lab.Cas. P 11,815

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CONRAIL-IAM&AW
NY DOCK (MGA)

ARBITRATION BOARD
ESTABLISHED PURSUANT TO ARTICLE I, SECTION 4
OF THE NEW YORK DOCK PROTECTIVE CONDITIONS
AS IMPOSED BY THE INTERSTATE COMMERCE COMMISSION
IN FINANCE DOCKET NO. 31875

In the Matter of an Arbitration between

CONSOLIDATED RAIL CORPORATION
AND MONONGAHELA RAILWAY COMPANY

and

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS

FINDINGS & AWARD

QUESTIONS AT ISSUE:

1. Does the implementing agreement proposed by the Carriers meet the criteria set forth in Article 1, Section 4, of the New York Dock conditions in effecting the coordination of work performed by employees represented by the International Association of Machinists and Aerospace Workers on the Monongahela Railway Company with that performed on Consolidated Rail Corporation in connection with the merger authorized by the Interstate Commerce Commission in Finance Docket No. 31875?

2. If the answer to 1 is "No," what implementing agreement is appropriate?

BACKGROUND:

On October 10, 1991, the Interstate Commerce Commission (the ICC or Commission) in Finance Docket No. 31875 approved the merger of the Monongahela Railway Company (the MGA) into the Consolidated Rail Corporation (Conrail) (collectively, the Carrier). The Commission found the Carrier proposal to be "a minor transaction."

In its decision, the Commission stated the following as concerns the increased efficiencies to be accomplished by merger of the MGA into Conrail:

"MGA handles almost exclusively coal traffic. It operates a 162-mile line in West Virginia and southwestern Pennsylvania, consisting of two branches named West Division and East Division that meet at Brownsville, PA. The West Division extends west from Brownsville across the Monongahela River to West Brownsville and then generally southwest 55 miles to Blackville, WV. The

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Carrier's Ex MM, Page 1.

East Division, extends from Brownsville, south along the Monongahela River, and terminates at Fairview, a length of 79 miles.

* * * * * * *

The merger is intended to increase efficiencies between MGA and Conrail and thus to improve the combined system's ability to compete with NS and CSXT. The operating plan calls for: (1) removing the current MGA-Conrail interchange at West Brownsville on traffic to/from Conrail and moving the crew change point to Waynesburg to maximize the road train mileage; (2) consolidating maintenance-of-way and clerical functions; (3) centralizing the train and crew dispatching functions; (4) modernizing the MGA's maintenance of way equipment; and (5) constructing or rehabilitating certain rail line to improve capacity and speed operations. Applicants contend that these economies and efficiencies will enable Conrail to quote more competitive rates allowing more MGA-origin coal to be mined and sold.

* * * * * * *

MGA is essentially a coal carrier. In 1989 and 1990, 99 percent of MGA's traffic was coal. Of that, more than 80 percent was interchanged with Conrail in 1989. In 1990, 83 percent was interchanged with Conrail. Of the remaining 17 percent, 16 percent was interchanged with PLE and 1 percent with CSXT."

The Commission, in addressing Labor Issues related to the merger, declared that the conditions for protection of railroad employees described in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60, (1979), aff'd sub nom. New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979) (the New York Dock conditions), were appropriate to protect employees affected by this transaction "in the absence of need for greater protection, which is not sought or shown on this record."

The Carrier, on September 9, 1992, following informal discussion about the merger with representatives of the International Association of Machinists and Aerospace Workers (the IAM&AW), gave such representatives, for their review, advance copy of a notice which it said it intended to post pursuant to Section 4 of Article I of the New York Dock conditions. At the same time, the Carrier forwarded to the IAM&AW copy of what it called "a standard proposed implementing agreement."

On September 15 and on September 18, 1992, representatives for the IAM&AW and Conrail discussed in telephone conversations the content of the Carrier notice and the implementing agreement and exceptions which the IAM&AW representatives took to such matters.

Thereafter, on September 23, 1992, the Carrier gave formal written notice of the intended transaction. This notice reads:

> "Pursuant to the decision of the Interstate Commerce Commission in Finance Docket No. 31875, Consolidated Rail Corp. -- Merger -- Monongahela Railway Co., Monongahela Railway Company (MGA) will merge into Consolidated Rail Corporation (Conrail). Conrail will also assume MGA's position as lessee of the Waynesburg Southern Railway properties and of the CSXT's rail line between Catawba Junction, WV and Grant Town, WV.
>
> As a result of the Carrier's exercise of the above-described authority, it is intended to unify, coordinate and/or consolidate facilities used and operations and services presently performed separately by Conrail and MGA.
>
> This coordination and/or consolidation will result in the retention of one (1) machinist position working in the Locomotive Facilities headquartered at South Brownsville, PA, two machinist positions in the Locomotive Facilities will be abolished. The four (4) machinist positions in the Maintenance of Way Shops will be retained. It is anticipated that this coordination and/or consolidation of work will occur on or about January 1, 1993, or earlier if an implementing agreement is reached or referee decision rendered. It is also anticipated that subsequent to this date all remaining machinist positions at South Brownsville, PA will be relocated to Waynesburg, PA.
>
> It is intended that all MGA employees represented by the International Association of Machinists and Aerospace Workers will, on the effective date of the unification, coordination and/or consolidation, be integrated into the Conrail-IAM Seniority District '0012A' roster with a Prior RR code 'MGA' and a Prior Roster code '0001', and that such employees will be available to perform service on a coordinated basis subject to applicable Conrail agreements.
>
> The I.C.C. order provides employee protection in accordance with the conditions for the protection of employees embodied in New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), and these conditions will be provided. This notice is served pursuant to Article I, Section 4 of those conditions."

The parties met on October 15 and 16, 1992; they exchanged written proposals, but they were unable to reach mutual agreement on an implementing agreement. Joint meetings and/or telephone con-

ferences were subsequently held between the parties on November 6, 1992, January 5, 6, 11, and 13, 1993.

On January 27, 1993 the Carrier confirmed in a letter to the representative for the IAM&AW that it was "unwilling to accede to the Organization's demands and it was clear that the parties were at an impasse over their efforts to reach an implementing agreement." The Carrier advised that it was thereby withdrawing "the proposed side letters and all oral proposals previously offered in an effort to reach a mutually accommodative implementing agreement."

In its January 27, 1993 letter the Carrier proposed adoption of an implementing agreement which it attached to such letter; it announced its intent to submit the above stated Question at Issue to final and binding arbitration; and, it named Jeffrey H. Burton as its representative in the selection of a neutral referee.

On January 31, 1993 the representative for the IAM&AW responded to the Carrier letter, stating in part the following:

> "Please be advised, it is the Machinists position, that the Carrier's invoking the arbitration process at this time is premature and improper, as proper negotiations as required could not and cannot be conducted until the Carrier provides a full and adequate notice of the true proposed changes to be affected by the transaction.
>
> Therefore, I respectfully request that the Carrier provide a complete, full, and adequate notice to the Machinists. If the Carrier will provide the required notice and its representatives engage in good faith negotiations, I believe it is possible to reach an agreement that will be mutually beneficial and satisfactory to all concerned, without the need of arbitration."

In a February 23, 1993 five-page letter to the IAM&AW, the Carrier set forth why it believed a proper notice had been served; it recalled discussions which had taken place at past informal and formal meetings; and, it offered why it believed the parties were at an impasse. In this latter regard, the Carrier said:

> "It is the Carrier's position, as the foregoing so clearly indicates, that they have fulfilled the requirements of New York Dock, have negotiated in good faith, and indeed have attempted to meet the employees' concerns through offers to establish new positions and to supply information concerning prior earnings of IAM represented employees. Notwithstanding this, the Organization has not yielded in its position concerning precertification and now insists negotiations should continue.

It is quite clear that the parties are at an impasse over their attempts to reach an implementing agreement and that New York Dock requires that the parties resolve this dispute through arbitration. The Carriers further take the position that any dispute over the adequacy of the notice is referrable to the Arbitrator under Article I, Section 4.

Mr. Burton will call you shortly in an attempt to reach agreement on a neutral for arbitration."

On March 8, 1993 the IAM&AW, in a four-page letter, set forth why it was taking issue with several of the Carrier's past and current contentions and why it believed that the IAM&AW proposal should be the implementing agreement. In closing, the Organization said "if you are unable to give serious consideration to our positions and cannot meet most of the conditions required to reach an Agreement" that it would and did submit the names of arbitrators for consideration as a neutral member "to adjudicate our dispute."

The parties jointly selected Robert E. Peterson to chair the Arbitration Board.

The parties were requested to and did provide pre-hearing briefs to the Arbitration Board. Hearings in this matter were held in Philadelphia, PA on May 4, 1993. At such hearings the parties stipulated to the issue in dispute being that which appears above as the Question at Issue. Further, at such hearings both parties presented oral and rebuttal argument and introduced additional evidentiary documents.

POSITION OF THE CARRIER:

The Carrier asserts that its notice and the terms of its proposed implementing agreement meet all the necessary requirements of the New York Dock conditions.

In its brief, the Carrier described the implementing agreement it has proposed to basically provide as follows:

"1) The Conrail/IAM schedule agreement, including the union shop agreement, will be applicable to all former MGA employees. All MGA/IAM agreements will be terminated.

2) Employees holding seniority on the MGA/IAM seniority rosters will be dovetailed into the Conrail/IAM seniority district roster (for the adjacent and larger Pittsburgh Division) the Conrail-IAM seniority district '0012A' will be expanded to encompass the former territory of the MGA. Former MGA Machinists will hold

'prior rights' to Machinists' positions headquartered on the former MGA territory.

3) Former MGA employees will be credited by Conrail with their prior continuous MGA service and qualifying years, for the purposes of vacation, personal leave and other benefits granted on the basis of qualifying years of service.

4) An employee who is affected by the transaction may request an appropriate form to request a test period average and a displacement or dismissal allowance. Any claim for such protection must be made within 60 days of the adverse effect.

5) An employee who is deprived of employment and unable to secure a position may be offered a position in the Machinists craft at any location. When such offer is made, the employee at his option shall select to accept the offer, resign and accept a termination allowance, or be furloughed without protection.

6) Any dismissal allowance shall be reduced by outside earnings.

7) The implementing agreement will become effective upon the giving of five (5) days notice to the appropriate General Chairman of the IAM."

The Carrier says that a comparison of the proposed implementing agreement which it has submitted for the IAM&AW "is, in most respects, identical to the several agreements that have been voluntarily adopted by other crafts involved in the merger of the MGA into Conrail." In this respect, the Carrier submitted into evidence copy of implementing agreements governing other MGA employees in both the non-operating crafts (Electricians; Sheet Metal Workers; Firemen & Oilers; Train Dispatchers; and, Maintenance of Way Employees) and the operating crafts (Engineers; Conductors; and, Trainmen).

The Carrier also offers that in disputes that were settled by arbitrated awards under Section 4 of the New York Dock conditions, one involving Engineers represented by the UTU(E), and the second arbitrated award involving Clerks represented by the TCU, that in each such instance it was determined that the Conrail collective bargaining agreement would be applied and the MGA agreements will be abrogated.

Further, the Carrier submits that in every negotiated agreement or arbitration award, the former MGA territory was incorporated into the adjacent Conrail Pittsburgh Division Seniority territory and the MGA seniority roster was merged into the Conrail Pittsburgh area seniority roster.

In response to the implementing agreement which is proposed by the IAM&AW, the Carrier says that although there are a few areas of basic agreement with such proposal, that there are several areas where there is fundamental disagreement. In this latter regard, the Carrier says the implementing agreement proposed by the IAM&AW goes beyond the requirements of the New York Dock conditions and also beyond the authority of this arbitration committee under Section 4 of Article I of the New York Dock conditions.

In its ex parte brief to this Arbitration Board, the Carrier provided the following description of the work currently being performed and to be performed following the full merger of the MGA into Conrail:

> "IAM-represented employees perform work in the Locomotive Shops and the Maintenance of Way Shops, both located in the same building in South Brownsville, PA. The locomotive shop employs three machinists; one lead machinist and locomotive inspector; one air brake inspector; and one machinist working in the air brake room/machine shop. These positions perform the normal machinist work associated with locomotive maintenance and repair. This work includes:
>
> > Service and Inspection (FRA) of Locomotives on Inspection Track. Adding oil, changing brake shoes.
> > Machine Shop work - Lathe, Milling, Saw Cutting Metal, Threading Stock.
> > All heavy and running repairs on Locomotives.
> > Maintenance of MofW Equipment and Vehicles.
> > Maintenance and rebuilding of air equipment - Locomotives.
> > Locomotive (FRA) Test Work.
>
> Following full merger and integration of the MGA into Conrail, all MGA locomotives will be integrated into the Conrail locomotive fleet. As such, all scheduled and heavy locomotive maintenance and repair work formerly performed by MGA employees will be performed at the Conrail Locomotive Shop at Conway, PA (about 25 miles from Pittsburgh and 94 miles from South Brownsville). Some heavy locomotive repair work will also be performed at the Conrail facilities at Altoona, PA.
>
> Once full coordination of the locomotive work is achieved, there will only be sufficient work to retain one Machinist position performing work on locomotives on the former MGA property. This position will primarily perform light maintenance and running repairs on locomotives in the Conrail fleet operating on the former MGA

territory.

Four machinist positions currently perform the work of maintenance and repair of maintenance of way equipment on the MGA and work in the Engineering Department, Maintenance of Way Shops at Brownsville. These positions are: one gang leader, two machine inspectors and one assistant machine inspector. These positions perform the following work:

> Electric and gas welding and cutting, repair of gasoline and diesel engines, hydraulic pumps, motors, etc., on all types of M. of W. Equipment. Repair of company vehicles with or without hyrail wheels. Rebuilding and installation of rail lubricators. Performance of road work.

Following the merger and coordination of work, Conrail plans on keeping all four IAM positions in the MW Department working on the former MGA territory. These employees will perform repair and maintenance duties connected with running repairs of MW equipment in the field. Major repairs or overhaul of MW machinery such as tampers, ballast regulators, tie removers, and spikers, among others, will be performed when necessary at the Conrail system MW facility at Canton, OH. This shop performs all such major repairs and rehabilitation of MW machinery used throughout the Conrail system."

Based upon the foregoing contentions the Carrier asserts that the procedural objections raised by the IAM&AW are without merit and that the proposed implementing agreement which attached to its letter of January 27, 1993 should be selected by the Arbitration Board in resolution of the Question at Issue.

POSITION OF THE IAM&AW:

The IAM&AW maintains that the notice of the intended transaction which the Carrier served did not fully meet the requirements of Section 4 of Article I of the New York Dock conditions. It bases this contention upon the following stated objections:

> "1. Notice did not contain a full and adequate statement of the proposed changes to be affected by such transaction.
>
> 2. Notice did not include the number of employees of each class or craft to be affected the intended changes.
>
> 3. Notice did not state the specific dates when the transaction would occur.

4. Notice did not specify what work would be moved and where.

5. Notice did not specify where the affected employees would be required to move to."

The IAM&AW offered a summary listing of what it calls "the needed and requested information that the Carrier refused to furnish the Organization in connection with this transaction." Basically, it said it should be provided the following information:

1. Estimated number of employees of each shop craft/class that will be affected by the intended change.

2. Drawings, prints, pictures, or any type of information concerning the new facility to be built at Waynesburg, PA.

3. A list of the equipment that the employees represented by the IAM&AW repair, rebuild, or rehabilitate.

4. A list of the shop equipment that the employees represented by the IAM&AW repair, rebuild, or rehabilitate.

5. A list of all the shop equipment contemplated on being moved from South Brownsville, PA to Waynesburg, PA.

Accordingly, the IAM&AW maintains that the notice which the Carrier served is procedurally defective and the arbitration process premature in the assertion that "proper negotiations as required could not and cannot be conducted until the Carrier provides a full and adequate notice of the true proposed changes to be affected by the transaction."

Additionally, the IAM&AW contends that the Carrier has failed to "engage in good faith negotiations and by doing so, has proposed an agreement to the Organization that does not adequately address the concerns, needs and rights of the employees and most certainly does not meet the requirements of New York Dock." In this same respect, the IAM&AW says the implementing agreement which has been proposed by the Carrier is inferior to agreements offered other crafts on the NGA.

In its ex parte brief to this Arbitration Board, the IAM&AW offered the following conclusionary statement of its position:

"In conclusion, the Organization only desires a fair and equitable Agreement for the Machinists employed by the NGA, that would protect their rights and entitlements and preserve the work currently performed by them. We

simply desire a Test Period Average for all the MGA Machinists, with no strings attached. We want to establish a separate seniority district for the MGA employees, containing rosters for Maintenance of Way and Maintenance of Equipment and for the four (4) Maintenance of Way Machinists to be allowed to maintain and perform all the work currently performed on the MGA. Also, that the (1) Maintenance of Equipment Machinist be allowed to maintain and perform all the locomotive work currently performed on the MGA that is not transferred to another location. Further, if the work is transferred to Canton, OH or other Conrail location, we want the Machinists to have the right to follow their work, with all protective benefits and to be able to dovetail their seniority. We do not want Machinists work assigned to another Craft that is not entitled to perform same.

In the event that the Carrier transfers running repair locomotive work to Conway and heavy repair to Altoona, we want the Maintenance of Equipment Machinists to have the right to follow their work, with all protective benefits and to be able to dovetail their seniority. In addition, we desire that the work on other equipment and highway vehicles be identified and retained for the former MGA Machinists and that the IAM be advised where the vehicles and equipment are being transferred to if not retained on the former MGA property and that the Machinists be allowed to follow the work if proper.

We further desire that all MGA Machinists positions at Brownsville be abolished and new positions be established and advertised for the respective locations to where the work is being transferred, including Waynesburg. Also we desire that the Machinists required to transfer to another work location be given a five (5) day moving allowance and a lace curtain allowance similar to what the Carrier provided in the Carmen's Agreement.

The Organization has attached a proposed Implementing Agreement which we firmly believe is fair and suitable, and in conformity with the provisions of the New York Dock conditions established for handling of this transaction."

Accordingly, the IAM&AW says that if the Carrier notice is not found to be premature that the implementing agreement proposed by the Carrier should be rejected, and that the implementing agreement which the IAM&AW has offered into record should be adopted in a resolution of the dispute.

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Carrier's Ex MM ,Page 10 .

FINDINGS AND OPINION OF THE BOARD:

The Board will first address the procedural issues raised by the IAM&AW, i.e., (1) the validity of the Carrier notice; and, (2) the question of whether the impasse declared by the Carrier was premature.

The Notice:

Section 4 of Article I of the New York Dock conditions calls for the posting and serving of a written notice which shall contain "a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes."

The Carrier notice was not inconsistent with the requirements of Section 4. It was timely served and posted; it identified the decision issued by the ICC for merger of the MGA into Conrail; it announced that the conditions of protection of employees as embodied in the New York Dock conditions will be provided; it noted that "it is intended to unify, coordinate and/or consolidate facilities used an operations and services performed separately by Conrail and the MGA;" it gave a general description of the affect that the merger would have on employees; it identified the positions and departments where those positions work on the MGA which were to be retained or abolished; it gave an estimate of the number of employees to be affected; and, it indicated the expected coordination and/or consolidation of work would occur, "on or about January 1, 1993, or earlier if an implementing agreement is reached or referee decision rendered."

Although the Carrier subsequently found reason to change some aspects of the notice, that circumstance does not support a contention that the Carrier had not essentially met the notification requirements of the New York Dock conditions. Section 4 does not define what shall constitute a perfect notice. Rather, it seems to call for the serving of a notice that is sufficiently composed so as to alert both employees and their labor representatives to the intended transaction and thereby trigger the consummation of any necessary implementing agreement.

Further, nothing in the Section 4 notice requirements or other provisions of the New York Dock conditions appear to mandate the extent of information sought by the IAM&AW, namely, drawings, prints, pictures, and other information concerning a new facility which is to be built; a list of equipment that employees represented by the IAM&AW repair, rebuild or rehabilitate; or, a list of all shop equipment contemplated on being moved by the Carrier from one location to another location.

The above observations of the Arbitration Board notwithstanding, it would seem that those meetings and conferences which preceded and followed the serving of the Carrier notice, as well as the

implementing agreement provisions thereafter proposed by the IAM&AW, clearly demonstrate an overall awareness on the part of the IAM&AW representatives of the intentions of the Carrier as concerns the merger of employees, work, and facilities of the NGA into Conrail.

Accordingly, the IAM&AW protest that the notice was defective and did not meet the requirements of Section 4 of Article I of the New York Dock conditions is found to be without merit.

The Impasse and Arbitration:

The parties engaged in a number of informal and formal meetings and telephone conversations regarding the notice as well as the terms of an implementing agreement. That both parties insisted on remaining firm on a number of issues and were thereby not able to reach mutual accord is unfortunate. However, that the parties have not been able to amicably resolve their differences does not support a finding that there was a lack of good faith bargaining or that they had not in fact reached an impasse in negotiation of an implementing agreement.

Section 4 of Article I of the New York Dock conditions intends there be a speedy resolution of disputes involving an implementing agreement. It calls for "negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this Appendix [III]" to begin within five days of the receipt of a notice. And, Section 4 states that if at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment to arbitration.

As indicated above, informal discussions were conducted between the parties before the notice was formally served on September 23, 1992. The parties met on October 15 and 16, 1992, and exchanged written proposals. Subsequent meetings and telephone conferences were held on November 6, 1992 and January 5, 6, 11, and 13, 1993. It was not until some two weeks later, on January 27, 1993, that the Carrier declared an impasse and intent to submit the dispute to arbitration.

It being apparent the parties engaged in or had opportunity of negotiation for almost twice the period of time prescribed by the New York Dock conditions before one party, the Carrier, declared an impasse, there is no basis to hold there was a violation of Section 4 requirements of the New York Dock conditions that there be a 30-day period for negotiation of an implementing agreement before the declaration of an impasse and resort to arbitration.

The Arbitration Board thus finds no reason to conclude that the Carrier was premature in declaring an impasse and invoking arbitration for the resolution of the dispute.

Turning now to the merits of arguments advanced by both parties

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Carrier's Ex MM, Page 12.

as to the terms of an implementing agreement.

Schedule of Rules Agreement:

The parties are basically in agreement that the current Conrail-IAM&AW Schedule of Rules Agreement, effective May 1, 1979, be the surviving rules agreement when the MGA is merged into Conrail. However, the IAM&AW asks that such rules additionally include or provide as follows:

1. A continuation of language contained in a 1988 MGA letter agreement concerning training and tools.

2. A listing of all MW equipment presently maintained by IAM&AW employees and a list of shop equipment to be transferred to Waynesburg and agreement that those employees would continue to maintain the equipment in the future.

3. That a former Pennsylvania Railroad agreement concerning highway vehicle maintenance applicable to portions of Conrail territory (former PRR property) cover the MGA territory.

Given the few number of employees involved i.e., seven, and the rather limited geographical confines of the MGA as compared to the rather extensive size of the Conrail labor force and the extent of its system properties, both parties have wisely chosen to be in general agreement that the Conrail--IAM&AW Schedule of Rules Agreement be applicable when the former MGA employees are merged into Conrail, albeit, as indicated above, the IAM&AW would like to amend that Agreement to preserve certain MGA rules.

In the opinion of the Arbitration Board, to modify or amend the Conrail-IAM&AW Schedule of Rules Agreement to extend or preserve certain rights to former MGA employees would be to debase the principles of the basic understanding as to which agreement would survive the merger, and tend to impede, rather than foster the economies and efficiencies of the merger, even if it was to be held, which it is not, that there was merit to the aforementioned desires of the IAM&AW.

Seniority and Seniority Rosters:

Three of the total of seven active employees represented by the IAM&AW on the MGA work in the Locomotive Shop. The four other employees work in the Maintenance of Way and Signal Department. The employees are currently on two separate seniority rosters: (1) Machinists Seniority Roster No. 1, South Brownsville Locomotive Facilities, and (2) Machinists Seniority Roster No. 2, South Brownsville Maintenance of Way Shops.

The IAM&AW asks that on the date the implementing agreement is

made effective that: (1) a new Conrail-IAM&AW Seniority District Roster be established to encompass the former territory of the MGA, including South Brownsville and Waynesburg, PA; (2) two new rosters be created at Waynesburg, one for shop work and the other for maintenance of way work; (3) employees following their work and accepting transfers to other locations on Conrail where work on former MGA locomotives, roadway machines, equipment, etc., has been transferred have their names and MGA seniority dates dovetailed into the existing appropriate Conrail-IAM&AW Seniority District Roster; and, (4) in the event that employees accept transfer to a Conrail location where no MGA work has been transferred they shall have their name placed at the bottom of the appropriate Conrail-IAM&AW Seniority District Roster.

The IAM&AW also asks that the implementing agreement provide that employees who transfer to other Conrail-IAM Seniority Districts will retain seniority at South Brownsville and be subject to recall to a permanent vacancy known to be of at least 60 days duration, with the Carrier paying reasonable expenses in connection with an employee accepting recall and returning to South Brownsville.

The Carrier, on the other hand, proposes that all MGA employees represented by the IAM&AW be dovetailed into the Conrail-IAM&AW Seniority District "0012A" roster with a Prior RR Code "MGA" and a Prior Roster code "0001", and that such employees be available to perform service on a coordinated basis subject to applicable Conrail agreements. The Carrier has also proposed that on the effective date of the implementing agreement that Conrail-IAM&AW Seniority District "0012A" be expanded to encompass the former territory of the MGA.

In this latter regard the Carrier has stated that those IAM&AW Machinists who are designated to retain prior rights will have prior rights to all machinists positions subsequently advertised on the former MGA territory.

The Carrier asserts that its seniority proposal provides the MGA employees full integration of their seniority on the Pittsburgh area seniority roster, and that this is appropriate since it says the preponderance of locomotive work formerly done at Brownsville by IAM&AW represented employees will be performed at the Conway Diesel Shop because the MGA locomotive fleet will be integrated into the Conrail system locomotive fleet, while some unquantified amount of heavy repair work will be done at Altoona, PA.

Further, the Carrier says that the vast preponderance of the work on maintenance of way machinery will continue to be performed on the former MGA property, and that its proposal to assign MGA prior rights to positions headquartered on the former MGA assures that machinists who had performed the work will have first rights to continue to perform the work on the former MGA territory.

In support of the logic of its seniority proposal, the Carrier points up that in every implementing agreement reached by mutual agreement or under Section 4 arbitration, the appropriate Conrail Pittsburgh area seniority district has been expanded to encompass the former MGA territory, and that in no instance has the MGA been kept a separate seniority district as here requested by the IAM&AW.

The Carrier further submits, and the Arbitration Board believes rightly so, that the advertisement and awarding of positions should be basically pursuant to the applicable rules agreement, or, as here, the Conrail-IAM&AW Schedule of Rules Agreement. In this respect, it is noted that Section 5 of Article I of the New York Dock conditions prescribes that to eligible for a displacement allowance there must be "the normal exercise of seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced."

Accordingly, in consideration of the record and arguments of the parties, the Arbitration Board finds the Carrier proposal for the expansion of the Pittsburgh Seniority District to include the former MGA territory to be meritorious and appropriate for the protection of seniority rights and the assignment of employees made necessary by the merger of the MGA into Conrail.

The Test Period Average:

A test period average (TPA) is a meaningful measurement of past earnings of a displaced employee in the establishment of an affected employee's job protection allowance. It permits a determination to be made as to the extent, if any, that a displacement allowance is payable each month during the term of a protective period as a consequence of the employee having been adversely affected as a direct result of the transaction.

A TPA is not, however, something to which an employee is entitled account an indirect affect of the transaction, or on the basis of speculative belief that the transaction may be cause for reduced compensation or loss of a job at a future date.

For it to be concluded, as the IAM&AW asks, that a TPA be given to all MGA Machinists, "with no strings attached," would require this Arbitration Board to go outside the meaning and intent of the New York Dock conditions and give blanket certification to all employees. Such action would be in disregard of those provisions of the New York Dock conditions which condition entitlement to either a dismissal or displacement allowance on a showing that the transaction has had an adverse affect on an employee, or, as set forth in such conditions, that as a "result of a transaction" the affected employee "is deprived of employment" or is "placed in a worse position with respect to his compensation and rules governing his working conditions."

In this same respect, it would seem to the Arbitration Board that the certification of an employee solely on the basis of the implementation of a transaction, rather than the certification and construction of a TPA at the time the employee is in fact adversely affected, would be to prematurely commence the tolling of the protective period during which the affected employee would be entitled to a job protection or displacement allowance.

That the Carrier, in an implementing agreement with the Brotherhood of Maintenance of Way Employees, was agreeable to providing that employees on the MGA who are in active service on a date certain "will be certified as a 'Displaced Employee' adversely affected by the transaction" and "will be provided their test period averages," must be viewed in the light of that understanding being one of a voluntary nature in settlement of the merger notice and other pending labor matters, and also stipulating the following:

> "It is further agreed that notwithstanding the certification provided for above, any such employee adversely affected due to any of the following causes will not be entitled to receive either a dismissal allowance or a displacement allowance as a result thereof:
>
> o Employee's own choice (e.g. voluntarily bidding to a lower rated position).
>
> o Return of other (senior) employees from leave of absence, disability, injury or vacation.
>
> o Medical disqualification of the Claimant.
>
> o Emergency or work stoppage.
>
> o External statutory changes such as amendments to the Hours of Service Law or FRA regulations."

In any event, aside from the above understanding between the Carrier and the BMWE being one of a voluntary or collective bargaining nature, it is not, as here sought by the IAM&AW, the providing of a TPA "with no strings attached."

Arbitrator William E. Fredenberger, Jr. in a decision which he issued under date of January 12, 1983 in a dispute between the Brotherhood of Railway Carmen and the Baltimore and Ohio Railroad/Louisville and Nashville Railroad involving what shall be contained in an arbitrated implementing agreement, in holding that issues concerning displacement allowances were not properly justiciable in the proceeding before him, said:

> "The question of whether the Carriers are obliged to furnish test period earnings as well as the question of

whether a particular employee meets the definition of a displaced employee are dependent upon individual circumstances. These questions are properly justiciable in a proceeding pursuant to Article I, Section 11 of the New York Dock Conditions rather than this [Section 4] proceeding."

In the light of the aforementioned considerations, and in keeping with the findings of many past boards, such as in the case before Arbitrator Fredenberger, this Arbitration Board finds no basis to conclude that an arbitrated implementing agreement may properly mandate a TPA provision in the manner requested by the IAM&AW.

Moving Allowance:

The IAM&AW initially requested that, in addition to those moving benefits contained in Article I, Section 9, of the New York Dock conditions, "employees electing to transfer to a new point of employment requiring a change of residence as a result of jobs offers" be provided "an allowance for any and all other expenses" in accordance with a schedule that would call for payment of $400 allowance on the date of transfer; a second $400 allowance at the end of 120 days of compensated work; and a third $400 allowance at the end of 190 days of compensated work. The foregoing notwithstanding, in its presentation to the Arbitration Board, the IAM&AW proposed that the machinists required to transfer be given a "lace curtain" allowance similar to that contained in the implementing agreement the Carrier entered into with the Carmen's Organization, i.e., a $500 allowance.

The IAM&AW also asks that the implementing agreement stipulate reimbursement of wage losses be five (5) days rather than the three (3) day reimbursement which is prescribed in the New York Dock conditions.

It is beyond the jurisdiction of an arbitration board, such as this, to award an increase in the prescribed moving allowance, absent the authority of the parties to make a determination on such a matter.

Section 9 of the New York Dock conditions specifically says that the affected employee shall be reimbursed for an actual wage loss "not to exceed 3 working days." No mention is made in those conditions of "other expenses" or a schedule of allowances for other expenses.

This finding notwithstanding, the Arbitration Board would be remiss if it did not say, as Arbitrator Scheinman said in a dispute involving this Carrier and the TCIU, and wherein the Carrier had agreed to permit the arbitrator to make a determination about moving allowances: "We believe it inequitable to provide a different level of benefits to former MGA employees who must move... as a result of this transaction."

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Carrier's Ex MM ,Page 17

The Arbitrator would hope that in final resolution of the instant dispute that the Carrier would reconsider its position and grant employees represented by the IAM&AW the same level of benefits it was willing to provide in pre-arbitration meetings and as is contained in certain letters of agreement with the other craft organizations, i.e., five (5) working days off with pay and a $500 transfer or lace curtain allowance.

Current Work Continuation:

The IAM&AW asks that the implementing agreement provide the four Maintenance of Way Machinists "be allowed to maintain and perform all the work currently performed on the NGA" and the one Maintenance of Equipment Machinist "be allowed to maintain and perform all the locomotive work currently performed on the NGA that is not transferred to another location." Further, it asks that if the work is transferred to Canton, Ohio or other Conrail locations, that the Machinists it represents have the right to follow such work.

The IAM&AW also desires that work on other equipment and highway vehicles be identified and retained for the former NGA Machinists and that it be advised where the vehicles and equipment are being transferred to if not retained on the former NGA property, "and that the Machinists be allowed to follow the work if proper."

Except as will be discussed below, this Arbitration Board finds no reason to hold that a newly created position at a location to which work formerly performed on the NGA may be transferred should be awarded to a former NGA employee on the basis that work attached to the creation of such position will be exclusively work of the former NGA. Certainly, when work of the nature here involved on the NGA is transferred and integrated into the Conrail system in implementation of the merger it will be difficult, if not impossible, to distinguish what work had previously been work restricted to or performed by former NGA employees.

The Conrail--IAM&AW Schedule of Rules Agreement, which, as stated above, is to be adopted by the parties as part of the implementing agreement, prescribes the manner in which new positions and vacancies will be advertised, posted, and announcements made as to the name of the successful applicant after the close of the advertisement.

Provision is also made in such Agreement for the awarding of advertised positions or vacancies as concerns employees having prior right seniority in the craft and class in which the vacancy exists to be given first consideration, even if working out of their craft or class. Thus, it would seem that the IAM&AW concerns are without merit and that the applicable and current rules of the Conrail--IAM&AW Schedule of Rules Agreement should apply and prevail with respect to the advertisement and awarding of

positions which may arise out of application of the implementing agreement.

The exception to the above findings is that the Arbitration Board believes the implementing agreement should include that Side Letter of Understanding which the Carrier had initially proposed to the IAM&AW, but withdrew when it declared an impasse, or, namely, a letter dated October 16, 1992, and presented to this Board by the IAM&AW as Employee Exhibit No. 32, and which will be attached to this Arbitration Board decision and hereinafter be identified as Side Letter No. 1 to the Implementing Agreement. This side letter concerns the anticipated transfer of portions of work from the MGA to Altoona, PA, and the right of former MGA employees to be initially awarded a position created as a consequence of such action. It is also evident from the record that the same situation may well apply with respect to a transfer or work from the MGA to Conway, PA. Thus, this side letter will be considered as likewise applicable to any position which initially involves the transfer of portions of work from the former MGA to Conway, PA.

Accordingly, in study of the record and arguments of the parties, the Arbitration Board finds that the Implementing Agreement which the Carrier has proposed for adoption, namely, Exhibit 13 to its written presentation, and here attached as Attachment "A", meets the criteria set forth in Article 1, Section 4 of the New York Dock Conditions in effecting the coordination of work performed by employees represented by the IAM&AW on the MGA in a manner as authorized by the ICC. Therefore, the Arbitration Board finds that such document, together with the addition of previously mentioned Side Letter of Understanding No. 1, shall be held to constitute the appropriate Implementing Agreement for the merger of MGA employees represented by the IAM&AW into Conrail.

AWARD:

The Question at Issue is disposed of as set forth in the above Findings of the Arbitration Board.

Robert E. Peterson, Arbitrator

June 21, 1993

IAM

ATTACHMENT "A"
CONRAIL-IAM&AW
NY DOCK (MGA)

AGREEMENT MADE THIS DAY OF 1992, UNDER ARTICLE I, SECTION 4 OF THE NEW YORK DOCK CONDITIONS, BETWEEN THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND CONSOLIDATED RAIL CORPORATION AND THE MONONGAHELA RAILWAY COMPANY IN CONNECTION WITH THE MERGER OF THE MONONGAHELA RAILWAY COMPANY INTO CONRAIL PURSUANT TO INTERSTATE COMMERCE COMMISSION ORDER IN FINANCE DOCKET NO. 31875

Whereas the Interstate Commerce Commission in Finance Docket No. 31875 granted approval of the merger of the Monongahela Railway Company (hereinafter referred to as MGA) into Consolidated Rail Corporation (hereinafter referred to as Conrail) subject to "New York Dock" Labor Protective conditions and that the ICC further approved the assignment of leases of the MGA to Conrail; and

Whereas, the Carriers intend to effect the coordination of work performed by employees represented by the International Association of Machinists and Aerospace Workers in connection with the merger, including the movement of maintenance of equipment work to Waynesburg and Conway, PA.

IT IS AGREED:

1. On the effective date of this agreement, the Collective Bargaining Agreement effective May 1, 1979, as

EXHIBIT 1

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Carrier's Ex MM, Page 20

amended, between Conrail and the International Association of Machinists and Aerospace Workers, will be applicable to the former Monongahela Railway Company employees covered by this Agreement, and Monongahela Railway Company Agreements are terminated.

2. On the effective date of this Agreement, all MGA employees represented by the International Association of Machinists and Aerospace Workers will be dovetailed into the Conrail-IAM Seniority District "0012A" roster with a Prior RR code "MGA" and a Prior Roster code "0001", and that such employees will be available to perform service on a coordinated basis subject to applicable Conrail agreements. On the effective date of this Agreement Conrail-IAM Seniority District "0012A" will be expanded to encompass the former territory of the MGA.

3. Employees affected as a result of this transaction will be afforded the benefits prescribed by the ICC as set forth in the New York Dock conditions which are, by reference, incorporated herein and made a part hereof.

4. Any prior continuous service and qualifying years with the Monongahela Railway Company shall be credited for vacation, personal leave and other benefits which are granted on the basis of qualifying years of service.

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Carrier's Ex MM ,Page 21 .

5. An employee who is affected by the transaction and entitled to benefits under Section 5 or 6 of the New York Dock conditions may file a written request on the form provided, with the Manager-Labor Relations, Suite 201 Conrail Building, 424 Holiday Drive, Pittsburgh, PA 15220, for a statement of test period earnings for use in developing his or her displacement or dismissal allowance. A claim for protection must be presented on the form provided and must be submitted to Conrail's Manager-Labor Relations within sixty (60) days following the end of the month in which the adverse affect is claimed.

6. An employee who is deprived of employment as a Machinist as a result of this transaction may be offered a position as a Machinist at any location. Such employee shall be given thirty (30) days' written notice by certified mail (with copy to the General Chairman) of such offer and must elect in writing one of the following options prior to the expiration of the notice: (1) to accept the offer; (2) to resign from all service and accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May, 1936 (if a change in residence is required); or (3) to be furloughed without protection during the period of such furlough. In the event an employee fails to make such an election, he shall be considered to have exercised option 3. Employees accepting

a job offer that would under existing agreements require a change in residence will be eligible to receive the moving expenses provided under paragraph 3 of this Agreement.

7. The dismissal allowance of any employee shall be reduced to the extent of any earnings made by the employee outside of the employment of Conrail. Employees receiving a dismissal allowance must, upon request, provide documentation attesting to the amount of such outside earnings. Failure to provide such documentation upon request, or upon evidence of any fraudulent submission of claims, shall result in a suspension of benefits.

8. This Agreement will become effective upon five (5) days advance notice to the involved General Chairmen of the International Association of Machinists and Aerospace Workers, unless otherwise agreed, and constitutes the required implementing agreement and fulfills all other

requirements of Article I, Section 4 of the New York Dock Labor Protective Conditions imposed by ICC Finance Docket 31875.

Signed this _____ day of _____, 1992, at

FOR THE EMPLOYEES:

_____
General Chairman
International Association of
Machinists and Aerospace Workers

FOR CONSOLIDATED RAIL CORPORATION:

_____
Vice President-Labor Relati

APPROVED:

_____
International Association of
Machinists and Aerospace Workers

FOR THE MONONGAHELA RAILWAY COMPANY:

_____

SIDE LETTER NO. 1
CONRAIL-IAM&AW
NY DOCK (MGA)

----~~SIDE LETTER NO. 2~~---

October 16, 1992

Mr. Raymond J. McMullen
General Chairman
International Association of
Machinists and Aerospace Workers
RD #1, Box 756A
Altoona, PA 16601

Re: Monongahela Railway Company - Conrail Merger
ICC Finance Docket 31875

Dear Mr. McMullen:

This confirms the discussions held concerning the merger implementing agreement.

In our discussions and in the Notice previously provided the Carrier advised that IAM positions would be moved from Brownsville to Waynesbyurg concurrent with the coordination of MGA work with Conrail.

We further advised that we anticipate moving five of the seven current Machinists positions and abolishing two positions, as portions of the work now performed by those positions will be performed by Conrail forces ~~and~~ at the Altoona Shops.

We agree that concurrent with the coordination of work and the movement of IAM positions to Waynesburg, Carrier will establish new positions at Altoona equal to the number of positions permanently abolished on the MGA. Those positions will initially be advertised and filled on [illegible]. MGA prior rights basis. Former MGA employees awarded these positions will be entitled to moving expenses and benefits in accordance with Article I Sections 9 and 12 of New York Dock conditions. Employees following their work and accepting transfer in accordance with this Agreement shall have their names and MGA seniority dates dovetailed into the existing appropriate Conrail IAM Seniority District Roster, their names will be removed from the District IAM Roster.

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EMPLOYES EXHIBIT 32

Carrier's Ex MM, Page 25.

Please indicate your agreement by signing in . provided.

Sincerely,

/s/ R. E. Swert

R. E. Swert
Vice President-Labor Relations

I concur:

R. J. McMullen

JEB/mas
RJMSIDE2.JEB

EMPLOYES EXHIBIT 33

S.A.-0278
Carrier's Ex MM ,Page 26

ARBITRATION PURSUANT TO
ARTICLE I, SECTION 4, OF THE
NEW YORK DOCK CONDITIONS

* *
In the matter of arbitration between *
*
United Transportation Union and *
Brotherhood of Locomotive Engineers *
*
-and- *
*
CSX Transportation, Inc. *
* *

Background

CSX Transportation, Inc. (hereinafter referred to as CSXT or the Carrier) is a Class I railroad that has evolved from the merger and acquisition of some eleven (11) railroads and their subsidiaries pursuant to the authorization of the Interstate Commerce Commission (hereinafter referred to as the ICC). Since 1962, the Baltimore & Ohio Railroad (hereinafter referred to as the B&O) and the Chesapeake & Ohio Railroad (hereinafter referred to as the C&O) have been commonly controlled and managed. These railroads and some subsidiaries comprised the Chessie System, Inc. The Chessie System, Inc. also controlled the Western Maryland Railway Company (hereinafter referred to as the WM).

In 1980, the Chessie System, Inc. and the Seaboard Family Lines, Inc. were merged to form CSX Transportation, Inc. The ICC approved this merger in Finance Docket No. 28905. In this same Finance Docket, the ICC also authorized the CSX Corporation to control the Richmond, Fredericksburg & Potomac Railroad (hereinafter referred to as the RF&P) through stock ownership.

S.A.-0413
Carrier's Ex. NN, Page 1

In 1983, through a Notice of Exemption, the ICC authorized the B&O to operate the railroad properties of WM as part of the B&O system. (Finance Docket No. 30160). In 1987, the ICC issued another Notice of Exemption in Finance Docket No. 31033 merging the B&O into the C&O. As a result of this merger, the B&O ceased to exist as a separate corporate entity. In 1987, the ICC also authorized the merger of the C&O into CSX in Finance Docket No. 31106. In 1988, the ICC authorized the merger of the WM into CSXT (Finance Docket No. 31296). In 1992, the ICC authorized CSXT to operate the properties of the RF&P in the name and for the account of CSXT (Finance Docket No. 32020).

It should be noted that with the exception of the seminal 1980 merger between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc., all these other mergers were exempt from prior ICC approval. In all of these Finance Dockets, the ICC imposed the labor protective conditions set forth in New York Dock Railway-Control-Brooklyn Eastern District Terminal, 360 ICC 60, (1979) (hereinafter referred to as the New York Dock Conditions).

This arbitration under Article I, Section 4, of the New York Dock Conditions emanates from a January 10, 1994 notice that the Carrier served on four (4) United Transportation Union (UTU) General Committees of Adjustment and three (3) Brotherhood of Locomotive Engineers (BLE) General Committees of Adjustment. The Carrier claims that this notice was served in accordance with Article I, Section 4, of the New York Dock Conditions. The

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Carrier's Ex NN, Page 2.

Carrier contends that this New York Dock notice was served pursuant to ICC Finance Dockets 28905, 30160, 31033, 31106, 31296, 31954 and 32020.

The January 10, 1994, notice advised the affected UTU and BLE General Committees of Adjustment that CSXT intended to fully transfer, consolidate and merge the train operations and associated work force on the former WM, RF&P and a portion of the former C&O in the area between Philadelphia, PA., Richmond, VA., Charlottesville, VA., Lurgan, PA., Connellsville, PA., Huntington, W. VA. and Bergoo, W. VA. This proposed consolidation would include all terminals, mainlines, intersecting branches and subdivisions located in this territory between southern Pennsylvania and southern Virginia. This territory would be known as the Eastern B&O Consolidated District. It would encompass seven (7) existing seniority districts for train service employees and five (5) existing seniority districts for engine service employees.

The January 10, 1994, notice also advised the UTU and BLE General Committees of Adjustment that the aforementioned operations on the C&O, WM and RF&P would be merged into operations on the former Baltimore and Ohio Railroad and the affected train and engine service employees would be governed by the existing collective bargaining agreements on the former B&O applicable to train and engine service employees. Additionally, CSXT proposed that the working lists of the separate districts protecting service in this territory would be merged, including

establishment of common extra boards to protect service out of the respective supply points that would be maintained.

The notice outlined six (6) initial operational changes that the Carrier intended to make in order to facilitate the proposed transfer, consolidation and merger. However, CSXT subsequently withdrew its proposal requiring the Keystone Subdivision to protect certain service west of Cumberland. The Carrier suggested that a meeting be held on January 20, 1994, to commence negotiations for an implementing agreement pursuant to Article I, Section 4, of the New York Dock Conditions.

CSXT estimates that forty-five (45) train and engine positions would be abolished and forty-three (43) new positions would be created as a result of this consolidation. Some positions will be established at new locations. The Carrier asserts that no train or engine service employees will be furloughed as a result of the coordination. However, the Carrier's proposal will result in the closing of a number of supply points on the former C&O, B&O and WM. Reporting points would also change for some train and engine service employees. One seniority district would be created for the proposed Eastern B&O Consolidated District.

On February 10, 1994, the parties met to discuss the Carrier's January 10, 1994, notice. The UTU and the BLE took the position that the notice was improper for a myriad of reasons. They claimed that the proposal was improper because it would cause changes in the rates of pay, rules and working conditions

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Carrier's Ex. NN, Page 4.

in existing collective bargaining agreements without compliance with the Railway Labor Act. They further asserted that the proposal did not involve a "transaction" under the New York Dock Conditions. Moreover, the UTU and BLE complained that the notice failed to specifically relate any of the proposed changes to the individual Finance Dockets cited by the Carrier. They also claimed that the proposal was not permitted by the Interstate Commerce Act and had no relation to the merger dating back to 1980 between the Chessie System, Inc. and the Seaboard Coast Line Industries, Inc. because no properties of the former Seaboard Coast Line were involved in the proposed changes. The Unions asked the Carrier to withdraw its January 10, 1994, notice but it refused to do so. .

On February 25, 1994, CSXT submitted a proposed implementing agreement to the BLE and UTU involving the properties of the former B&O, C&O, RF&P, and WM it wished to merge. The Unions reiterated their objections to the notice and declined to meet to discuss the Carrier's proposed implementing agreement. On March 25, 1995, CSXT insisted that its notice was proper and legal and suggested that the parties proceed to arbitration pursuant to Article I, Section 4, of the New York Dock Conditions.

The BLE and UTU General Committees of Adjustment agreed to participate in the arbitration requested by CSXT while reserving their rights to challenge the January 10, 1994, notice as improper and procedurally infirm; and that there was no legal basis or authority for the changes proposed in the notice. The

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Carrier's Ex NN ,Page 5 .

Unions maintained that these arguments, among others, would be presented to the New York Dock arbitrator.

On September 23, 1994, the National Mediation Board designated the undersigned as Arbitrator of this dispute. The parties submitted extensive Submissions and a plethora of evidence in support of their respective positions. A hearing was held on March 28, 1995, in Washington, D.C. Based on the extensive evidence and arguments advanced by the Unions and CSXT, this Arbitrator hereby addresses the issues submitted to him.

Findings and Opinion

The ultimate question before this Arbitrator is whether the Carrier's proposed implementing agreements with the United Transportation Union and the Brotherhood of Locomotive Engineers comport with Article I, Section 4, of the New York Dock labor protective conditions. However, before reaching that paramount question, the Unions have presented several threshold issues that must be addressed. As noted heretofore, when the Unions agreed to CSXT's invocation of arbitration, they specifically reserved their right to submit these issues to the Arbitrator appointed pursuant to Article I, Section 4, of the New York Dock Conditions.

It is a universally accepted principle that Arbitrators appointed pursuant to Article I, Section 4, of the New York Dock Conditions serve as an extension of the ICC. Since these Arbitrators derive their authority from the ICC, they are duty

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Carrier's Ex NN, Page 6.

bound to follow decisions and rulings promulgated by the ICC. The ICC has suggested that New York Dock Arbitrators should initially decide all issues submitted to them, including issues that might not otherwise be arbitrable, subject, of course, to ICC review. Consistent with that mission, the undersigned Arbitrator hereinafter addresses the issues advanced by the UTU and BLE.

I. Has CSXT presented a "transaction" as defined in Article I, Section 1(a) of the New York Dock Conditions?

A "transaction" is defined as any action taken pursuant to a Commission authorization upon which New York Dock Conditions have been imposed. The Unions stress that CSXT is the moving party in this arbitration. Therefore, according to the Unions, CSXT must prove that there is a causal nexus between an ICC approved transaction and the operational changes it wished to make on the C&O, B&O, WM and RF&P railroads.

Rather than demonstrate this requisite causal relationship, the Unions contend that the Carrier merely listed seven Finance Dockets in its purported January 10, 1994, notice and explained eight (now seven) changes it wished to implement without identifying whether any of the particular Finance Dockets bear any relationship to any of the proposed changes. For these reasons, among others, the Union submits that CSXT has not submitted a proper and valid New York Dock notice for this Arbitrator's consideration.

In CSX Corp. - Control - Chessie System, Inc and Seaboard Coast Line Indus., Inc., 8 I.C.C. 2d 715 (1992), the ICC set

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forth guidelines to determine when a proposed coordination constitutes a "transaction" under New York Dock. In that proceeding, CSXT proposed to abolish four dispatcher positions at Corbin, Kentucky and transfer this work to management positions in Jacksonville, Florida. CSXT served this notice under the authority of Finance Docket No. 28905 which the ICC had approved in 1980, eight (8) years prior to the proposed transfer of these dispatcher positions. The American Train Dispatchers Association (ATDA) refused to agree to an implementing agreement and one was imposed by a New York Dock Arbitrator. The ATDA appealed the Arbitrator's Award to the ICC arguing that the change proposed in 1988 occurred too long after imposition of New York Dock conditions in 1980 to qualify as a "transaction."

The ICC rejected the ATDA's argument and found that the eight (8) year lapse between its imposition of New York Dock labor protective conditions in Finance Docket No. 28905 and the proposed transfer of dispatching functions in 1988 did not, by itself, render the proposal improper. The ICC explained that the relevant inquiry is not the passage of time but whether the coordination "reasonably flowed" from the control transaction that had been approved in 1980. The ICC declared that approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to and fulfill the purposes of the principal transaction. The ICC did caution, however, that there must be a direct causal connection between the earlier merger transaction and the subsequent operational

changes sought to be implemented by a carrier.

It is instructive to note that in 1980, the ICC authorized the CSX Corporation to control the RF&P in Finance Docket No. 28905. In 1987, the ICC approved the merger of the B&O into the C&O in Finance Docket No. 31033. and the merger of the C&O into CSX (Finance Docket No. 31106). In 1988, the ICC sanctioned the merger of the WM into CSXT which had been formed in 1987 (Finance Docket No. 31296). And in 1992, the ICC authorized CSXT to operate the properties of the RF&P (Finance Docket No. 32020). All these Finance Dockets were cited by the Carrier in its January 10, 1994, notice to the UTU and BLE.

In this Arbitrator's opinion, the operational changes proposed by the Carrier in its January 10, 1994 notice directly related to and flowed from the aforementioned transactions that were authorized by the ICC. Were it not for the ICC permission in those Finance Dockets, CSXT would have no authority to merge the B&O, C&O, WM and RF&P territories into a single, discrete rail freight operation. To this Arbitrator, there is a direct causal relation between the mergers and coordinations sanctioned by the ICC in the Finance Dockets cited in the Carrier's January 10, 1994, notice and the operational changes it sought to implement on the former B&O, C&O, WM and RF&P properties. Accordingly, that proposal constituted a "transaction" as defined in Article I, Section 1(a), of the New York Dock Conditions.

II. **Does the Arbitrator lack authority to grant CSXT's request for modification or relief from existing collective bargaining agreements because Article 1, Section 2, of the New York Dock conditions mandates the preservative of rates of pay, rules, working conditions and rights, privileges and benefits under existing agreements?**

Article I, Section 2, of New York Dock provides as follows:

> The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of Railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

In Railway Labor Executives' Association v. United States of America and the Interstate Commerce Commission, 982 F.2d 806 (1993), the United States Court of Appeals for the District of Columbia Circuit ruled that Section 11347 of the Interstate Commerce Act (49 U.S.C. 11347) mandates that rights, privileges and benefits afforded employees under existing collective bargaining agreements must be preserved. The Court remanded the case to the ICC to define "rights, privileges and benefits." The ICC has not yet rendered a ruling in that remanded proceeding.

The Unions argue that until the ICC defines what is meant by the "rights, privileges and benefits" language of Section 405 of the Rail Passenger Service Act, which has been incorporated into Section 11347 of the Interstate Commerce Act, this Arbitrator lacks authority to grant CSXT the right to modify or eliminate any existing collective bargaining agreements.

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Although the ICC has suggested that New York Dock arbitrators address all issues submitted to them, subject to its review, clearly it would be inappropriate for this Arbitrator to determine what was intended by the statutory language "rights, privileges and benefits" in Section 405 of the Rail Passenger Service Act. In *Executives*, the Court of Appeals for the D.C. Circuit specifically remanded this determination to the ICC. Therefore, it would be totally inappropriate for this Arbitrator to offer an opinion on the scope of this statutory language and I expressly decline to do so.

Addressing the facts extant in this particular proceeding, it appears that there would be several significant changes in the working conditions of train and engine service employees affected by the Carrier's proposal. For instance, their current seniority districts will be expanded to include all of the C&O, B&O, WM and RF&P territory to be coordinated. Also, the crew reporting points will be expanded to include all reporting points in this combined seniority district. Many present supply points will be eliminated for these employees. And those employees now working under the C&O, WM and RF&P schedule agreements will be placed under B&O schedule agreements. Additionally, some employees will have their representation changed from the UTU to the BLE.

While these are indeed not insignificant changes for many train and engine service employees in the territory to be coordinated, nevertheless similar changes are not uncommon in many New York Dock implementing agreements. Several New York Dock

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Arbitrators have imposed implementing agreements placing employees under a different collective bargaining agreement. Moreover, numerous CSXT employees have been transferred to other railroads with different agreements pursuant to ICC implementing agreements. It should be noted that representation changed for many employees when the B&O Central District was created. Moreover, crew reporting points and seniority districts have been changed and expanded as a result of ICC authorized mergers and consolidations. CSXT's current proposed coordination is not markedly different from other mergers and coordinations approved by the ICC or by Arbitrators acting under the authority of the ICC.

III: Does Section 11341 (a) of the Interstate Commerce Act apply to proceedings exempted from prior review and approval by the ICC?

Section 11341(a) of the Interstate Commerce Act (49 U.S.C. 11341[a]) exempts a carrier from the antitrust laws and all other law, including State and municipal law, as necessary to let it carry out a transaction approved by the ICC under Chapter 113 of the Interstate Commerce Act (*49 U.S.C. section 11301 et seq.*) In Norfolk & Western Railway Co. et al. v. American Train Dispatchers et al., 499 U.S. 117 (1991), the United States Supreme Court ruled that the Section 11341(a) exemption "from all other law" includes a carrier's legal obligation under a collective bargaining agreement when necessary to carry out an ICC-approved transaction. The Supreme Court concluded that obligations imposed by laws, such as the Railway Labor Act, will

not prevent the efficiencies of rail consolidations from being achieved.

The Unions contend that this exemption applies only when it is necessary to carry out a transaction approved by the ICC. They maintain that the exemption does not apply when the ICC exempts a railroad from review and approval pursuant to Section 10505 of the Interstate Commerce Act (49 U.S.C. 10505). All of the transactions cited by CSXT in its January 10, 1994, notice, with the exception of the 1980 seminal transaction in Finance Docket No. 28905, involved exemptions under Section 10505 rather than approvals under Chapter 113. Therefore, the Unions assert that the Section 11341(a) exemption from "all other law" is inapplicable to these transactions.

In the light of the Supreme Court's unambiguous decision in *Train Dispatchers*, it cannot be gainsaid that the ICC may exempt transactions approved under Section 11341(a) from the RLA, and collective bargaining agreements entered into thereunder, when this is necessary to carry out a transaction approved by the ICC. The ICC has ruled that this authority extends to Arbitrators when they are working under the delegated authority of the ICC (See CSX Corporation - Control - Chessie System, Inc. and Seaboard Coast Line Industries, 8 I.C.C.2d 715 [1992]). Moreover, several Arbitrators under Article I, Section 4, of New York Dock have concluded that they have the authority to override existing collective bargaining agreements if they are an impediment to carrying out an approved transaction.

At issue here is whether the Section 11341(a) exemption from the RLA and collective bargaining agreements subject to the RLA also applies to transactions exempt from ICC review and approval under Section 10505 of the Interstate Commerce Act. A literal reading of Section 11341(a) would seem to support the Unions' argument that the exemption from other laws does not apply to transactions exempt from ICC approval. However, the ICC has concluded that it has the authority under both Section 11341(a) and Section 11347 of the Interstate Commerce Act to modify collective bargaining agreements under the RLA when they are an impediment to a merger. (See CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 ICC 2d 715 [1990]). This is the so-called ICC "Carmen II" decision. The Court of Appeal for the D.C. Circuit deferred to the ICC's judgment in *Executives*.

As noted at the outset of this proceeding, Arbitrators acting under the authority of the ICC must adhere to ICC rulings and decisions. In the aforementioned Carmen II decision, the ICC expressly stated that Arbitrators appointed under the New York Dock conditions have the authority to modify collective bargaining agreements when necessary to permit mergers. Thus, this Arbitrator has the authority under both Section 11341(a) and 11347 to modify existing collective bargaining agreements if this is necessary to carry out the coordination proposed by CSXT in its January 10, 1994, notice.

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Carrier's Ex NN, Page 14.

IV. Are the provisions of Section 11341(a) inapplicable to combinations of multiple approved or exempted transactions?

When the CSXT served its January 10, 1994, notice on the UTU and BLE, it cited seven (7) Finance Dockets that the ICC had either approved or exempted from prior approval and regulation. The Unions contend that there is no statutory or other legal basis or precedent for combinations of multiple approved or exempt transactions. This Arbitrator must respectfully disagree with the Unions' contention, however.

It is true that Section 11341(a) of the Interstate Commerce Act refers to "the transaction" in the singular. Nevertheless, the Carrier's reference to multiple Finance Dockets does not appear to be barred by the Interstate Commerce Act, ICC decisions, or the New York Dock Conditions. It is noteworthy that all of the cited Finance Dockets apply to CSXT's control of the four (4) properties it now wishes to consolidate. Moreover, the ICC imposed the same labor protective conditions in each of those transactions. Also, for many years, CSXT and its predecessor railroads have served notices under New York Dock and other ICC labor protective conditions listing multiple Finance Dockets. Evidently, neither the affected rail labor organizations nor the ICC took any exception to this practice.

For all the foregoing reasons, this Arbitrator finds that it was not improper for CSXT to reference a combination of seven (7) Finance Dockets in its January 10, 1994, notices to the UTU and BLE.

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V. Is the Section 11341(a) exemption necessary to carry out the Carrier's proposed coordination?

In *Dispatchers*, the Supreme Court declared that the Section 11341(a) exemption is applicable only when it is necessary to carry out an approved transaction. The Court ruled that the exemption can be no broader than the barrier which would otherwise stand in the way of implementation. The ICC advocated a similar limitation in *Carmen II*. The ICC assumed that any change in collective bargaining agreements will be limited to those necessary to permit the approved consolidation and will not undermine labor's rights to rely primarily on the RLA for those subjects traditionally covered by that statute.

The Unions argue that the changes now proposed by CSXT are not necessary to carry out the Finance Dockets cited in the Carrier's January 10, 1994 notices in view of the actual transactions involved in those Finance Dockets; the lack of any relationship between the proposed changes; and the years that have passed since those ICC decisions.

CSXT has convinced this Arbitrator that it is necessary to change the seniority districts of the train and engine service employees affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Were the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority district the operating efficiencies contemplated by the coordination would be illusory. According to the Carrier, the proposed consolidation of

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the present four seniority districts into a single seniority district will eliminate some train delays and will promote more efficient manpower utilization. To achieve this enhanced efficiency it is necessary to eliminate the current seniority districts on the affected territory and create a single seniority district.

CSXT also contends that to achieve the enhanced operating efficiency intended by its proposed consolidation some crew supply points will have to be closed, such as Hanover, PA, Charlottesville, VA and Haggerstown, MD for freight train operations. These changes, in conjunction with the establishment of Richmond as a common supply point for train service crews, will improve manpower utilization, according to the Carrier, since excess RF&P train and engine service employees at Richmond will be able to supplement the B&O, WM and C&O crews who now operate there. Again, it appears that it will be necessary to close some former crew supply points in order to achieve the efficiencies contemplated by the proposed consolidation.

It must be stressed that employees working in the consolidated territory will continue to receive the same wage rates and benefits that they currently receive. Except for the elimination of their current seniority districts and the closing of some supply points for crews, the present collective bargaining agreements on the B&O, C&O, WM and RF&P will be continued unchanged. This transaction therefore will not result in a mere "transfer of wealth" from these employees to CSXT which

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Carrier's Ex NN ,Page 17 .

the D.C. Court of Appeals found impermissible in *Executives*. Rather, the savings will be achieved from better utilization of equipment, facilities and manpower. Also, CSXT will not be obligated to hire additional train and engine service employees due to its more efficient use of employees on the combined territory. Moreover, CSXT estimates that train delays will be greatly reduced. Thus, in this Arbitrator's opinion, the transaction itself will yield enhanced efficiency independent of any modifications in the present collective bargaining agreements on the B&O, C&O, WM and RF&P.

VI. Is it permissible for the Carrier to coordinate all or part of properties that are already subject to earlier implementing agreements?

In 1983, the UTU and the BLE executed implementing agreements after the B&O received permission to operate the properties of the Western Maryland in Finance Docket No. 30160. In 1992, the UTU and the BLE executed implementing agreements after the CSXT acquired the rail assets and operations of the RF&P in Finance Docket No. 31954. Those implementing agreements provided that "they shall remain in full force and effect until revised or modified in accordance with the Railway Labor Act."

According to the Unions, those implementing agreements are still in effect since they were never revised or modified pursuant to the RLA. The Unions maintain that the Carrier has no right to re-coordinate the properties that were involved in those implementing agreements.

The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for *de novo* arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris Award to the ICC.

It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

This would seem to distinguish the Harris Award. In any event, this Arbitrator finds nothing in the Interstate Commerce Act, ICC decisions or the New York Dock Conditions which preclude coordination of property previously coordinated and subject to an implementing agreement which may only be revised or modified

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pursuant to the RLA. Any tension between this Award and the Harris Award must be resolved by the ICC.

In this Arbitrator's view, when the drafters agreed that an implementing agreement could only be changed in accordance with the RLA they intended this prohibition to apply to matters subject to bargaining under the RLA. They could not have intended it to affect the jurisdiction of the ICC. Nor did they have the right to preclude the ICC from reviewing mergers and coordinations subject to its jurisdiction. A new transaction would be governed by the Interstate Commerce Act, not the Railway Labor Act.

It is also noteworthy that CSXT and its predecessors have negotiated several implementing agreements containing language similar to that involved in the Harris Award. Many of those properties were subsequently coordinated without resort to the RLA. Rather, they were coordinated in accordance with ICC procedures. The ICC has made it clear that labor disputes arising from transactions which it has approved are resolved through labor protective conditions it has imposed, such as New York Dock, not through the Railway Labor Act.

For all the foregoing reasons, this Arbitrator finds that it was permissible for CSXT to propose a subsequent coordination of property that had been coordinated previously which was subject to an implementing agreement which could only be modified or revised pursuant to the Railway Labor Act.

VII. Is there a public transportation benefit flowing from the Carrier's proposal?

In *Executives* the Court of Appeals for the D.C. Circuit held that to override a collective bargaining agreement, the ICC must find that the underlying transaction yields a transportation benefit to the public, not merely a transfer of wealth from employees to their employer. Although the Court of Appeals remanded that proceeding to the ICC to clarify whether there were, in fact, transportation benefits to be had from the lease transaction involved there, it suggested that "transportation benefits" could include the promotion of safe, adequate and efficient transportation; the encouragement of sound economic conditions among carriers; and enhanced service levels.

The Carrier anticipates that its proposed changes will promote more economical and efficient transportation in the territory now served by the B&O, C&O, WM and RF&P which it wished to coordinate. According to the D. C. Court of Appeals, there would thus be some transportation benefit flowing to the public from the underlying transaction proposed by CSXT in its January 10, 1994, notices to the UTU and BLE.

Conclusion

As observed heretofore, the ICC must decide whether changes in the B&O, C&O, WM and RF&P collective bargaining agreements that are necessary to implement the transaction proposed by the Carrier involve "rights, privileges and benefits" of train and

engine employees affected by the transaction which must be preserved. If the ICC determines that their "rights, privileges and benefits" have been preserved, an issue on which this Arbitrator makes no finding, then the implementing agreements proposed by CSXT on February 25, 1994, meet the requirements of Article I, Section 4, of the New York Dock Conditions. Any employees adversely affected by this transaction will be entitled to New York Dock labor protective benefits.

The Carrier's January 10, 1994, notice to the UTU and BLE comported with the requirements of the New York Dock Conditions. The notices were in writing; were posted and served on the UTU and BLE ninety (90) days in advance; contained a full and adequate statement of the proposed changes; and included an estimate of the number of employees in each craft who would be affected by the proposed changes. The notices were therefore proper New York Dock notices.

Respectfully submitted,

Robert M. O'Brien

Robert M. O'Brien, Arbitrator

April 24, 1995

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This decision will be printed in the bound volumes of the ICC printed reports at a later date.

SERVICE DATE

DEC 7 1995

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 28905 (Sub-No. 27)

CSX CORPORATION--CONTROL--CHESSIE SYSTEM, INC.
AND
SEABOARD COAST LINE INDUSTRIES, INC., ET AL.
(Arbitration Review)

Decided: November 22, 1995

The Commission finds that employment changes proposed by the petitioning railroad may be effected pursuant to arbitration under the agency's standard New York Dock conditions for protecting employees adversely affected by agency-approved consolidations

BY THE COMMISSION:

We uphold the findings of fact and conclusions of law in the award of Arbitrator Robert M. O'Brien concerning the implementing agreements proposed by CSX Transportation, Inc. ("CSXT") to effect that carrier's coordination of operations in a new operating district. Because the proposed implementing agreements are necessary to effect the proposed transaction and would not override any "rights, privileges and benefits" that must be preserved under our New York Dock labor protection conditions, we conclude that those agreements satisfy the requirements of our labor protection conditions. The agreements should therefore be adopted.

BACKGROUND

CSXT in its present form was created by a series of transactions approved by this agency. In our 1980 decision in Finance Docket No. 28905 (Sub-No. 1) et al.,[1] we allowed CSX Corporation, a noncarrier holding company, to control as subsidiary corporations the Chessie System, Inc. ("Chessie"), Seaboard Coast Line Industries, Inc. ("SCLI"), and, indirectly through stock ownership, the Richmond, Fredericksburg & Potomac Railroad Company ("RF&P Railroad").[2] The railroads controlled by Chessie included the Chesapeake & Ohio Railway Company ("C&O"), the Baltimore & Ohio Railroad Company ("B&O"), and the Western Maryland Railway Company ("WM"). The railroads controlled by SCLI included the Seaboard Coast Line Railroad (Seaboard), the Louisville and Nashville Railroad Company (L&N), the Clinchfield Railroad, and several smaller carriers.

In a subsequent series of decisions, we approved the consolidation of the railroad corporate entities controlled by

[1] CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 363 I.C.C. 521 (1980) (CSXT--Control--Chessie and Seaboard).

[2] At that time, RF&P Railroad was controlled (65.9%) by the Richmond-Washington Company, which, in turn, was owned by Chessie (40%) and SCLI (40%).

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CSX Corporation into its subsidiary CSXT.[3] The last steps in this process involved the RF&P Railroad. In 1991, CSXT spun off RF&P Railroad's non-rail assets and created the Richmond, Fredericksburg & Potomac Railway Company ("RF&P Railway") to acquire and to operate RF&P Railroad's rail assets. CSXT invoked our class exemption for corporate families to obtain approval for the acquisition and control.[4] In 1992, CSXT again invoked our corporate family class exemption to operate RF&P Railway directly and to assume all of its rights and obligations.[5]

The decisions creating present-day CSXT were approved subject to our standard labor protection conditions. These conditions were adopted in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock) to implement our mandate to provide such protection under 49 U.S.C. 11347. Under New York Dock, labor changes that are related to Commission-approved transactions are established by implementing agreements negotiated before the changes occur. If the parties cannot reach an implementing agreement, the issues are resolved by arbitration. Arbitration awards may be appealed to the Commission under our Lace Curtain standard of review.[6]

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[3] In CSXT--Control--Chessie and Seaboard, the Commission authorized the CSX Corporation ("CSX") to acquire control of the 6 subsidiary rail carriers of Chessie and the 10 subsidiary rail carriers (the so-called "Family Lines") of SCLI, through the merger of Chessie and SCLI into CSX. Two years later, in Seaboard Coast Line R.R.--Merger Exemption--Louisville & N. R.R., Finance Docket No. 30053 (ICC served Nov. 8, 1982), the Seaboard and the L&N (both of which were subsidiaries of SCLI in 1980) merged to form the Seaboard System, Inc. Subsequently, in Baltimore & O. R.R. and Chesapeake & O. Ry.--Merger Exemption, Finance Docket No. 31033 (ICC served May 22, 1987), the B&O merged into the C&O. Later that year, C&O merged into the recently created CSXT. See Chesapeake & O. R.R. and CSX Transp., Inc.--Merger Exemption, Finance Docket No. 31106 (ICC served Sept. 18, 1987).

[4] See the notice of exemption in CSX Corporation, et al.--Corporate Family Transaction Exemption--Richmond, Fredericksburg and Potomac Railroad Company, Finance Docket No. 31954 (ICC served Oct. 31, 1991).

[5] CSX Transportation, Inc.--Operation Exemption--Richmond, Fredericksburg and Potomac Railway Company, Finance Docket No. 32020 (ICC served Apr. 15, 1992).

[6] Under 49 CFR 1115.8, the standard for review is provided in Chicago & North Western Trtn. Co.--Abandonment, 3 I.C.C.2d 729 (1987), popularly known as the "Lace Curtain" case. Under the Lace Curtain standard, the Commission does not review "issues of causation, the calculation of benefits, or the resolution of other factual questions" in the absence of "egregious error." Id. at 735-736. In Delaware and Hudson Railway Company--Lease and Trackage Rights Exemption--Springfield Terminal Railway Company, Finance Docket No. 30965 (Sub-No. 1) et al. (ICC served Oct. 4, 1990) at 16-17, remanded on other grounds in Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993), we elaborated on the Lace Curtain standard as follows:

> Once having accepted a case for review, we may only overturn an arbitral award when it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it exceeds the authority reposed in arbitrators by those conditions. [Citations omitted.]

This agency (and an arbitrator acting under New York Dock) is authorized to override provisions of collective bargaining agreements that prevent realization of the public benefits of a transaction.[3] Those contesting proposals that we exercise our authority to override collective bargaining agreements argue that: (1) New York Dock requires the preservation of pre-transaction bargaining agreements; or (2) the changes may not be made because they are not (perhaps due to the passage of time) related to, or necessary for effectuating the purposes of, the proposed transaction. Under New York Dock, employees affected when a collective bargaining agreement is overridden must be compensated pursuant to the formula established therein, which provides comprehensive displacement and termination benefits for up to 6 years.

This proceeding has arisen because of CSXT's efforts to make operational changes that are allegedly related to, and necessary to realize the operational benefits from, certain mergers that helped to create the present-day CSXT. On January 10, 1994, CSXT served a notice on the United Transportation Union (UTU) and the Brotherhood of Locomotive Engineers (BLE) (jointly, "the unions") of its intention to invoke the authority of New York Dock to make operational changes and related employee assignments in order to effectuate the public benefits of the transactions.

Briefly, CSXT is proposing to coordinate train operations in a portion of its system, its new "Eastern B&O Consolidated District" (the "Eastern District"), by transferring work, abolishing and creating positions, and merging seniority rosters. All engineers and trainmen working in the new district would be placed under CSXT's collective bargaining agreements with UTU and BLE covering the former B&O lines. The notice reveals a net loss of 5 positions (47 abolished minus 42 established). CSXT made minor alterations and proposed further details as to the implementation of these coordinations in draft implementing agreements (one for each union) transmitted to the unions on February 25, 1994. In the Appendix to this decision, we have reproduced the major operational changes that were proposed in Article I of CSXT's draft implementing agreements.[4]

The unions refused to participate in the negotiation of an implementing agreement, objecting that: (1) the changes may not be made under New York Dock because they violate existing collective bargaining agreements; (2) CSXT improperly related the changes to the whole group of Commission decisions[5] rather than specified individual decisions; and (3) the changes cannot be related to any of the transactions approved in the decisions because the decisions are too old. CSXT then invoked arbitration under New York Dock. Unable to negotiate, the parties selected Robert M. O'Brien as the arbitrator. An arbitration hearing was

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[3] Where modification is necessary, we may act under either section 11347 or section 11341(a). CSX Corp.--Control--Chessie and Seaboard C.L.I., 4 I.C.C.2d 641 (1988), modified 6 I.C.C.2d 715 (1990); Brandywine Valley R. Co.--Pur.--CSX Transp., Inc., 5 I.C.C.2d 764 (1989); Railway Labor Executives' Ass'n v. United States, 987 F.2d 806 (D.C. Cir. 1993) (RLEA); Norfolk & Western v. American Train Dispatchers, 499 U.S. 117 (1991); and American Train Dispatchers Association v. I.C.C., 26 F.3d 1157 (D.C. Cir. 1994) (ATDA).

[4] The notices and letters of transmittal to the unions appear in attachments 1 and 2 of volume I of the Appendix to CSXT's petition filed June 9, 1995. The specific changes announced for each union were the same.

[5] See note 3, supra, for a statement of the decisions.

held on March 28, 1995. Arbitrator O'Brien issued his award on April 24, 1995.

The Arbitrator's findings of fact and law favored CSXT. He found that the operational changes were subject to New York Dock because they "directly related to and flowed from" the merger authorizations by which CSXT was created. (Award at 9.) The Arbitrator rejected the unions' arguments that: (1) the changes were not subject to New York Dock because they were not related to specific decisions imposing New York Dock protection (but, rather, a whole group of decisions); and (2) the changes cannot be related to any of the transactions approved in the decisions because the decisions are stale. The Arbitrator also held that, acting under our precedent, he had "the authority under both Section 11341(a) and 11347 to modify existing collective bargaining agreements" when they frustrate attainment of the public benefits of transactions approved by this agency. (Award at 14.) Concerning such benefits, the Arbitrator found that CSXT had in fact shown that the changes were necessary to attain the public transportation benefits of the transactions. (Award at 16-18.)

Although his findings of fact and law favored CSXT, the Arbitrator stopped short of adopting the implementing agreements proposed by CSXT. He cited Article I, section 2 of New York Dock, which provides in pertinent part,

> The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of a railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

Arbitrator O'Brien noted that, in RLEA, the court ruled that section 11347 of the Interstate Commerce Act (49 U.S.C. 11347) mandates that rights, privileges and benefits afforded employees under existing collective bargaining agreements must be preserved.[16] The court remanded the case to the Commission to define "rights, privileges and benefits." As the Arbitrator noted, we have not yet rendered a ruling in that proceeding. Because we have not yet ruled on the court's remand, the Arbitrator declined to rule on the issue. The Arbitrator left it to the Commission to determine whether the changes proposed by CSXT would be contrary to any such "rights, privileges and benefits." (Award at 21-22.)

On June 9, 1995, CSXT and the unions filed petitions for review of the Arbitrator's award. On June 29, 1995, CSXT and the unions filed replies. On July 28, 1995, CSXT filed a petition for leave to file a reply to the reply filed on June 29, 1995, by the unions. By decision served August 22, 1995, we granted CSXT's petition and allowed the unions to file a reply to the substantive arguments raised therein. The unions filed a reply on September 6, 1995.

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[16] The court noted, RLEA at 811-814, that section 11347 incorporates the protections afforded under the Rail Passenger Service Act of 1970 (Amtrak Act), 45 U.S.C. 565, which provides, inter alia, that "rights, privileges and benefits" afforded employees under existing collective bargaining agreements be preserved.

ARGUMENTS OF THE PARTIES

The parties raise four main issues: (1) whether we should hear the appeal under our Lace Curtain standard; (2) whether the operational changes proposed by CSXT are linked to, or caused by, a prior approved transaction subject to New York Dock, i.e., whether they were properly before the Arbitrator; (3) whether the changes would improperly reopen prior implementing agreements by contravening provisions in them that allegedly require that such changes be accomplished through bargaining under the RLA; and (4) whether the changes are the type of changes that may justify our overriding collective bargaining agreements or, alternately, involve "rights, privileges and benefits" that must be preserved under section 2 of New York Dock.

1. Whether the appeal should be heard

In its reply filed June 29, 1995, CSXT argues that the Arbitrator's findings of fact should not be reviewed under our deferential Lace Curtain standard of review (see n. 6, supra), under which we do not review arbitrators' findings as to issues of causation, the calculation of benefits, or the resolution of other factual questions. In this category of unreviewable issues, according to CSXT, are the Arbitrator's findings that (1) the operational changes proposed by CSXT grow out of the prior control and merger transactions and that (2) CSXT demonstrated a need to modify collective bargaining agreements to realize the benefits of the merger.

In their June 29, 1995 reply to CSXT, the unions argue that the Arbitrator's award is fully reviewable under our Lace Curtain standard on the grounds that the Arbitrator made egregious errors of fact and law.

2. Whether the changes proposed are linked to or caused by a prior approved transaction

In their petition for review filed June 9, 1995, the unions argue that the Arbitrator lacked jurisdiction under New York Dock to consider the changes sought by CSXT pursuant to our authority to approve operational changes that are necessary to effectuate mergers. That is so, according to the unions, because the changes cannot be linked to, or were not caused by, any of the merger transactions cited by CSXT. The unions maintain that the changes sought here are due to pre-1980 control proceedings not cited by the carrier and involving the property at issue. According to the unions, the changes cannot be linked to the 1980 decision that put Chessie and SCLI under common control because they do not involve SCLI property.[11]

In its reply, CSXT advances various arguments to show that the labor changes proposed by CSXT grow out of the prior control and merger transactions. CSXT cites various decisions where this agency or arbitrators acting under its authority assertedly allowed changes under New York Dock. Responding to the unions' argument that, because the changes do not involve SCLI property, they cannot be linked to Finance Docket No. 28905 (Sub-No. 27),

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[11] The unions sometimes discuss this issue of linkage or causation in terms of whether "the consolidation of seniority rosters and seniority districts" (reply filed June 29, 1995 at 6) or an attempt to realize "efficiencies" (petition filed June 9, 1995 at 19) can be considered to be "transactions" under New York Dock. Although the unions' choice of words sometimes differs, the underlying issue is the same-- whether CSXT is attempting to implement a transaction or transactions that are subject to New York Dock.

CSXT notes that the changes involve property of the RF&P, the last carrier to come under the complete control of CSXT. CSXT responds to the unions' argument that our 1980 decision in Finance Docket No. 28905 (Sub-No. 27) cannot be the source of the changes allegedly because it is too old by (1) pointing to decisions where we have assertedly held that causality is not diminished by time and (2) arguing that CSXT was not able to integrate the operations of its subsidiaries until the subsidiaries were actually merged into CSXT, a lengthy process that was not concluded until 1992.

3. RLA bargaining requirement in prior decisions

In their petition for review, the unions argue that the merger transactions have already been covered by implementing arrangements and that the coordination sought here would improperly reopen these prior agreements.[12] The unions maintain that the prior implementing agreements require that the changes proposed here be accomplished through bargaining under the Railway Labor Act (RLA) rather than arbitrations under New York Dock.[13]

In its reply, CSXT responds that the language in question is old boilerplate language going back as far as 1959 that provides merely that matters touched upon in implementing agreements can be changed pursuant to transactions that do not require our approval without going through New York Dock procedures. CSXT cites five implementing agreements where representatives of labor allegedly did not argue that the language required bargaining under the RLA to implement transactions requiring Commission approval. The carrier also argues that it cannot credibly be found to have agreed to a one-sided bargain that would have permanently waived its ability to accomplish future coordinations through the New York Dock procedures. Finally, CSXT argues that it had no authority to waive its statutory right to have these issues governed by Commission procedures under section 11347 and New York Dock rather than RLA procedures.

4. Ability to override prior agreements

Both parties tacitly assume that CSXT's changes would in fact contravene collective bargaining agreements. As in prior cases where our authority under New York Dock was at issue, neither party systematically discusses how the collective bargaining agreements would bar the changes sought by management in the absence of action by this agency. Instead, the parties restrict their argument to whether we may compel the changes under New York Dock. The Arbitrator did not resolve this issue.

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[12] The prior agreements alleged by the unions to bar the instant coordination due to language requiring modification pursuant to RLA procedures are: (1) the two 1983 coordination agreements between (a) the B&O and WM and BLE and (b) B&O and WM and UTU, both of which involved lesser included territory [see Exh. 9 to the unions' Appendix of Exhibits]; and (2) the two 1992 coordination agreements between (a) CSXT, RF&P, and UTU [see Exh. 10 to the unions' Appendix of Exhibits] and (b) CSXT, RF&P, and BLE [see Exh. 11 to the unions' Appendix of Exhibits], both of which involved lesser included territory.

[13] The language in question typically provides that "This agreement ... shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended." See, e.g., the 1979 implementing agreement reached between the B&O, WM, and several unions, in CSXT's petition filed June 9, 1995, Appendix volume II, exhibit 36, page 8.

In its petition for review filed June 9, 1995, CSXT asks us to decide the issue that the Arbitrator declined to decide, i.e., whether the changes proposed by CSXT would fail to preserve the "rights, privileges and benefits" of existing collective bargaining agreements. Briefly, CSXT argues that the changes do not alter prior rights, privileges, or benefits because: (1) the pay, benefits, and other "key terms" of the prior agreements will not change; (2) all employees will continue to be covered by collective bargaining agreements (the B&O agreements); and (3) our labor protection obligations have never been interpreted as giving employees of a merged carrier like CSXT the "right" or "privilege" of working only on the lines of their former employers.

The unions argue that, under RLEA, the changes must be necessary to secure the public benefits of the merger and that the changes at issue fail this test. CSXT responds that its changes will effectuate the cited transactions by merging operations on lines where train operations are allegedly being conducted as though they continued to belong to separate railroads. The unions dispute CSXT's statement (that operations in the proposed district are being conducted as though they continued to belong to separate railroads) on the grounds that operations in the district have in fact been merged, except for the consolidation of seniority districts.[14]

CSXT argues that the changes meet the standard imposed in RLEA for changing prior practices that interfere with attainment of the public benefits of the transaction. CSXT argues that: (1) the changes will improve operational efficiency; (2) this improvement is a public benefit under RLEA; and (3) the cost savings from this improvement satisfy RLEA by not creating merely a transfer of wealth from labor to CSXT.[15] Concerning this last point, CSXT contrasts the operational changes proposed here with changes in pay and pension benefits (not proposed here) and other changes that, according to CSXT, can directly transfer wealth from labor to carriers. CSXT accuses the unions of interpreting RLEA as disallowing any changes to collective bargaining agreements, not just changes that are designed to transfer wealth from labor to carriers.

The parties dispute the broader implications of section 2 of New York Dock. CSXT views the "rights, privileges and benefits" language of section 2 as merely creating a savings clause that preserves the collective bargaining agreement provisions that are not required to be modified in order to effectuate Commission-authorized transactions. The unions respond that RLEA precludes CSXT's argument.

The unions dispute CSXT's position that the changes are not important enough to constitute changes in "rights, privileges and benefits." In particular, the unions argue that changes in the location where employees work must be considered in any evaluation of whether "rights, privileges and benefits" are changed and that we may not consider only pay and benefits. The unions also argue that union representation is a right that must be preserved.

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[14] See Appendices A and B of the unions' reply filed June 29, 1995.

[15] The parties sometimes argue in terms of whether the changes "flow solely from modification to labor agreements" or use similar terms. When they do this, they seem to be disputing whether we would be contravening RLEA by mandating changes that are designed less to secure the public benefits of transactions than to transfer wealth from labor to the carrier.

The parties dispute the relevance of section 11341(a). The unions question the Arbitrator's premise that modifications of collective bargaining agreements may be ordered pursuant to 49 U.S.C. 11341(a), on the grounds that section 11341(a) does not apply to transactions that are approved under our section 10505 exemption authority.[16] In response, CSXT argues that, first, the Arbitrator did not rely exclusively on section 11341(a) but also relied on section 11347, and, second, that the Arbitrator related the changes to Finance Docket No. 28905 (the common control proceeding), which was not approved via an exemption under section 10505.

DISCUSSION

As noted, the parties raise four main issues. The threshold issue is whether we may hear the appeal on its merits.

1. Whether the appeal should be heard. We will hear the appeal. Under our Lace Curtain standard of review, we do not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of egregious error. Here, the Commission must decide the issue of whether the changes involve "rights, privileges and benefits" that must be preserved under section 2 of New York Dock because the arbitrator deferred resolution of it to us. The Arbitrator's decision on the issue of whether the proposed changes are linked to a prior transaction is a factual issue. That decision should not be set aside except for egregious error. The third issue raised on appeal, whether the railroad has bound itself to follow RLA procedures in undertaking the changes at issue here, involves factual determinations by the arbitrator which merit our deference. However, because it goes beyond mere factual questions, it warrants our review under the Lace Curtain standards.

2. Whether the changes proposed are linked to or caused by a prior approved transaction. The parties dispute whether the labor changes proposed by CSXT are linked to, or caused by, a prior approved transaction subject to New York Dock, i.e., whether they were properly before the Arbitrator. We find that the changes were properly before the Arbitrator under New York Dock.

The Arbitrator's finding on linkage is a factual finding as to causation, and, as such, is entitled to deference under our Lace Curtain standard of review. Such findings are reversed only upon a showing of egregious error.

The Arbitrator's finding of linkage was not egregious error. The purpose of the changes is to ensure that CSXT ceases to operate as a collection of separate railroads and fully enjoys the operational economies of being a unified system.[17] The

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[16] We have asserted two statutory grounds for modification of collective bargaining agreements: section 11347, the statutory basis of New York Dock; and section 11341(a).

[17] The unions dispute CSXT's statement, that operations in the proposed district are being conducted as though they continued to belong to separate railroads, on the grounds that operations in the district have in fact been merged, except for the consolidation of seniority districts. See the statements of UTU General Chairmen Robert J. Will and John T. Reed, attached to the unions' reply filed June 29, 1995. We find, however, that operations in the proposed district have not been merged, based on the statement of CSXT's Director of Employee Relations Michael D. Rogers, attached to CSXT's response filed July 28, 1995.

opportunity to make these changes was created by an entire series of decisions. These began with the 1963 and 1967 decisions that brought the B&O, C&O, and WM under common control and ended with the 1992 decision that formally merged the RF&P into the CSXT system.[11] All of these decisions played a role in creating the opportunity for CSXT to coordinate operations in the proposed Eastern District by use of a single pool of employees. This opportunity cannot be attributed solely to any individual decision in this series of decisions.

The relevant inquiry is whether the action at issue is linked to prior Commission action in which we imposed New York Dock conditions. As long as the actions at issue are rooted in transactions subject to New York Dock, it does not matter whether these conditions were imposed in one transaction or several. The conditions do not vary from case to case. The only question is whether they are applicable. The unions do not dispute that they are. Neither logic nor precedent supports the unions' contention that the basis for a carrier's action must be found in a single, Commission-approved transaction, rather than in a series of them.

The unions' position is based on an assumption that CSXT had a duty to implement whatever New York Dock-related coordinations involving C&O, B&O, and WM track when these carriers first came under common control or soon thereafter. If CSXT had been under such a duty, the instant coordination arguably could have been criticized as too late to be accomplished under New York Dock.

But we have never imposed a deadline on making merger-related operational changes. In fact, in CSX Corporation--Control--Chessie System, Inc., and Seaboard Coast Line Industries, 8 I.C.C.2d 715, 724 n. 14 (1992), we held that causality is not diminished with the passage of time:

> Causality, however, is not per se diminished by a lengthy delay in exercising authority previously granted. This is not analogous to laches. There could be any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been undertaken earlier.

We have been given no reason to depart from this holding here. CSXT merged its operations gradually, delaying many changes until the corporate entities were merged. This approach does not appear to be unreasonable on its face, and no showing has been made that it is unreasonable. Nor has any showing been made that CSXT's gradual merger of its operations prejudiced the rights of employees under New York Dock. If anything, the gradual nature of the merger would have been more likely to benefit employees by providing for a smoother integration of personnel into the merged system.

The unions note that the order of Presidential Emergency Board 219 increasing the basic mileage of train and engine service employees influenced the benefits of the coordination. See the statements of Don M. Menefee and John T. Reed, attached to the unions' Appendix of Exhibits filed with its petition on June 9, 1995. Without the merger decisions, however, there could have been no coordination at all, notwithstanding Presidential

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[11] The Arbitrator's failure to include the pre-1980 transactions as grounds for his jurisdiction did not affect his jurisdiction because this agency, like courts operating under modern rules of pleading and practice, may uphold its jurisdiction for any valid legal reason, regardless of whether that reason is pleaded or argued.

Emergency Board 219. Without Presidential Emergency Board 219, the new district would most likely have been smaller (due to a smaller range of crew travel), but some coordination would still have been possible. The connection between the merger decisions and the coordination was not severed by the action of the Emergency Board. A reasonably direct causal connection remains between our decisions and the coordination. Our standard of "reasonably direct connection" was applied in: (1) Burlington Northern, Inc.--Control and Merger--St. Louis-San Francisco Railway Company (Petition for Review of Arbitral Award), Finance Docket No. 28583 (Sub-No. 24) (ICC served June 23, 1986); and (2) Maine Central Railroad Company--Lease (Arbitration Review), Finance Docket No. 29720 (Sub-No. 1A) (ICC served Dec. 8, 1988), aff'd Brotherhood of Maintenance of Way Emp. v. I.C.C., 920 F.2d 40 (D.C. Cir. 1990). Thus, the Arbitrator did not commit egregious error by finding a connection.

3. RLA bargaining requirements in prior agreements. The parties dispute whether the coordination sought by CSXT would contravene provisions in prior implementing agreements that allegedly require that subsequent coordinations be accomplished through bargaining under the RLA.

We uphold the Arbitrator's decision that these provisions impose no such requirement. The intent of the provisions requiring RLA bargaining was not to bar this type of coordination under New York Dock. The lack of intent was manifested in two ways: (1) differences in the territories involved; and (2) past dealings.

(a) Territorial differences. The Arbitrator found that the changes proposed by CSXT here do not involve the same territory or property involved in the prior agreements.[19] We have no

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[19] In making this finding, the Arbitrator distinguished an earlier arbitration award where Arbitrator Harris found to the contrary (Award at 19):

> The Unions cite a 1994 award rendered by Neutral Robert O. Harris in a case between the UTU and CSXT (involving Carrier's notice to coordinate work performed on the C&O and the Louisville and Nashville Railroad Company) in support of its contention. Arbitrator Harris found that because of an earlier implementing agreement involving the same properties, CSXT was precluded from asking for de novo arbitration to coordinate property subject to an implementing agreement which, by its express terms, may only be changed pursuant to the RLA. The Carrier has appealed the Harris award to the ICC.
>
> It appears that Arbitrator Harris concluded that an implementing agreement may not be changed in a second coordination of the same properties except in accordance with the terms of the implementing agreement. However, CSXT and or its predecessors agreed to implementing agreements involving the WM and the RF&P. Evidently, there were no implementing agreements involving the B&O and the C&O. Since over 80% of the territory the Carrier now proposes to coordinate involves former B&O and C&O property the Carrier is not now seeking coordination of "the same properties" which were subject to earlier implementing agreements, in this Arbitrator's judgment.

reason to question this finding, much less to find it egregiously wrong.[20]

Nor do we find egregious error in the Arbitrator's premise that the prior agreements were not intended to cover future coordinations involving different track and territories. While it can be argued that CSXT bound itself to RLA procedures as a condition for changing the coordinations involving the lesser included track at issue in the prior agreements, the carrier cannot reasonably be found to have intended these agreements as perpetually waiving New York Dock procedures for future coordinations involving territories of substantially greater extent and differing scope. Such a waiver would have barred the carrier from any future New York Dock coordination between the track involved in the prior agreements and the remainder of the CSXT system, thereby creating an "island" of unintegrated operations in its system. We cannot plausibly find that the carrier intended to use the minor and routine 1983 and 1992 agreements to bind itself to such a significant restriction, at least in the absence of specific language in those agreements or other credible evidence of such intent.

(b) Past dealings. The Arbitrator also implied that past dealings show that the RLA requirement was not intended to bar the instant coordination.[21] Under general contract law, the intent of parties to an agreement can be ascertained from a course of dealing or usage of the trade. Custom and usage, as reflected in the arbitration agreements cited by CSXT, contravenes the contention that RLA procedures are required for subsequent coordination efforts under New York Dock.[22] The

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[20] The Arbitrator's finding that different territory was involved was not egregiously wrong. An inspection of the track involved in the prior agreements (see the agreements and diagrams cited in note 11, above) indicates that much of the track and the scope of the coordination differs:

1. The WM trackage involved in the two 1983 agreements coordinating operations on the WM and the B&O only partially overlaps the WM trackage at issue here. Part of the WM trackage involved in the 1983 agreements seems to have been abandoned.

2. The B&O track involved in the 1992 agreements coordinating operations on the RF&P and the B&O ran from Potomac Yard to Baltimore and Philadelphia and from Potomac Yard west to Brunswick and east again to Baltimore, a small subsegment of the B&O track involved here. Unlike the agreements at issue here, the 1992 agreements did not involve C&O track.

[21] The Arbitrator stated (Award at 20):

> It is also noteworthy that CSXT and its predecessors have negotiated several implementing agreements containing language similar to that involved in the Harris award. Many of those properties were subsequently coordinated without resort to the RLA. Rather, they were coordinated in accordance with ICC procedures.

[22] The agreements are discussed on pages 29-30 of CSXT's reply filed June 29, 1995 and appear in exhibits 36, 38, 39, 40, 41, 42, and 43. In each of the five implementing agreements cited by CSXT, the union did not object to the expansion of the coordination of operations under New York Dock, notwithstanding the presence of similar language referring to the RLA in the prior implementing agreements establishing the coordinations that

(continued...)

awards cited by CSXT, going back over 30 years, show that neither party had any reason to view this language as restricting CSXT's ability to invoke New York Dock to implement future operational changes, an ability that CSXT would not have readily given up. This usage history is consistent with CSXT's position that the language is boilerplate language that provides merely that matters touched upon in implementing agreements can be changed pursuant to transactions that do not require our approval without going through New York Dock procedures.

Because we are upholding the Arbitrator's finding that the intent of the language requiring RLA procedures was not to bar future coordinations under New York Dock, we do not have to reach CSXT's argument that carriers have no authority to waive their statutory right to have such issues governed by Commission procedures under section 11347 and New York Dock rather than RLA procedures.

4. Ability to override prior agreements. It is well settled that we have the authority to modify collective bargaining agreements when modification is necessary to obtain the benefits of a transaction that we have approved in the public interest. See the cases cited in note 7, supra. At issue here are the limits of that authority. In particular, the issue is whether the changes sought by CSXT comport with the court's decision in RLEA.

The court in RLEA did not intend to make every change an impermissible change in rights, privileges, or benefits. As the court stated (987 F.2d at 814), "Unless, however, every word of every CBA were thought to establish a right, privilege, or benefit for labor-- an obviously absurd position--§ 565 [of the Rail Passenger Service Act, 45 U.S.C. 565] (and hence § 11347) does seem to contemplate that the ICC may modify a CBA." [Citation omitted.] Nor did the court hold that changes in work location or the switching of employees from work under one collective bargaining agreement to another involved impermissible changes in rights, privileges, or benefits.

To determine which changes are permissible, the court in RLEA established the following standard (987 F.2d at 814-815):

> . . . it is clear that the Commission may not modify a CBA willy-nilly: § 11347 requires that the Commission provide a "fair arrangement." The Commission itself has stated that it may modify a collective bargaining agreement under § 11347 only as "necessary" to effectuate a covered transaction. [Citation omitted.] . . . We look therefore to the purpose for which the ICC has been given this authority [to approve consolidations]. That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer . . . .

In other words, the court's standard is whether the change is (a) necessary to effect a public benefit of the transaction or (b) merely a transfer of wealth from employees to their employer.

This standard has been met here. The Arbitrator did not commit error (much less egregious error) in finding that the

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[22](...continued)
were expanded. The unions do not dispute CSXT's position that they did not raise the RLA language as an objection to subsequent expansion.

changes sought by CSXT would improve efficiency,[23] a factual finding entitled to deference under our Lace Curtain standard. CSXT has supported its claims that merging the separate seniority rosters into one will produce real efficiency benefits; see volume III of the Appendix of Exhibits to the Petition of CSXT, Tab B at 8-12. Improvements in efficiency reduce a carrier's costs of service. This is a public transportation benefit because it results in reduced rates for shippers and ultimately consumers. The savings realized by CSXT can be expected to be passed on to the public because of the presence of competition. Where the transportation market for particular commodities is not competitive, regulation is available to ensure that cost decreases are reflected in rate decreases. Moreover, increased efficiency and lower costs would enable CSXT to increase traffic and revenue by enabling that carrier to lower its rates for the service it provides or to provide better service for the same rates. While the railroad thereby benefits from these lower costs, so does the public.

The changes sought by CSXT do not appear to be a device merely to transfer wealth from employees to the railroad. Indeed, there does not appear to be a significant diminution of the wealth of the employees. The extent of unionization will not change. The reduction in labor costs will occur through more efficient use of employees and equipment, not by any reduction in current hourly wages and benefits.[24] In order to use employees more efficiently, CSXT will require some employees to work different territories and report to different staging areas. Some employees may have to move. Moving expenses are a benefit under our New York Dock compensation formula.

The one adverse effect on employees from the proposed consolidation of seniority districts apparent from the record is that some employees may have to travel to protect their seniority rights. A specific instance cited was that terminal reporting points for engineers working out of Cumberland, MD, would be 100 miles away. No reduction in wages or change in working conditions would exist, except the minor changes noted. Employees subject to these changes would be compensated under New York Dock. For that reason, the criteria of RLEA have been met.

In considering whether the actions taken by CSXT comport with RLEA, we need to consider the court's decision in ATDA, which adopted the RLEA standard, adding (26 F.3d at 1164, emphasis supplied):

> In other words, the benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain.

The Arbitrator found that the consolidation of the seniority districts would lead to lower costs, hence resulting in transportation benefits. But the unions have asserted that these benefits arise merely from the modification of the CBA, thereby contravening the court's holding in ATDA.

We disagree. On page 16 of his decision, Arbitrator O'Brien states:

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[23] See note 16, above.

[24] Certain WM employees may experience minor changes in compensation due to minor differences between the B&O and WM collective bargaining agreements. But the differences apply only to small numbers of employees and in atypical situations. Any changes in compensation would be compensable under New York Dock.

> CSXT has convinced this arbitrator that it is necessary to change the seniority districts of the train and engine service affected by its proposal if the territory of the erstwhile C&O, B&O, WM and RF&P to be coordinated is to be run as a distinct and unified rail freight operation. Were the Carrier required to continue operating this territory as four separate railroads each with its own work force and seniority districts the operating efficiencies contemplated by the coordination would be illusory. (Emphasis added.)

Here, the "transaction" is not, as labor contends, the modification of the collective bargaining agreements but rather the mergers of four previously separate railroads into a single entity. The merging of the seniority districts does not have its genesis in the modification of the collective bargaining agreements. As long as the C&O, B&O, WM and RF&P remained separate railroads, the employees of each must of necessity have worked independently of each other. Approval of the merger was the action that permitted these four groups of employees to be melded into one. Once the merger had taken place, the consolidation of the employees--and the modification of the collective bargaining agreements--became necessary if the efficiencies of the single work force, made possible by the merger, were to be realized.

We must also determine whether the CBA provisions to be changed--(1) "scope" provisions governing "ownership" of work;[21] and (2) seniority provisions--are "rights, privileges, and benefits" that must be preserved. The D.C. Circuit Court remanded RLEA to permit the Commission to define the meaning and scope of the phrase "rights, privileges, and benefits" in section 405 of the Amtrak Act as incorporated into 49 U.S.C. 11347. 987 F.2d at 814.

The history of the phrase "rights, privileges, and benefits" indicates that it has traditionally meant what it implies--the incidents of employment, ancillary emoluments or fringe benefits--as opposed to the more central aspects of the work itself--pay, rules and working conditions. The genesis of section 405 of the Amtrak Act was the Urban Mass Transit Act of 1962 (UMTA), which authorized federal financial assistance to state and local governments for the improvement of urban mass transit systems. Section 13(c) of that Act (now codified as 49 U.S.C. 5333(b)) required the Secretary of Labor to certify as "fair and equitable" arrangements to protect affected employees. The first requirement of section 13(c) for a "fair and equitable" arrangement was "the preservation of rights, privileges, and benefits under existing collective bargaining agreements or otherwise."

Since no UMTA financing could be completed without the Secretary of Labor's section 13(c) certification, a model protective agreement was developed to permit rapid and dependable processing of applications. The current regulations of the Department of Labor provide that the Secretary will certify pursuant to section 13(c) if the parties adopt the Model Agreement. 29 CFR 215.6. Paragraph 10 of the Model Agreement sets forth the type of rights, privileges, and benefits that are "preserved" (emphasis added):

> (10) No employee receiving a dismissal or displacement allowance shall be deprived during his protection period, of any rights, privileges, or benefits

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[21] See ATDA, 26 F.3d at 1160-61 for discussion of scope provisions.

> attaching to his employment, including without limitation, group life insurance, hospitalization and medical care, free transportation for himself and his family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which he may be entitled under the same conditions so long as such benefits continue to be accorded to other employees of the bargaining unit, inactive service or furloughed as the case may be.

We believe that this is compelling evidence that the term "rights, privileges, and benefits" means the "so-called incidents of employment, or fringe benefits," Southern Ry. Co.--Control--Central of Georgia Ry. Co., 317 I.C.C. 557, 566 (1962), and does not include scope or seniority provisions.

In any event, the particular provisions at issue here do not come within "rights, privileges, or benefits" because they have consistently been modified in the past in connection within consolidations. This may well be due to the fact that almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transactions. The ATDA court looked to past conduct in consolidations when it ruled that scope rules were not among those provisions protected as "rights, privileges, and benefits." 26 F.3d at 1163. The court relied, in part, on CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 I.C.C.2d 715, 736, 742 (1990) (Carmen II), and its recitation of the power of arbitrators under the Washington Job Protection Agreement of 1936 and pre-1976 labor conditions.

Seniority provisions have also been historically modified with regularity by arbitrators in connection with consolidations. See Carmen II, 6 I.C.C.2d at 721, 736-737, 742, and 746 n.22. Thus, both scope rules and seniority provisions have historically been changed without RLA bargaining and, accordingly, are not eligible for protection as "rights, privileges, and benefits."

The unions argue that section 2 of New York Dock gives employees a right to retain their existing union representation. The coordination will require WM engineers, currently represented by UTU, to work under the agreement that BLE negotiated with the B&O rather than their current agreement. The effect of our transactions on selection of union membership is under the jurisdiction of the National Mediation Board acting under the Railway Labor Act. Fox Valley & Western Ltd.--Exemption Acquisition and Operation--Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company, Finance Docket No. 32035 (Sub-No. 1) (ICC served Dec. 19, 1994), slip op. at 7. Therefore, we find that the issue of which union is to represent WM engineers or receive them as dues-paying members does not involve a right that must be preserved under section 2 of New York Dock.

As noted, the parties dispute whether section 2 of New York Dock is merely a savings clause that preserves the collective bargaining agreement provisions that are not required to be modified in order to effectuate Commission-authorized transactions. We need not resolve that issue here. The decisions upholding our authority to change collective bargaining agreements are not premised on section 2 being merely a savings clause.

The unions have not even alleged that the consolidation of agreements in any way impairs the ability of CSXT employees to bargain collectively with the railroad. Nor are the rights, benefits, and privileges granted by past negotiations impaired. CSXT is proposing action that is made possible by transactions that we have authorized. Employees affected by those transactions are entitled to the benefit of New York Dock conditions, which have been imposed here.

CONCLUSIONS

We conclude that the implementing agreements proposed by CSXT satisfy the requirements of our labor protection conditions and should be adopted. The coordination proposed by CSXT is linked to transactions subject to New York Dock and was thus properly before the Arbitrator. By pursuing arbitration under New York Dock, CSXT did not contravene language in prior implementing agreements requiring that future changes must be made under the RLA because those agreements were not intended to apply to the changes sought here. Finally, we find that the changes may be made even if they are inconsistent with existing collective bargaining agreements and that our authority to require these changes is consistent with the requirement of section 2 of New York Dock that "rights, privileges and benefits" of existing collective bargaining agreements be preserved.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The findings of fact and conclusions of law in the Arbitrator's award are upheld, as supplemented in this decision, and the implementing agreements proposed by CSXT are adopted.

2. This proceeding is discontinued.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

(SEAL)

Vernon A. Williams
Secretary

APPENDIX
CSXT's Statement of Changes Under Section 4 of New York Dock[1]

Article I

A. Effective upon ten (10) days advance notice, all train operations and the associated work forces of the former WM, RF&P, and a portion of the former C&O, will be transferred, consolidated and merged into the train operations and associated work force on the former Baltimore and Ohio in the territory hereinafter described:

Philadelphia, Pa. - Cumberland, Md. (former B&O)
Cherry Run, Md. - Baltimore, Md. (former WM)
Hagerstown, Md. - Lurgan, Pa. (former WM)
Baltimore, Md. - Potomac Yard, Va. (former B&O)
Brunswick, Md. - Potomac Yard, Va. (former B&O)
Potomac Yard, Va. - Richmond, Va. (former RF&P)
Charlottesville, Va. - Richmond, Va. (former C&O)
Brunswick, Md. - Winchester, Va. (former B&O)
Cumberland, Md. - Brooklyn Jct. W. Va. (former B&O)
Grafton, W. Va. - Huddlety, W. Va. (former B&O)
Benwood, W. Va. - Huntington W.Va. (former B&O)
Tygart Jct. W. Va. - Bergoo, W. Va. (former B&O and WM)

which areas comprise the territory shown on the sketch designated as Attachment "A."

NOTE: All branches and industrial tracks intersecting the above listed lines and all pre-existing territorial rights of the involved districts are included in the coordinated territory.

B. The following initial operational changes will be placed into effect upon implementation of the Consolidation:

1. Charlottesville, Va. will be closed as a supply point and terminal for other than outlying point assignments, transferring all other work to Richmond, Va. Charlottesville will thereafter be an outlying point for the Richmond supply point. The Piedmont-Washington Subdivision will be added to the working limits of the Richmond-Potomac Yard Pool.

2. Hanover, Pa. will be closed as a supply point and terminal for other than outlying point assignments, transferring all other work to Baltimore, Maryland. The territory between Baltimore and Hanover will be added to the working limits of the Baltimore-Brunswick Pool. Hanover will thereafter be an outlying point for the Baltimore supply point.

3. Hagerstown, Md. will be closed as a supply point and terminal for other than outlying point assignments, transferring the protection of service to and from Harrisburg to a through freight pool out of Cumberland (operating through Hagerstown). The territory between Cherry run and Hanover will be added to the working limits of the Baltimore-Brunswick pool. Hagerstown will thereafter be an outlying point for the Brunswick supply pool.

4. The protection of certain service west of Cumberland will be transferred to Brunswick by adding the territory west of Cumberland on the Mountain Subdivision and former WM lines

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[1] Source: Pages 1-3 of CSXT's proposed implementing agreement with UTU transmitted to the unions on Feb. 25, 1994, reproduced in Attachment 1 of volume I of the Appendix of Exhibits to CSXT's petition filed June 9, 1995. The same provisions appear in CSXT's proposed implementing agreement with BLE in Attachment 2.

intersecting the Mountain Subdivision to the working limits of the Brunswick-Cumberland Pool with Brunswick remaining the home terminal and Cumberland the away from home terminal.

5. The working limits of the Henry Pool will be combined with the working limits of the Cumberland-Grafton Pool. Cumberland will remain as the home terminal. Grafton will remain as the away from home terminal.

6. Elkins, W. Va. will be closed as a supply point and terminal for other than outlying point assignments, transferring the protection of service between Tygart Junction and Bergoo to the supply point of Grafton by adding that territory to the working limits of the Grafton-Cowan Pool. Laurel Bank will be added as an away from home terminal for that pool. Elkins and Laurel Bank will thereafter be an outlying point for the Cumberland supply point.

NOTE: Notwithstanding any other provisions of this Agreement, to foster an efficient and economic environment for the retention and growth of business on this marginal line, when service is needed on the Tygart-Bergoo line, qualified employees in the Grafton-Cowan Pool will be called ahead of unqualified employees. When there are no qualified employees available in the pool, the Carrier may call qualified extra employees ahead of unqualified pool employees.

C. Employees may be required to perform service throughout the coordinated territory in accordance with the B&O schedule agreement in the same manner as though such coordinated territory was included within their original seniority district.

29606 SERVICE DATE - SEPTEMBER 25, 1998
EB

This decision will be included in the bound volume of printed reports at a later date.

SURFACE TRANSPORTATION BOARD[1]

DECISION

Finance Docket No. 28905 (Sub-No. 22)

CSX CORPORATION—CONTROL—CHESSIE SYSTEM, INC.
AND SEABOARD COAST LINE INDUSTRIES, INC.
(ARBITRATION REVIEW)

Finance Docket No. 29430 (Sub-No. 20)

NORFOLK SOUTHERN CORPORATION—CONTROL—
NORFOLK AND WESTERN RAILWAY COMPANY AND
SOUTHERN RAILWAY COMPANY
(ARBITRATION REVIEW)

Decided: September 22, 1998

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[1] The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), effective January 1, 1996, abolished the Interstate Commerce Commission (ICC or Commission), and established the Surface Transportation Board (Board). The Act transferred from the ICC to the Board a number of the functions formerly performed by the ICC, including the rail carrier control functions formerly codified at 49 U.S.C. 11341-11347, and now codified at 49 U.S.C. 11321-11326.

Section 204(b)(1) of the ICCTA provides, in general, that any proceedings pending before the ICC at the time of its termination and that involve functions transferred from the ICC to the Board shall be decided by the Board under the law as in effect prior to the enactment of the ICCTA. We will therefore decide these proceedings under the old law (i.e., under old 49 U.S.C. 11341, 11343, 11344, and 11347).

ICCTA made no significant changes to the substantive law as relevant to these proceedings, although it did effect a renumbering of the sections. All further statutory references in this decision will be, except as specifically indicated otherwise, to the sections of the law as in effect prior to January 1, 1996.

EXHIBIT
Carriers' B-2
Carrier's Ex PP, Page 1

We are affirming the orders entered by the ICC in these proceedings in its decisions served in 1988, affirming in one case (4 I.C.C.2d 1080) and affirming in part and reversing in part in the other (4 I.C.C.2d 641) the arbitration awards previously entered in these proceedings in accordance with Article I, section 4 of the New York Dock conditions. New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock). We do so employing the reasons and the standards set forth in the ICC's subsequent 1990 decision in this matter served on June 21, 1990 (6 I.C.C.2d 715). However, we are not remanding the matters to the parties for further negotiation as that decision proposed to do because developments in the law since then have made it unnecessary to do so and because the parties have waited long enough for a final resolution of these proceedings.

We answer the question left open by the Supreme Court decision in Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117, 134 (1991) (N&W), as follows: Where New York Dock labor protection is required to be imposed upon a rail consolidation by virtue of 49 U.S.C. 11347, now section 11326, the scope of an arbitrator's authority to modify collective bargaining agreements (CBAs) as "necessary ... to carry out the transaction" under section 11341(a), now section 11321(a), is limited by the provisions of these labor protective conditions as explained by the ICC in its 1990 decision and as updated and further explained in this decision. We conclude that it is unnecessary, premature and inappropriate for us to address in the abstract at this time the reach of the immunity provision of section 11341(a), now section 11321(a), where it is not constrained by the required imposition of New York Dock labor conditions.

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BACKGROUND

Finance Docket No. 28905 (Sub-No. 22). In CSX Corp.--Control--Chessie and Seaboard C.L.I., 363 I.C.C. 518 (1980) (CSX Control), the ICC approved, subject to the New York Dock conditions, the control by CSX Corporation of two noncarrier railroad holding companies, the Chessie System, Inc. (Chessie) and Seaboard Coast Line Industries, Inc. (SCLI). The railroads controlled by Chessie included the Chesapeake and Ohio Railway Company (C&O). The railroads controlled by SCLI included the Seaboard Coast Line Railroad Company (SCL).[2]

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[2] In Seaboard Air Line R. Co.--Merger--Atlantic Coast Line, 320 I.C.C. 122 (1963) (SCL Merger), the ICC had approved, subject to the then standard labor protective conditions, the formation of the SCL through the merger of the Seaboard Air Line Railroad Company (SAL) and the Atlantic Coast Line Railroad Company (ACL). In 1966, in anticipation of the consummation of the SCL Merger transaction, SAL and ACL had entered into a labor protective agreement, commonly referred to as the Orange Book agreement, with the Brotherhood of Railway Carmen (BRC) and 16 other unions. The Orange Book gave SCL the right to transfer work and employees throughout the merged SCL system, and gave all covered employees
(continued...)

In 1980, when the ICC approved the CSX Control transaction, C&O operated a freight car heavy repair shop at Raceland, KY, and SCL operated a freight car heavy repair shop at Waycross, GA. These two shops continued to function for the next several years. The Raceland shop continued to perform freight car heavy repair work for C&O, and the Waycross shop continued to perform freight car heavy repair work for SCL and, after a time, for SCL's corporate successor, an entity first known as Seaboard System Railroad, Inc. and later known as CSX Transportation, Inc. (CSXT).

In August 1986, C&O and CSXT (hereinafter referred to collectively as CSX) served notice under New York Dock, Article I, section 4, on BRC and other involved unions that, on or about December 31, 1986, the Waycross freight car heavy repair shop would be closed and its functions would be transferred to the Raceland freight car heavy repair shop. The notice stated that the work to be moved from Waycross to Raceland, which was then being performed at Waycross under the SCL Agreement, would be "coordinated with such work presently being performed at Raceland under the C&O Agreement." The notice indicated that 149 positions (121 of which were represented by BRC) would be abolished at Waycross, and that 107 positions (99 of which would be represented by BRC) would be established at Raceland. CSX and BRC attempted to negotiate regarding the proposed transfer, but were unable to reach agreement. The matter was then submitted to arbitration.

On March 23, 1987, the arbitration committee entered its opinion and award (LaRocco Award). The committee, relying heavily upon the ICC's 1983 DRGW decision,[3] determined that,

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[2](...continued)
(those employed on or before July 1, 1967) certain lifetime job protections.

[3] Denver and Rio Grande Western Railroad Company--Trackage Rights Over Missouri Pacific Railroad Company Between Pueblo, CO and Kansas City, MO, et al., Finance Docket No. 30000 (Sub-No. 18) (ICC served Oct. 25, 1983) (DRGW), rev'd sub nom. Brotherhood of Locomotive Engineers v. ICC, 761 F.2d 714 (D.C. Cir. 1985), discussed infra, at 10. A few months after the entry of the committee's opinion and award, the D.C. Circuit's (continued...)

under Article I, section 4 of the New York Dock conditions, it had jurisdiction to formulate an implementing agreement, and that, pursuant to 49 U.S.C. 11341(a), the implementing agreement would be immunized from conflicting provisions in the Railway Labor Act (RLA) and in existing CBAs. The committee further determined, however, that, on account of the section 11341(a) "necessity" requirement, such an implementing agreement had to "reasonably accommodate" existing CBAs and collective bargaining rights.[4] The "reasonable accommodation" formula attained particular significance on account of the committee's finding that the Orange Book, in explicitly according SCL the right to transfer Orange Book protected employees and their work throughout the SCL system, implicitly barred SCL and its successors from transferring Orange Book protected employees or their work beyond the SCL system.

The implementing agreement that the committee formulated reflected what it considered to be a "reasonable accommodation" of the section 11341(a) immunity provision with the Orange Book agreement. Acknowledging section 11341(a), the committee concluded that the Orange Book provision barring the transfer of *the work* of covered employees beyond the former SCL system "must be subordinated to the Carriers' right to engage in the authorized New York Dock transaction. Otherwise, the Carriers would be effectively thwarted from transferring all the Waycross freight car heavy repair work to Raceland." LaRocco Award, at 36-37. But, reflecting its "reasonable accommodation" standard, the committee ruled that the Orange Book provision barring the transfer of *covered employees* beyond the former SCL system would not be thus subordinated. "Unlike the work, the Orange Book limitation on transferring covered employees throughout the SCL

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[3](...continued)
decision was vacated on procedural grounds in ICC v. Brotherhood of Locomotive Engineers, 482 U.S. 270 (1987).

[4] "[T]he [section 11341(a)] exemption is only triggered when necessary . . . . To the extent that terms of collective bargaining agreements and collective bargaining rights do not thwart or substantially impede the approved transaction, those agreements and rights are preserved. . . . If feasible, the transaction should reasonably accommodate existing collective bargaining agreements and collective bargaining rights." LaRocco Award, at 33 (emphasis added).

system can be reasonably accommodated with the transaction. Permitting Orange Book covered workers to be transferred only throughout the SCL (absent a voluntary agreement with the Organization) will only slightly impair the transaction while preserving the essence of the Orange Book pursuant to Section 3 of the New York Dock conditions." LaRocco Award, at 37.

Accordingly, the committee, in formulating an implementing agreement, directed the parties to adopt the implementing agreement that had been proposed by CSX, subject to this one significant exception: that Waycross employees covered by the Orange Book could not be compelled to transfer to Raceland.

In CSX Corp.-Control-Chessie and Seaboard C.L.I., 4 I.C.C.2d 641 (1988) (Carmen I), the ICC affirmed in part and reversed in part the committee's opinion and award, and remanded to the committee for further proceedings consistent with the ICC's decision.

The ICC affirmed the part of the committee's opinion and award that approved the movement of the work performed at Waycross. The ICC noted that the committee had concluded that "it had the authority to move both work and employees to Raceland, despite potentially conflicting provisions in the RLA and the Orange Book Agreement ('the ICC has emphasized that a transaction hurdles all legal obstacles preventing implementation,' award at 34). This is a correct statement of our position and we affirm the committee's finding on its authority." Carmen I, 4 I.C.C.2d at 649. The ICC restated the applicable standard as follows:

> [T]he carrier is permitted to carry out and fully implement [a transaction the Commission has authorized] despite potential impediments in existing agreements upon compliance with the provisions for the protection of the rights of employees contained in New York Dock or imposed by the Commission upon the involved transaction. As the committee found, and we agree, it has the authority to override these obstacles in the implementing agreement it will fashion.

Carmen I, 4 I.C.C.2d at 650.

The ICC reversed the part of the committee's opinion and award that created an Orange Book employees exception to the prescribed implementing agreement. The ICC ruled that the committee had erred in fashioning a standard of "slight impairment of the transaction" for permitting a CBA provision to conflict with the implementation of an approved transaction. This "slight impairment of the transaction" standard, the ICC stated, contradicted the correct standard ("a transaction hurdles all legal obstacles preventing implementation"), and would effectively undercut the ICC's authorization of the transaction at issue.

> [E]ven if the committee did properly interpret the Orange Book as prohibiting the transfer of employees outside former SCL limits, its attempted "accommodation" of this supposed prohibition to the proposed transaction must be overturned because the Orange Book agreement as interpreted by the committee serves as an impediment to implementation of a transaction authorized by the Commission.

Carmen I, 4 I.C.C.2d at 649-50. The ICC added that, even if the committee's "slight impairment of the transaction" standard were appropriate, the evidence of record did not support the application of that standard in the present circumstances. The evidence, the ICC said, established that a prohibition against the transfer of Orange Book protected employees "imposed a significant, if not insurmountable, obstacle to implementation of the transfer." Carmen I, 4 I.C.C.2d at 649. Accordingly, the ICC set aside the portion of the decision holding that CSX may not require transfer of employees and remanded the matter with the instruction that such transfers are of course subject to the terms set forth in New York Dock for the protection of the interests of affected employees.

Finance Docket No. 29430 (Sub-No. 20). In Norfolk Southern Corp.--Control--Norfolk & W. Ry. Co., 366 I.C.C. 171 (1982) (NS Control), the ICC authorized Norfolk Southern Corporation to acquire control of the separate railroad systems of Norfolk and Western Railway Company (N&W) and Southern Railway Company (Southern). The approval was subject to the New York Dock conditions.

In 1982, when the ICC approved the NS Control transaction, each railroad system performed its own power distribution work. On the N&W, power distribution was performed at an N&W facility in Roanoke, VA, by supervisors who were represented by the American Train Dispatchers Association (ATDA), and who were covered by an ATDA/N&W CBA. On the Southern, power distribution was performed at a Southern facility in Atlanta, GA, by supervisors who were considered management, and who, for this reason, were neither represented by a union nor covered by a CBA.

In September 1986, N&W and Southern (hereinafter referred to collectively as NS) notified ATDA that power distribution for the two railroad systems would be consolidated. This consolidation would involve the transfer of the work performed in the N&W's Roanoke facility to the Southern's Atlanta facility, which would thereafter be responsible for power distribution for the entire NS system. It was envisioned that the work at the Atlanta facility would be performed by Southern supervisors, and therefore would not be subject to a CBA. In a proposed implementing agreement, NS offered the N&W supervisors the opportunity to request consideration for new supervisor positions to be created on the Southern. NS was unwilling, however, to assign the transferred N&W supervisors the same duties and territorial responsibilities they had had on the N&W. NS and ATDA attempted to negotiate regarding the proposed consolidation, but they were unable to reach agreement. The matter was then submitted to arbitration.

On May 19, 1987, the arbitration committee entered its decision and award (Harris Award). The committee, relying heavily upon the ICC's 1985 Maine Central decision,[5] determined, in essence, that, under Article I, section 4 of the New York Dock conditions, it had jurisdiction to formulate an implementing agreement, and that, pursuant to section 11341(a), the implementing agreement would be immunized from conflicting

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[5] Maine Central Railroad Company, Georgia Pacific Corporation, Canadian Pacific Ltd. and Springfield Terminal Railway Company—Exemption From 49 U.S.C. 11342 and 11343, Finance Docket No. 30532 (ICC served Sept. 13, 1985) (Maine Central), aff'd mem. sub nom. RLEA v. ICC, 812 F.2d 1443 (D.C. Cir. 1987). (Commission order approving transaction and imposing labor protection—rather than RLA—governs labor management relations in implementing approved transaction.)

provisions in existing CBAs and in the RLA. The committee also ruled that Article I, section 4 of the New York Dock conditions empowered it to approve the transfer of work from a location subject to a CBA to a location not subject to a CBA. Accordingly, the committee adopted, with one minor exception, the implementing agreement that had been proposed by NS.

In Norfolk Southern Corp.-Control-Norfolk & W. Ry. Co., 4 I.C.C.2d 1080 (1988) (Dispatchers I), the ICC affirmed the committee's decision and award. The ICC said that, under the auspices of the section 11341(a) exemption, the mandatory arbitration scheme of Article I, section 4 of New York Dock took precedence over RLA procedures whether asserted independently or based on an existing CBA.

> Article I, section 4 of New York Dock provides for compulsory, binding arbitration of disputes. It has long been the ICC's view that private collective bargaining agreements and RLA provisions must give way to the ICC-mandated procedures of section 4 when parties are unable to agree on changes in working conditions required to implement a transaction authorized by the Commission. Absent such a resolution, the intent of Congress that Commission-authorized transactions be consummated and fully implemented might never be realized. Moreover, 49 U.S.C. § 11341(a) exempts from other law a carrier participating in a § 11343 transaction as necessary to carry out the transaction.

Dispatchers I, 4 I.C.C.2d at 1083 (footnote omitted).

At The Court Of Appeals. In Brotherhood of Ry. Carmen v. ICC, 880 F.2d 562 (D.C. Cir. 1989) (Carmen), the court of appeals, ruling that the section 11341(a) immunity provision did not empower the ICC to override a CBA, reversed the ICC's decisions in Carmen I and Dispatchers I and remanded the records to the ICC in order that the ICC might determine whether further proceedings were necessary. The ICC accepted the remand, and, on June 21, 1990, it served its decision on remand, CSX Corp.-Control-Chessie and Seaboard C.L.I., 6 I.C.C.2d 715 (1990) (Carmen II). CSX and NS, however, did not agree with the decision of the court of appeals; instead, they sought certiorari; and, on March 19, 1991, the Supreme Court issued its

decision on certiorari, reversing the D.C. Circuit. Norfolk & Western R. Co. v. Train Dispatchers, 499 U.S. 117 (1991) (N&W).

On Remand. In the interim the ICC issued Carmen II, which held that, in connection with an approved transaction, CBAs and collective bargaining rights could be modified, without resort to RLA procedures, under the auspices of section 11347 and the protective conditions imposed thereunder. Thus, according to the ICC's decision, the CBA override authority that the court of appeals had held could not be based on section 11341(a) has a basis in section 11347 and Article I, section 4 of the New York Dock labor conditions. Section 11341(a) was found available to be relied upon for an RLA override authority commensurate with the changes in CBAs that could be effected under section 11347.

The Carmen II analysis is based upon the historical development of section 11347 and ICC labor conditions. The history behind this provision, leading to its enactment in 1940 as section 5(2)(f), is long and complex, and involves the Transportation Act of 1920, the Railway Labor Act of 1926, the Emergency Railroad Transportation Act of 1933, certain amendments to the Railway Labor Act enacted in 1934, the Washington Job Protection Agreement of 1936 (WJPA), and the Transportation Act of 1940.

The ICC indicated in Carmen II that the enactment of section 5(2)(f) in the Transportation Act of 1940 codified the legal framework that had been agreed upon by the negotiators of the WJPA in 1936, and set the stage for a 40-year era of labor peace with regard to mergers and consolidations. Upon approving a post-1940 merger or consolidation proposed by two or more railroads, the ICC would impose WJPA-based protective conditions. Rail management and rail labor would then negotiate implementing agreements to permit smooth implementation of the transaction, and, in the event of impasse, arbitrators were empowered to modify CBAs when necessary to implement the transaction. Prior to 1936, these negotiations would have been conducted under the interminable RLA dispute resolution procedures applicable to major disputes, and deadlock might well have been the result. After 1940, the mechanism for an RLA bypass having been put in place, these negotiations would have been conducted under the WJPA, under comparable procedures negotiated in connection with the particular transaction, or under the comparable section 5(2)(f)-mandated procedures contained in the ICC's labor conditions. These various procedures, all of which were

substantially the same and provided for mandatory binding arbitration, were designed to resolve covered disputes with a certain measure of dispatch and to overcome the obstacle of CBA provisions that might otherwise have prevented consummation of an approved transaction.

Carmen II indicates that the 40-year era of labor peace ushered in by the 1940 enactment of section 5(2)(f) ended about 1980 arguably due in part to a change mandated by the Railroad Revitalization and Regulatory Reform Act of 1976: the addition of the requirement that the ICC impose labor protection at least as protective of the interests of employees as the terms established under section 405 of the Rail Passenger Service Act (RPSA). This gave birth to Article I, section 2 of the New York Dock conditions which provide for the preservation of collective bargaining rights. Rail labor contended for a literal reading of Article I, section 2 so as to prevent any modifications of CBA provisions in approved consolidations except through resort to RLA procedures.[6] The carriers, on the other hand, responded with a reading of Article I, section 4 of the New York Dock conditions which would permit an arbitrator to change any provision of a CBA deemed an impediment to the approved consolidation. In Carmen I and Dispatchers I, the ICC applied the interpretation of Article I, section 4 of New York Dock and the section 11341(a) immunity provision commonly associated with its 1983 DRGW decision and its 1985 Maine Central decision (hereinafter referred to collectively as the DRGW doctrine). The DRGW doctrine asserted that, as a result of section 11341(a), the ICC approval of a transaction operated automatically to override all laws, including the RLA, as necessary to carry out an approved transaction, and that CBAs conflicting with an approved transaction had to give way. Under the DRGW doctrine, it was understood that the Article I, section 4 binding arbitration rule trumped the Article I, section 2 "preservation of contracts" rule. It was further understood that, by virtue of section 11341(a), a New York Dock

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[6] More specifically, rail labor forced the ICC to address the issue in DRGW by seeking a declaration that the DRGW and MKT railroads could not operate over trackage rights imposed by the ICC to counteract the anticompetitive effects of a merger it had approved utilizing their own crews without negotiating with the employee organizations representing employees of the merged carriers under the RLA. The ICC concluded otherwise and its interpretation was ultimately upheld by the Supreme Court in N&W.

arbitrator acting under Article I, section 4 was authorized to override any term of a CBA that impeded the effectuation of a merger.

In Carmen II the ICC made three refinements to the DRGW doctrine. *First*, the ICC substituted section 11347, which provides for the imposition of labor protective conditions in connection with an approved transaction, for section 11341(a) as the authority for modifying CBAs while foreclosing resort to RLA remedies. *Second*, the ICC set forth a more balanced interpretation of Article I, section 2 of New York Dock. Article I, section 2, the ICC indicated, cannot realistically be interpreted as bearing its literal meaning, i.e., that CBAs shall be preserved without any qualification whatsoever. What Article I, section 2 means, the ICC found, is that contract rights shall be respected and not overridden unless necessary to permit an approved transaction to proceed.[7] *Third*, the ICC tempered what it had said in DRGW and Maine Central. It was still true, the ICC stated in Carmen II, that CBAs and the RLA had to yield to allow implementation of an approved transaction. However, section 11347, and the protective conditions imposed thereunder, only required CBAs and the RLA to yield to permit modifications of the type traditionally made by arbitrators under the WJPA and the ICC's conditions from 1940 to 1980; and section 11341(a) reinforced 11347 by requiring the RLA to yield so as not to block the sort of changes permitted under section 11347. The ICC did not attempt to define what changes should be considered to be necessary but stated in Carmen II that CBAs and the RLA should not be overridden simply to facilitate a transaction, but should be required to yield only when and to the extent necessary to permit the approved transaction to proceed.

The ICC did not attempt, in Carmen II, to apply its section 11347 analysis to the facts of the two proceedings then before the ICC (and now before the Board). Rather, in recognition of the central role accorded negotiation and arbitration in the fashioning of an implementing agreement, these two proceedings were "remanded to the parties to continue the implementing

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[7] This was the first time the concept of necessity had been expressly applied to modification of a CBA by an arbitrator under 49 U.S.C. 11347—a concept that was embraced by the D.C. Circuit in RLEA v. United States, 987 F.2d at 806, 814-15 (D.C. Cir. 1993) (RLEA).

process in accordance with Article I, section 4 of the New York Dock conditions through further negotiations or arbitration, if necessary, to reach new implementing agreements in accordance with the standards set forth in this decision." Carmen II, 6 I.C.C.2d at 757. The two outstanding arbitration awards were vacated, because the arbitrators in the two cases had "based their decisions on pronouncements [in DRGW and Maine Central] that the Carmen court found to be incorrect statements of the law and that we modify in this decision," Carmen II, 6 I.C.C.2d at 721.[8]

At The Supreme Court. In N&W the Supreme Court, holding that a carrier's exemption under section 11341(a) "from all other law" includes the carrier's legal obligations under a CBA, reversed the D.C. Circuit's Carmen judgment and remanded for further proceedings. The Supreme Court's N&W decision amounted to an affirmation of a key aspect of the ICC's decisions in DRGW, Maine Central, Carmen I, and Dispatchers I.

> We hold that, as necessary to carry out a transaction approved by the ICC, the term "all other law" in § 11341(a) includes any obstacle imposed by law. In this case, the term "all other law" in § 11341(a) applies to the substantive and remedial laws respecting enforcement of collective-bargaining agreements. Our construction of the clear statutory command confirms the interpretation of the agency charged with its administration and expert in the field of railroad mergers.

N&W, 499 U.S. at 133.

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[8] In a decision served July 20, 1990 (with corrections served July 25, 1990, and August 13, 1990), the ICC denied petitions to stay the effectiveness of Carmen II that had been filed by CSX and NS. In a decision served October 29, 1990, the ICC denied petitions seeking administrative reconsideration that had also been filed by CSX and NS. The denial of the stay petitions allowed the Carmen II decision to become effective, and, following the denial of the reconsideration petitions, should have led in due course to further negotiation and, if necessary, further arbitration. However, so far as the record before us indicates, it did not.

Before addressing the merits, however, the Supreme Court emphasized that its decision did not resolve certain issues:

> By its terms, the exemption applies only when *necessary* to carry out an *approved* transaction. These predicates, however, are not at issue here, for the Court of Appeals did not pass on them and the parties do not challenge them. For purposes of this decision, we assume, without deciding, that the ICC properly considered the public interest factors of § 11344(b)(1) in approving the original transaction, that its decision to override the carriers' obligations is consistent with the labor protective requirements of § 11347, and that the override was necessary to the implementation of the transaction within the meaning of § 11341(a). Under these assumptions, we hold that the exemption from "all other law" in § 11341(a) includes the obligations imposed by the terms of a collective-bargaining agreement.

N&W, 499 U.S. at 127-28 (footnote omitted; emphasis in original).

At the very end of its opinion, the Supreme Court again emphasized what was not being decided:

> The immunity provision does not exempt carriers from all law, but rather from all law necessary to carry out an approved transaction. We reiterate that neither the conditions of approval, nor the standard for necessity, is before us today. It may be, as the ICC held on remand from the Court of Appeals, that the scope of the immunity provision is limited by § 11347, which conditions approval of a transaction on satisfaction of certain labor-protective conditions. See n. 2, *supra*.[9] It also might be true that "[t]he breadth of the exemption [in § 11341(a)] is defined by the

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[9] In its notes 2 and 3, the Supreme Court took note of Carmen II, and certain statements with respect to the interplay of sections 11341(a) and 11347. See N&W, 499 U.S. at 126 n.2 and at 128 n.3.

> scope of the approved transaction . . . ." *ICC v. Locomotive Engineers*, *supra*, at 298 (STEVENS, J. concurring in judgment).[10] We express no view on these matters, as they are not before us here.

N&W, 499 U.S. at 134 (brackets and ellipsis in original).

Back To The Court Of Appeals. Subsequent to the Supreme Court's N&W decision, the ICC's decisions in Carmen I, Dispatchers I, and Carmen II were all subject to review in the court of appeals. Carmen I and Dispatchers I were there on remand from the Supreme Court; Carmen II was there on direct appeal. By order filed September 17, 1991, the court of appeals remanded these cases and two additional cases "for reconsideration in light of the Supreme Court's decision."

Comments Solicited. By decision served November 13, 1992, the ICC invited the parties to the Carmen case and the Dispatchers case, and other interested persons as well, to submit, with regard to any issues in these cases that remained open for reconsideration in light of the Supreme Court's N&W decision, comments and replies. In due course, comments and replies were submitted by CSX, BRC, NS, RLEA,[11] NRLC, UP, and Conrail.[12]

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[10] This reference is to Justice Stevens' concurring opinion in ICC v. Brotherhood of Locomotive Engineers, 482 U.S. 270, 287 (1987).

[11] RLEA is the acronym for the Railway Labor Executives' Association, which submitted its pleadings on behalf of itself and its member organizations, one of which was ATDA. ATDA has since become a Department of the Brotherhood of Locomotive Engineers. See Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company (Arbitration Review), Finance Docket No. 30965 (Sub-No. 4) (ICC served Aug. 30, 1994) (slip op. at 1 n.1).

[12] NRLC is the acronym for the National Railway Labor Conference. UP is the acronym for Union Pacific Railroad Company and Missouri Pacific Railroad Company. Conrail is the acronym for Consolidated Rail Corporation.

Preliminary Procedural Matter. RLEA has moved (on behalf of itself and its member organizations) that these proceedings be assigned for oral argument. We think that the matters at issue in these proceedings have been adequately addressed in the written pleadings, and that oral argument would not assist us in any substantial way in our resolution of these matters. We will therefore deny RLEA's motion.

DISCUSSION AND CONCLUSIONS

Analytical Framework

United States Code. The analytical framework within which these proceedings arose and under which they must be decided rests primarily upon 49 U.S.C. 11343, 11344, 11347, and 11341.[13]

Section 11343(a) provided that certain rail carrier control "transactions" could be carried out only with the approval and authorization of the ICC. The control by CSX Corporation of the Chessie holding company (which itself controlled several rail carriers) and the SCLI holding company (which itself controlled several additional rail carriers) was a "transaction" within the scope of 49 U.S.C. 11343(a). The control by Norfolk Southern Corporation of rail carriers N&W and Southern was likewise a "transaction" within the scope of 49 U.S.C. 11343(a).

Section 11344(a) provided that the ICC could begin a proceeding to approve and authorize a transaction referred to in 49 U.S.C. 11343 on application of the person seeking that authority. Section 11344(c) directed the ICC to approve and authorize any such transaction when it found that the transaction was consistent with the public interest. Section 11344(b)(1)(D) provided that, if the transaction involved the merger or control of at least two Class I railroads, the ICC, in reaching its decision under section 11344(c), would first have to consider several factors including, among others, "the interest of carrier employees affected by the proposed transaction." Applications seeking approval for the CSX Control transaction and the NS Control transaction were filed with the ICC by CSX Corporation

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[13] As indicated in note 1, these provisions have been carried forward by the ICCTA and recodified as 11323, 11324, 11326, and 11321, respectively.

and NS Corporation, respectively; the ICC approved such transactions upon finding that each was consistent with the public interest, CSX Control, 363 I.C.C. at 597-98, and NS Control, 366 I.C.C. at 249; and, because each such transaction involved the control of at least two Class I railroads, the ICC considered, with respect to each transaction, the interests of the carrier employees affected by the proposed transaction, CSX Control, 363 I.C.C. at 588-92, and NS Control, 366 I.C.C. at 229-31.

Section 11347 directed the ICC, when approving a rail carrier transaction under 49 U.S.C. 11344, to require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who were affected by the transaction as "the terms imposed under this section before February 5, 1976, and the terms established under section 565 of title 45." In response to the addition, in 1976, of the reference to the terms established under section 565 of title 45 (i.e., the terms established under section 405 of the RPSA), the ICC developed the New York Dock[14] conditions which were imposed upon the primary transactions at issue in CSX Control and NS Control. CSX Control, 363 I.C.C. at 604; NS Control, 366 I.C.C. at 253.

Section 11341(a) provided that a carrier, corporation, or person participating in a transaction approved by the ICC under 49 U.S.C. 11344 was "exempt from the antitrust laws *and from all other law*, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction" (emphasis added). Section 11341(a) was variously referred to as the immunity provision, the exemption provision, and the override provision (because it "immunized" a rail carrier from laws that might otherwise have been applicable, it "exempted" that carrier from the requirements of such laws, and it effected an "override" of such laws). In the 1991 N&W decision, the Supreme Court held that the immunity provision reached *both* the Railway Labor Act itself (because the RLA was a "law") *and also* CBAs entered into under the RLA (because immunity from a law implies immunity from the obligations imposed by that law). N&W, 499 U.S. at 133. The Court noted, however, that such

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[14] New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Ry. v. ICC, 609 F.2d 83 (2d Cir. 1979).

immunity would apply only when *necessary* to carry out a properly *approved transaction*, and the Court emphasized "that neither the conditions of approval, nor the standard for necessity, is before us today." N&W, 499 U.S. at 134.

New York Dock. The basic framework *both* for mitigating the labor impacts of consolidations *and also* for bypassing the drawn-out RLA procedures that would otherwise be applicable to particular transactions was created in the Washington Job Protection Agreement of 1936, was enacted into law by the Transportation Act of 1940,[15] and was carried into its present form in 1979 when the ICC issued the New York Dock conditions. That framework provides *both* substantive benefits for affected employees (dismissal allowances, displacement allowances, and the like) *and* a procedural mechanism (negotiation, if possible; arbitration, if necessary) for resolving disputes respecting implementation of authorized transactions. See New York Dock, 360 I.C.C. at 84-90.[16]

Most recently the Board affirmed the importance it places on negotiation first, and arbitration, if necessary, to arrive at implementing agreements in its recent decision in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating

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[15] See, generally, Carmen II, 6 I.C.C.2d at 732-40 (discussing the Washington Job Protection Agreement of 1936 and the Transportation Act of 1940).

[16] The ICC adopted arbitration procedures to ensure that "those most familiar with the complexities of labor law and particular problems associated with railroad employees would determine disputes arising out of such conditions." Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger, 9 I.C.C.2d 1021, 1025 (1993) (Nickel Plate 4) (citation omitted), aff'd United Transp. Union v. ICC, 43 F.3d 697 (D.C. Cir. 1995). See also Amer. Train Dispatchers Assoc. v. CSX Transp., Inc., 9 I.C.C.2d 1127, 1130 (1993) (CSX 24), aff'd American Train Dispatchers Ass'n v. ICC, 54 F.3d 842, 845-46 (D.C. Cir. 1995) (both the ICC and the court held, inter alia, that the ICC could require the parties to a dispute arising under labor protective conditions to submit that dispute to arbitration, even though a party might prefer to forgo arbitration and to have the ICC decide the dispute in the first instance).

Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (Conrail), slip op. at 126-27, where, at the request of various organizations representing employees, it expressly stated that "approval of this transaction does not indicate approval or disapproval of any of the CBA overrides that applicants have argued are necessary to carry out the transaction; the arbitrators are free to make whatever findings and conclusions they deem appropriate with respect to CBA overrides under the law."

Arbitration plays a central role in the process of implementing approved transactions under New York Dock. The New York Dock conditions do not prescribe, and they could not possibly prescribe, a one-size-fits-all standard respecting implementation of particular transactions. Instead, New York Dock prescribes a procedure (negotiation, if possible; arbitration, if necessary) for arriving at an implementing agreement respecting any particular transaction.[17] The New York Dock conditions do not themselves specify how and to what extent CBAs may be overridden by arbitrators in arriving at arbitrally imposed implementing agreements. The authority to do so derives from 49 U.S.C. 11341 as explained by the ICC in Carmen I and Dispatchers I and affirmed by the Supreme Court in N&W and from 49 U.S.C. 11347 as explained by the ICC in Carmen II.

Under the approach reflected by the ICC's decision in Carmen I and Dispatchers I, as affirmed by the Supreme Court in N&W, the scope of the arbitrator's authority to override CBA terms was said to be limited only by the scope of the approved

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[17] An implementing agreement is *either* an agreement negotiated by management and labor *or* an "agreement" imposed in an arbitration proceeding. The arbitrators' awards, in the absence of an agreement between the carriers and the representatives of the affected employees, constitute the implementing agreements specified under New York Dock and which we have required to be in effect before a transaction affecting employee rights can be consummated. Fox Valley & Western Ltd.--Exemption Acquisition and Operation- Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company (Petition for Emergency Cease and Desist Order), Finance Docket No. 32035 (ICC served Aug. 26, 1993) (slip op. at 3).

transaction—with any obstacle to its accomplishment being overridden.[18] Under the alternative approach reflected by the ICC's Carmen II decision, the scope of the arbitrator's authority was defined in terms of the process as conducted by arbitrators during the period from 1940-1980. Carmen II, 6 I.C.C.2d at 740-45.[19] It was the potential conflict between these two

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[18] The immunity provision has been characterized as *self-executing*. This phrase has reference to the immunizing power of 49 U.S.C. 11341(a) vis-à-vis transactions directly related to and growing out of, or flowing from, a specifically authorized transaction. Because the immunity provision was self-executing, its immunizing power did not depend upon a declaration by the ICC that a particular exemption was necessary to a particular approved transaction. "Section 11341 is self-executing and does not condition exemptions on the ICC's announcing that a particular exemption is necessary to an approved transaction." CSX Corp.-Control-Chessie and Seaboard C.L.I., 8 I.C.C.2d 715, 723 n.12 (1992) (CSX 23), aff'd, American Train Dispatchers Ass'n v. ICC, 26 F.3d 1157 (D.C. Cir. 1994) (ATDA). "[Section 11341], as its plain language indicates, does not condition exemptions on the ICC's announcing that a particular exemption is necessary to an approved transaction. Rather, § 11341 automatically exempts a person from 'other laws' whenever an exemption is 'necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.' 49 U.S.C. 11341. The breadth of the exemption is defined by the scope of the approved transaction, and no explicit announcement of exemption is required to make the statute applicable." ICC v. Brotherhood of Locomotive Engineers, 482 U.S. 270, 298 (1987) (Stevens, J., concurring) (footnote omitted). See also CSX 23, 8 I.C.C.2d at 723-24 (the immunity provision does not extend "only to matters specifically mentioned by us in approving the transaction. Rather, § 11341(a) immunity covers the future coordinations expected to flow from the control transaction that we approved, and our approval of the principal transaction also extends to these directly related actions."), aff'd ATDA, 26 F.3d at 1164. The majority in the N&W case adopted the reasoning of the Stevens opinion, 499 U.S. at 132-33.

[19] See also Carmen II, 6 I.C.C.2d at 721: "It appears that arbitrators, management and labor developed approaches in the 1940-80 period for resolution of the inevitable conflicts with

(continued...)

approaches, which the Supreme Court recognized but expressly declined to resolve in N&W, 499 U.S. at 134, that gave rise to the remand of these cases, and it is this issue that has remained unresolved to this date.[20]

The present proceedings arise out of implementing agreement arbitrations conducted under the auspices of Article I, section 4 of the New York Dock conditions. The procedural mechanism provided, like the procedural mechanism provided by the WJPA from which section 4 was derived,[21] reflects the understanding that CBA modifications necessary to permit implementation of transactions approved by the ICC under 49 U.S.C. 11344 could not be relegated to the purposefully drawn-out procedures provided by the RLA.[22] The RLA seeks to preserve labor peace by preserving the CBA status quo, and it was recognized that, in many instances, preservation of the CBA status quo would effectively thwart full implementation of rail carrier transactions approved by the ICC under 49 U.S.C. 11344.

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[19](...continued)
CBAs that permitted the carrying out of the transaction while maintaining labor peace. We trust that these parties will be able to call upon their institutional memories to again resolve these matters consistently and amicably, now that we have removed two major impediments to the process."

[20] Other issues that were alive at the time of the remand have since been definitively resolved. The issue of the relationship between Article I, section 2 and Article I, section 4 has been resolved by a series of decisions in the D.C. Circuit culminating in UTU v. STB, 108 F.3d 1425 (D.C. Cir. 1997) (UTU). So too has the issue of necessity for purposes of 49 U.S.C. 11347 and 11326. RLEA, 987 F.2d at 806. We refer to these issues herein solely for clarity of exposition.

[21] Article I, section 4 of the New York Dock conditions can be traced directly back to the WJPA. See Carmen II, 6 I.C.C.2d at 732-40. See also RLEA, 987 F.2d at 813; ATDA, 26 F.3d at 1159-60.

[22] A copy of the WJPA can be found in Carmen II, 6 I.C.C.2d at 778-93. The procedural mechanism now provided by New York Dock, Article I, section 4 is derived from the similar procedural mechanism provided by WJPA sections 4, 5, and 13.

Article I, section 4, which permits CBA modifications to be arrived at on an expedited schedule through binding arbitration, provides in pertinent part:

> Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the *selection of forces* from all employees involved on a basis accepted as appropriate for application in the particular case and any *assignment of employees* made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days [i.e., 30 days after the railroad contemplating a transaction has provided written notice of such intended transaction] there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures: (1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Meditation Board shall immediately appoint a referee. (2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence. (3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

New York Dock, 360 I.C.C. at 85.

The implementing agreements imposed in arbitration under labor conditions that antedated New York Dock generally focused on *selection of forces* and *assignment of work*. See, e.g., WJPA section 5, reproduced at Carmen II, 6 I.C.C.2d at 779. The ICC, in the course of discussing this matter at some length in its Carmen II decision, noted that "[i]f the 1940-80 arbitrators felt themselves bound by these terms, they must have defined them broadly enough to include contract changes involving the movement of work (and probably employees) as well as adjustments in seniority." Carmen II, 6 I.C.C.2d at 721. Nevertheless, the dispute resolution mechanism established by WJPA section 5, the

ICC noted, embraced more than selection and assignment of forces, narrowly defined. It encompassed also the modification of certain contractual rights; it embraced whatever was necessary to the effectuation of those projects that were the direct results of the merger.

> Negotiators and arbitrators may well have followed the rubric of "selection of forces and assignment of employees" when administering the provisions governing the effect of consolidations. The scope of these terms, however, is not well defined. It must extend beyond the mere mechanism for selection or assignment of employees, and include the modification of certain important contractual rights. *Southern* [Southern Ry. Co.-Control-Central of Georgia Ry. Co., 331 I.C.C. 151 (1967)] and Bernstein [an arbitrator cited in Carmen II] make it clear that work was transferred from one railroad to another despite contrary contractual provisions in CBAs. It was also obvious that contractual seniority rights were modified in order to consolidate rosters of the two separate, combining railroads. *See Southern* at 165, 185. These rosters may have been "dove-tailed" or another method [may have been] agreed upon or decreed by an arbitrator. We can assume that the reassignment of employees would have regularly taken place despite CBA prohibitions. These actions are the sort that would be necessary to permit almost any consolidation of the functions of two merging railroads. The WJPA procedures make it possible.

Carmen II, 6 I.C.C.2d at 742 (footnotes omitted).

In short, the ICC in Carmen II defined the scope of authority of arbitrators to modify CBAs under Article I, section 4 of New York Dock by reference to the practice of arbitrators during the period 1940-1980. Although this is by no means a bright line definition, it has been accepted as a practicable

working definition by the courts, see RLEA, ADTA, and UTU, and we will adopt it too.

The ICC also explained in Carmen II that three additional crucial limitations restrict the CBA modifications that can be effected by an arbitrator under section 4. The transaction sought to be implemented must be an *approved transaction*; the modifications must be *necessary* to the implementation of that transaction; and the modifications cannot reach CBA *rights, privileges, or benefits* protected by Article I, section 2 of the New York Dock conditions. We agree with the ICC and will discuss how we intend to apply each of these limitations in the light of intervening court decisions.

Approved Transaction. Section 11343(a) provided that certain transactions could be carried out only with the approval and authorization of the ICC; section 11344(c) provided that the ICC should approve and authorize such transactions only if they were consistent with the public interest; section 11347 directed the ICC, when approving such transactions, to require the rail carrier to provide a fair arrangement protective of the interests of its employees; and section 11341(a) provided that a rail carrier participating in an approved transaction was exempt from otherwise applicable law, as necessary to carry out the transaction. But none of these provisions defined the scope of the transaction approved by the ICC under section 11344(c) and thereby immunized against other law under section 11341(a).

Although a narrow interpretation of the word *transaction* has frequently been sought by rail labor, it is now settled that the proper and court-approved interpretation of the word *transaction* is the interpretation established by the ICC. The ICC, with the approval of the courts, held that the word, as used in 49 U.S.C. 11343, 11344, 11347, and 11341, embraced two categories of transactions: the principal transaction approved by the ICC (generally a consolidation or acquisition of control); and subsequent transactions that were directly related to and grew out of, or flowed from, that principal transaction (such as consolidations of facilities, transfer of work assignments, etc.). "The approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to and fulfill the purposes of the principal transaction (i.e., those which, the Supreme Court noted, would allow 'the

efficiencies of consolidation' to be achieved)." CSX 23, 8 I.C.C.2d at 722.

In our view, "approved" transactions include those specifically authorized by the ICC, such as the various proposals we have approved which led to the formation of CSXT and those that are directly related to and grow out of, or flow from, such a specifically authorized transaction. The instant transaction, the transfer of the dispatching functions, falls into the latter category. The existence of this second category of transactions is implicit in the definition of the term "transaction" in the standard labor protective conditions: "[A]ny action taken pursuant to authorizations of the ICC on which these provisions have been imposed." *New York Dock*, 360 I.C.C. at 84, CSX 23, 8 I.C.C.2d at 720-21 (footnote and internal cross-references omitted). The omitted footnote cites New York Dock, 360 I.C.C. at 70: "[T]he broad definition [of 'transaction'] is necessary in the types of transactions for which approval is required under 49 U.S.C. 11343 *et seq.*, because the event actually affecting the employees might occur at a later date than the initial transaction, yet still pursuant to our approval (consolidation of employee rosters, et cetera)." In ATDA, 26 F.3d at 1165, the court, in affirming CSX 23, found reasonable the ICC's view that the term *approved transaction* "extends to subsidiary transactions that fulfill the purposes of the main control transaction"; the court added that "[t]he ICC's elastic construction of 'approved transaction' in this case mirrors [the] settled understanding [of the term]." Moreover, it is now settled that the mere passage of time does not prevent a finding of nexus between the proposed changes and the initially approved transaction. UTU, 108 F.3d at 1430-31.

Necessity. A CBA override can be had only if such override is *necessary* to carry out a transaction approved under 49 U.S.C. 11344(c). The necessity requirement is explicit in 49 U.S.C. 11341(a); it has been held to be implicit in 49 U.S.C. 11347, Carmen II, RLEA, 987 F.2d at 814-15; it is therefore, on both counts, part and parcel of Article I, section 4 of the New York Dock conditions. "This 'necessity' finding is not optional; pre-transaction labor arrangements cannot be modified without it." Fox Valley & Western Ltd.--Exemption Acquisition and Operation--Certain Lines of Green Bay and Western Railroad Company, Fox River Valley Railroad Corporation, and the Ahnapee & Western Railway Company (Arbitration Review), Finance Docket No. 32035 (Sub-Nos. 2-6) (Fox Valley) (ICC served Aug. 10, 1995)

(slip op. at 2) (citation omitted). Whatever the standard of necessity may be where only 11341(a) is involved, it is settled that there is one and only one necessity standard where section 11347 and the New York Dock conditions are relied upon by the arbitrator as the basis for overriding CBA provisions. ATDA, 26 F.3d at 1164-65.

Although, as we have noted above, the ICC in Carmen II did not attempt to define what would constitute necessity in such cases, the D.C. Circuit Court of Appeals has subsequently held, and we have accepted that holding, that a CBA override can be effected only where there are transportation benefits of the underlying transaction; it cannot be effected if the only benefit of the modification derives from the CBA modification itself. RLEA, 987 F.2d at 814-15. "[W]e do not see how the agency can be said to have shown the 'necessity' for modifying a CBA unless it shows that the modification is necessary in order to secure to the public some transportation benefit flowing from the underlying transaction (here a lease)." RLEA, 987 F.2d at 815. "[T]he benefit cannot arise from the CBA modification itself; considered independently of the CBA, the transaction must yield enhanced efficiency, greater safety, or some other gain." ATDA, 26 F.3d at 1164. See also UTU, 108 F.3d at 1431.

Under the approach adopted in Carmen II, the necessity determination generally had to be made in the first instance by an arbitrator, though it was generally reviewable by the ICC.

As stated by the ICC in its Fox Valley decision (slip op. at 3):

> Arbitrators should also be aware that in [RLEA] the court admonished us to identify which changes in pre-transaction labor arrangements are necessary to secure the public benefits of the transaction and which are not. *We have generally delegated to arbitrators the task of determining the particular changes that are and are not necessary to carry out the purposes of the transaction,* subject only to review under our Lace Curtain standards [referenced below]. Arbitrators should discuss the necessity of modifications to pre-transaction labor arrangements, taking care to reconcile the

> operational needs of the transaction with the need to preserve pre-transaction arrangements. Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying operational and related work assignment and employment level changes that are clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities, if these changes are identified with reasonable particularity. But arbitrators should not assume that all pre-transaction labor arrangements, no matter how remotely they are connected with operational efficiency or other public benefits of the transaction, must be modified to carry out the purposes of a transaction. (footnote omitted).

Rights, Privileges, and Benefits. The necessity standard of 49 U.S.C. 11341(a) and 11347 provides one check upon the CBA modification authority entrusted to arbitrators under Article I, section 4 of the New York Dock conditions. The rights, privileges, and benefits standard of Article I, section 2 of New York Dock[23] provides another check upon that authority. That provision states that certain rights, privileges, and benefits afforded employees under pre-transaction CBAs must be preserved. RLEA, 987 F.2d at 814 (noting, however, that not every word of every CBA establishes a right, privilege, or benefit); ATDA, 26 F.3d at 1163 (indicating that a CBA "scope" provision creates no rights, privileges, or benefits).

Although it was a hotly contested issue at the time these proceedings were remanded, the definition of rights, privileges

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[23] Article I, section 2 of the New York Dock conditions, 360 I.C.C. at 84, provides: "The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes."

and benefits has now been established by an ICC decision, which we have adopted and applied,[24] and by the affirmance of that ICC decision by the D.C. Circuit. In CSX Corporation-Control-Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27) (ICC served Dec. 7, 1995) (CSX 27) (slip op. at 14-16), the ICC defined the rights, privileges, and benefits that cannot be overridden to include such things as group life insurance, hospitalization and medical care, free transportation, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation. Protected rights, privileges, and benefits do not embrace scope rules and seniority provisions. Such rules and provisions, the ICC noted, have historically been changed in arbitration conducted under Article I, section 4 of the New York Dock conditions, or under the comparable provisions of the predecessor labor protective conditions imposed prior to 1979. The rights, privileges, and benefits that must be preserved, the ICC added, do not include pre-transaction union representation arrangements.[25] Aff'd, UTU.

In explaining our denial of a petition to stay the ICC's CSX 27 decision, we indicated that rates of pay, rules, and working conditions are not rights, privileges, or benefits that must be

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[24] Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company-Control and Merger-Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company (Arbitration Review), STB Finance Docket No. 32760 (Sub-No. 22) (STB served June 26, 1997).

[25] The ICC pointed out, however, that once a transaction has been implemented pursuant to an award imposed under Article I, section 4 of the New York Dock conditions, questions respecting union representation arrangements are subject to the sole jurisdiction of the National Mediation Board under the RLA. "The effect of our transactions on selection of union membership is under the jurisdiction of the National Mediation Board acting under the Railway Labor Act." CSX 27, slip op. at 15 (citation omitted).

preserved.[26] "[I]t is now well established that changes in rates of pay, rules, and working conditions can be required by this agency or by arbitrators acting under New York Dock. Carriers may invoke New York Dock to modify such CBA terms when modification is necessary to obtain the benefits of a transaction that was approved as being in the public interest." CSX 27 Stay Decision, slip op. at 3.

In affirming the ICC's Sub-No. 27 Decision, the court observed (108 F.3d at 1430):

> [2] In this case, the Commission offers a definition: "rights, privileges, and benefits" refers to "the incidents of employment, ancillary emoluments or fringe benefits—as opposed to the more central aspects of the work itself—pay, rules and working conditions." See Commission decision at 14, reprinted in J.A. 237. And "the incidents of employment, ancillary emoluments or fringe benefits" refers to employees' vested and accrued benefits, such as life insurance, hospitalization and medical care, sick leave, and similar benefits. See id. at 15, reprinted in J.A. 238. According to the Commission, seniority provisions are not within the compass of "rights, privileges, and benefits" protected absolutely from the Commission's abrogation authority. See id. On this point, the Commission notes that seniority provisions "have consistently been modified in the past in connection within [sic] consolidations. This may be due to the fact that almost all consolidations require scope and seniority changes in order to effectuate the purpose of the transaction. Railway Labor Act bargaining over these aspects of a consolidation would frustrate the transactions."

Id.

The court went on to affirm this definition in the following language, which is dispositive of the issue:

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[26] See CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27) (STB served Jan. 4, 1996) (CSX 27 Stay Decision).

> The Commission's interpretation is reasonable. See American Train Dispatchers Ass'n v. ICC, 54 F.3d 842, 847-48 (D.C. Cir. 1995) (holding that the ICC's interpretation of New York Dock rules is entitled to substantial deference by a reviewing court). Under the Commission's interpretation, "rights, privileges and benefits" are protected absolutely, while other employee interests that are not inviolate are protected by a test of "necessity," pursuant to which there must be a showing of a nexus between the changes sought and the effectuation of an ICC-approved transaction. Under this scheme, the public interest in effectuating approved consolidations is ensured without any undue sacrifice of employee interests. In our view, this is exactly what was intended by Congress.

Id.

Takings. An argument has been advanced that any CBA override effected under Article I, section 4 of the New York Dock conditions amounts to a "taking" of private property in violation of the Fifth Amendment. That question cannot be resolved by a New York Dock arbitrator, it cannot be resolved by an administrative agency reviewing an award issued by the arbitrator, and it cannot be resolved even by an appellate court reviewing a decision entered by the administrative agency. See RLEA, 987 F.2d at 815-16 (takings claims can be adjudicated only in the court of Federal Claims or, in certain limited circumstances, in a District court).[27]

Whether Section 11341 Is Limited by Section 11347. As discussed, in 1991 the Supreme Court left open the question whether CBA overrides authorized by 49 U.S.C. 11341 might be limited by 49 U.S.C. 11347. N&W, 499 U.S. at 134. We conclude that, where as here New York Dock conditions are required to be imposed, section 11341 is constrained by section 11347 and the provisions of these labor conditions. We believe that it is unnecessary and would be unwise here to attempt to resolve the issue of the reach of section 11341 unconstrained by section

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[27] Because we cannot adjudicate a takings claim under any circumstances, we have no reason to determine whether certain supposed procedural defaults bar adjudication of the takings claims raised in the present proceedings.

11347 and the New York Dock conditions, because the orders of the ICC in Carmen I and Dispatchers I are affirmable under either section 11341 or section 11347. Therefore, following the lead of the D.C. Circuit under substantially identical circumstances in ATDA, 26 F.3d at 1165, we affirm the orders in Carmen I and Dispatchers I applying the reasons and standards articulated in Carmen II as discussed herein. We vacate the order in Carmen II insofar as it vacates the arbitrators' decisions and remands the matters to the parties for further negotiation and arbitration, if necessary. We believe this approach is appropriate because, as in ATDA, the transportation benefits from the consolidations proposed by NS and CSX are sufficient to pass the RLEA necessity test and we can see nothing to be gained by further prolonging this already very protracted process.

We believe it would be unwise to attempt to resolve the issue of the reach of section 11341, now section 11321, in the abstract as that issue is not presented in this case. We would prefer to address it in the context of a case in which our New York Dock conditions do not apply so that the question of whether section 11341, now section 11321, is limited by section 11347, now section 11326, in the modification of collective bargaining agreements is the sole issue presented. Such a proceeding will of necessity take account of changes made by the ICCTA, which in effect limit our imposition of New York Dock labor conditions to consolidations or acquisitions of control as described in current section 11326(a).

The Board continues to be committed to a process of negotiation first and arbitration, if necessary, to arrive at implementing agreements. See Conrail, where the Board in response to requests by rail labor made clear that the approval of the transaction does not indicate approval or disapproval of CBA overrides that have been argued to be necessary to carry out the transaction. Decision No. 89, slip op. at 126-127.

Finance Docket No. 28905 (Sub-No. 22)

In 1987 the arbitration committee directed CSX and BRC to adopt the implementing agreement that had been proposed by CSX, subject to one exception: that Waycross employees covered by the Orange Book could not be compelled to transfer to Raceland. LaRocco Award, at 41. In 1988 the ICC (1) affirmed the LaRocco

Award insofar as it had approved the movement of the work performed at Waycross, (2) reversed the LaRocco Award insofar as it had created an Orange Book employees exception to the prescribed implementing agreement, and (3) remanded to the committee (in effect, to the parties) for further proceedings consistent with the ICC's decision subject to the admonition that the transfer of employees would be subject to New York Dock protections. Carmen I, 4 I.C.C.2d at 650, 655. In 1989 the D.C. Circuit reversed the ICC's decision and remanded to the agency to permit it to determine whether further proceedings were necessary. Carmen, 880 F.2d at 574. In 1990 the ICC reversed and vacated the LaRocco Award, effectively remanding the entire proceeding to the parties to recommence the implementing process in accordance with Article I, section 4 of the New York Dock conditions "through further negotiations or arbitration, if necessary, to reach [a] new implementing agreement[] in accordance with the standards set forth in this decision." Carmen II, 6 I.C.C.2d at 757. Finally, in 1991, the Supreme Court reversed the D.C. Circuit's Carmen decision and remanded to the D.C. Circuit for further proceedings, N&W, 499 U.S. at 134; and the D.C. Circuit remanded both Carmen I and Carmen II to the ICC for reconsideration in light of N&W.

If the Finance Docket No. 28905 (Sub-No. 22) proceeding had been handled by the ICC in the usual fashion, it would have been held in abeyance while a certiorari petition was pending, and, once certiorari had been granted, it would have continued to be held in abeyance pending a decision of the Supreme Court. If this proceeding had been handled in that fashion, the Supreme Court's N&W decision would have returned the proceeding to the D.C. Circuit, which could then have decided the various issues it had left open in Carmen. And, if this proceeding had been handled in the usual fashion, the ICC would never have issued its Carmen II decision.

CSX contends that, even though this proceeding was not handled in the usual fashion, the outcome should be the same as if it had been. CSX argues that the order entered in Carmen II (reversing and vacating the LaRocco Award) is a nullity, because, as a matter of law, the Supreme Court's reversal of the D.C. Circuit's Carmen decision reinstated the ICC's Carmen I decision. The reversal of a court judgment, CSX insists, nullifies orders issued in any subsequent proceeding that were dependent upon the reversed judgment. Carmen II, in CSX's view, was dependent upon Carmen, because, again in CSX's view, the ICC issued Carmen II

solely to comply with the D.C. Circuit's Carmen decision. CSX therefore urges that we simply reinstate, without further ado, the ICC's Carmen I decision.

Carmen II *was* issued upon the predicate that the court of appeals decision overturning Carmen I was correct but it was not issued *solely* in compliance with the court of appeals decision, and therein lies the flaw in CSX's argument. As the Supreme Court recognized in N&W, 499 U.S. at 128 n.3, in denying labor respondent's motion to dismiss, Carmen II was decided on an alternative basis which could not be said to have ended the dispute between the parties there. As a result, the Supreme Court concluded that the definitive interpretation of section 11341 provided by its decision may affect the ICC's Carmen II decision. Id. There was no suggestion in the decision of the Supreme Court that its decision supplanted the Carmen II decision. In fact, the Supreme Court noted the pendency of a review proceeding and went on to say that the court on review might not agree with the ICC's interpretation in Carmen II, 499 U.S. at 126-28, n.2 and 3. It was to permit the ICC [and now the Board] to arrive at a determination as to what effect, if any, the Supreme Court's N&W decision would have on Carmen II, that Carmen II was remanded to the ICC. We conclude that the N&W decision should have no effect and that Carmen II should stand as decided subject of course to the subsequent developments in the law referred to in this decision and subject to our modification of the relief provided in Carmen II.

In cases reviewing decisions involving CBA modification under sections 11347/11326 and Article I, section 4 of our New York Dock conditions, the D.C. Circuit has adopted a two part test: (1) is there a nexus between the changes sought and an approved transaction, and (2) is there a transportation benefit to the public from the transaction. If the answers to both questions (1) and (2) are in the affirmative, then the modifications are deemed necessary and permitted unless they involve "rights, privileges, and benefits" protected from change by Article I, section 2 of New York Dock. See UTU, 108 F.2d at 1430-31.

Both CSX and BRC have quoted from the following passage in CSX Control:

> We find that the applicants' estimate of employee impacts is reasonable. What dislocations there are promise to be short term. It is certainly possible that as the two systems mesh their operations, additional coordinations may occur that could lead to further employee displacements. However, no wholesale disruption of the carriers' work force should occur. Only at points where the basically end-to-end systems meet does it appear that perceptible dislocations will result. Those common point locations are clearly identified. We believe that the standard conditions will adequately protect those employees now identified as affected by the consolidation as well as those who may be affected in the future, but are not now identified specifically.

CSX Control, 363 I.C.C. at 589. Both CSX and BRC have quoted from this passage, but they have emphasized different parts of it. CSX has emphasized that the ICC was aware that there might be "additional coordinations" (i.e., coordinations beyond those specifically mentioned in the CSX Control application), and that employees might be affected by the proposed transaction "in the future." This, CSX contends, demonstrates that the ICC anticipated that transactions such as the 1986 Waycross/Raceland transfer would be embraced within the principal transaction approved in CSX Control. BRC emphasizes the ICC's expectation that employee dislocations would be "short term" and that perceptible dislocations would occur only at points "where the basically end-to-end systems meet." Noting that the 1986 Waycross/Raceland transfer was six years delayed (and was therefore not a "short term" dislocation) and that Waycross and Raceland are hundreds of miles apart (and therefore are not located at junction points of the two end-to-end systems), BRC contends that the cited passage demonstrates that the ICC never anticipated that transactions such as the 1986 Waycross/Raceland transfer would be embraced within the principal transaction approved in CSX Control.

The ICC, in its 1992 CSX 23 decision, discussed the scope of the principal transaction approved in CSX Control. Quoting parts of the passage we have quoted in whole, the ICC concluded that "as far back as 1980, we contemplated that the applicants could undertake operational changes to improve efficiency which we had not considered in the decision and that specific approval of these coordinations was not necessary." CSX 23, 8 I.C.C.2d at 725. We agree with this assessment, which was approved by the D.C. Circuit Court of Appeals on review in ATDA, 26 F.3d at 1165. We believe those decisions are dispositive of the substantially identical issue here.

We agree with the ICC and the D.C. Circuit and adopt the view that the approval of a principal transaction extends to and encompasses subsequent transactions that are directly related to, and fulfill the purposes of, the principal transaction.[28] CSX 23, 8 I.C.C.2d at 722. As long as there is "a reasonably direct causal connection between the [principal] transaction and the operational changes sought to be implemented," such operational changes are embraced within the principal transaction. CSX 23, 8 I.C.C.2d at 724 n.14. The 1986 Waycross/Raceland transfer meets these tests. It is directly related to the 1980 CSX Control principal transaction (common control of C&O and SCL allowed CSX to consolidate the work performed at Waycross and Raceland) and it fulfills the purposes of the principal transaction (one such purpose was the achievement of efficiencies made possible by common control). We therefore conclude that the 1986 Waycross/Raceland transfer was embraced within the principal transaction approved in the 1980 CSX Control decision.

In the Finance Docket No. 28905 (Sub-No. 22) proceeding, the focus of the necessity issue has always been the Orange Book, and, in particular, the twin prohibitions respecting transfer of work and transfer of employees. In 1987 the arbitration committee determined that an override of the work transfer prohibition was necessary, but that an override of the employee transfer prohibition was not necessary. LaRocco Award, at 35-38. In 1988 the ICC, relying heavily on the necessity standard announced in DRGW, determined that an override of both prohibitions was necessary. Carmen I, 4 I.C.C.2d at 648-50. Thus the decision in Carmen I affirmed the award insofar as it

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[28] Importantly, it follows that any employees affected by the transfer are entitled to labor protection.

provided for the transfer of work but vacated and remanded for further negotiation or arbitration, if necessary, the part of the award that prohibited the transfer of employees. Two years later the ICC changed course, and vacated and remanded the entire proceeding to allow CSX and BRC to negotiate or arbitrate, "if necessary, to reach [a] new implementing agreement[] in accordance with the standards set forth in this decision."[29] Carmen II, 6 I.C.C.2d at 756-57.

We are now affirming the Carmen I order in all respects. We expect CSX and BRC to negotiate or arbitrate, if necessary, any issues associated with the transfer of personnel we have found to be required to the extent these issues continue to have vitality.

CSX contends that the ICC erred in Carmen II in retreating from the necessity standard announced in DRGW and relied upon in Carmen I, and CSX 23, 8 I.C.C.2d at 721. CSX 23, however, was in this respect somewhat of an overstatement of our authority under the necessity provision implicit in Article I, section 4 of the New York Dock conditions as interpreted in Carmen II. See ATDA, 26 F.3d at 1165. We will therefore adhere to the position announced in Carmen II that the authority of arbitrators to modify collective bargaining agreements is limited by the practice of arbitrators from 1940-1980 for cases subject to the New York Dock conditions.

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[29] The record indicates that, after the LaRocco Award was issued, CSX transferred the work and the non-Orange Book-protected employees to Raceland. See CSX Comments (Mar. 1, 1993) at 9 n.15. The record suggests that no Orange Book-protected employees have ever been transferred to Raceland. See CSX's July 2, 1990 petition for stay of the ICC's Carmen II decision, at 4: "[T]he transfer of BRC members subject to the Orange Book protections has been deferred pending the outcome of the litigation surrounding the consolidation." See also BRC Comments (Mar. 1, 1993) at 31 ("[After the LaRocco Award was issued], the carriers closed the Waycross repair facility and abolished the positions of carmen employed at that facility. A total of 88 carmen and 11 painter positions were abolished at that time. Of these carmen, 54 accepted separation pay and terminated their employment with the SCL. Twenty-three other carmen bid on new positions on the rip track located at Waycross. Nine or 10 junior employees who were unable to hold a position at Waycross accepted transfers to Raceland.") (footnotes omitted).

As we have indicated earlier, we need not decide whether this transaction meets the standard for necessity embodied in 49 U.S.C. 11341/11321 upon which the Carmen I and Dispatchers I decisions were based or implicit in 11347/11326 as a result of the Carmen II decision and certain decisions of the D.C. Circuit, especially UTU and ATDA, which have embraced the Carmen II approach, because it is clear that it satisfies both. Under these circumstances, we reaffirm the [ICC's] decision in Carmen I as consistent with the approach adopted in that decision and affirmed by the Supreme Court in N&W and as satisfying the alternative and more limited approach adopted in Carmen II which we are reaffirming here.

CSX and BRC should attempt to resolve any remaining aspects of the dispute concerning transfer of personnel from Waycross to Raceland by negotiation. If an agreement has not been reached by the end of the 30-day negotiation period required by Article I, section 4, either party may then (or thereafter) demand binding arbitration in accordance with Article I, section 4.

Finance Docket No. 29430 (Sub-No. 20)

In 1987 the arbitration committee adopted, with one minor exception, the implementing agreement that had been proposed by NS, Harris Award, at 17-18, and in 1988 the ICC affirmed, Dispatchers I, 4 I.C.C.2d at 1092. In 1989 the D.C. Circuit reversed the ICC's decision and remanded to the ICC in order that the ICC might determine whether further proceedings were necessary. Carmen, 880 F.2d at 574. In 1990 the ICC reversed and vacated the Harris Award, effectively remanding the proceeding to the parties to continue the implementing process in accordance with Article I, section 4 of the New York Dock conditions "through further negotiations or arbitration, if necessary, to reach [a] new implementing agreement[] in accordance with the standards set forth in this decision." Carmen II, 6 I.C.C.2d at 757. Finally, in 1991, the Supreme Court reversed the D.C. Circuit's Carmen decision and remanded to the D.C. Circuit for further proceedings, N&W, 499 U.S. at 134, and the D.C. Circuit remanded to the ICC for reconsideration in light of N&W.

NS, advancing an automatic nullification argument much like CSX's, contends that the outcome in the Finance Docket No. 29430 (Sub-No. 20) proceeding should be what it would have been had the

proceeding been held in abeyance pending final action by the Supreme Court. NS argues that the order entered in Carmen II (reversing and vacating the Harris Award) is a nullity, because, as a matter of law, the Supreme Court's reversal of the D.C. Circuit's Carmen decision reinstated the ICC's Dispatchers I decision. The reversal of a court judgment, NS insists, nullifies orders issued in any subsequent proceeding that were dependent upon the reversed judgment. Carmen II, in NS's view, was dependent upon Carmen, because, again in NS's view, the ICC issued Carmen II solely to comply with the D.C. Circuit's Carmen decision. NS therefore urges that we simply reinstate the ICC's Dispatchers I decision.

We conclude, for the reasons provided above in our discussion of the equivalent argument advanced by CSX, that Carmen II was not nullified by the Supreme Court's N&W decision, and we therefore reject NS's request that we simply reinstate Dispatchers I. We will, however, reinstate the order affirming the Harris Award, but for the reasons set forth in Carmen II.

We now turn to the issues that remain open for reconsideration in light of N&W: the approved transaction issue and the necessity issue. We will decide the approved transaction issue ourselves, because it is immediately obvious that there can be but one answer to this question and because we do not want to unnecessarily extend this already protracted proceeding. There can be no doubt that the centralization of power distribution for the N&W system in Atlanta was sufficiently related to the transaction approved in NS Control as to satisfy the standards for relatedness established in CSX 23 and approved by the D.C. Circuit on review in ATDA, discussed supra, and we so find. We will also decide the necessity issue implicit in the Article I, section 4 implementing agreement process, because it is clear that there are transportation benefits to N&W's proposal sufficient to satisfy the necessity criteria established by the D.C. Circuit in RLEA, ATDA, and UTU.

In the Finance Docket No. 29430 (Sub-No. 20) proceeding, the focus of the necessity issue has been the pre-1986 CBA that covered ATDA-represented supervisors at Roanoke. The Roanoke/Atlanta transfer proposed by NS in 1986 effected a CBA override by leaving the CBA in Roanoke while transferring the "work function" previously performed thereunder to CBA-free Atlanta. Dispatchers I, 4 I.C.C.2d at 1086. In 1987 the arbitration committee determined that an override of the Roanoke

CBA was necessary. Harris Award, at 11-15. In 1988 the ICC, relying heavily on the necessity standard announced in Maine Central, affirmed. Dispatchers I, 4 I.C.C.2d at 1086-87.[30] Two years later the ICC changed course. By order entered June 21, 1990, the ICC reversed and vacated the Harris Award, effectively remanding the proceeding to the parties. Carmen II, 6 I.C.C.2d at 775, ordering paragraph 2. The proceeding was remanded to allow NS and ATDA to continue the implementing process in accordance with Article I, section 4 of the New York Dock conditions "through further negotiations or arbitration, if necessary, to reach [a] new implementing agreement[] in accordance with the standards set forth in this decision." Carmen II, 6 I.C.C.2d at 756-57. Eight years have now passed, but this proceeding appears to be today in essentially the same posture it was in on June 21, 1990. A new implementing agreement has not yet been reached and so far as we have been advised, neither party has attempted to compel further arbitration.[31]

As a result, the decision we reach today may be declaratory only and not affect the rights of any of the employees involved. However, the question of the manner in which the New York Dock labor conditions affect arbitrator's rights to set aside CBA provisions where necessary to implement approved transactions remains a vital one and it is that question we have attempted to

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[30] "Imposition of the collective bargaining agreement [i.e., a transfer of the CBA from Roanoke to Atlanta] would jeopardize the transaction because the work rules it mandates are inconsistent with the carriers' underlying purpose of integrating the power distribution function." Dispatchers I, 4 I.C.C.2d at 1086.

[31] The record indicates that, after the Harris Award was issued, the Roanoke/Atlanta transfer was carried out and positions at Atlanta were offered to the nine active and three furloughed Roanoke supervisors. Of the nine active supervisors, eight moved to Atlanta and one declined. Of the three furloughed supervisors, one moved to Atlanta and two declined. As of July 2, 1990: of the eight active supervisors who had moved to Atlanta, seven had retired and one was still actively employed there; and the one furloughed supervisor who had moved to Atlanta was also still actively employed there. See NS's July 2, 1990 petition for stay of the ICC's Carmen II decision, at 3 n.3 and at 8 n.8.

answer here. As with the other proceeding covered by this decision, we will reinstate the order issued in Dispatchers I, affirming the arbitral decision for the reasons provided in Carmen II and discussed above at length.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for oral argument filed by RLEA is denied.

2. In Finance Docket No. 28905 (Sub-No. 22), the order entered by the ICC in its decision in Carmen I affirming in part and reversing and vacating in part the LaRocco Award is affirmed as complying with the standards established by the ICC in Carmen II and by various intervening decisions of the ICC, the United States Court of Appeals for the D.C. Circuit, and this Board.

3. In Finance Docket No. 29430 (Sub-No. 20), the order entered by the ICC in its decision in Dispatchers I affirming the Harris Award is affirmed as complying with the standards established by the ICC in Carmen II and by various intervening decisions of the ICC, the United States Court of Appeals for the D.C. Circuit, and this Board.

4. This decision is effective on October 25, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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BEFORE A
NEUTRAL REFEREE APPOINTED
UNDER ARTICLE I, SECTION 4
OF THE NEW YORK DOCK CONDITIONS

In the Matter of Arbitration Between	) Hearing Date: April 29, 1997
UNION RAILROAD COMPANY AND BESSEMER AND LAKE ERIE RAILROAD COMPANY	) Briefs Received: July 18, 1997
AND	) Award Issued: October 21, 1997
UNITED STEELWORKER OF AMERICA, AFL-CIO*CLC	)

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INTRODUCTION

This arbitration arises under Article I, §4 of the New York Dock Employee Protective Conditions. As noted in the Carrier's pre-hearing submission, the Interstate Commerce Commission ("ICC") imposed those conditions in 1988 when it authorized Transtar, Inc., a non-carrier holding company, to obtain control of the Bessemer and Lake Erie Railroad Company ("B&LE"), the Union Railroad Company ("URR"), and five other railroads. Following proceedings before the ICC, the agency exempted Transtar's acquisition of control from the prior approval requirements but, pursuant to its obligation to impose a "fair arrangement...protective of the interests of employees who are affected by the transaction", 49 U.S.C. Section 11347, imposed protective conditions as set forth in New York Dock RY. -- Control -- Brooklyn Eastern District Terminal, 360 I.C.C 60 (1979).

BACKGROUND

The matter in dispute is the stated intention of Transtar to consolidate accounting clerical functions across its entire system which consists of seven different railroads. Two of those railroads, the Union Railroad and the Bessemer and Lake Erie Railroad, are the only carrier parties to this dispute.

The Union Railroad is, essentially, a switching railroad which operates over approximately 22 miles of mainline and 110 miles of yard track in Allegheny County, Pennsylvania Its 9 accounting clerical employees are represented for collective bargaining purposes by the United Steelworkers of America

The Bessemer and Lake Erie Railroad (B&LE) is a freight railroad which transports iron ore, coal and limestone over approximately 140 route miles from North Bessemer, Pennsylvania to Conneaut, Ohio. Its 23 accounting clerical employees are represented by the Transportation Communications International Union.

Currently, each railroad maintains its own accounting department. The clerks are assigned to payroll accounting, accounts receivable/payable, demurrage, revenue, etc.

Each Organization maintains a collective bargaining agreement with the railroad that employs its members. While similar, the two collective bargaining agreements have some distinct differences, particularly in the area of health care benefits, pensions, sick leave and vacations.

Since 1982, the USWA represented clerks and the TCIU represented clerks have worked in a common facility located in Monroeville, Pennsylvania. Each group historically has performed work associated solely with its own employer pursuant to the negotiated scope rules that reserve solely to each railroad's clerical employees the clerical work associated with that railroad. However, the two railroads have used the same computer programs for the work, identical accounting procedures, and have had common supervision from B&LE both at the first line level and the director level in the accounting department. There has not been, however, any commingling of the accounting work between the two bargaining units.

As a further step in the transaction begun by USX in 1988 when ICC approval was sought for control, Transtar seeks to consolidate the accounting clerical functions by eliminating accounting clerical work on the Union Railroad and five other railroads in the system, and having all such work performed by employees on the B&LE The practical effect of this is the loss of nine accounting

clerical positions on the Union Railroad and the addition of those nine positions to the B&LE. However, as a result of the consolidation of clerical work forces, Transtar anticipates an eventual reduction of two positions, made possible by the efficiencies that will result from an integrated work force. This reduction of two clerical positions, one from payroll accounting and one from accounts receivable/payable, is expected to result in a savings estimated to be $457,000 over six years and $113,000 annually thereafter. In January and in March, 1997, B&LE hired two new employees for payroll and receivables jobs that will be abolished when the coordination occurs They have the lowest seniority in the group of accounting clerks and would be the first to be laid off in the event of the reduction of two positions.

Essentially, the Carriers assert that this consolidation is necessary to effectuate the transaction approved by the ICC in 1988 and that it bears a solid nexus to that transaction. The Carriers have proposed an implementing agreement that would, if imposed in this proceeding, supplant the collective bargaining agreement under which the nine URR clerical employees are now covered.

For purposes of providing a perspective on the instant dispute, highlights of the proposed transaction include the following:

1. Nine employees currently working as accounting clerks on URR will be required to follow their work and accept clerical positions on B&LE.

2. All 9 clerical positions on the URR will be abolished because all clerical work will be performed exclusively by clerical employees of B&LE.

3. Each employee transferring from URR to B&LE will immediately be covered under the Feb 7, 1965 Mediation Agreement which provides 6 years' protection to railroad employees displaced as a result of merger, consolidation

and so forth.

> 4. Each employee transferring from URR to B&LE will immediately be covered by the CBA between B&LE and TCIU or as modified by the Implementing Agreement imposed by the New York Dock arbitrator in this proceeding..
>
> 5. United Steelworkers of America will no longer represent any employees on the URR in the craft or class of clerical, office, agency, telegraphic, station and storehouse employees because all accounting clerical positions will be abolished on that railroad and consolidated on B&LE.

On December 11, 1996, B&LE and TCIU entered into an implementing agreement that provides, *inter alia*, for a single seniority list merging employee groups by dovetailing their seniority. The Implementing Agreement proposed by the Carrier to the United Steelworkers of America before this proceeding was initiated is attached hereto as Appendix "A". There was no negotiation concerning terms of the Implementing Agreement because the Organization declined to participate in such negotiations on the theory that the exemption procedures of the ICC, now the Surface Transportation Board, including *New York Dock arbitration*, do not and can not override the requirements of Section 6 of the Railway Labor Act with respect to changes or modifications in collective bargaining agreements.

Having failed to reach an Implementing Agreement with United Steelworkers of America, the Carriers proceeded to arbitration by serving notice to the United Steelworkers of America under Article I, Section 4 on December 13, 1996 in accordance with the procedures of *New York Dock*.

In their presentation at the hearing held on April 29, 1997, the Carriers presented the written

statement and testimony of John F. Marteeny, Director of Accounting East for the B&LE. Marteeny said that the consolidation of clerical functions associated with general, revenue, property and payroll accounting, including accounts receivable, accounts payable, mail messenger and data entry, inventory control, car distribution, car hire and demurrage, currently performed by each railroad on its own property, will increase the efficiency of the railroads' accounting operations and result in significant cost savings. He added that with a unified manpower pool, the B&LE "will be able to more effectively and productively allocate the available clerical work among its employees" through increased specialization and development of functional expertise, for example, by assigning work according to function, regardless of which carrier's operations is the subject of the accounting work.

Mr. Marteeny said that the Carriers anticipate an eventual reduction of 2 in the total number of clerical employees after the coordination is completed because of the increased efficiency of a unified department. The reduction in force will then result in a monetary saving. In addition, the Carriers anticipate that this unification of the clerical work force will provide non-monetary benefits such as uniformity in the Accounting Department with respect to accounting procedures, methods and instructions. Moreover, centralization and uniformity of procedures will benefit users of accounting information, simplify training, and eliminate the need for duplicative management information services accounting programs

CONTENTIONS OF THE PARTIES

As its threshold position, the United Steelworkers of America asserts that the Carriers must use the major dispute procedures of Section 6 of the Railway Labor Act in order to change the terms and conditions of employment of its Steelworker-represented employees, particularly with respect to the scope and seniority provisions of its collective bargaining agreement with the URR, and may not resort to *New York Dock* arbitration to circumvent those negotiating requirements. The Organization acknowledges, however, that this Arbitrator is without jurisdiction to decide that issue which currently is before the United States District Court for the Western District of Pennsylvania. The Organization does request, however, that the Arbitrator hold this proceeding in abeyance pending decision by the court.

The first argument advanced by the United Steelworkers of America on the merits of the dispute is that the Carriers have not met their burden of showing that there is a non-labor related transportation benefit to be gained by this coordination of clerical work. The Organization points out that the first coordination of clerical work occurred in 1982 when the URR and B&LE employees were established in the same office by USX under the same supervision while working under separate, though similar, agreements on work within the scope of their own collective bargaining agreements.. Since then, it says, Transtar has not sought to merge the two railroads and has apparently already reaped the benefits of the coordination Now, says the Organization, the Carriers seek to make the

clerical work fungible simply by being relieved of the URR/USWA scope clause which prohibits the transfer of URR clerical work to the B&LE For that reasons, says the Organization, the purported "transaction" proposed by the Carriers is prohibited by what was 49 U.S.C. Section 11347 which mandates that the employee protections imposed under *New York Dock* be "fair". In accord with *Executives*, 987 F. 2d at 814, the court said:

> We agree that whatever else a "fair arrangement " entails, the modification of a CBA must at a minimum be *necessary* to effectuate a transaction..
>
> . . .If the purpose of the [underlying] transaction were merely to abrogate the terms of a CBA, however, then "necessity" would be no limitation at all upon the Commission's authority to set a CBA aside We look therefore to the purpose for which the ICC has been given this authority That purpose is presumably to secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from employees to their employer Viewed in that light, we do not see how the agency can be said to have shown the "necessity" for modifying a CBA unless it shows that the modification is necessary in order to secure to the public some transportation benefit flowing from the underlying transaction . . .

The Organization asserts that the benefit sought here by the Carriers is that B&LE employees can perform either B&LE or URR clerical work thereby allowing the Carriers to cut their employment by two out of 32 employees The Organization views that "benefit" as flowing solely from modification of the URR-USWA scope clause because any improvement in a non-labor related benefit was achieved in 1982 Thus, says the Organization, the planned modifications "simply transfer wealth from employees to employer and, thus, are prohibited by Section 11347."

As its second point on the merits of this case, the Organization claims that the "controlling

carrier" concept is "not good law" because it is premised on the erroneous belief that *New York Dock* referees may abrogate "rights, privileges and benefits." It credits arbitrators appointed under Section 4 with having devised the doctrine in cases where modification of a CBA was necessary in order to permit a merger. The Organization notes that in the instant case, the Carriers' simplistic formula is that where employees involved in a coordination are covered by different collective bargaining agreements, the agreement and representation structure of the carrier that will "control" the coordinated work should govern the coordinated operation In the Organization view, this is wrong because the mandate that rights, privileges, and benefits afforded employees under existing CBA's be preserved nullifies the controlling carrier" concept

As its final major point, the Organization asserts that no changes should be made to the URR/USWA CBA. It stresses that the Carriers have shown no "necessity" to abrogate the CBA, noting that the two employee groups have worked side by side for years enjoying different benefits. Furthermore, the proposed Implementing Agreement does not provide many of the benefits that URR clerical employees are currently entitled to under their CBA such as shift and Sunday premium pay. Therefore, because these benefits are immutable under *Executives* and, in the absence of necessity, no changes can be made. Rather, the Organization urges, a "fence agreement" under which 9/32nds of the work would be assigned to USWA-represented clerical employees should be imposed by the Arbitrator to preserve the URR/USWA agreement "until the parties negotiate a different arrangement under the Railway Labor Act " USWA Post-hearing Brief, p 24, n.17

The Carriers assert that the proposed coordination is a "transaction" that bears a nexus to the ICC exemption and that the changes do provide a transportation benefit.

Citing a wealth of judicial authority, the Carriers deny that this proceeding can be thwarted by the Organization by asserting rights under the Railway Labor Act. Rather, say the Carriers, the ICC had directed that this *New York Dock* arbitration, not the RLA § 6 process, is the exclusive forum for implementing the proposed coordination of URR and B&LE accounting work Furthermore, pursuant to the arbitration process, the Arbitrator has the authority to modify scope and seniority rules specifically, as shown in CSX Control/Train Operations, the Carriers note, so as to permit implementation of the authorized transaction.

The Carriers argue that the USWA proposal permitting employees transferring from URR to exercise seniority back to URR could result in "churning" of the jobs and defeat the efficiencies sought in the coordination. But if such moves are permitted in the Implementing Agreement, it should also be made clear that any URR employee transferring back from B&LE or any URR employee bumped in such a move will be neither a displaced or dismissed employee and will not be entitled to *New York Dock* benefits, say the Carriers.

In sum, the Carriers contend that their proposal preserves vested and accrued benefits, as required, because it will preserve the former URR employees' Transtar Pension Plan, the only vested and accrued fringe benefit at issue Other benefits cited by the Organization such as vacations, premium pay or certain health and accident benefits are not vested and accrued benefits and, thus, not

protected by Article I, §2 of *New York Dock*, the Carriers contend. Any Implementing Agreement that permits URR employees to carry their benefits with them would "create an internal rift" and a "fractured work arrangement" , in the Carriers' view, the antithesis of a coordinated clerical accounting department.

The Carriers request that the Arbitrator find their proposed Implementing Agreement appropriate and impose it.

DISCUSSION AND FINDINGS

Appearances to the contrary notwithstanding, the Arbitrator declines to hold this matter in abeyance for the purpose of awaiting a decision of the United States District Court for the Western District of Pennsylvania on the issue of jurisdiction under *New York Dock* The case will be decided on the basis of the evidence and argument in the voluminous record timely submitted.

The first questions are (1) whether the Carriers have substantiated that the coordination of clerical forces they seek is a "transaction" which flows from and has a nexus to the exemption granted to Transtar in 1988 (Finance Docket No. 31363); (2) whether the passage of 8 years from the date the exemption from prior approval was granted by the then ICC invalidates the transaction for purposes of applicability of *New York Dock;* (3) whether Section 11347 proscribes changing the CBA because the proposed transaction " is merely to transfer wealth from employees to employer.".

The evidence is persuasive that the unification of clerical forces of 7 railroads so that one

railroad performs all clerical work is a change that flows naturally from the ceding of control by USX to a new non-carrier holding company, Transtar In its decision, the ICC expressed its belief that the ". . .transaction, when implemented, will give the management of Transtar [an] economic interest in the carriers. This direct interest should assist in encouraging efficient management, encourage competition, and give greater assurance of the development of a sound rail transportation system..." (Emphasis supplied) Efficient management is one of the stated goals found in the exemption. The efficiencies which can flow from specialization of accounting and clerical functions, non-duplication of effort and supervision, and centralization of activity are many and obvious as shown in the record. They certainly were not available in 1982, contrary to the argument of the Steelworkers, when control was originally awarded to USX because each railroad had its own distinct and separate accounting department requiring each clerical employee to learn the full scope of the accounting functions with equal proficiency, no matter how infrequently required. Certainly, the unification sought here will inure to the benefit of both Carriers and shippers, not only in terms of proficiency and the resulting efficiency, but also in terms of cost In that very real sense, it provides a "transportation benefit". Thus, while not expressly mentioned in either the petition for exemption or the ICC decision, the proposed coordination flows from and has a nexus to the original exemption and, therefore, qualifies as a "transaction" covered by the exemption

The second question deals only with the length of time that has elapsed from the date the exemption was granted until the date the Carriers proposed this transaction. While the law with

respect to many of the issues in this case is plagued by ambiguity and obfuscation, the law on this point is clear. As stated by the ICC itself, a prime source for interpretation of its powers and responsibilities under the ICA, in CSX Finance Docket No. 28905 (Sub-No. 27):

> But we have never imposed a deadline on making merger-related operational changes. In fact, in CSX Corporation -- Control--Chessie System Inc. and Seaboard Coast Line Industries, 8 I.C.C. 2d 715, 724 n 14 (1992), we held that causality is not diminished with the passage of time:
>
> > Causality, however, is not per se diminished by a lengthy delay in exercising authority previously granted. This is not analogous to laches There could be any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been undertaken earlier.

The record compels a finding that the lapse of 8 years, in and of itself, does not detract from characterization of the Carriers' proposal as a transaction authorized in the ICC exemption in 1988 and subject to labor protective conditions under Article 1, §4 of *New York Dock*.

Third, the purpose of the proposed transaction is "not merely to transfer wealth from employees to their employer" as charged by the Organization in reliance on the interpretive language found in *Executives*, (987 F.2d at 815). While an eventual change in the number of employees may yield savings in employment costs, that is a result, certainly not the sole purpose, of the planned coordination. As shown above, centralization of the accounting function has the potential for producing efficiencies and improvements in accounting procedures that will benefit both the Carriers

and its customers. Thus, the Organization's argument is not persuasive that, on the facts here, §11347 prohibits any change in the Organization's CBA

The determination that the coordination of clerical accounting functions is a "transaction" covered by the ICC exemption and that, as a consequence, affected employees are protected by the *New York Dock* provisions imposed thereby, makes issues respecting proposed changes in the labor agreement and development of an Implementing Agreement the next area of inquiry.

The proposed transaction will result in the transfer of all clerical accounting work currently performed on the URR to the B&LE. The effect of the proposed transaction will be to abrogate the scope clause currently in effect between the URR and the United Steelworkers of America.

The Organization stresses throughout its Brief and in its presentation that the Arbitrator in a *New York Dock* proceeding may not abrogate "rights, privileges and benefits" attained through collective bargaining when fashioning labor protective conditions for affected employees. It argues that the best protection for employees is found within the terms of the agreement the bargaining representative of those employees has already negotiated. For that reason, the Organization urges that URR clerical employees who accept employment with B&LE should be permitted to take aspects of their present collective bargaining agreement with them, an arrangement the Carriers vigorously reject.

This case is different from some in that it involves two unrelated organizations, not different units within the same organization There is, of course, substantial precedent for such circumstances.

But it is important to note that it is not the exquisitely-fine points of law concerning authority of the ICC, the STB or the Arbitrator that will provide the needed solution here but a practical and fair approach that will accomplish the twin goals of permitting execution of the Carriers' proposed transaction and protection of affected employees under *New York Dock*.

It should be noted that the Carriers intend to require individual employees to leave their employment with the URR and follow their work to become employees of the B&LE. B&LE employment will be offered to the current members of the craft or class on the URR which they will be free to accept or reject. There are consequences, however, to the decisions made by individual employees. Those who accept employment will be covered by an agreement which is the product of this arbitration. Those who reject employment on B&LE will forfeit protection and may be furloughed. None of this has been meaningfully discussed by the parties because the Organization declined to participate in negotiations that might have led to a mutually acceptable Implementing Agreement Therefore, it is for the Arbitrator to decide what modifications need to be made, if any, to the proposed Implementing Agreement in order to effectuate the proposed transaction and fairly protect the URR employees.

The Organization's suggestion that a "fence agreement" should be imposed pending negotiation of a different arrangement under § 6 of the Railway Labor Act is rejected as unworkable and contrary to law. Moreover, this solution offers no assurance that the procedures of § 6 will ever result in an agreement that will effectuate the proposed transaction Rather, it has the potential of

frustrating the transaction, certainly not what the ICC intended. Any fair reading of the multitude of citations provided by the parties here compels the conclusion that a *New York Dock* arbitrator may make changes to a CBA that are deemed necessary to effect the transaction.

AWARD AND ORDER

The Arbitrator renders the following Award and Order:

The Implementing Agreement proposed by the Carriers will be imposed on the employees transferring from the URR to B&LE with the following modifications:

(1) Paragraph 1 shall be amended to provide that the positions identified in Attachment "A" shall become positions of the B&LE effective within 10 days of the date of this Decision. In addition, it shall be amended to provide that the employees currently incumbent to the 9 positions identified in Attachment "A" shall be offered an opportunity to follow their work and to become employees of B&LE covered by the collective bargaining agreement in effect between B&LE and TCIU. In the event any incumbent URR employee declines the offer of employment so offered, the position shall be made available on a seniority bid basis to any qualified member of the craft or class of clerical accounting on URR Any employee incumbent to

a Attachment "A" position who refuses the offer of employment shall be entitled to exercise bumping rights on the URR. Failure to exercise bumping rights will result in the loss of *New York Dock* protection. Any employee attaining one of the transferred positions through the seniority bid process rather than by acceptance of the Carriers' offer shall be entitled to protection in the event of a furlough. No employee transferring to B&LE shall retain seniority on any other Carrier.

(2) Paragraph 2. shall be amended by changing the description of the transferring employees from "the URR employees listed in Attachment "A" to "the URR employees who accept the offer of employment to B&LE".

The Arbitrator notes that all 9 employees transferring from URR to B&LE have at least six years continuous service with the Carrier and can be expected to be able to hold in any furlough that could occur as the result of this transaction. But because it is a particularly loathsome prospect for the Organization to have its members forced to transfer from one Carrier to another, in the process changing collective bargaining representatives and being subject to working under a different collective bargaining agreement, because there will be little effect on implementation of the transaction as it will be necessary in any event for the new work force to be trained in the unified procedures, and because the Carriers have not sought to merge the railroads and have not

interchanged employees, there is no necessity for requiring current incumbents of the positions listed on Attachment "A" only to follow the work.

(3) Paragraph 9. shall be amended by increasing the number of days advance notice to the Director, District 10, United Steelworkers of America, from 5 to 30 so as to permit time, which can be wisely used to "otherwise agree" to modifications in the Implementing Agreement.

In all other respects, the Implementing Agreement proposed by the Carriers is adopted by the Arbitrator.

Helen M. Witt, Arbitrator

AGREEMENT MADE THIS DAY OF 1997, UNDER ARTICLE I, SECTION 4, OF THE NEW YORK DOCK CONDITIONS, BETWEEN THE UNITED STEELWORKERS OF AMERICA AND BESSEMER AND LAKE ERIE RAILROAD COMPANY AND UNION RAILROAD COMPANY IN CONNECTION WITH THE COORDINATION OF CERTAIN UNION RAILROAD COMPANY ACCOUNTING, MESSENGER AND YARD CLERK WORK INTO BESSEMER AND LAKE ERIE RAILROAD COMPANY PURSUANT TO INTERSTATE COMMERCE COMMISSION ORDER IN FINANCE DOCKET NO. 31363

Whereas the Interstate Commerce Commission in Finance Docket No. 31363 granted approval of the acquisition and control by Transtar, Inc. of the Bessemer and Lake Erie Railroad Company (hereinafter referred to as BLE), Birmingham Southern Railroad Company, Duluth, Missabe and Iron Range Railway Company, Elgin, Joliet and Eastern Railway Company, Lake Terminal Railroad Company and Union Railroad Company (hereinafter referred to as URR) subject to "New York Dock" Labor Protective Conditions; and

Whereas, BLE and URR intend to effect the coordination of work performed by certain employees who are employed at the General Office Building at 135 Jamison Lane, Monroeville, PA, in the craft or class of

CARRIERS' EXHIBIT 1
Page 1 of 11

Attachment "A"

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clerical, office, agency, telegraphic, station and storehouse employees and who are represented by the Transportation Communications International Union (hereinafter referred to as TCIU) and United Steelworkers of America, Local No. 3263 (hereinafter referred to as USWA)

IT IS AGREED:

1. On the effective date of this agreement the URR employees and positions that are identified in Attachment "A", attached hereto and made a part hereof, shall become employees and positions of the BLE and the Collective Bargaining Agreement between BLE and TCIU, effective June 15, 1938, as subsequently amended, will be applicable to those employees and positions. On the effective date of this agreement the Agreements between URR and USWA shall cease to be applicable to those employees and positions listed in Attachment "A", attached hereto.

2. On the effective date of this Agreement, the URR employees listed in Attachment "A" attached hereto, represented by the USWA, will be dovetailed into the BLE Clerical Seniority Roster and such employees will be available to perform service on a coordinated basis subject to the BLE

Agreement. On the effective date of this Agreement the BLE Clerical Seniority Roster will be expanded to encompass the positions and work of the positions which are listed in Attachment "A" attached hereto. URR employees who become BLE employees as a result of this agreement shall cease to be employees of URR and their names shall be removed from the USWA roster.

3. Employees affected as a result of this transaction will be afforded the benefits prescribed by the ICC as set forth in New York Dock Ry. - Control - Brooklyn Eastern District Terminal, 360 ICC 60 (1979) hereinafter referred to as "New York Dock conditions", which are by reference incorporated herein and made a part hereof.

4. Any prior continuous service and qualifying years with the URR shall be credited for vacation, personal leave, sick leave, protection pursuant to the February 7, 1965 Mediation Agreement (A-7128) and other benefits under the BLE - TCIU Agreement, which are granted on the basis of qualifying years of service. Insofar as continuous service for the Transtar, Inc. Non-Contributory Pension Plan and the United States Steel Corporation Plan for Employee Pension Benefits (Revision of 1950) purposes is

concerned, continuous service shall be determined under the rules of the Plans. URR employees who become BLE employees pursuant to this Agreement shall not be deemed to have broken continuous service for pension purposes simply as a result of the change in their employing Company.

5. Notwithstanding Section 2 above to the contrary, the URR employees who become BLE employees on or after the effective date of this Agreement shall become covered by the BLE-TCIU Insurance Plan effective the first day of the month after the ninetieth (90th) day following the date on which they acquire seniority under the BLE-TCIU Agreement and until that time they shall continue to be entitled to the same coverage that they would have had had they remained employees of URR, except that Employees and their eligible dependents who are hospitalized on the date on which the employee becomes covered by the BLE-TCIU Insurance Plan, shall have the same coverage that they would have had had they remained employees of URR for the duration of such hospitalization.

6. Any BLE employee, including any former URR employee named in this Agreement, who is deprived of employment on or after the effective

date of this Agreement as a result of this coordination may be offered either:

1) a BLE position as a TCIU represented employee at any location; or

2) any comparable BLE position, provided it does not require a change of residence.

Such employee shall be given thirty (30) days' written notice by certified mail (with copy to the Regional Representative, Allied Services Division - TCIU) of such offer and must elect in writing one of the following options prior to the expiration of the notice:

(1) to accept the offer; or

(2) to be furloughed without protection during the period of such furloughs.

In the event an employee fails to make such an election he shall be considered to have exercised option 2. Employees accepting a job offer that would require a change in residence will be eligible to receive the moving expenses provided under paragraph 3 of this Agreement.

7. The dismissal allowance of any employee shall be reduced to the extent of any earnings made by the employee outside of the employment of BLE or URR or under any benefits received under any unemployment insurance law. Employees receiving a dismissal allowance must, upon

request, provide documentation attesting to the amount of such outside earnings or unemployment insurance benefits. Failure to provide such documentation upon request, or evidence of any fraudulent submission of claims, shall result in a suspension of benefits.

8. An employee who is affected by the transaction and is entitled to benefits under Section 5 or 6 of the New York Dock conditions may file a written request on the form provided, with the Manager Labor Relations, P.O. Box 68, Monroeville, PA 15146, for a statement of test period earnings for use in developing his or her displacement or dismissal allowance. A claim for protection must be presented on the form provided and must be submitted to BLE's Manager-Labor Relations within sixty (60) days following the end of the month in which the adverse affect is claimed. A copy of the form referred to herein is attached hereto as Attachment "B".

9. This Agreement will become effective upon five (5) days advance notice to the Director, District 10, United Steelworkers of America, unless otherwise agreed to and constitutes the required implementing agreement and fulfills all other requirements of Article I, Section 4 of the New York Dock Labor Protective Conditions imposed by ICC Finance Docket 31875.

Signed this day of 1997, at Monroeville, PA:

FOR THE EMPLOYEES:

_____

Mr. Andrew V. Palm, Director
District 10
United Steelworkers of America

FOR THE COMPANIES:

_____

Mr. Richard B. McGinley
Director Labor Relations - East
Bessemer and Lake Erie Railroad Company

_____

Mr. Richard B. McGinley
Director Labor Relations - East
Union Railroad Company

ATTACHMENT "A"

Mail Messenger/Accounting Clerk (D. S. Miller, incumbent)
Clerk (General) (M. L. Fisher, incumbent)
Clerk (General) (R. J. DiVincenzo, incumbent)
Payroll Relief Clerk (R. Greiner, incumbent)
Code Clerk (K. L. Farren, incumbent)
Clerk (Relief)(C. A. Sauers, incumbent)
General Accounting Clerk (M. J. Foshee, incumbent)
General Accounting Clerk (P. L. Schartner, incumbent)
Yard Clerk (J. Anthony, incumbent)

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(Cite as: 1998 WL 877620 (I.C.C.))

Surface Transportation Board (S.T.B.)

*1 UNION RAILROAD COMPANY AND BESSEMER AND LAKE ERIE RAILROAD COMPANY--ARBITRATION REVIEW--UNITED STEEL WORKERS OF AMERICA

Decided: December 16, 1998

Service Date: December 17, 1998

SURFACE TRANSPORTATION BOARD DECISION
STB Finance Docket No. 31363 (Sub-No. 3) [FN1]

By the Board, Chairman Morgan and Vice Chairman Owen.

The United Steel Workers of America (USWA) has appealed the decision of Arbitrator Helen M. Witt entered on October 21, 1997, which imposed an implementing agreement under which the Union Railroad Company (URR) and the Bessemer and Lake Erie Railroad Company (B&LE) (jointly, the Carriers) plan to consolidate functions currently performed by each Carrier's accounting department. We decline review of the arbitration decision.

BACKGROUND

In Blackstone Capital Partners, L.P., Blackstone Transportation Partners L.P. and USX Corporation--Exemption from 49 U.S.C. 10746, 11321 and 11343, Finance Docket No. 31363 (ICC served Dec. 23, 1988) (Blackstone), the Interstate Commerce Commission (ICC) exempted from the prior approval requirements now contained in 49 U.S.C. 11323 the transfer of control of URR, B&LE and five other rail carriers and one water carrier from USX Corporation (USX) to Transtar, Inc. (Transtar), a noncarrier holding company. [FN2] The transaction was subjected to the employee protective conditions in New York Dock Ry.-- Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock). Under New York Dock, labor changes related to approved transactions are effected through implementing agreements negotiated before the changes occur. If the parties cannot agree, the issues are resolved by arbitration, subject to limited review by the Board. URR, B&LE, and the other rail carrier subsidiaries of Transtar had maintained separate accounting departments in different locations. The clerical employees for each carrier performed work solely for their own employer, under separate collective bargaining agreements. URR's accounting department employees are represented by USWA, while B&LE's accounting department employees are represented by the Transportation Communications International Union (TCU). [FN3] Apparently, URR employees worked side-by-side with B&LE employees in the same facility in Monroeville, PA. According to the Carriers, Transtar formulated a plan to consolidate the accounting and clerical functions of all of its carrier subsidiaries into its Monroeville, PA facility to be managed by B&LE. The Carriers stated that the plan was part of the process for realizing benefits

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from Transtar's common control over its carrier subsidiaries. [FN4]

On September 3, 1996, URR and B&LE notified the USWA and TCU by letter that they wanted to coordinate work of their accounting departments, citing Article I, section 4 of the New York Dock conditions imposed in Blackstone. The letter indicated that the work performed by nine URR employees would be transferred to B&LE, and that B&LE would increase its staff by nine new clerical positions. The letter further stated that employees adversely affected by the coordination would be accorded benefits under New York Dock.

*2 On October 9, 1996, USWA advised the Carriers that it would not participate in negotiations under the New York Dock conditions to transfer URR work, contending that the coordination should be governed by the Railway Labor Act, 45 U.S.C. 156 (RLA). USWA maintained that its collective bargaining agreement with URR precluded URR from assigning its clerical work to B&LE employees. USWA further asserted that it was not a party to any other agreement that would authorize URR's actions, such as the Washington Job Protection Agreement of 1936 (WJPA). Instead, the USWA informed the URR that it considered the Carriers' New York Dock notice as a notice of intended change in agreements under section 6 of the RLA and that it would negotiate over those changes.

On October 26, 1996, URR and B&LE informed USWA that they were submitting the dispute to arbitration under Article I, section 4 of New York Dock. URR also submitted a proposed implementing agreement, under which the nine URR employees would be transferred to the B&LE. The proposed agreement further provided that the nine former URR employees would be represented by the TCU and would be covered by the B&LE-TCU collective bargaining agreement for accounting employees.

In a letter dated November 1, 1996, the USWA informed the URR that it considered the Carriers' invocation of the New York Dock arbitration procedures to be a unilateral and constructive termination of conferences under section 6 of the RLA. USWA also advised URR that it would not participate in the selection of an arbitrator to hear the dispute under the New York Dock conditions. On November 4, 1996, the URR requested that the National Mediation Board (NMB) appoint a neutral referee to arbitrate the dispute. On November 19, 1996, USWA informed the NMB that it would not participate in the selection of a neutral referee. The NMB appointed Arbitrator Witt to sit as the neutral referee.

On November 18, 1996, URR filed an action before the United States District Court for the Western District of Pennsylvania (District Court), seeking a declaratory order and injunction contending that USWA's section 6 notice was premature. USWA counterclaimed that the provisions of the RLA govern the dispute rather than New York Dock, and that the arbitration would violate its rights under the RLA. As discussed later in this decision, the court subsequently rejected this position.

The issue of our jurisdiction over this dispute was also raised in a petition for declaratory order that was filed on November 20, 1996, by the Carriers in STB Finance Docket 31363 (Sub-No. 2), Union Railroad Company and Bessemer and Lake Erie Railroad Company--Petition (Union R. Petition). The Carriers requested that the Board determine that it has exclusive jurisdiction to resolve any dispute arising from implementing the proposed coordination. On December 13, 1996, USWA replied, contending that the Board did not have jurisdiction over the

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dispute. The Carriers filed a rebuttal on January 3, 1997. Action on the Carriers' petition was deferred because the dispute had been submitted to arbitration.

*3 A hearing was held before Arbitrator Witt on April 29, 1997, at Pittsburgh, PA. Despite USWA's objections, it participated in the arbitral proceeding. The arbitrator issued her award on October 21, 1997, in which she imposed an implementing agreement for the coordination of the Carriers' accounting departments.

The arbitrator noted that, under the proposed agreement submitted by the Carriers, individual employees who left their employment with URR would follow their work to become employees of B&LE. Current members of the craft or class of URR employees would be offered employment by B&LE, which they would be free to accept or refuse. The arbitrator indicated that those employees who accept employment would be covered by an agreement produced by the arbitration, but those employees who reject employment with B&LE would forfeit protection and could be furloughed. She noted that USWA had declined to submit a proposed implementing agreement. Therefore, she had to decide what modifications were needed, if any, to the Carriers' proposed implementing agreement to fairly protect the URR employees.

The arbitrator modified Paragraph 1 of the implementing agreement to clarify the rights of URR clerical employees who decline to accept newly established B&LE positions. She also changed the timing for implementing the transaction. The arbitrator amended Paragraph 9 to provide that the implementing agreement would become effective upon 30 days' notice to the USWA, rather than the 5 days' notice which the proposed agreement provided for. Apparently, the Carriers accepted the arbitrator's modifications.

On November 10, 1997, USWA filed an appeal of the arbitrator's decision and the Carriers replied on December 22, 1997.

DISCUSSION AND CONCLUSIONS

Jurisdiction.

USWA initially questions whether the Board has jurisdiction to decide the dispute. As we noted, the jurisdiction issue had been raised in URR's petition for declaratory order in Union R. Petition. There, USWA, noting that the issue was also being considered by the District Court, requested that arbitration be held in abeyance until the court determined whether the dispute should be resolved under New York Dock. The arbitrator declined the request. In its appeal, USWA continues to assert that the dispute is subject to the procedures in the RLA and that the Board lacks jurisdiction to determine whether the URR's contractual obligations and RLA obligations have been preempted by 49 U.S.C. 11326.

Shortly after USWA filed its appeal of the arbitration decision, the District Court issued its decision and ruled that the Board, rather than the court, has exclusive jurisdiction to determine whether the New York Dock process was properly invoked to resolve the dispute. [FN5] In support, the court cited Railway Labor Executives' Ass'n. v. Southern Pacific Transp. Co., 7 F.3d 902,

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906 (9th Cir. 1993); Brotherhood Ry. Carmen, Div. of Transp. Comm. Int'l Union v. CSX Transp. Inc., 855 F.2d 745, 748-49 (11th Cir. 1988), cert. denied, 489 U.S. 1016 (1989); and CSX Transp. Inc. v. United Transp. Union, 86 F.3d 346 (4th Cir. 1996), which upheld the Board's exclusive authority to resolve labor disputes when implementing a Board-approved transaction.

*4 These decisions, in turn, relied on precedent which established that the Board's approval of a transaction automatically removes its implementation from the procedures of the RLA, and that the Board or arbitrators acting under authority delegated under New York Dock may exempt a transaction from the provisions of the RLA and may override collective bargaining agreements when necessary to realize public benefits of an approved transaction. Where modification of a collective bargaining agreement has been necessary, it has been approved under either section 11321(a) [formerly section 11341(a)], or section 11326 [formerly section 11347]. Norfolk & Western v. American Train Dispatchers, 499 U.S. 117 (1991) (Dispatchers); Railway Labor Executives' Ass'n v. ICC, 987 F.2d 806 (D.C. Cir. 1993) (RLEA); American Train Dispatchers Ass'n. v. ICC, 26 F.3d 806 (D.C. Cir. 1994) (ATDA); and United Transp. Union v. STB, 114 F.3d 1425 (D.C. Cir. 1997) (UTU-STB). In RLEA, 987 F.2d at 814-15, the court indicated that agreements may be changed if necessary to effect a public benefit that would not be available if the agreement were left in place, but not merely to transfer wealth from employees to their employer.

The District Court in Union RR v. USWA further noted that, since USWA's jurisdictional claim was raised after the arbitration process had begun, the union's claim could be characterized as an impermissible collateral attack on the arbitration process. The District Court also rejected USWA's assertion that it did not sign the WJPA, stating that the carrier's rights are statutory in nature and owe nothing to the WJPA.

USWA did not appeal the District Court's decision or raise any objections to the court's decision here. The court's decision confirms our jurisdiction to resolve this dispute under New York Dock and also upholds the arbitrator's authority to impose an implementing agreement under the New York Dock procedures.

Another jurisdictional issue raised by USWA both here and in Union R. Petition is the union's assertion that the Board is unable to issue a decision in these proceedings because we are "unconstitutionally composed." USWA states that the Board's members obtained their authority pursuant to 49 U.S.C. 701(b)(4) which was enacted in the ICC Termination Act, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which provides:

> On the effective date of this section, the members of the Interstate Commerce Commission serving unexpired terms on the date of the enactment of the ICC Termination Act of 1995 shall be members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission.

USWA asserts that Congress violated the Appointments Clause in U.S. Const., Art II § 2, [FN6] because, by terminating the ICC and creating the Board, and then appointing three of the ICC's members to be members of the Board, it infringed on the President's right to appoint principal officers as members of the Board.

*5 In support, USWA cites two decisions involving the abolishment of the

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Federal Home Loan Bank Board (FHLBB) and the Federal Savings and Loan Insurance Corporation and the creation of the Office of Thrift Supervision (OTS), a new agency. The FHLBB had three members. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183 (1989), the newly formed OTS was to have only one Director which was to be appointed by the President with the advice and consent of the Senate. 12 U.S.C. 1462a(c)(1). However, the statute also included a "transitional provision" in 12 U.S.C. 1462a(c)(5) which designated the chairman of the FHLBB as the first director of the OTS. Two courts found that, by enacting the "transitional provision" in section 1462a(c)(5), Congress had appointed the Director of OTS and thus unconstitutionally infringed on the President's right to appoint officers. Franklin Sav. Ass'n v. Director of Office of Thrift Supervision, 740 F. Supp. 1535 (D. Kan. 1990), and Olympic Federal Sav. And Loan Ass'n. v. Director, Office of Thrift Supervision, 732 F. Supp. 1183 (D.D.C. 1990) (Olympic), appeal dismissed as moot, 903 F.2d 837 (D.C. Cir 1990).

We do not agree with USWA that the statute which created the Board has the unconstitutional impediments that were present when OTS was created. In Olympic, 732 F. Supp. at 1186, the court noted that:

> Had OTS been placed under the supervision of a three-person board, this court believes that the . . . three former FHLBB members would not have required re-confirmation. However, when Congress decided that only one of the three FHLBB members would have his responsibilities transferred and, moreover, decided specifically which one of the three would become the new Director, it went beyond simply changing the duties of an office and appointed a person to a new post.

When Congress abolished the ICC and transferred the members of the ICC to become members of the Board, it transferred the positions of the members of the ICC to the Board, 49 U.S.C. 701(b)(4). But, Congress did not transfer "particular" members of the ICC to the Board, as was done when the OTS was established under FIRREA. Thus, establishment of the Board is consistent with the court's discussion in Olympic and is not a violation of the appointments clause.

USWA argues that the STB is without jurisdiction to override its collective bargaining agreement under 49 U.S.C. 11341(a) [and now section 11321(a)], because 11341(a) does not apply because the ICC used 49 U.S.C. 10505 [now 10502] to exempt the underlying control transaction from the prior approval requirements of sections 11321 and 11343. USWA cites in support of its argument Railroad Consolidation Procedures--Trackage Rights Exemption, 1 I.C.C.2d 270 (1985) (Rail Procedures), and RLEA, supra.

We disagree. In Rail Procedures, the ICC indicated that its authority to approve a transaction under section 11341(a), so that the transaction is exempt from the antitrust laws and from all other laws as necessary, does not reach transactions under section 10505. However, subsequently in Rio Grande Industries, et al.--Trackage Rights--Burlington Northern R.R. Lines, ICC Finance Docket No. 31730 (ICC served Mar. 12, 1991), the ICC clarified its position. Therein, the ICC stated that, even under the reasoning of Rail Procedures, the exemption authority in section 10505 would not remove transactions exempted from section 11343 from the reach of section 11341(a) with regard to labor protection

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matters. This is so, the ICC held, because the Commission, and the Board today, are expressly barred by the terms of the exemption provision from using the exemption powers to derogate from the labor protection to which employees are entitled under the relevant statutory section by which the transaction would be approved. The courts have been in accord with this position. [FN7] In United Transportation Union v. Norfolk and Western Ry Co., 822 F.2d 1114, 1115 (D.C. Cir. 1987), cert. denied, 484 U.S. 1006 (1988), the court saw no basis for distinguishing between approved and exempted transactions for purposes of the applicability of section 11341(a). There, the court explained that the Commission "merely substitutes one form of Commission oversight for another" when it imposes labor protective conditions pursuant to an exemption. See also Brotherhood of Locomotive Engineers v. Boston and Maine Corp., 788 F.2d 794 (1st Cir. 1986), cert. denied, 421 U.S. 975 (1987). Moreover, 49 U.S.C. 11326, like its predecessor, section 11347 of the Interstate Commerce Act, provides an independent source of authority for the Board and its arbitrators to modify labor agreements as necessary to permit the implementation of an authorized transaction. RLEA at 813-14. See Delaware and Hudson Railway Co.--Lease and Trackage Rights--Springfield Terminal Company, Finance Docket No. 30965 (Sub Nos. 1 and 2)·(STB served Sept. 25, 1998); CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review), Finance Docket No 28905 (Sub-No. 22); and Norfolk Southern Corporation--Control--Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review), Finance Docket No. 29430 (Sub No. 20) (STB served Sept. 25, 1998).

Review of the Arbitration Decision.

*6 Under 49 CFR 1115.8, the standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom., International Broth. Of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988) (Lace Curtain). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." We generally do not overturn an arbitral award, unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Id. at 736.

USWA asks us to consider whether the arbitrator exceeded her authority when she imposed an implementing agreement and whether the award failed to preserve the rights of affected employees.

We find no reason to disturb the arbitrator's award under the Lace Curtain standards. There is no issue of first impression; and any issues that are likely to recur have already been thoroughly resolved by us and the courts. USWA has not shown egregious error or any other grounds requiring review of the arbitration award here. See Employees of Butte Anaconda & Pac. Ry. v. United States, 938 F.2d 1009 (9th Cir. 1991), at 1012; United Transp. Union v. ICC, 43

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F.3d 697 (D.C. Cir. 1995), at 699; CSX Transp. Inc. v. Surface Transp. Bd., 75 F.3d 696 (D.C. Cir. 1996), at 700; United Transportation Union v. Surface Transp. Bd., 114 F.3d 1242 (D.C. Cir. 1997), at 1245. And, to the extent USWA is seeking to raise an issue of representation, such issues can be resolved only by the NMB.

Because the Lace Curtain standards for review have not been met here, we decline review of the arbitration decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. To the extent USWA's appeal challenges the Board's jurisdiction to address the issues in this proceeding, it is denied.
2. We decline to review the award that is the subject of USWA's appeal.
3. The proceedings are discontinued.
4. This decision is effective 30 days after its service date.

Vernon A. Williams
Secretary

FN1. Embraces Union Railroad Company and Bessemer and Lake Erie Railroad Company--Petition, STB Finance Docket No. 31363 (Sub-No. 2).

FN2. The other railroads are: Birmingham Southern Railroad Company (BS); Duluth, Missabe, and Iron Range Railway Company (DM&IR); Elgin, Joliet and Eastern Railway Company (EJ&E); The Lake Terminal Railroad Company (LT); and the McKeesport Connecting Railroad Company (MKC). The water carrier is the Warrior & Gulf Navigation Company.

FN3. TCU is not participating in this proceeding.

FN4. Apparently, implementing agreements have been negotiated with employee representatives of the other rail subsidiaries of Transtar, including B&LE.

FN5. Union Railroad Company v. United Steelworkers of America, Civil Action No. 96-2905 (W.D. Pa. Nov. 24, 1997) (Union RR v. USWA).

FN6. Article II, § 2 provides: "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

FN7. The noted exception is the court decision in RLEA. However, on remand of that case, the ICC emphasized that it continued to adhere to its longstanding position that "section 11341 applies to authorizations by exemption as well as

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to approvals." Delaware & Hudson Ry.--Lease and Trackage Rights--Springfield Terminal Ry., ICC Finance Docket No. 30965 (Sub-Nos. 1&2) (ICC served Apr. 21, 1993), slip op. at 2 n.4. No further review was sought.
1998 WL 877620 (I.C.C.)
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Westlaw.

242 F.3d 458, 166 L.R R.M. (BNA) 2648, 142 Lab.Cas. P 10,924
(Cite as: 242 F.3d 458)

Briefs and Other Related Documents
Union R. Co. v. United Steelworkers of AmericaC.A.3 (Pa.),2001.

United States Court of Appeals,Third Circuit.

UNION RAILROAD COMPANY,
v.
UNITED STEELWORKERS OF AMERICA;
United Steelworkers of America-District 10;
United Steelworkers of America-Local 3263,
Appellants,
United Steelworkers of America, AFL-CIO-CLC,
Petitioner,
v.
United States of America; and Surface Transportation Board, Respondents,
Union Railroad Company ("URR") and Bessemer and Lake Erie Railroad Company ("B&LE"),
Intervenors.[FN*]

FN* (See Clerk Order of 2/16/99)

Nos. 97-3680, 98-6511.

Argued Jan. 25, 2000
Filed March 1, 2001.

Following approval by Interstate Commerce Commission (ICC) of transportation holding company's acquisition of railroads, holding company's proposal to merge railroads' accounting departments, holding company's invocation of arbitration pursuant to New York Dock conditions that had been imposed by ICC, and union's service upon holding company of bargaining proposal pursuant to Railway Labor Act (RLA), holding company filed action under Declaratory Judgment Act and RLA, seeking declaration that RLA notice was premature. Steelworkers' union filed counterclaim, seeking to prevent holding company from carrying out proposed merger of accounting departments. The United States District Court for the Western District of Pennsylvania, Donetta W. Ambrose, J., dismissed counterclaim for lack of jurisdiction. Steelworkers' union appealed. Steelworkers' union also petitioned for review of decision of Surface Transportation Board (STB) declining review of arbitrator's award imposing, in large part, holding company's plan for merging departments. The Court of Appeals, Roth, Circuit Judge, held that: (1) STB had exclusive jurisdiction over union's challenge to merger of departments, and (2) STB's conclusion that it had exclusive jurisdiction to consider whether ICA preempted RLA was not arbitrary, capricious, or otherwise not in accordance with law.

District Court decision affirmed; petition for review of STB decision denied.

West Headnotes

[1] Federal Courts 170B ⇐763.1

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk763 Extent of Review Dependent on Nature of Decision Appealed from
170Bk763.1 k. In General. Most Cited Cases

Court of Appeals would exercise plenary review over district court's dismissal of counterclaim for lack of subject matter jurisdiction.

[2] Carriers 70 ⇐10

70 Carriers
70I Control and Regulation of Common Carriers
70I(A) In General
70k10 k. Supervision by Public Officers in General. Most Cited Cases

The Court of Appeals may not upset a decision of the Surface Transportation Board (STB) unless the Court finds that it is arbitrary, capricious, or in excess of its statutory authority.

[3] Carriers 70 ⇐10

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70 Carriers
70I Control and Regulation of Common Carriers
70I(A) In General
70k10 k. Supervision by Public Officers in General. Most Cited Cases
Surface Transportation Board (STB) had exclusive jurisdiction over union's challenge to holding company's consolidation of accounting departments of two railroads that holding company had acquired in merger authorized by Interstate Commerce Commission (ICC), inasmuch as STB, which was ICC's successor, had exclusive jurisdiction under Interstate Commerce Act (ICA) to consider disputes concerning changes to labor agreements necessary to implement STB-authorized consolidations, and Railway Labor Act (RLA), which provided procedures for modifying collective bargaining agreements (CBAs), was required to yield to ICA when RLA impeded implementation of STB-approved consolidation. Railway Labor Act, § 7, 45 U.S.C.A. § 157; 49 U S.C.A. §§ 11324(b)(4), 11326.

[4] Labor and Employment 231H ⇐1103

231H Labor and Employment
231HXII Labor Relations
231HXII(C) Collective Bargaining
231Hk1101 Constitutional and Statutory Provisions
231Hk1103 k. Purpose. Most Cited Cases
(Formerly 232Ak46 Labor Relations)
The RLA was passed to encourage collective bargaining between railroads and their employees, thereby preventing strikes and interruptions to interstate commerce. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 151 et seq.

[5] Carriers 70 ⇐10

70 Carriers
70I Control and Regulation of Common Carriers
70I(A) In General
70k10 k. Supervision by Public Officers in General. Most Cited Cases
To the extent that a transaction subject to the approval of the Surface Transportation Board (STB) impacts collective bargaining agreements (CBA) or the relationship between railroads and their employees, the STB has exclusive jurisdiction under the Interstate Commerce Act (ICA) in the first instance to consider the issues 49 U.S.C.A. §§ 11324(b)(4), 11326

[6] Commerce 83 ⇐85.34

83 Commerce
83III Interstate Commerce Commission
83III(A) Organization and Authority
83k85.34 k. Water Carriers, Regulation. Most Cited Cases
Fact that union was not signatory to Washington Job Protection Agreement of 1936 (WJPA) did not preclude imposition of New York Dock employee-protection and arbitration procedures on union by Interstate Commerce Commission (ICC), inasmuch as ICC's authority to impose labor protections was derived from Interstate Commerce Act (ICA), and owed nothing to WJPA. 49 U.S.C.A. § 11326.

[7] Carriers 70 ⇐10

70 Carriers
70I Control and Regulation of Common Carriers
70I(A) In General
70k10 k. Supervision by Public Officers in General. Most Cited Cases
Conclusion of Surface Transportation Board (STB), that it had exclusive jurisdiction to consider whether Interstate Commerce Act (ICA) preempted Railway Labor Act (RLA) with respect to implementation of STB-approved merger, was not arbitrary, capricious, or otherwise not in accordance with law. Railway Labor Act, § 1 et seq., 45 U.S.C.A. § 157; 49 U S.C.A. §§ 11324(b)(4), 11326.

*459 Jeffrey S. Berlin (Argued), Mark E. Martin, Sidley & Austin, Washington, DC, Attorneys for Appellee/Intervenors.
David R. Jury (Argued), Assistant General Counsel, Pittsburgh, PA, Attorney for Appellants/Petitioner.
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Henri F. Rush, General Counsel, Theodore K.

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Kalick (Argued), Surface Transportation Board Office of General Counsel, Washington, DC, Attorneys for Surface Transportation Board Respondent.

Before GREENBERG,[FN**] NYGAARD and ROTH , Circuit Judges.

FN** After this case was argued, but prior to the issuance of this opinion, Judge Greenberg took senior status on June 30, 2000.

***460 OPINION OF THE COURT**

ROTH, Circuit Judge:

These consolidated cases present the question whether a federal district court has subject matter jurisdiction to adjudicate challenges to changes to a collective bargaining agreement, made in connection with a rail merger authorized by the Surface Transportation Board (STB). The District Court and the STB concluded that the latter has exclusive authority to resolve labor disputes arising out of STB-approved rail consolidations. For the reasons set out below, we will affirm the decision of the District Court and deny the petition for review of the decision of the STB.

I. Factual and Procedural History

In 1988, Transtar, Inc., a transportation holding company located in Monroeville, Pennsylvania, acquired control of the Union Railroad Company and the Bessemer and Lake Erie Railroad Company, along with five other rail carriers and one water carrier. This consolidation was achieved pursuant to an Interstate Commerce Commission (ICC) authorization (Control Order), which, under 49 U.S.C. § 10505, exempted the transaction from the prior approval requirements of 49 U.S.C. §§ 10746, 11321, and 11343.[FN1] *Blackstone Capital Partners, L.P., and USX Corporation-Exemption from 49 U.S.C. §§ 10746, 11321 and 11343*, Finance Docket No. 31363, served Dec. 23, 1988. The ICC found that exempting the transaction would "minimiz[e] administrative expense" and " foster sound economic conditions and encourage efficient management." *Id* slip op. at 2. When the ICC authorized a merger, it was required by 49 U.S.C. § 11326 to impose labor protections for affected employees. Here, the ICC complied with § 11326 by applying the *New York Dock* employee protective conditions.

FN1. The ICC Termination Act of 1995, Pub.L. No. 104-88, 109 Stat. 803, abolished the ICC (§ 101, 109 Stat. at 804) and transferred its remaining functions to the Surface Transportation Board (STB) effective January 1, 1996. The Act also resulted in the renumbering of various provisions of the ICA. Following are the former section numbers that are relevant here with the new numbers in brackets: § 10505 [§ 10502]; § 11341 [§ 11321]; § 11347 [§ 11326]. The new provisions were re-enacted without substantive change. In referring to the statute in this opinion, we will employ the current section numbering.

The *New York Dock* conditions are those adopted in *New York Dock Ry.-Control-Brooklyn Eastern District Terminal*, 360 I.C.C. 60, 84 (1979), *aff'd. sub. nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir.1979). Under *New York Dock*, changes related to authorized transactions are accomplished through implementing agreements negotiated between the rail carrier and representatives of the employees. If the parties cannot agree to the terms and conditions of the implementing agreement, either party may unilaterally invoke an arbitration proceeding to resolve the dispute.[FN2]

FN2. More specifically, the *New York Dock* conditions provide compensatory benefits to employees who are adversely affected by a railroad merger or control transaction, including protecting affected employees' wages for up to six years. The *New York Dock* conditions also fix procedures for making adjustments in work forces and labor agreements that will permit carriers

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> to implement an authorized transaction. Article I, § 4 requires a carrier to give affected employees ninety days' advance notice of a proposed transaction. The parties must begin negotiation of an implementing agreement within ten days of the notice; after thirty days, either party may submit the dispute to arbitration before an arbitrator acting pursuant to STB authority. If the parties are unable to select an arbitrator within five days, they may ask the National Mediation Board to appoint one. The arbitration hearing must begin within twenty days of the arbitrator's designation and the decision is to be rendered within thirty days of the hearing. 360 I.C.C. at 84, 85.

Prior to the 1988 consolidation, the Union Railroad Company and the Bessemer and Lake Erie Railroad Company (collectively, the Railroad) had maintained separate accounting departments. The workers in each of these departments worked *461 solely for their respective carriers and under separate collective bargaining agreements. The clerical workers employed by Union Railroad were members of the United Steelworkers of America (USWA); the clerical workers of Bessemer and Lake Erie were members of the Transportation Communications International Union.

As part of the implementation of the 1988 Control Order, the Railroad sought to coordinate certain clerical work by moving Union Railroad's accounting department to Bessemer and Lake Erie Railroad As required by Article 1, § 4, of the *New York Dock* conditions, the Railroad notified the unions of its proposed coordination in a letter dated September 3, 1996. The notice stated that nine new positions would be established at Bessemer and Lake Erie Railroad to perform the consolidated work; nine positions at Union Railroad would thereby be eliminated. The notice also explained that the nine former Union Railroad employees would be incorporated into the existing Bessemer and Lake Erie Railroad clerical seniority roster according to their Union Railroad seniority rank.

The USWA, the Union Railroad clerical union, claimed that the proposed coordination of work would violate a scope rule contained in the United Railroad/USWA's collective bargaining agreement, which forbade non-Union Railroad employees from performing its accounting work.[FN3] The USWA maintained that changes to the scope rule must be made pursuant to the Railway Labor Act (RLA), 45 U.S.C. §§ 151 *et seq.* The USWA also argued that it was not a party to any other agreement, such as the Washington Job Protection Agreement of 1936, [FN4] that would authorize the contemplated changes Accordingly, the USWA asserted that it considered the Railroad's letter of September 3, 1996, detailing the planned coordination, as a notice of proposed changes in the collective bargaining agreement under § 6 of the RLA.

> FN3 The scope rule provided: "[If][a]ny person outside the bargaining unit or any person not covered by the bargaining unit performs work in violation of this section and the employee who otherwise would have performed this work can reasonably be identified, the Company shall pay such employee the applicable standard hourly rate for the time involved or for four (4) hours, whichever is greater." This rule was first adopted in 1978 and subsequently revised in 1981.
>
> FN4. The Washington Job Protection Agreement was signed by many of the nation's rail carriers and unions in 1936. It required carriers to compensate employees dismissed or displaced as a result of railroad mergers and to pay relocating costs. It also provided that carriers give notice of consolidation to employees and to negotiate implementing agreements for coordinating work forces. Disputes concerning the interpretation of agreements were submitted to binding arbitration. *See New York Dock*, 609 F 2d at 87.

On October 26, 1996, the Railroad responded by providing formal notice that it was invoking arbitration under Article I, § 4, of *New York Dock*.

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The USWA countered in a letter dated November 1, 1996, that it could not be compelled to arbitrate because the RLA allows changes to existing collective bargaining agreements only if the changes are arbitrated with the mutual consent of both parties 45 U.S.C. § 157. It would therefore consider the Railroad's invocation of arbitration under *New York Dock* as a termination of voluntary negotiations under § 6 of the RLA. The USWA further asserted that it would not aid in the selection of a *New York Dock* arbitrator. The Railroad subsequently requested the National Mediation Board (NMB) to appoint a neutral referee to arbitrate the dispute. The NMB appointed Arbitrator Witt.

On October 29, 1996, the USWA served the Railroad with an RLA § 6 bargaining proposal, asking for numerous changes to the collective bargaining agreement. The Railroad responded by filing this action, seeking declaratory and injunctive relief under the Declaratory Judgement Act, 28 U.S.C. § 2001, and the RLA, 45 U.S.C. § 151. The Railroad sought a declaration that the USWA's October 29, 1996, § 6 *462 notice was premature because of a moratorium clause in the existing collective bargaining agreement and that self-help was not available.

The USWA filed its counterclaim on December 9, 1996, seeking declaratory and injunctive relief preventing the Railroad from carrying out its proposed coordination of clerical workers through the *New York Dock* arbitration procedure. Compelled arbitration of the dispute under this procedure, the USWA claimed, would violate its rights under the RLA. The USWA next filed a motion for summary judgment, with respect to both the Railroad's claim and its counterclaim. The Railroad, in turn, filed a motion to dismiss the counterclaim for lack of subject matter jurisdiction.

On November 24, 1997, the District Court found, *inter alia*, that it lacked subject matter jurisdiction over the USWA's counterclaim: "A review of the relevant case law persuades me that the propriety of the Railroad's invocation of the *New York Dock* process must be resolved by the STB, and by the Court of Appeals. I do not have jurisdiction over these matters" *Union Railroad Company v. United Steelworkers of America*, No. 96-2095, slip op. at 8 (WDPA, Nov 1997). The USWA timely appealed the District Court's November 23, 1997, dismissal. FN5

FN5. The District Court has also granted USWA's motion for summary judgment on the complaint, making the order appealed from a final order.

While the action was pending in the District Court, the *New York Dock* arbitration proceeded, with the USWA preserving its objections to the arbitrator's jurisdiction. On October 21, 1997, Arbitrator Witt issued her award (Witt Award), which imposed, with a few modifications, the implementing agreement that the Railroad had proposed. On November 10, 1997, the USWA petitioned the STB for an administrative review of the Witt Award, pursuant to 49 C.F.R. § 1115.8. By a decision dated December 16, 1998, the STB declined review of the Witt Award. *Union Railroad Company and Bessemer and Lake Erie Railroad-Arbitration Review-United Steel Workers of America*, STB Finance Docket No. 31363 (Sub-No. 3), served Dec, 16, 1998. The USWA filed a timely petition for review of the STB decision.

II Jurisdiction

The District Court dismissed the USWA's counterclaim for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291 to review the final judgment of the District Court.

The STB had jurisdiction over the USWA's petition to review the arbitral decision under 49 U.S.C. §§ 10502, 11323, and 11326. Our jurisdiction over the USWA's petition to review the STB's decision is based on 28 U.S.C. §§ 2321(a), 2342(5), and 2344.

III. Standard of Review

[1] We exercise plenary review over the District Court's dismissal of the USWA's counterclaim for

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lack of subject matter jurisdiction *See Ernenet, Inc. v Velocity Net, Inc.*, 156 F.3d 513, 514 (3d Cir.1998).

[2] We may not upset the decision of the STB unless we find that it is arbitrary, capricious, or in excess of its statutory authority. *See National Small Shipments Traffic Conference, Inc, v United States*, 887 F.2d 443, 445 (3d Cir.1989)

IV Discussion

A. The District Court Decision

[3] The jurisdictional question at issue here-whether the District Court had subject matter jurisdiction to adjudicate the USWA's challenge to the Railroad's implementation of its 1988 ICC-authorized consolidation-requires us to examine the relationship between the Railroad Labor Act and the Interstate Commerce Act. *463 The USWA argues that the RLA and the ICA are "co-equal" and complementary statutory schemes and that, therefore, the District Court had general federal subject matter jurisdiction pursuant to 28 U.S C. § 1331 to hear its counterclaim seeking enforcement of its rights under the RLA. The Railroad contends that the ICA is the exclusive statutory scheme for dealing with railroad consolidations and that accordingly the STB has exclusive jurisdiction to consider disputes concerning changes to labor agreements which are necessary to implement an STB-authorized consolidation. We agree with the Railroad.

[4] The RLA was passed in 1926 to encourage collective bargaining between railroads and their employees, thereby preventing strikes and interruptions to interstate commerce. *See Detroit and Toledo Shore Line Railroad Co. v. United Transportation Union*, 396 U.S. 142, 148, 90 S.Ct. 294, 24 L.Ed.2d 325 (1969). To this end, the RLA establishes elaborate procedures for the negotiation, enforcement, and modification of collective bargaining agreements between railroad carriers and railroad labor unions. The RLA also imposes upon parties the obligation to engage in good-faith negotiations and to maintain status quo without resorting to self-help while the RLA's remedies are being exhausted. The exhaustion of the RLA's remedies is, however, "an almost interminable process." *Id.* at 149, 90 S.Ct. 294. "[T]he procedures of the Act are purposely long and drawn out, based on the hope that reason and practical considerations will provide in time an agreement that resolves the dispute." *Brotherhood of Ry. & Steamship Clerks, etc. v. Florida East Coast Ry. Co*, 384 U.S. 238, 246, 86 S.Ct. 1420, 16 L.Ed 2d 501 (1966).

The ICA, on the other hand, gives substance to what has been, since the adoption of the Transportation Act of 1920, the nation's policy of pursuing railroad carrier consolidation as a means of promoting the health and efficiency of the railroad industry: " [C]onsolidation of the railroads of the country, in the interest of economy and efficiency, became an established national policy ... so intimately related to the maintenance of an adequate and efficient rail transportation system that the 'public interest' in the one cannot be disassociated from that in the other." *United States v. Lowden*, 308 U.S. 225, 232, 60 S.Ct. 248, 84 L.Ed. 208 (1939), *see also, St. Joe Paper Co v. Atlantic Coast Line R Co*, 347 U.S. 298, 315-321, 74 S.Ct. 574, 98 L.Ed. 710 (1954). The ICA grants the STB exclusive authority to approve mergers and acquisitions of transportation carriers within its jurisdiction. 49 U.S.C. § 11323(a). It also provides that STB-authorized consolidations are exempted from " the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier ... carry out the transaction." 49 U S C. § 11341(a).[FN6] The authorization may take one of two forms. The STB may, under 49 U.S C. §§ 11323-11324, affirmatively approve a merger, acquisition of control, or other rail consolidation by determining that it is "consistent with the public interest." 49 U.S.C. § 11324(c). Alternatively, 49 U.S.C. § 10505 allows the STB to authorize a consolidation by granting an exemption for the prior approval requirements of *464 §§ 11323-11324. [FN7] In either case, the STB is required to impose labor protective measures for affected employees as a condition of consolidation authorizations. 49 U S.C. § 11326.

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FN6. 49 U S C. § 11321(a) provides:
The authority of the Board under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

FN7. Exemption from the full approval process is appropriate when "the transaction or service is of limited scope" or when "the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power." 49 U S.C. § 10505.

Our analysis of the relationship between the RLA and the ICA begins with the most recent Supreme Court decision on the subject, *Norfolk and Western Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. 117, 132, 111 S.Ct. 1156, 113 L.Ed.2d 95 (1991). There, labor unions in two separate cases challenged ICC orders that relieved the railroad carriers from collective bargaining agreement obligations The unions argued that § 11321(a), which confers to transactions necessary for the implementation of ICC-authorized consolidations immunity from "all other law," does not abrogate existing collective bargaining agreements. Modification of such agreements, the unions insisted, must be made pursuant to the RLA.

The Supreme Court disagreed: "RLA is a law that, under [§ 11321(a)], is superseded when an ICC-approved transaction requires abrogation of collective-bargaining obligations." *Id* at 132, 111 S.Ct. 1156 (citations omitted). This conclusion, the Supreme Court explained, is consistent with the ICA's overall statutory scheme. The ICA was designed to promote "economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure." *Texas v. United States*, 292 U S. 522, 534-35, 54 S Ct. 819, 78 L.Ed. 1402 (1934). Recognizing that consolidations of carriers would result in employee dismissals, transfers and other changes detrimental to employees, the ICA mandated that the ICC impose safeguards, like the *New York Dock* employee protective conditions, to ensure that employee interests of the affected parties are protected. Section 11321(a), in turn, guaranteed that, once these interests are accounted for, the ICC would be free from requirements, such as provisions of the RLA, that might impede the consolidation. If the RLA were not superseded by the ICA, the Court observed, "rail carrier consolidations would be difficult, if not impossible, to achieve," because " [t]he resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated." *Dispatchers,* 499 U.S. at 133, 111 S.Ct. 1156 (citations omitted).[FN8]

FN8. The Union argues, based in part on our decision in *Railway Labor Executives' Ass'n v. Pittsburgh & Lake Erie Railroad Co.*, 845 F 2d 420 (3d.Cir.1988), that the RLA and the ICA are co-equal and complementary sources of legal rights. In that case, we focused on the differing policy goals animating the RLA and the ICA. The former, we stated, advances the policy of avoiding "disruptions in the railroad industry by promoting collective bargaining and preventing strikes." *Id.* at 436. The latter promoted the policy goal of "encourag[ing] the flow of capital into the [rail] industry" and "expedit[ing] the approval process so that efficient transactions are not derailed by red tape." *Id* In light of we explained, the judiciary " must reconcile the two statutes as much as possible and attempt to reach a result that will produce the minimum possible

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> conflict with Congressional intent." *Id.* at 423 But in invoking our decision in *P&LE*, the Union neglects to acknowledge that we were without the benefit of the Supreme Court's decision in *Dispatchers*. To the extent our observations on the relationship between the RLA and the ICA conflict with those of the Supreme Court in *Dispatchers*, ours must give way.

Although *Dispatchers* did not directly address the jurisdictional question at issue here, the Ninth and Fourth Circuit Courts of Appeals have interpreted *Dispatchers*, and the relationship between the RLA and the ICA that it envisions, as compelling the conclusion that the ICC (now the STB), not the district court, has the exclusive authority to resolve labor disputes that arise from implementing an ICC (or STB)-authorized transaction. *465*Railway Labor Executives' Ass'n. v. Southern Pacific Transportation Co.*, 7 F.3d 902 (9th Cir.1993); *Norfolk & Western Ry. v. Brotherhood of Railroad Signalmen*, 164 F.3d 847 (4th Cir.1998).

In *Southern Pacific*, the ICC approved a merger of certain railroads pursuant to 49 U.S.C. § 11321(a) and, in compliance with 49 U.S.C. § 11326, imposed the *New York Dock* conditions to protect existing and future employees from the adverse effects of the merger. When time came for the merged railroad to coordinate work, it claimed, believing that the coordination was incident to the merger, that the changes should be implemented through the *New York Dock* procedures. The union there, like the USWA in the present case, countered that changes to the existing collective bargaining agreement could be made only through RLA procedures. The union brought suit, claiming that a *New York Dock* arbitration of its dispute without its consent would violate its RLA rights.

The Ninth Circuit affirmed the district court's ruling that it lacked subject matter jurisdiction over the suit. The court stated that the Supreme Court's *Dispatchers* decision, while not directly on point, was determinative:

> First of all, *Dispatchers* reiterates the proposition that under the ICA, "the Interstate Commerce Commission [has] exclusive authority to examine, condition, and approve proposed mergers and consolidations of transportation carriers within its jurisdiction." Second, *Dispatchers* makes clear that under Section [11321(a)], the ICC has the effective power of exempting parties to a railroad merger from any provision of the RLA, by approving the merger. It follows from these propositions that where a railroad which has been a party to an ICC approved merger claims that certain proposed actions are incident to that merger and exempt from RLA procedures under section [11321(a)], the ICC has exclusive authority to resolve a challenge to these claims.

Southern Pacific, 7 F.3d at 906 (internal citations omitted). The court went on to state that the conclusion that jurisdiction belongs to the ICC and not the district court also comports with the policy objective underlying the ICA-the promotion of economy and efficiency of interstate transportation. *See Dispatchers*, 499 U.S. at 132, 111 S.Ct. 1156; *Texas v. United States*, 292 U.S. at 534, 54 S.Ct. 819. Integral to meeting this objective is the authority vested in the ICC to substitute RLA procedures with the expedited dispute resolution prescribed by the *New York Dock* conditions. But, if parties were allowed to litigate in federal district court the propriety of invoking the *New York Dock* process, the ICC's ability to meet this stated objective of facilitating rail consolidations would be hindered: "We would invite a barrage of collateral challenges to the ICC's authority which would be likely to frustrate and delay the administration of mergers in a way that section [11321(a)] was clearly meant to avoid." *Id* at 907.

The Fourth Circuit in *Norfolk & Western Ry. v. Brotherhood of Railroad Signalmen*, 164 F.3d 847 (4th Cir.1998) reached the same conclusion. As in *Southern Pacific* and the present case, the unions in *Signalmen* sought a declaratory judgement in district court that changes to collective bargaining agreements in connection with the implementation of a STB-authorized rail consolidation must be made pursuant to RLA procedures. The district court dismissed the case for lack of subject matter jurisdiction. The court of appeals found that the dismissal was proper. Drawing on *Dispatchers*, the court held that within the context of an

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STB-authorized merger, "any effort to challenge changes in the collective bargaining agreements proposed ... must be presented in the first instance to the STB under its exclusive jurisdiction and may *466 not be negotiated under the RLA."[FN9] *Id.* at 855.

> FN9 The Eleventh Circuit came to the same conclusion-although by way of a different rationale-in *Brotherhood Ry. Carmen, Div. of Transp. Comm. Int'l Union (TCU) v. CSX Transp, Inc.*, 855 F.2d 745 (11th Cir.1988), a pre-*Dispatchers* case. There, the ICC approved a merger of certain rail carriers and incident to that approval imposed the *New York Dock* conditions. The consolidated carrier then proposed to close down a repair shop and transfer the work and employees to another facility. Attempts between the carrier and the union representing the affected employees to negotiate an implementing agreement on the transfer failed and the carrier sought arbitration of the dispute under *New York Dock*. The union in turn filed an action in district court arguing, *inter alia*, that the implementing agreement was not governed by the *New York Dock* procedures and that compulsory arbitration would violate the RLA. While the action in district court was pending, a *New York Dock* arbitrator considered the dispute and rendered a decision. Both parties appealed the arbitrator's decision to the ICC. Before the appeal was heard by the ICC, the district court granted summary judgment to the carrier.
>
> A panel of the Eleventh Circuit vacated the district court's order, finding that the district court lacked subject matter jurisdiction to adjudicate the dispute. The court based its decision on Congress's grant of exclusive jurisdiction to the courts of appeals to review ICC orders. 28 U.S.C. § 2231(a), 2342(5). The court explained: "The arbitration opinion and award ... is authoritative only as an extension of the authority of the ICC. .. [T]he present lawsuit is, in effect, a collateral attack on the arbitration award; it is an attempt by [the union] to have the district court set aside the arbitration award, rather than going through the normal channels of appeal to the ICC and then to the Court of Appeals." *Id.* at 745. By assuming jurisdiction over the dispute, the court ruled, the district court improperly interfered with the normal appeals procedure and encroached on the court of appeals' exclusive authority to review ICC decisions. *Id.*

The USWA argues that *Dispatchers*, *Southern Pacific*, and *Signalmen* are inapposite because the consolidations in those cases were authorized through the full approval process of § 11323 while the merger here was achieved through the abbreviated process of § 10502. This distinction is critical, according to the USWA, because the § 11321(a) exemption "from all other laws" applies only to § 11323 transactions. This argument is based on the language of § 11321(a), which provides that "[t]he authority of the Board *under this subchapter is exclusive.*" (emphasis added). Section 10502 is not in the same subchapter as § 11321 *See Railway Labor Executives' Ass'n v United States*, 987 F.2d 806, 813 (D.C.Cir.1993) ("That decision [*Dispatchers*] is not applicable here, however, because § [11321(a)] applies to transactions exempted under subchapter III, of which it is a part. The Commission exempted the transaction at issue here under § [10502], which is in subchapter I") The USWA argues, therefore, that when the STB is not given the power of making exemptions-that is, when its actions are not taken pursuant to S 11321(a)-there is no basis for granting exclusive jurisdiction to the STB.

The USWA's argument misses the mark, confusing the STB's scope of exemption under § 11321(a) with its jurisdictional authority over disputes arising out of the implementation of railroad consolidations. Although § 11321(a) expressly can preempt the RLA, the STB's jurisdictional exclusivity does not depend alone on § 11321(a). Rather, the STB also finds jurisdictional authority

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in the overall statutory design of the ICA. Congress, in seeking to promote the economy and efficiency of the rail industry, has given the STB considerable authority over railroads, granting to it exclusive jurisdiction to authorize railroad mergers and consolidations 49 U S.C. § 11321(a). *See Dispatchers*, 499 U.S. at 119-20, 111 S Ct. 1156.

[5] Among the matters which the ICA puts within the exclusive jurisdiction of the STB is the relationship between the railroad and its employees. Section 11324 mandates that the STB consider when approving a merger "the interest of the rail carrier employees affected by the transaction." 49 U.S.C. § 11324(b)(4). More importantly,*467 § 11326 grants to the STB both the statutory authority and the mandate to impose on the rail carrier, as a condition of consolidation authorization, a "fair arrangement" that will protect the employees affected by the consolidation. All this demonstrates, as the Fourth Circuit noted in *Signalmen*, that "to the extent that a transaction subject to the STB's approval impacts collective bargaining agreements or the relationship between railroads and their employees, the STB has exclusive jurisdiction in the first instance to consider the issues." 164 F.3d at 855. Thus, the exclusive jurisdiction to resolve labor problems in a merger exists independently of the § 11321(a) exemption of such a merger from other laws.[FN10]

FN10. To the extent that § 10502 mergers may receive exclusive STB resolution of employee relations issues but not § 11321(a) exemption from "other laws," the justification for this result may be found in the fact that § 10502 mergers by definition are of "limited scope."
That said, we note that the USWA's effort to draw a distinction between an approved transaction under § 11321(a) and an exempted transaction under § 10502 has been rejected by the ICC, which found that § 11321(a) does apply to § 10502 transactions. In *Rio Grande Industries, Inc., et al.-Trackage Rights-Burlington Northern R R. Lines Between Kansas City, MO and Chicago, IL*, ICC Finance Docket No. 31730, 1991 ICC LEXIS 57, served March 12, 1991, at *9-11, the ICC held that immunity under § 11321(a) extends to transactions exempted under § 10502. *Accord Brotherhood of Locomotive Engineers v. Boston & Maine Corp.*, 788 F.2d 794, 799-801 (1st Cir.1986).
The conclusion that § 11321(a) applies to both "approved" and "exempted" transactions is consistent with polices behind the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), which broadened and liberalized S 10502 in furtherance of the ICA's goal of revitalizing the railroad industry *See Coal Exporters Ass'n v. United States*, 745 F.2d 76, 80-82 (D.C Cir.1984). By increasing the ICC's ability to exercise its power under § 10502, Congress indicated that the § 10502 procedure was an equal and even preferred way of regulating the railroad industry. *See* H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 105 (1980), *reprinted in* 1980 U.S.C.C.A N. 4110, 4137.

The USWA contends, however, that interpreting the ICA as vesting the STB with exclusive jurisdiction to adjudicate all issues concerning railroad-employee relationships which arise as a result of approved mergers is too sweeping. For this argument, it relies on the Seventh Circuit's decision in *Harris v. Union Pacific Railroad*, 141 F.3d 740 (7th Cir.1998). There the court considered whether the ICA takes away from the district court jurisdiction to consider civil rights claims brought by two union members against a railroad carrier. The ICC had approved Union Pacific's acquisition of another carrier pursuant to § 11321(a). Although the ICC imposed the *New York Dock* conditions, it also permitted labor and management to negotiate different conditions "in a labor agreement entered into prior to consolidation, in which case protection shall be at the negotiated level, subject to our review to assure fair and equitable treatment of affected employees." *Id.* at 741 (quoting ICC order). The parties then reached an alternative agreement for separation benefits. To qualify for the separation allowance, however,

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an employee on leave had to return to work within twenty days. Neither the union nor the management sought the ICC's review of the alternative agreement.

The two plaintiffs in *Harris* were on maternity leave at the time the labor agreement was posted; neither returned within twenty days. Their applications for separation benefits were denied. They then filed suit for sex discrimination in district court. The court dismissed the action for lack of subject matter jurisdiction. The Seventh Circuit reversed, holding that the civil rights laws did not put any obstacle in the way of the railroad merger at issue. None of the relief sought by the plaintiffs would be incompatible with the ICC's approval of the merger. It would be pointless, therefore, to deny jurisdiction to the district court in order to refer the civil rights issue to the STB.

[6] The USWA urges us to follow *Harris* by requiring that the STB articulate in *468 its approval of a merger the laws that are necessary to displace. We do not read this result into *Harris*. We conclude that a case involving civil rights issues, arising from the application of a non-STB approved agreement to two members of a class, is distinguishable from the situation here where *New York Dock* arbitration has authorized changes in the labor agreement, which changes are necessary to implement the transaction. For that reason, even if we were bound to follow the Seventh Circuit, we would find *Harris* to be distinguishable.[FN11]

FN11. In a related argument, the USWA contends that it cannot be made subject to the *New York Dock* procedures because it was not a signatory to the Washington Job Protection Agreement of 1936. On the USWA's theory, only signatories to the Agreement have bargained away their RLA right to refuse to arbitration under *New York Dock* procedures. We find that this argument is without merit and agree with the District Court's conclusion that the ICC's authority under § 11326(a) to impose labor protections is "statutory in nature, and owe nothing to the WJPA." Although the WJPA provisions are, in many respects, duplicated in the *New York Dock* conditions, the two sets of labor protections derive their authority from different sources and are not equivalent in scope. The WJPA is a contract, the provisions of which bind only those carriers and unions that consented to the Agreement. The *New York Dock* conditions, on the other hand, arose as a result of Congressional mandate. As part of the Transportation Act of 1940, Congress granted to the ICC express statutory authority to impose employee protection upon approval of railroad mergers. Pub. L. No. 76-785, 54 Stat. 898 (1941) (codified as amended at 49 U.S.C. § § 10101-11901 (1998)). It is pursuant to this statutory authority that the ICC developed the standard set of labor protections contained in *New York Dock*. The ICC's authority to impose the *New York Dock* conditions-and to make changes to labor agreements pursuant to those conditions-derives, therefore, from the ICA and reaches those carriers and unions who were not signatories to the WJPA.

We conclude that the ICA-in its language and overall statutory design-reflects Congress's commitment to a national transportation policy that favors the consolidation of railroads. And Congress has decided that such a policy is best pursued by freeing rail consolidations from the burdensome delays and expenditures associated with RLA procedures. Thus, the ICA and the RLA are not complementary and co-equal statutory schemes, as the USWA proposes. The RLA must yield to the ICA when it impedes the implementation of a STB-approved consolidation. Moreover, the STB has the exclusive jurisdiction to adjudicate challenges to such an implementation. Accordingly, we will affirm the District Court's dismissal of the USWA's counter claim for lack of subject matter jurisdiction.

B. The STB Decision

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We now turn to the USWA's petition for review of the STB decision of December 17, 1998. The standard the STB must apply in reviewing arbitration decisions is provided in *Chicago & North Western Transportation Company*, 3 I.C.C.2d 729 (1987) ("*Lace Curtain*"), *aff'd sub. nom. International Brotherhood of Electrical Workers v ICC*, 862 F.2d 330 (D.C.Cir.1988). 49 CFR § 1115.8. Under *Lace Curtain*, the arbitrator's decision is given deference and the STB will review "issues of causation, calculation of benefits, or the resolution of factual questions" only if there is egregious error. Review is thus limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." 3 I.C.C. at 735-36. Based on this, the STB declined to review and vacate the Witt Award: "We find no reason to disturb the arbitrator's award under the *Lace Curtain* standards. There is no issue of first impression; and any issues that are likely to recur have already been thoroughly resolved by us and the courts [The USWA] has not shown egregious error or any other grounds requiring review of the arbitration award here." *Union Railroad Company and Bessemer and Lake Erie Railroad-Arbitration Review-United Steel Workers of America*, *469 STB Finance Docket No. 31363 (Sub No 3), served Dec, 16, 1998, slip op. at 7-8.

[7] The USWA presents in this appeal no challenges to the factual determinations made by the arbitrator, relying solely on the argument it made before the District Court that the STB does not have exclusive jurisdiction to adjudicate the USWA's RLA-based challenges to the implementation of the 1988 ICC-authorized consolidation. In light of our analysis in the previous section, we cannot say that the Board's conclusion that it has exclusive jurisdiction to consider whether the ICA preempts the RLA was arbitrary, capricious, or otherwise not in accordance with law. *See National Small Shipments Traffic Conference, Inc. v United States*, 887 F.2d 443, 445 (1989). We will, therefore, deny the petition for review of the STB's decision not to review the Witt Award.

V. Conclusion

For the foregoing reasons, we will affirm the judgment of the District Court and we will deny the petition for review of the decision of the Surface Transportation Board.

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Briefs and Other Related Documents (Back to top)

- 1999 WL 33617521 (Appellate Brief) Brief for Intervenors (Nov. 01, 1999) Original Image of this Document (PDF)
- 1999 WL 33616944 (Appellate Brief) Reply Brief of Defendants - Appellants (Oct. 14, 1999) Original Image of this Document (PDF)
- 1999 WL 33617078 (Appellate Brief) Brief for Appellee (Oct. 04, 1999) Original Image of this Document with Appendix (PDF)
- 1999 WL 33617335 (Appellate Brief) Brief for Appellee (Oct. 04, 1999) Original Image of this Document with Appendix (PDF)
- 1999 WL 33632447 (Appellate Brief) Brief of Petitioner (Sep. 21, 1999) Original Image of this Document with Appendix (PDF)
- 1999 WL 33617077 (Appellate Brief) Brief of Defendants - Appellants (Aug. 23, 1999) Original Image of this Document with Appendix (PDF)
- 98-6511 (Docket) (Dec. 30, 1998)
- 1998 WL 34084094 (Appellate Brief) Brief of Respondent Surface Transportation Board (1998) Original Image of this Document with Appendix (PDF)
- 97-3680 (Docket) (Dec. 29, 1997)

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IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD RAILWAY CARMEN DIVISION - TCU

and

TRANSPORT WORKERS UNION OF AMERICA

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the Organization representatives signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may only effect the following coordinations or rearrangements of forces:

(a) The allocated CRC locomotives and cars which respectively are to be operated by either CSXT or NSR and will be integrated into either CSXT's or NSR's existing fleets of locomotives and freight cars and the maintenance and repair work of the CSXT and NSR coordinated and integrated fleets will be performed, respectively, at any CSXT or NSR facility notwithstanding the prior railroad ownership of the equipment.

(b) (1) At common locations on NSR, including those listed below, shop craft seniority will be integrated in accordance with the terms and provisions outlined in Article II and Side Letters attached to this Agreement:

NSR/CRC Points
Buffalo, New York
Chicago, Illinois
Cincinnati, Ohio
Cleveland/Lorain, Ohio
Columbus, Ohio
Fort Wayne, Indiana
Toledo, Ohio

(2) For common locations on the territories of the former Baltimore and Ohio Railroad and Chesapeake and Ohio Railway, shopcraft seniority will be integrated in accordance with the terms and provisions in Article II and Side Letters attached to this Agreement: Walbridge, Ohio (C&O); Cleveland, Ohio, E. St.

Louis, Illinois, Lima, Ohio and Indianapolis, Indiana (B&O).

(c) The following work may be coordinated or rearranged, in whole or in part, on NSR and allocated CRC properties operated by NSR:

(1) EMD locomotive overhaul and component rebuild from Roanoke to Juniata Locomotive Works at Altoona

(2) GE locomotive overhaul and component rebuild from Juniata (Altoona) to Roanoke Shop - Locomotives

(3) Atlanta (Pegram Shop) locomotive truck overhaul to Altoona

(4) Rebuilding of air brake equipment from Chattanooga to Altoona

(5) Wreck repair for heavily damaged locomotives from Roanoke Shop - Locomotives to Altoona

(6) Painting of locomotives from Chattanooga to Altoona

(7) All EMD and GE turbocharger work from Juniata (Altoona) to Roanoke Shop - Locomotives

(8) Machine tool operations and associated fabrication from Altoona to Roanoke

(9) 92-day inspection of locomotives from Elkhart, Pavonia, and Oak Island to Bellevue

(10) 92-day inspection of locomotives from Enola to Conway

(11) Program car repair work from Macedonia, OH, Decatur, IL, and Williamson, WV to Hollidaysburg

(12) Freight car part reclamation from Hollidaysburg to Roanoke

(13) Wheel shop consolidation to site selected by NSR

(14) Office car work from Roanoke to Altoona

(d) The following work may be coordinated or rearranged, in whole or in part, on CSXT and allocated CRC properties operated by CSXT:

(1) Heavy locomotive work from Selkirk, NY, to Huntington, WV

(2) Heavy locomotive work from Juniata Locomotive Works at Altoona, PA, to Huntington, WV, and Waycross, GA.

(3) Freight car work from Hollidaysburg, PA, to Raceland, KY and to

any of CSXT's project shops.

(e) Because after the transaction CRC will have no locomotive heavy repair or periodic maintenance capability, nor the ability to perform substantial or program work on cars, such service will be provided by CSXT or NSR, in accordance with their respective collective bargaining agreements and/or practices, or as directed by the locomotive or car owner. Only fueling, servicing and light and running repairs on locomotives and cars will be provided by CRC consistent with its collective bargaining agreement or practices, when such work is performed in Shared Assets Areas.

Section 2

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, in which no employee is required to relocate and the work force is not reduced at the involved locations as a result of the coordination may be implemented upon fifteen (15) days' written notice by NSR and/or CRC, to the appropriate Organization representatives.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 3

Future coordinations of work, services or operations, in whole or in part, not now contemplated and/or specified in Section 1, which involve the dismissal or displacement of any employee(s) or rearrangement of forces may be implemented by NSR and/or CRC, after providing employee(s) and their Organization representatives thirty (30) days' written notice.

Should the Organization desire a conference concerning the

rearrangement of forces that would occur as a result of the announced coordination, upon written request from the Organization prior to the expiration of the aforementioned 30-day notice period, the period of the notice will be extended up to but not exceeding an additional sixty (60) days. The parties shall promptly meet on the matter. If they do not resolve their differences, NSR and/or CRC may implement the announced coordination described in the notice after the expiration of the 60-day period. Either party may invoke arbitration procedures under Article I, Section 4 of the New York Dock conditions provided such action is taken within five (5) days of the termination of conference. There shall be no employees dismissed or transferred pending the agreement or arbitrator's award, nor shall there be a change in carrier's operations, services, facilities, or equipment.

Future coordinations on CSXT will be governed by Side Letter No. 14.

Section 4

Coordinations on NSR and/or CRC in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred (the "transferring location") will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred (the "receiving location") will be advertised for a period of seven (7) days to all employees holding regular Carmen assignments at the transferring location.

(b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be notified in writing of the award together with the date and time to report to the officer in charge at the receiving location. The employees so notified shall report upon the date and at the time specified unless other arrangements are made with the proper authority or they are prevented from doing so due to circumstances beyond their control.

(c) After fulfilling the requirements of Article I, Section 4(a) and 4(b) above, should there remain unfilled positions in the coordinated operation and surplus employees at the transferring location, those surplus employees who do not stand for a position will be offered a position in reverse seniority order, beginning with the most junior employee holding a regular assignment at the transferring location, until all positions are filled or until surplus employees are exhausted. (The term "surplus employee" shall not be interpreted to apply to furloughed unprotected employees at the transferring location.) Upon receipt of such assignment, those employees must, within seven (7) days, elect in writing one of the following options: (1) accept the offer to the unfilled position and report to the position pursuant to Article I, Section 4(b) above, or (2) be furloughed without protection. In the event an employee fails to make such an election, the employee shall be considered to have exercised option (2).

(d) After completing the above, furloughed non-protected employees at the transferring location may be assigned, in seniority order, to

positions. Upon receipt of such assignment, those employees must, within seven (7) days, elect in writing one of the following options: (1) accept the assigned position and report to the position pursuant to Article I, Section 4(b) above, or (2) remain furloughed. In the event an employee fails to make such an election, the employee shall be considered to have exercised option (2).

(e) Employees transferring under this section will have their seniority date(s) dovetailed in accordance with the procedures set forth in Article II on the appropriate roster(s) at the receiving location. Employees who transfer in accordance with provision (c)(1) or (d)(1), above, will retain their seniority at the location from which transferred (home location), subject to recall to a permanent vacancy known to be of at least 60 days duration. Upon recall to his home location, the employee must elect in writing within ten days from the date of receipt of the written recall notice to either: (1) forfeit his seniority at the location to which transferred and protection under the transaction and return to his home location or (2) forfeit his seniority at his home location and remain at the location to which transferred pursuant to the terms of the transaction. Should the employee fail to make an election, he will be considered as having elected to remain at the location to which transferred. The Carrier will not be liable for any expenses in connection with an employee voluntarily accepting recall and returning to his home location under the provisions of this paragraph, except as otherwise provided in this agreement or as provided for in conditions imposed by the STB.

(f) The notices required to be given under Sections 1, 2, 3 and 4 above shall contain a full and adequate statement of the changes to be affected by the individual transactions, including an estimate of the number of employees affected, if any, by such changes. All notices sent to the General Chairmen will be sent by certified mail.

Future coordinations on CSXT will be governed by Side Letter No. 14.

ARTICLE II

Section 1

On the effective date of this Agreement, all employees who hold a regular assignment on the allocated CRC territories to be operated by CSXT will become employees exclusively of CSXT, all employees who hold a regular assignment on the allocated CRC territories to be operated by NSR will become employees exclusively of NSR, and all employees who hold a regular assignment in the Shared Assets Areas will remain employees of CRC. Inactive employees on CRC seniority rosters will become employees exclusively of CSXT or NSR, respectively, if they last worked on CSXT-operated or NSR-operated CRC territories.

Those CRC employees who become NSR employees will be available to perform service on a coordinated basis subject to the agreement in effect on NSR between BRC and Norfolk and Western Railway Company ("NW") dated September 1, 1949, as amended, except at common points, as follows: The Nickel Plate Agreement will be applicable at Buffalo, New York, Chicago, Illinois; Cleveland/Lorain, Ohio, Fort Wayne, Indiana and Toledo, Ohio; the NW Agreement will be applicable at Columbus, Ohio; the Norfolk Southern Railway (former Southern Railway) Agreement will be applicable at Cincinnati, Ohio. All employees holding a regular assignment will continue

to hold that regular assignment under the newly-applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions. It is not the intent of the parties to infringe upon any work generally recognized as belonging to another craft.

Those CRC employees who become CSXT employees and will perform service on a coordinated basis on the former C&O and B&O will be subject, respectively, to the agreement in effect on CSXT between BRC and the former B&O and former C&O. All employees holding a regular assignment will continue to hold that regular assignment under the newly applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions. It is not the intent of the parties to infringe upon any work generally recognized as belonging to another craft.

Those CRC employees who remain in the Shared Assets Areas will continue to perform service under the applicable CR Agreements, except as they may have been modified elsewhere herein.

Section 2

On the effective date of this Agreement, the seniority districts on the former CRC territories allocated and operated by NSR will be consolidated and realigned to establish "point" seniority. (See Attachment A for points with active rosters.)

Similarly, on the effective date of this Agreement, the seniority districts on the former CRC territories allocated and operated by CSXT will be consolidated and realigned to establish "point" seniority. (See Attachment B for points with active rosters.)

On the effective date of this Agreement, the seniority districts in the Shared Assets Areas will be realigned to establish one seniority

district for each Shared Assets Area.

Section 3

The seniority dates of employees recorded on existing rosters will be accepted as correct. When rosters are integrated or names are integrated into new or existing rosters, and as a result thereof, employees on such rosters have identical seniority dates, then the roster standing among such employees shall be determined as follows:

1. earlier hire date shall be ranked senior;
2. previous service with carrier shall be ranked senior;
3. employee with earlier month and day of birth within any calendar year shall be ranked senior.

Section 4

When seniority rosters are integrated, employees who hold a regular assignment on the NSR-operated or CSXT-operated territories at the time of the integration (i.e., "active employees," including employees on sick leave, leave of absence, promoted, suspended from service or dismissed employees who are subsequently returned to service) will be dovetailed using their seniority dates as shown on the respective rosters and their names listed in dovetailed order at the top of the roster. When any such person described above returns to service and exercises seniority rights, the employee(s) displaced as a result shall revert to their previous status and be afforded such protection to which they would have been entitled had the absent employee been present at the time of the transaction.

Those employees who are inactive (furloughed) at the time of the transaction and who are on the rosters to be integrated will be dovetailed using their seniority dates as shown on the respective rosters; however, in the application of the seniority rights of such furloughed employees represented by BRC/TWU, whose dovetailed seniority will be greater than

junior employees who hold a regular assignment at the time of such transaction, it is understood such furloughed employees will not be permitted to exercise seniority until such time as they are recalled to a vacant permanent position. Thereafter, except as provided below, all exercise of seniority rights will be governed by the applicable schedule agreement. When any subsequent force reduction is made as a result of the transaction, those employees who were inactive on transaction date will be furloughed, without protection, before those employees who were active on transaction date. However, if a subsequent force reduction is made for reasons other than the transaction, the seniority provisions of the applicable collective bargaining agreements will apply. If there is any dispute about whether such force reduction is related to the transaction, those employees who were inactive on transaction date will be furloughed, without protection, before those employees who were active on transaction date.

ARTICLE III

Section 1

Former CRC employees who become employees of NSR under Article II above shall be credited with prior service for vacation, bereavement leave, personal leave and other benefits provided NSR agreement employees which are granted on the basis of qualifying years of service in the same manner as though all such time spent had been in the service of NSR.

Likewise, former CRC employees who become employees of CSXT under Article II above shall be credited with prior service for vacation, personal leave and other benefits now provided under the applicable C&O or

B&O agreement and which are granted on the basis of qualifying years of service in the same manner as though all such time spent had been in the service of CSXT under the C&O and B&O Agreements.

Section 2

Apprentices and/or student mechanics involved in a transaction who are transferred from one Carrier to another Carrier will be subject to the training program and agreement in effect at the location to which transferred and will be credited with time earned at the former location.

Those employees holding regular positions who have served enough time to complete the training period at the location to which transferred will be placed on the integrated journeymen's roster as specified above.

Section 3

All pending notices and proposals, if any, served under Section 6 of the Railway Labor Act, as amended, on behalf of individuals who become employees of CSXT or NSR under Article II, Section 1 above will no longer apply to such employees. These employees, if any, will be covered by the current notices pending on the agreement applicable to the territory to which transferred as if they were on such territory when said notices were served.

ARTICLE IV

(a) In order that the provisions of the first proviso set forth in Article I, Section 3 of the conditions contained in New York Dock may be properly administered, each employee determined to be a "displaced

employee" or a "dismissed employee" as a result of this Agreement who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within thirty (30) days after having established "displaced" or "dismissed" status under the conditions set forth in New York Dock conditions, elect between the benefits under such other arrangement and this Agreement. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3 of New York Dock.

(b) In the event an employee fails to make such election within the said thirty (30) day period, he or she will be subject to the protective benefits of this Agreement.

(c) There shall be no duplication of protective benefits receivable by any employee under this Agreement and any other agreement or protective arrangement.

ARTICLE V

The parties further agree that after the initial division of the use and operation of CRC's assets between CSXT and NSR pursuant to this agreement, if either CSXT or NSR serves a subsequent notice related to the Application but limited to a coordination of its CRC allocated assets and not affecting the other railroads, then only that railroad needs to be the party to the subsequent implementing agreement.

ARTICLE VI

This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions or any other conditions which have been imposed in the Order by the STB in Finance Docket No. 33388. The terms of

the New York Dock conditions shall apply to all transactions covered by this agreement, except as specifically provided herein.

ARTICLE VII

This Agreement shall be effective only after the effective date of the STB order approving the transaction and service by CSXT, NSR and CRC of the initial seven (7) days advance written notice to the Organization representative signatory hereto as specified in Article I, Section 1.

Signed at Norfolk, Virginia, this 16th day of October, 1998.

FOR BROTHERHOOD
RAILWAY CARMEN DIVN-TCU

General Chairman, BRC

General Chairman, BRC

General Chairman, BRC

General Chairman, BRC

General Chairman, BRC

FOR TRANSPORT WORKERS UNION
OF AMERICA

International Vice President, TWU

Local President, TWU

Local President, TWU

Local President, TWU

CSX TRANSPORTATION, INC.
And its Railroad Subsidiaries

Vice President Labor Relations

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And its Railroad Subsidiaries

Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

Vice President Labor Relations

CSX TRANSPORTATION
Kenneth R. Peiter
Vice President-Labor Relations

500 Water Street-J456
Jacksonville, FL 32202
(904) 359-2227

October 9, 1998

Labor Relations
OCT 22 1998

Mr. Robert A. Scardelletti
International President
Transportation Communications International Union
3 Research Place
Rockville, MD 20850

Mr. Sonny Hall
International President
Transport Workers Union of America
80 West End Avenue
New York, NY 10023

Gentlemen:

I am responding to your letter of September 14, 1998 to which you attached a letter between your organizations regarding representation of employees in the carmen craft on CSX Transportation (CSXT) and the rail lines of Conrail which will be allocated to CSXT.

Much of what is contained in the September 14, 1998 agreement between the Transportation Communications International Union and the Transport Workers Union of America is an internal matter as to union membership issues, payment of union dues and an inter-union dispute resolution process. On these matters, we have no opinion.

The craft or class of Carmen on CSXT is represented, for purposes of collective bargaining under the Railway Labor Act, exclusively by BRC-TCU. CSXT is not agreeable to recognizing an additional representative of the same craft or class. CSXT believes that it has no legal obligation to serve Section 6 notices on, and accept Section 6 notices from, any union other than BRC-TCU. However, because BRC has notified us that it has agreed that TWU will be involved for purposes of negotiating on behalf of Carmen working at former CR-TWU facilities, CSXT will provide copies to TWU of all future Section 6 notices served on BRC involving such employees and will not object if TWU signs Section 6 notices from BRC involving such employees and signs any agreements applicable to such employees.

Upon signature today of the New York Dock implementing agreement by BRC and TWU, CSXT further agrees to the following:

1) CSXT agrees that Carmen working at locations on the allocated Conrail property where TWU has historically held representation may be represented by TWU for purposes of claims and grievances handling and disciplinary appeals. This will include settlement of claims and appeals and submission of unsettled claims or appeals to arbitration under Section 3 of the Railway Labor Act. The Organizations must agree that such settlements or decisions will be equally binding and precedential when progressed by TWU as if they had been settled or progressed by BRC-TCU. Where a claimant or appellant is represented by the TWU in accordance with this paragraph, a Public Law Board under Section 3, Second of the Railway Labor Act may be established with an Employee Member from the TWU and an Employee Member from the BRC-TCU, as was the practice on Conrail.

2) CSXT agrees that Carmen working at locations on the allocated Conrail property where TWU has historically held representation may have union dues deducted by CSXT and paid to TWU, provided that the Organizations agree to hold CSXT harmless, against claims or litigation of any kind arising from CSXT's actions in response to such employee directions as to dues deduction and payment.

If the above stated basis for the representation of carmen on CSXT is acceptable to you, please indicate your concurrence by signing below and returning a fully executed original to me.

Sincerely yours,

Kenneth R. Peifer
Vice President Labor Relations
CSX Transportation, Inc.

I Concur:

R. A. Scardelletti

Sonny Hall

CC: Mr. Robert Spenski

14TH CASE of Level 1 printed in FULL format.

NORFOLK AND WESTERN RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY AND INTERSTATE RAILROAD COMPANY -- EXEMPTION -- CONTRACT TO OPERATE AND TRACKAGE RIGHTS (ARBITRATION REVIEW)

Finance Docket No. 30582 (Sub-No. 2)

INTERSTATE COMMERCE COMMISSION

1989 ICC LEXIS 174

June 27, 1989

PANEL:
[*1]

DECISION

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

OPINION:

On March 31, 1988, the United Transportation Union (UTU or petitioner) requested review of the arbitration decision rendered on September 25, 1985, by the Neutral Member (the arbitrator) of the Arbitration Panel established pursuant to Article I, section 4 of the so-called Mendocino n1 labor protective conditions imposed on the transaction described below. In his decision, the arbitrator authorized Norfolk and Western Railway Company (N&W), Southern Railway Company (Southern), and Interstate Railroad Company (Interstate) (collectively referred to as the carriers) to effect an implementing agreement that had been rejected by certain railroad employees. The carriers replied on April 20, 1988. We are denying the petition.

n1 The conditions are those set forth in Mendocino Coast Ry., Inc. -- Lease and Operate, 354 I.C.C. 732 (1978), as modified at 360 I.C.C. 653 (1980) (Mendocino), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 675 F.2d 1248 (D.C. Cir. 1982).

BACKGROUND

The dispute arises from the transaction authorized pursuant to a Notice of Exemption [*2] in Finance Docket No. 30582 (Sub-No. 1), Norfolk & W. Ry. Co., Southern Ry. Co. and Interstate R. Co. -- Exempt. -- Contract to Operate and Trackage Rights (not printed), served February 25, 1985. The transaction involved the joint operation by N&W and Southern of the properties of Interstate, a small carrier with less than 40 miles of main line operating exclusively in the coal fields of southwestern Virginia. N&W and Southern were to assume responsibility for certain of Interstate's functions. To facilitate the operation, N&W also proposed to obtain trackage rights over 2.3 miles of Southern's line. The transaction was designed to allow the carriers to take advantage of better grades and operating routes for coal traffic moving from Interstate origins to points on N&W and Southern. Coal that formerly moved for the most part westward and southward onto Southern's lines was to move eastward

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onto N&W's lines. Through these operating changes, a variety of economies and efficiencies were to be achieved.

Because the three railroads were members of the same corporate family, n2 the transaction fell within the class of transactions that are exempt from the prior review requirements [*3] of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(3). n3 Labor protective conditions were imposed, as required by 49 U.S.C. 10505(g)(2). The contract to operate the Interstate properties approved subject to the conditions described in Mendocino, and the trackage rights operation was subjected to the conditions described in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino.

n2 Norfolk Southern Corporation.

n3 The class exemption was promulgated under the authority of 49 U.S.C. 10505(a), which provides that the Commission "shall exempt a person, class of persons, or a transaction or service" from a regulatory provision of 49 U.S.C. Subtitle IV when it finds that regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a, and either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

As a result of the transaction, Southern's Appalachia Division, which included the entire Interstate territory, was to cease its existence as a separate operating unit. Responsibility for its operations was to be divided between Southern's [*4] Tennessee Division and N&W's Pocahantas Division. Because N&W was to control all train operations previously handled by Interstate crews, there was to be a consolidation, under N&W's control, of road freight movement and pick-up and delivery work. Formerly, this work was performed by N&W and Interstate crews working separately in close proximity to each other. Train and engine service employee work forces (trainmen, conductors, firemen and engineers) of the two carriers also were to be consolidated under N&W's control. In addition, the Interstate employees would be required to relocate their reporting point from Andover to Norton, VA, approximately 20 road miles and 45 minutes away by automobile.

The Railway Labor Executives' Association (RLEA) protested the exemption on the ground that the proposed operational changes would alter the seniority rights and working conditions of the Interstate employees. It argued that the carriers could not impose these changes unilaterally or require the employees to arbitrate changes in existing collective bargaining agreements. RLEA requested the Commission to issue a declaratory order stating that the exemption would not authorize any actions [*5] that would abrogate the employees' rights under the Railway Labor Act (45 U.S.C. 151) (RLA) or 49 U.S.C. 11347.

In a notice to the parties, served April 3, 1985, the Commission's Director of the Office of Proceedings stated that there was no evidence that the carriers intended to abrogate the employees' contractual or statutory rights. Noting that exemptions under section 10505 do not operate to relieve the carriers of applicable laws and agreements relating to labor relations, the Director said that the exemption proceeding was not the proper forum to resolve whether applicable law and labor agreements preclude the carriers from making the proposed changes without the consent of the employees.

Notwithstanding that it also opposed the operating proposal, the UTU agreed

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to bargain with the carriers and on April 17, 1985 a tentative agreement was reached. Subsequently, on April 19, the 27 Interstate trainmen and conductors rejected the tentative agreement because they objected to being transferred from the Interstate/UTU bargaining agreement to the N&W/UTU bargaining agreement. On May 7, 1985, the carriers requested arbitration under Article I, section 4 of Mendocino. An arbitrator [*6] was appointed by the National Mediation Board. A hearing was held on August 28, 1985, and the arbitrator issued his decision on September 25, 1985.

The arbitrator rejected UTU's argument that the RLA precluded the arbitration panel from imposing on objecting employees an implementing agreement that changed the rates of pay, rules, or working conditions of the Interstate employees. To the contrary, he found that the Commission possessed the authority to "take all necessary action to authorize a consolidation, including labor protective conditions and procedures to resolve disputes on implementing agreements, including arbitration without deference to RLA bargaining rights." Relying on the fact that the arbitration panel was created pursuant to Commission - imposed labor protective conditions, he concluded that the panel's jurisdiction was derived from the Commission and that it could render a decision on the merits of the implementing agreement.

In considering the merits of the agreement, the arbitrator noted certain differences in the provisions of the N&W/UTU and the Interstate/UTU agreements. He stated that these differences could cause friction between the two groups. However, [*7] he noted that the rate of pay was higher under the N&W/UTU agreement than under the Interstate/UTU agreement, and that the employees had indicated a willingness to work under the Southern/UTU agreement (which contained terms similar to those proposed by N&W, including the reporting point relocation). Concluding that the N&W/UTU agreement actually might be favorable to the Interstate employees, he found the tentative implementing agreement fair, equitable, and reasonable, and found it consistent with the purposes of the transaction. Accordingly, he authorized its implementation.

On October 25, 1985, UTU sought judicial relief, alleging that the employees' rights under RLA had been abridged by the arbitration award. In United Transp. Union v. Norfolk & Western R. Co., 627 F. Supp. 1008 (D.D.C. 1985), the court dismissed UTU's complaint on jurisdictional grounds, n4 concluding that, under section 4 of Article I of Mendocino, n5 the Commission had delegated its final order-making authority to the arbitration panel. The court held that: (1) if the arbitration award constituted a final Commission order, the proper forum for judicial review would be the Court of Appeals for the District [*8] of Columbia Circuit; but (2) if the award was not final, the matter was not ripe for judicial review. 627 F. Supp. at 1014-1015.

n4 UTU filed a complaint for a declaratory order and injunctive relief. A temporary restraining order was granted on October 31, 1985, but was dissolved on November 29, when the court denied UTU's motion for a preliminary injunction.

n5 Section 4(c) provides: "The decision of the referee shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute."

This decision was affirmed in United Transp. Union v. Norfolk & Western Ry., 822 F.2d 1114 (D.C. Cir. 1987) (UTU v. N&W), cert. denied, U.S. , 98 L. Ed.

2d 651, 108 S. Ct. 700 (1988). The Court of Appeals agreed that the Commission had delegated its decisional authority to the arbitration panel and that the arbitration decision was "functionally an 'order of the Commission.'" UTU v. N&W, supra, at 1120. The court also rejected UTU's argument that the arbitrator's award could not be considered a Commission order because the underlying transaction was exempted rather than reviewed and approved under section 11343 and, [*9] thus, the Commission had no jurisdiction to address the RLA issue. The court stated at 1122-23:

The requirement of the Interstate Commerce Act that the Commission impose labor protective conditions when it exempts a transaction from prior review merely substitutes one form of continuing Commission oversight for another. The exemption implies neither that the transaction should be treated as though it had not been subject to regulation ab initio, nor that the arbitral regime substituted for the Commission's prior review of transactions is independent of the source of its statutory authority, viz. the Interstate Commerce Act.

UTU now seeks Commission review of the arbitration award. n6

n6 The carriers contend that we should decline UTU's petition because it was filed 2-1/2 years after issuance of the arbitration decision. They argue that UTU's unsuccessful court challenges should not prolong its right to seek Commission relief. Any uncertainty UTU may have had as to its rights before the Commission assertedly was resolved in Chicago & North Western Tptn. Co. -- Abandonment, 3 I.C.C. 2d 729 (1987) (Lace Curtain), aff'd sub nom. International Bhd. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988), and all doubts as to its proper course of action were removed when the judgment in UTU v. N&W was transmitted on October 13, 1987. Nevertheless, they say that UTU waited more than 5 months from the date the mandate was transmitted and more than 3 months from January 11, 1988, the date its petition for certiorari was denied, to file this petition for review. Finally, the carriers state that the transaction was fully implemented after the District Court decision on November 29, 1985. Because affected employees have been operating under the N&W/UTU agreement for several years, they argue that this late reconsideration would be prejudicial to them.

We do not believe it would be equitable to penalize UTU for pursuing judicial review to its conclusion. The carrier was on notice that the union was seeking to have the arbitration decision reversed, and the union chose the wrong forum at a time when the law was in a state of flux. Under the circumstances, the filing of the petition 2-1/2 months after the exhaustion of judicial relief does not warrant dismissal of the action. Nor should the fact that the carriers implemented the transaction prior to a final resolution of the issues preclude UTU from seeking review in this particular case. UTU was pursuing judicial review prior to and during the time we decided Lace Curtain and it was undergoing judicial review. Until November 25, 1988 (with the District of Columbia Circuit's affirmance of Lace Curtain), our role in reviewing arbitration decisions was not clearly established. (We have since required that appeals to these actions be filed with us within 20 days. Norfolk and Western Ry. Co. and New York, Chicago and ST.L.R. Co. -- Merger, Etc., 5 I.C.C.2d 234 (1989) 49 CFR 1115.8). We will not reject UTU's petition on grounds of timeliness. [*10]

DISCUSSION AND CONCLUSIONS

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Standard of review. In Lace Curtain, supra, we determined that our statutory authority to impose labor protective conditions authorized us to review arbitration decisions. We stated, however, that there are limits to the scope of our review and that we will not review arbitrator's decisions on issues of causation, calculation of benefits, or the resolution of other factual questions. Instead the scope of our review would be limited to recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions, Lace Curtain, supra, at 736. If we determine that there is a significant issue that warrants our review, [w]e will employ an extremely limited standard of review according substantial deference to the arbitrator's competence and special role in resolving labor disputes and giving a strong presumption of finality to an award. Our deference to the arbitrator's decision will vary with the nature of the issue involved, ranging from the most deferential treatment in the case of evidentiary issues such as causation . . . [citation omitted] to significantly less deference when reviewing interpretation of Commission [*11] regulations or orders and matters of transportation policy." CSX Corp. -- Control -- Chessie and Seaboard Coast Line Industries, 4 I.C.C.2d 641, 649 (1988) (CSX Control). Since this case involves the arbitrator's finding of fact and application of well settled Commission precedent," we will examine the arbitrator's decision to see if he has committed egregious error in the interpretation of our labor conditions or if the decision does not draw its essence from those conditions. n7 For the reasons discussed below, we conclude that the arbitrator has not been shown to have committed egregious error in his interpretation of the labor conditions nor is the decision of the arbitrator an impermissible departure from those conditions.

n7 In Lace Curtain, this test was framed in terms of the decision not drawing its essence from the "collective bargaining agreement," as that was the way the issues had arisen in related litigation. See Loveless v. Eastern Airlines, Inc., 681 F.2d 1272, 1275-76 (11th Cir. 1982). In our context, however, the phrase "labor protective conditions" is the equivalent, and we use it here for ease of understanding.

Effect of exemption on RLA remedies. It [*12] is settled that labor disputes arising from transactions approved pursuant to 49 U.S.C. 11343 are resolved under Commission-imposed labor protective conditions and not through the provisions of the RLA. Brotherhood of Locomotive Engineers v. Chicago & North Western Ry. Co. 314 F.2d 424 (8th Cir. 1963), cert. denied, 375 U.S. 819 (1963) (BLE v. CNW); Nemitz v. Norfolk & Western Ry., 436 F.2d 841 (6th Cir. 1971), aff'd 404 U.S. 37 (1971), reh'g den. 404 U.S. 1026 (1972) (Nemitz); Burlington Northern, Inc. v. American Ry. Supervisors. Ass'n, 503 F.2d 58 (7th Cir. 1974) cert. denied, 421 U.S. 975 (1975); and Denver and R.G.W.R. Co. -- Trackage Rts. -- Missouri, P.R. Co. Between Pueblo, CO and Kansas City, MO, et al. (not printed), served October 25, 1983 (Denver and Rio Grande) rev'd in part and remanded sub nom., Brotherhood of Locomotive Engineers v. ICC, 761 F.2d 714 (D.C. Cir. 1985), rev'd 482 U.S. 270 (1987) (BLE v. ICC). These transactions are accorded the preemption immunity of section 11341(a) n8 and, thus to the extent necessary are exempt from application of RLA provisions. As the court of appeals said in BLE v. CNW, "Congress intended the ICC to have jurisdiction to prescribe [*13] the method for determining the solution of labor problems arising directly out of an approved merger," 314 F.2d at 431. Where a labor dispute arises from a Commission approved transaction of the type at issue here, the mandatory arbitration procedures of section 4, Article I of Mendocino apply.

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Finance Docket No. 29430 (Sub-No. 20), Norfolk So. Corp. -- Cont. -- Norfolk and W. Ry. Co. and Southern Ry. Co. (not printed), served June 10, 1988, appeal docketed sub nom. American Train Dispatchers Ass'n v. ICC, No. 88-1694 (D.C. Cir. 1988); and CSX Corp. -- Control -- Chessie and Seaboard C.L.I., 4 I.C.C.2d, 641, 649 (1988) (CSX Control), appeal docketed sub nom. Brotherhood of Ry. Carmen v. ICC, No. 88-1724 (D.C. Cir. 1988).

n8 Section 11341(a), formerly section 5(11), confers immunity from the "antitrust laws and from all other law, including State and municipal law" as necessary to carry out transactions approved or exempted under subchapter III of chapter 113 (section 11342-11351) of 49 U.S.C. Subtitle IV.

UTU argues that because this transaction was exempted under chapter 105 (section 10505), n9 it was not entitled to immunity under section 11341(a) from the RLA and other [*14] laws, as provided by section 11343(a). Asserting the applicability of the RLA, UTU further contends that neither the Commission nor the arbitrator to whom the Commission delegated its authority could impose the N&W/UTU collective bargaining agreement over the objections of affected employees. n10 We disagree.

n9 The class exemption was adopted in Rail Consolidation Procedures, 1 I.C.C.2d 270, 279 (1985).

n10 UTU also alleges that the April 3, 1985, exemption notice in this case established that the Commission's authority to exempt transactions did not include the power unilaterally to alter collective bargaining agreements. UTU misinterprets the language of the notice, which only stated that a section 10505 exemption did not operate to relieve carriers of "applicable laws and agreements." The notice did not address what was "applicable." That is the issue before us here.

Our authority to resolve labor disputes arising from transactions receiving our sanction is not founded solely in section 11341(a). The Congressional intent behind what is now section 11343 was to facilitate mergers and consolidations in the national transportation system. County of Marin v. United [*15] States, 356 U.S. 412, 416 (1958). This Commission and the courts have recognized Congress' intention that efficient consummation of these transactions not be impeded by limitations on the Commission's ability to resolve related labor problems, including work realignments. Although the previously-cited cases involved transactions approved under section 11343, which triggered immunity from the RLA, the main emphasis of the decisions was the Congressional intent that the Commission not be limited by the RLA in its authority to facilitate consummation of the transactions. The immunity provision was the means by which this authority was ensured. See BLE v. CNW, supra, at 431, and Nemitz, supra, at 845.

Enactment of section 10505 permitted the Commission to exempt parties from the various regulatory requirements of the statute. However, in section 10505(g)(2), Congress retained the requirement for labor protection. n11 Thus, Congress did not alter the Commission's responsibility with respect to labor matters related to those transactions. Our authority (and duty) under section 10505(g)(2) not to exempt transactions from statutory labor conditions reflects Congress' accommodation of [*16] those protections to the exemption process.

n11 In meeting this requirement, the Commission imposes labor protection

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conditions appropriate to the transaction for which the exemption is granted. The propriety of Mendocino for lease transactions was upheld in Railway Labor Executives' Ass'n v. ICC, 675 F.2d 1248 (D.C. Cir. 1982) (RLEA v. ICC).

In UTU v. N&W, supra, UTU also contended that the Ables award could not be regarded as having been issued under the Mendocino conditions because the transaction was considered in an exemption proceeding and, thus, did not operate to relieve carriers of their obligations under the RLA. UTU contended instead, that the award was issued under the authority of the RLA procedures and was subject to review in the district court. The Court of Appeals squarely rejected what it termed UTU's "curious" proposition in this regard, 822 F.2d at 1122. The court indicated by its previously-cited statement that the requirement for Commission oversight of labor matters is not dependent upon the form of the Commission's review of the primary transaction, i.e., approval of an application filed under section 11343, or exemption from those filing requirements. [*17] Therefore, consideration of a transaction under the exemption provisions of section 10505 does not diminish the Commission's preeminence with respect to labor disputes arising from the transaction. See also Maine Cen. R. Co., Georgia Pac. Corp., Can. Pac. Ltd. and Springfield Term. Ry. Co. - Exemp. from 49 U.S.C. 11342 and 11343 (not printed), served September 13, 1985, aff'd Railway Labor Executives' Ass'n v. ICC, 812 F.2d 1443 (D.C. Cir. 1987) (Maine Central).

Effect of section 11347. UTU also contends that, even if the preemptive effect of section 11341(a) applies in this instance, the RLA provisions must be observed. It asserts that section 11347 modifies the section 11341(a) preemption and specifically requires that existing collective bargaining agreements remain unaffected by a Commission-authorized transaction.

There is no specific language in section 11347 requiring the preservation, in toto, of existing collective bargaining agreements. That section only requires that conditions imposed under the section must be at least as protective of the interest of affected employees as: (1) the terms imposed under the statute n12 before February 5, 1976; and (2) those established [*18] under section 405 of the Rail Passenger Service Act (45 U.S.C. 565).

n12 Section 5(2)(f) of the Interstate Commerce Act.

However, citing Southern Ry. Co. - Control - Central of Georgia Ry. Co., 331 I.C.C. 151 (1967) (Southern), UTU argues that, prior to February 5, 1976, the Commission would impose conditions only after modifications were made to existing collective bargaining agreements pursuant to RLA requirements. n13 Thus, it asserts, arbitration panels under the pre-1976 conditions were not empowered to alter existing collective bargaining agreements.

n13 In Southern, the Commission said that such conditions were designed to apply after the carriers arrived at labor force adjustments in accordance with the governing provisions of collective bargaining agreements so that the carriers could effect the approved transaction. 331 I.C.C. at 170.

UTU also asserts that modification of an existing collective bargaining agreement is barred by section 2 of Article I of Mendocino. Section 2 was adopted by the Commission from employee protective conditions certified by the Secretary of Labor under section 405 n14 and provides that:

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the rates of pay, rules, working conditions [*19] and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of railroads' employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

n14 The certification by the Secretary of Labor was approved in Congress of Railway Unions v. Hodgson, 326 F. Supp. 68 (D.D.C. 1971).

Thus, UTU argues that, under Commission practice prior to 1976, the Neutral had no authority to abrogate the Interstate/UTU agreement and that, under section 2, the agreement could only be altered pursuant to RLA. It is in error on both points.

UTU has misinterpreted the Southern language, which referred to the different nature of employee rights under collective bargaining agreements and those rights derived from Commission-imposed labor protective conditions. The statement merely supported the determination that employees were not entitled to duplicate benefits from both sources. Southern, supra, at 169-170. Nothing in Southern can be construed as limiting the Commission's authority, or that delegated to [*20] an arbitration panel, to resolve labor disputes arising from an approved transaction, for this would be completely contrary to judicial precedent. See BLE v. CNW, supra, at 431.

In addition, section 2 of the Mendocino conditions does not bar the Commission from modifying collective bargaining agreements to ensure efficient consummation of the transaction. CSX Control, supra, at 649; Maine Central, supra, footnote 11; and Finance Docket No. 30,000 (Sub-No. 18), Denver and Rio Grande, supra. Such an interpretation would be wholly at odds with our role. In rejecting a similar argument by UTU in Denver and Rio Grande, we stated (slip op. at p. 6):

To the extent that existing working conditions and collective bargaining agreements conflict with a transaction which we have approved, those conditions and agreements must give way to the implementation of the transaction. The labor conditions imposed under section 11347 preserve conditions and agreements in the context of the authorized transaction.

In Springfield Terminal, supra, we expanded on the interrelationship of section 2 and section 4. There, we stated (slip op. at pp. 7-8):

The conditions were not intended to foreclose change, [*21] streamlining, and modernization of the rail industry, but rather were intended to ensure that the economies and efficiencies sought by the industry through consolidations were not achieved at the sole expense of rail employees. [Citations omitted.]

Our labor protective conditions, to be sure, provide generally that working conditions and collective bargaining agreements are to be preserved. However, the terms of these conditions must be read in conjunction with our decision authorizing the transaction and the public interest factors upon which it is based. To the extent that existing working conditions and collective bargaining agreements conflict with a transaction which we have approved, those conditions

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and agreements must give way to its implementation. [Citation omitted.]

The labor protective conditions that we impose uniformly require the development of an agreement to implement the transaction, which is to be arrived at by a mutual agreement between labor and management, or in the absence of a negotiated agreement, by binding arbitration. The arbitrator's duty, simply stated, is to fashion an implementing arrangement that will reconcile worker protections with the terms [*22] and the objectives of the transaction that we approved. If those terms and objectives cannot be achieved without modification of existing work rules and collective bargaining arrangements, he clearly has the authority to modify such arrangements to the extent necessary to carry out his mandate . . . .

Need for the change. UTU contends that the arbitrator failed to make a finding that abrogation of the Interstate/UTU agreement was necessary to effect the transaction. It argues that, while the arbitrator stated that existence of the Interstate/UTU agreement would cause certain burdens on the N&W operations, he did not consider whether these problems could be resolved.

In fashioning an implementing agreement the arbitrator found that the carrier's proposal to establish and administer terms and conditions of implementation by adopting arrangements taken from a single agreement was more appropriate then doing so by maintaining arrangements under two separate agreements as proposed by the union. However, UTU argues that he did not conclude that the Interstate/UTU agreement would prevent N&W from operating the Interstate territory. Further, it asserts that the Interstate/UTU agreement [*23] did not prevent N&W from assuming control over Interstate's operations, and, thus, that the Neutral unnecessarily voided an existing collective bargaining agreement.

An arbitrator may not act on mere whim or caprice. He should alter collective bargaining arrangements only to facilitate the transaction. In Springfield Terminal, supra (slip op. at p. 8), we concluded that the arbitrator's key role is to ensure that "the implementing arrangement be consistent with the essential terms of the transaction and the objectives sought to be obtained." In this respect, we accord the arbitrator great deference. In deciding whether and how existing agreements should be changed, the arbitrator obviously brings to bear a considerable amount of expertise on which we must necessarily rely to a large extent. Here, the arbitrator carefully explained the difficulties to be encountered by having similar operations conducted by two employee forces covered by different, and somewhat conflicting, collective bargaining agreements. In this respect, he stated (award at pp. 17-18):

If the Interstate trainmen did not operate under the N&W contract but, rather, operated under their present Interstate contract, [*24] important contract problems would develop, including observance of the Hours of Service law; different reporting locations for crews operating the same territory; differences of total hours worked each week (referred to as "gouging"); differences on opportunities to bid for and displace a junior employee on a job preferred by a senior employee; and different operation of extra boards. If, however, the N&W contract were applicable (for the 27 Interstate trainmen and the existing 816 N&W trainmen), employees, including present Interstate employees, would be able to draw assignments throughout the territory (which is considerably larger than the territory presently operated by Interstate

employees). Differences between the N&W and Interstate contracts, such as deadheading, filling vacancies, meal times, selection of vacation times and arbitraries, which would create friction as between N&W and Interstate crews working the same territory if the employees worked under different contracts, would be eliminated. Also, Interstate employees would enjoy the higher basic rate of pay presently applicable in the N&W contract.

We conclude that the Neutral's explanation reflects the difficulties [*25] that operation under the conflicting collective bargaining agreements would place on the efficient implementation of the operations contemplated by the carriers under the transaction. n15 His award clearly reflects a decision carefully and conscientiously made and is supported by substantial evidence.

n15 We will not comment on the merits of the Neutral's analysis of the harmful effects of the separate collective bargaining agreements applying to the same operations. In Lace Curtain, supra, we noted that arbitrators have a personal knowledge of industry practices and the complexities of labor disputes. Therefore, generally we will defer to them in matters such as this. Lace Curtain, supra, at 735-736. An important consideration in our review of this decision is that he made the analysis and fully explained it in his decision. We see no reason to question his fact finding.

In summary, we find that the arbitrator properly interpreted the provisions of the Mendocino conditions and observed the requirements of the relevant case law. His decision draws its essence from both, and we find no basis to reverse the arbitration decision.

This action will not significantly affect [*26] either the quality of the human environment or energy conservation.

It is ordered:

1. The petition by the United Transportation Union for review of the arbitration decision in this proceeding is denied.

2. This decision is effective on the date of service.

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MEMORANDUM OF AGREEMENT
BETWEEN
SEABOARD SYSTEM RAILROAD
AND ITS EMPLOYEES REPRESENTED BY
BROTHERHOOD OF RAILROAD SIGNALMEN

WHEREAS, the Seaboard System Railroad, hereinafter designated as "SBD," gave notice in accordance with Article 1, Section 4(a), of the Conditions for the protection of employees enunciated in New York Dock Ry. - Control - Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), hereinafter designated as "New York Dock Conditions," to implement a transaction under authority granted in Interstate Commerce Commission decisions in Finance Dockets 22916 and 30053 and related proceedings, and

WHEREAS, the parties have conferred,

NOW, THEREFORE, IT IS AGREED:

Section 1. (a) All signal shop work currently being performed at Atlanta Georgia, Erwin, Tennessee, Louisville, Kentucky, Nashville, Tennessee and Ocala, Florida will be consolidated at Savannah, Georgia.

(b) All employees shall be subject to the former SCL collective bargaining agreement covering Signal employees except as might otherwise be provided herein and except that former L&N employees will be subject to the former SCL Agreement only to the extent that such agreement differs from their home Carrier Agreement covering Signal employees. Where there is a conflict between the former L&N and former SCL Agreement rules, employees will be governed by the former SCL Agreement. They will, however, be represented by their home Carrier General Chairman or other designated Union representatives in the handling of any claims or grievances including discipline matters which shall be filed with the former SCL Carrier officer designated.

(c) The provisions of (b) in this Section 1 will be limited to a period of time extending six years from the date of implementation of this Memorandum Agreement as provided in Section 11. Thereafter, all work will be performed under the former SCL Schedule Agreement.

Section 2. (a) Employees adversely affected as a result of the implementation of the provisions of this Memorandum Agreement will be entitled to the protective benefits and conditions provided under Finance Dockets 22916 and 30053 which are attached hereto as Attachment "A" - or as otherwise stated herein, and such protective benefits and conditions will be applied for the duration and to the extent applicable to each employee entitled thereto.

NOTE: A "change in residence" as referred to in Sections 5(b) and 6(d) of New York Dock shall only be considered "required" if the reporting point of the employee would be more than thirty (30) normal highway miles, via the most direct route, from the employee's point of employment at the time affected, and the normal reporting point is farther from the employee's residence than his former point of employment.

(b) Employees entitled to the protective benefits and conditions referred to in paragraph (a) above and who are also otherwise eligible for protective benefits and conditions under other protective agreements or arrangements shall within forty-five (45) days from the date affected be notified in writing by the Carrier with copy to the General Chairman of their monetary protective entitlement under this Agreement. Within thirty (30) days of being advised of their monetary protective entitlement under the provisions of this Agreement, such employees will elect in writing between the protective benefits and conditions of this Agreement and the protective benefits and conditions under such other arrangement with copy of such election to the General Chairman. Should any employee fail to make an election of benefits during the period set forth in this paragraph (b), such employee shall be considered as electing the protective benefits and conditions of this Agreement.

(c) It is further understood and agreed that employees who are entitled to the protective benefits and conditions attached hereto, who are not now entitled to the protective benefits and conditions of some other protective agreements or arrangements but who subsequently become eligible for protective benefits and conditions under some other protective agreement or arrangement during the protective period provided in the attached protective benefits, will be entitled to the protective benefits and conditions of such other protective agreement or arrangement at the expiration of the protective period provided in the attached protective benefits, provided they continue to

maintain their responsibilities and obligations under such other protective agreements or arrangements.

(d) It is further understood and agreed that where employees are entitled to moving expenses they may elect to take the provisions as set forth below in lieu of the provisions of Section 9 of Attachment "A".

January 8, 1982 National Wage and Fringe Benefit Agreement

"Article XII -

When a Carrier makes a technological, operational, or organizational change requiring an employee to transfer to a new point of employment requiring him to move his residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employee shall be granted five (5) working days instead of 'two working days' provided in Section 10(a) of said Agreement; and in addition to such benefits the employee shall receive a transfer allowance of $400. Under this provision, change of residence shall not be considered 'required' if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

NOTE: The above paragraph applies not only to the employee who is initially displaced under the circumstances described but also to any other employee who is subsequently displaced under the circumstances described and is required to move his residence.

Examples of intent:

Example No. 1

The position of Employee 'A' is abolished because of a technological, operational, or organizational change initiated by the Carrier. In the exercise of his seniority, it is necessary for Employee 'A' to displace Employee 'B' at a new point of employment requiring Employee 'A' to move his residence. In the exercise of his seniority, it is necessary for

Employee 'B' to displace Employee 'C'' at a new point of employment requiring Employee 'B' to move his residence.

In this type of a situation, the provisions of Article XII would be applicable to both Employee 'A' and Employee 'B'.

Example No. 2

The position of Employee 'A' is abolished because of a technological, operational, or organizational change initiated by the Carrier and he displaces Employee 'B' at the same point of employment. In the exercise of his seniority, it is necessary for Employee 'B' to displace Employee 'C' at a new point of employment requiring Employee 'B' to move his residence and it is necessary for Employee 'C' to displace Employee 'D' at a new point of employment requiring Employee 'C' to move his residence.

In this type of a situation, the provisions of Article XII would be applicable to both Employee 'B' and Employee 'C'.

Example No. 3

The position of Employee 'A' is abolished because of a technological, operational, or organizational change initiated by the Carrier and he displaces Employee 'B' at the same point of employment. In the exercise of his seniority , it is necessary for Employee 'B' either to displace Employee 'C' at a new point of employment or bid on a vacancy, in either case requiring Employee 'B' to move his residence.

In this type of a situation, the provisions of Article XII would be applicable to Employee 'B' in either case."

(e) Sections 10 and 11 of the Washington Job Protection Agreement referred to in (d) herein above are attached hereto as Attachment "B".

Section 3. (a) The forces for carrying out signal shop work within the consolidated signal shop will be drawn from the former SCL, former L&N, former CRR and former A&WP in accordance with the Allocation Table attached hereto as Attachment "C" and made part hereof.

(b) The provisions of (a) in this Section 3 will be limited to a period of time extending six years from the date of implementation of this Memorandum Agreement as provided in Section 11.

(c) Names and seniority dates of employees assigned to the consolidated signal shop force transferring from the former L&N, former CRR and former A&WP will be dovetailed onto the appropriate former SCL seniority rosters at the expiration of the six years referred to in (b) in this Section 3. The names and seniority dates of employees transferred will also remain on the former L&N, former CRR and former A&WP seniority rosters until such time as the employee exercises seniority to a position out of the consolidated signal shop. If such transfer is to a former SCL position, his name and seniority date will be removed from the former L&N, former CRR or former A&WP seniority roster. If such transfer is to a position on the former property, his name and seniority date will be removed from the former SCL roster. If the dovetailing described herein results in two or more employees having the same seniority date on the dovetailed rosters, there respective positions on the roster will be determined by date of birth.

(d) The Carrier will provide adequate training or retraining in all phases of signal work to all employees affected.

Section 4. Except as provided in Section 5 hereof, in filling positions, the advertisement and award bulletin shall be issued and posted in the following manner:

(a) New positions or vacancies will be bulletined on the entire Seaboard System Railroad within thirty (30) days previous to or ten (10) days following the date such vacancies occur, except that temporary vacancies need not be bulletined until the expiration of thirty (30) days of the date such vacancies occur, unless it is apparent that the temporary vacancy will be in excess of thirty (30) days.

(b) Bulletins advertising such positions will specify the closing time (Twelve O'Clock Noon) and date for receiving bids and whether the position advertised is a new position or a

temporary or permanent vacancy, and if temporary, the probable duration. Such bulletins will further show (1) title of position; (2) Carrier employee entitled to such position; (3) rate of pay; (4) headquarters; (5) assigned hours and assigned meal period; and (6) assigned rest days.

(c) Transfers or promotions to new positions or to fill vacancies will be made after bulletin notice has been posted for a period of fifteen (15) days at all headquarters and sent to the address designated by each employee not in actual service on the entire Seaboard System Railroad, provided written request to that effect is on file with Seaboard System Chief Communications and Signals Officer, during which time employees will file their applications with the official whose name appears on the bulletin. The appointment will be made before the expiration of twenty-five (25) days from the date the bulletin is posted, and the award bulletin will be posted. New positions or vacancies may be filled temporarily pending permanent appointment.

(d) Transfer of successful applicants to new assignments will be made within thirty (30) days after close of the advertising bulletin. If not transferred within the above specified period, they shall be paid the higher rate (whether the new or old position) for all time worked until permitted to fill position awarded them. They shall be reimbursed for additional necessary actual expenses they are required to incur for meals and lodging while held away from position awarded them in excess of thirty days from close of advertising bulletin.

(e) Copies of all bulletins, including abolishment notices, will be furnished to the General Chairman at the time such bulletins are sent to employees.

(f) Except as modified herein, employees of a particular Carrier will have the same right to fill positions allocated to the employees of that Carrier as if the position were an exclusive position. In the event no bids are received from employees of the designated Carrier as outlined in the bulletin after the procedures outlined in this Agreement have been complied with, the position will be awarded to the senior applicant from the bids received from employees of the other three (3) Carriers. It is understood that employees of the Carrier to which the position was allocated may exercise displacement rights to the position.

Section 5. (a) The positions identified in Attachment "D", attached hereto and made a part hereof, will be abolished

effective 11:59 p.m. on the day before the coordination under this Agreement becomes effective without the need for the Carrier to give any additional notice beyond that provided for in Section 11 hereof. Effective 12:01 a.m. on the effective date of the coordination, the positions identified in Attachment "E", attached hereto and made part hereof, will be established to work within the consolidated signal shop.

(b) The initial filling of the positions established pursuant to paragraph (a) of this Section 5 will be by assignment thereto of employees whose positions were abolished pursuant to paragraph (a) hereof. A copy of Attachment "E" to this agreement shall be posted at the headquarters of the affected employees on the same date the Carrier gives notice to implement the agreement pursuant to Section 11 hereof and shall constitute notice of the establishment of these positions. The affected employees must submit their preference of assignment in numerical order for all of the positions allocated to Carrier's designated officer with copy to their General Chairman so that it is received within ten (10) days of the date of the posting of Attachment "E". The Carrier pursuant to paragraph (c) hereof, together with the General Chairman or their authorized representatives will make the assignment of the positions within ten (10) days of the posting of Attachment "E".

(c) The initial assignment of positions, exercise of seniority and related matters resulting from this Memorandum Agreement will be handled in advance of the implementation thereof through conference and agreement between the Management and the General Chairmen of the former SCL, former L&N, former CRR and former A&WP or their duly authorized representatives.

(d) Employees will be furnished a form to indicate their order of preference of assignments in the consolidated signal shop. Employees desiring to exercise their seniority on their home road will do so pursuant to the schedule agreement.

(e) Should any employee whose position is abolished pursuant to paragraph (a) of this Section 5 not be able to to obtain a position within the signal shop, such employee must exercise his seniority in accordance with his home Carrier schedule agreement.

Section 6. (a) In the event of a force reduction outside the consolidated signal shop, the Signal employees affected on the individual properties will have displacement rights on the positions allocated to the individual Carriers hereunder.

(b) In the event of a force reduction within the consolidated signal shop, the Carrier will have the right to abolish position(s) in accordance with the schedule agreements. The employee cut off may exercise his displacement rights over a junior employee working a position within the consolidated signal shop allocated to the same former property or exercise their displacement rights outside the consolidated signal shop in accordance with the applicable agreement rules covering Signal employees on that former property. If, as a result of a force reduction, the forces working become out of balance with the Allocation Table, the balance will be restored when additional positions are established.

Section 7. (a) The filing of any question or dispute resulting from a transaction covered in this Agreement will be handled in writing directly with the office of Director of Labor Relations. Response will be furnished no later than sixty days from receipt of such question or dispute.

(b) When any Carrier officer, responds in writing to an employee regarding matters covered by this Agreement, that officer shall on the date of response furnish the General Chairman a copy of such response and documents furnished the employee.

Section 8. Each employee dismissed on account of the previously described transaction shall provide the Chief Communication and Signals Officer with the following information for the preceding month in which he is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by the Carrier.

(a) The day(s) each such employee worked in other employment and the gross earnings made by the dismissed employee for such month from other employment which is first engaged in after the effective date of this agreement; provided however that the name and address of the employer of such employee will also be made available to the Chief Communication and Signals Officer with copy to the General Chairman upon its written request. Gross earnings from self employment will be reduced by the expenses associated with production of this income.

(b) If the employee referred to in this Section 8 has nothing to report under this Section 8 account of having no earnings from any other employment, such employee shall submit, within the time period provided for in Subsection (a) of this Section 8, on the appropriate form annotated "Nothing to Report."

(c) The failure of any employee referred to in this Section 8 to provide the information required in this Section 8 shall result in the withholding of all protective benefits dur-

ing the month covered by such information pending the Chief Communication and Signals Officer's timely receipt of such information from the employee. In any event, the Carrier shall pay any protective benefits within thirty days after such information is received by the Carrier's Accounting Department.

Section 9. This Agreement with all attachments referred to herein shall constitute the required agreement as stipulated in Article I, Section 4 of the protective conditions deriving from I.C.C. Dockets 22916 and 30053. This Agreement shall not constitute a precedent or prejudice the position of either the Carrier or the Organization signatory hereto in future similar cases nor will it modify the existing schedule agreements except as provided herein.

Section 10. For convenience, all references to gender, if any, in this Agreement are made in the masculine gender. It is understood and agreed by the parties to this Agreement that references to the masculine gender include both the masculine gender and the feminine gender.

Section 11. The provisions of this Agreement shall become effective on or after the fifteenth day following the date of the advance written notice by SBD to the involved General Chairmen.

Made at Jacksonville, Florida, this 13th day of March, 1986.

FOR THE BROTHERHOOD OF RAILROAD SIGNALMEN:

R. B. Flowers, General Chairman

E. G. McGriff, General Chairman

H. B. Sykes, General Chairman

C. R. Vaught, General Chairman

APPROVED:

W. D. Pickett, Vice President

FOR THE SEABOARD SYSTEM RAILROAD:

J. T. Williams
Director of Labor Relations

FF3.02/007

ATTACHMENT A

Finance Docket No. 28250

APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions,

responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the even they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances -(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad; and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance.- A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits.- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.-Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbusement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized respresentatives cannot settle any dispute or controvesy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to selects its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before Febraury 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or other wise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

APPENDIX II

The labor protective provision covering moving expenses suggested by BLE for imposition here is as follows:

Moving expenses.--

Any employee retained in service by the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of a transaction, and is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss during the time necessary for such move, and for a reasonable time thereafter not to exceed 5 working days. The extent of the responsibility of the railroad under this provision and the ways and means of transportation shall be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of a transaction, which are made subsequent to the initial change and which grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent as provided above, assume the expenses, etc., for any employee furloughed within three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the railroad within 90 days after the date on which the expenses were incurred.

WASHINGTON JOB PROTECTION AGREEMENT

"Section 10 (a). Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

"(b). If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

"(c). Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section."

"Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

"(b). Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

"(c). No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

"(d). Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises, and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree, then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party."

Attachment "C"

ALLOCATION TABLE
CONSOLIDATED SIGNAL SHOP
SAVANNAH, GEORGIA

POSITION	PROPERTY	CUMULATIVE POSITIONS BY PROPERTY	POSITION	PROPERTY	CUMULATIVE POSITIONS BY PROPERTY
1. Foreman	*	1	39. Signalman	SCL	23
2. Technician	SCL	2	41. Signalman	L&N	15
3. Technician	L&N	2	42. Signalman	L&N	16
4. Technician	SCL	3	43. Signalman	SCL	24
5. Lead Signalman	SCL	4	40. Signalman	SCL	25
6. Lead Signalman	SCL	5	44. Signalman	SCL	26
7. Lead Signalman	SCL	6	45. Signalman	L&N	17
8. Lead Signalman	SCL	7	46. Signalman	SCL	27
9. Lead Signalman	L&N	3	47. Signalman	SCL	28
10. Lead Signalman	L&N	4	48. Signalman	L&N	18
11. Signalman	SCL	8	49. Signalman	SCL	29
12. Signalman	SCL	9	50. Signalman	SCL	30
13. Signalman	L&N	5	51. Signalman	L&N	19
14. Signalman	L&N	6	52. Signalman	L&N	20
15. Signalman	SCL	10	53. Signalman	SCL	31
16. Signalman	SCL	11	54. Signalman	SCL	32
17. Signalman	L&N	7	55. Signalman	L&N	21
18. Signalman	SCL	12	56. Signalman	SCL	33
19. Signalman	SCL	13	57. Signalman	SCL	34
20. Signalman	CRR	1	58. Signalman	L&N	22
21. Signalman	L&N	8	59. Signalman	SCL	35
22. Signalman	SCL	14	60. Signalman	CRR	3
23. Signalman	SCL	15	61. Signalman	L&N	23
24. Signalman	L&N	9	62. Signalman	SCL	36
25. Signalman	L&N	10	63. Signalman	SCL	37
26. Signalman	SCL	16	64. Signalman	L&N	24
27. Signalman	SCL	17	65. Signalman	L&N	25
28. Signalman	L&N	11	66. Signalman	SCL	38
29. Signalman	SCL	18	67. Signalman	SCL	39
30. Signalman	SCL	19	68. Signalman	L&N	26
31. Signalman	L&N	12	69. Signalman	SCL	40
32. Signalman	SCL	20	70. Signalman	SCL	41
33. Signalman	SCL	21	71. Signalman	L&N	27
34. Signalman	L&N	13	72. Signalman	L&N	28
35. Signalman	L&N	14	73. Signalman	SCL	42
36. Signalman	SCL	22	74. Signalman	AWP	2
37. Signalman	AWP	1	75. Signalman	CRR	4
38. Signalman	CRR	2	76. Signalman	SCL	43

*In the event an L&N employee is not initially awarded the foreman's position in the consolidated shop, a junior L&N employee will not be permitted to displace on the position. Subsequent vacancies of the foreman's position will be bulletined to the former SCL and former L&N under existing agreements.

L3.03/002

Attachment D

SAVANNAH SIGNAL SHOP

PRESENT WORK FORCE

CARRIER	HEADQUARTERS	JOB TITLE
SCL	Savannah, Georgia	Signal Foreman
"	"	Elect. Sig. Technician
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Asst. Signalman
"	Ocala, Florida	Signal Foreman
"	"	Elect. Sig. Technician
"	"	Lead Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Asst. Appr. Insp.

Attachment D

CARRIER	HEADQUARTERS	JOB TITLE
SCL	Ocala, Florida	Asst. Appr. Insp.
"	"	Asst. Signalman
"	"	Asst. Signalman
L&N	Nashville, Tennessee	Signal Foreman
"	"	Lead Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	"	Signalman
"	Louisville, Kentucky	Signal Foreman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
"	"	Lead Signalman
CRR	Erwin, Tennessee	SC&E Maintainer
"	"	SC&E Maintainer
A&WP	Atlanta, Georgia	Signal Maintainer

SAVANNAH SIGNAL SHOP
PROPOSED WORK FORCE

Attachment E

Position No.	Job Title	Road To Which Allocated	Assigned Hours	Assigned Days	Rest Days	Rate
1.	Foreman	*	7:30A-3:30P	M-F	Sat-Sun	2948.88
2.	Technician	SCL	7:30A-3:30P	M-F	Sat-Sun	2912.56
3.	Technician	L&N	7:30A-3:30P	M-F	Sat-Sun	2912.56
4.	Technician	SCL	7:30A-3:30P	M-F	Sat-Sun	2912.56
5.	Lead Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.37
6.	Lead Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.37
7.	Lead Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.37
8.	Lead Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.37
9.	Lead Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.37
10.	Lead Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.37
11.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
12.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
13.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
14.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
15.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
16.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
17.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
18.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
19.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
20.	Signalman	CRR	7:30A-3:30P	M-F	Sat-Sun	13.26
21.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
22.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
23.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
24.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
25.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
26.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
27.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
28.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
29.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
30.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
31.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
32.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
33.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
34.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
35.	Signalman	L&N	7:30A-3:30P	M-F	Sat-Sun	13.26
36.	Signalman	SCL	7:30A-3:30P	M-F	Sat-Sun	13.26
37.	Signalman	AWP	7:30A-3:30P	M-F	Sat-Sun	13.26
38.	Signalman	CRR	7:30A-3:30P	M-F	Sat-Sun	13.26

* In the event an L&N employee is not initially awarded the Foreman's position in the consolidated shop, a junior L&N employee will not be permitted to displace on the position . Subsequent vacancies of the Foreman's position will be bulletined to the former SCL and former L&N under existing agreements.

SEABOARD SYSTEM RAILROAD
500 Water Street • Jacksonville, Florida 32202

Labor Relations Department

March 13, 1986 FF4.3/005

SBD Labor Agreement S-074(a)-86

Mr. C. R. Vaught, General Chairman
Brotherhood of Railroad Signalmen
P. O. Box 1548
Danville, Kentucky 40422

Mr. H. B. Sykes, General Chairman
Brotherhood of Railroad Signalmen
Route 11, Box 343-A
Gray, Tennessee 37615

Gentlemen:

This refers to Memorandum Agreement signed March 13, 1986 covering establishment of a consolidated signal shop at Savannah, Georgia.

This will confirm our understanding that in connection with Section 1(b) of the aforementioned agreement employees assigned to the consolidated signal shop from the former CRR and former A&WP will be subject to the rules and working conditions of the SCL collective bargaining agreement. The employees will, however, continue to be represented by their home property General Chairmen during the six year protective period.

Very truly yours,

J. T. Williams
Director of Labor Relations

I CONCUR:

C. R. Vaught
General Chairman

H. B. Sykes
General Chairman

SEABOARD SYSTEM RAILROAD
500 Water Street • Jacksonville, Florida 32202

Labor Relations Department

March 13, 1986 G-125 Signal Shops
FF4.03/006
SBD Labor Agreement S-074(b)-86

Mr. R. B. Flowers, General Chairman
Brotherhood of Railroad Signalmen
1152 Rodes Drive
Bowling Green, Kentucky 42101

Mr. H. B. Sykes, General Chairman
Brotherhood of Railroad Signalmen
Route 11, Box 343-A
Gray, Tennessee 37615

Mr. E. G. McGriff, General Chairman
Brotherhood of Railroad Signalmen
P. O. Box 373
St. Stephen, South Carolina 29479

Mr. C. R. Vaught, General Chairman
Brotherhood of Railroad Signalmen
P. O. Box 1548
Danville, Kentucky 40422

Gentlemen:

This has reference to Implementing Agreement dated March 13, 1986 covering the transfer of signal shop work from Ocala, Florida, Atlanta, Georgia, Erwin, Tennessee, Louisville, Kentucky and Nashville, Tennessee to Savannah, Georgia.

As you were advised, employes presently assigned to the Signal Shops who are required by the Company to transfer to Savannah as a result of the Implementing Agreement, may, in lieu of making the required transfer, elect to request a lump sum separation payment in exchange for their resignations, which shall be equal to one year's pay at pro rata rate (computed as 52 weeks x 5 days per week or for monthly rated employes 12 times the monthly rate) in lieu of all other benefits. The number of such resignations accepted shall be at the Company's option; provided, however, that the number accepted shall be in seniority order.

It should be understood that the New York Dock conditions do not require such separations and that this agreement is not an interpretation of New York Dock conditions nor will it establish a precedent in connection with

IMPLEMENTING AGREEMENT
between the
CSX TRANSPORTATION, INC. (CSXT)
(former SCL, L&N, A&WP, CRR)
BALTIMORE AND OHIO RAILROAD COMPANY (B&O)
BALTIMORE AND OHIO RAILROAD COMPANY (B&O-WM)
(former WM)
THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY (B&OCT)
THE CHESAPEAKE AND OHIO RAILWAY COMPANY (C&O-CD)
THE CHESAPEAKE AND OHIO RAILWAY COMPANY (C&O-PM)
and their employees represented by
BROTHERHOOD OF RAILROAD SIGNALMEN (BRS)

WHEREAS, this transaction is covered by Interstate Commerce Commission Finance Docket No. 28905, and

WHEREAS, the Carriers identified hereinabove have given notice in accordance with Article I, Section 4(a) of the Conditions for the protection of employees enunciated in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979), hereinafter referred to as "New York Dock Conditions", of their intent to transfer all Signal Shop work currently being performed for the C&O at Barboursville, West Virginia; for the B&O at Cumberland, Maryland; and for the C&O Pere Marquette District (PM) at Saginaw, Michigan; as well as similar work presently being performed for the former Western Maryland Railway Company (B&O-WM) at Hagerstown, Maryland; and for B&OCT at Chicago, Illinois, and to coordinate such work with previously coordinated SCL/L&N Signal Shop functions presently being performed for SCL, L&N, A&WP and CRR at Savannah, Georgia where such will thereafter be performed on a coordinated CSXT basis under the terms and conditions of the schédule agreement between former SCL and BRS, and

WHEREAS, the parties have conferred and it is now therefore agreed:

1. All Signal Shop work currently being performed under the scope of the respective BRS schedule agreements at the C&O(CD)'s Signal Shop at Barboursville, West Virginia; the B&O's Signal Shop at Cumberland, Maryland; and the C&O(PM)'s Signal Shop at Saginaw, Michigan; and similar work being performed under the scope of the BRS schedule agreements for B&OCT at Chicago, Illinois and for the former WM at Hagerstown, Maryland will be transferred to and coordinated with work presently being performed in the coordinated SCL/L&N/ A&WP/CRR Signal Shop facility at Savannah, Georgia (which was previously coordinated pursuant to provisions of Memorandum Agreement of March 13, 1986) where all such work will thereafter be performed on a coordinated CSXT basis by Carrier employees represented by BRS under the scope of the Schedule Agreement between former SCL and BRS as amended in Appendix "A", attached hereto. It is further understood that the work referred to herein will not be sent off the Carriers' properties.

2. Effective with the date of coordination, a new Seniority Roster for the Coordinated CSXT Signal Shop facility at Savannah, Georgia shall be established under the terms and conditions of the Schedule Agreement between former SCL and BRS, as specifically modified herein.

3. Effective with the date of coordination, a total of sixty-six (66) coordinated CSXT positions shall be located on the roster established pursuant to Section 2 above, with the following classes and titles:

CLASS NO.	NO. OF POSITIONS	TITLE OF POSITIONS
1	3	Foreman
2	4	Technician
3	9	Lead Signalman
	50	Signalman

4. The coordinated positions referred to in Section 3 above shall be allocated for initial filling to employees represented by BRS in the following manner:

NO. OF POSITIONS	TITLE OF POSITIONS	PROPERTY TO WHICH ALLOCATED FOR INITIAL FILLING
1	Foreman	Former SCL
1	Foreman	Former L&N
1	Foreman	B&O
2	Technician	Former SCL
1	Technician	Former L&N
1	Technician	C&O (CD)
8	Lead Signalman/Signalman	C&O (CD)
12	Lead Signalman/Signalman	B&O
4	Lead Signalman/Signalman	C&O (PM)
1	Lead Signalman/Signalman	B&O (WM)
1	Lead Signalman/Signalman	B&OCT
19	Lead Signalman/Signalman	Former SCL
11	Lead Signalman/Signalman	Former L&N
2	Lead Signalman/Signalman	Former CRR
1	Lead Signalman/Signalman	Former A&WP

5. Employees located in the present coordinated SCL/L&N/CRR/A&WP Signal Shop facility at Savannah, Georgia holding seniority on a SCL, L&N, CRR or A&WP roster shall have a prior right to fill those positions allocated to these respective former properties of CSXT, as the case may be. Should such employees elect to decline assignment to a position allocated to them in the coordinated CSXT Signal Shop facility at Savannah, Georgia they may then exercise their cumulative seniority on their respective home property in accordance with the terms and conditions of the applicable Schedule Agreement and such positions will then be made available to employees holding a regular position on the particular property to which the employee will return. In the case of an employee returning to the former L&N, the employees affected

will be given preference if the employee exercises seniority to a System Gang or the employees on the returning employee's home seniority roster will be given preference if the employee exercises seniority to a position on his home seniority district. If any such positions remain to be filled, such will be accomplished in accordance with Section 11 below.

6. Employees regularly assigned to positions located on the seniority roster covering C&O's Signal Shop at Barboursville, West Virginia which are to be abolished shall have a prior right to fill those positions in the coordinated CSXT Signal Shop facility at Savannah, Georgia which are allocated for initial filling to employees of C&O pursuant to Section 4 above. Those positions which remain to be filled will then be made available first to other employees holding a regular position elsewhere on C&O and who hold seniority on the C&O's Barboursville Signal Shop roster; and then to other employees holding a regular position elsewhere on C&O(CD). If such positions remain unfilled, they will then be filled in accordance with Section 11 below.

7. Employees regularly assigned to positions in B&O's Signal Shop at Cumberland, Maryland which are to be abolished shall have a prior right to fill those positions in the coordinated CSXT Signal Shop facility at Savannah, Georgia which are allocated for initial filling to employees of B&O pursuant to Section 4 above. Those positions remaining to be filled will then be made available first to other employees holding a regular position elsewhere on B&O and who hold seniority on the B&O's Cumberland, Maryland Signal Shop roster; and then to other employees holding a regular position elsewhere on B&O. If such positions remain unfilled, they will then be filled in accordance with Section 11 below.

8. Employees regularly assigned to positions in the C&O(PM)'s Signal Shop at Saginaw, Michigan which are to be abolished shall have a prior right to fill those positions in the coordinated CSXT Signal Shop facility at Savannah, Georgia which are allocated for initial filling to employees of C&O(PM) pursuant to Section 4 above. Those positions remaining to be filled will then be made available to other employees holding a regular position on the BRS Signal Department Seniority Roster covering C&O(PM). If such positions remain unfilled, they will then be filled in accordance with Section 11 below.

9. The position allocated to B&OCT pursuant to Section 4 above will be made available for initial filling to the senior employee located on the BRS B&OCT Seniority Roster who holds a regular position on such roster and who makes application for assignment to such position in the coordinated CSXT Signal Shop at Savannah, Georgia. If such position remains unfilled, it shall then be filled in accordance with Section 11 below.

10. The position allocated to B&O(WM) pursuant to Section 4 above will be made available for initial filling to the senior employee located on the BRS B&O(WM) Signal Department Seniority Roster covering the former WM who holds a regular position on such roster and who makes application for assignment to

such position at the coordinated CSXT Signal Shop at Savannah, Georgia. If such position remains unfilled, it shall then be filled in accordance with Section 11 below.

11. (a) Positions in the coordinated CSXT Signal Shop facility at Savannah, Georgia which are not initially filled in accordance with Sections 5, 6, 7, 8, 9, and 10 above will then be assigned in seniority order to those employees referred to in Sections 6, 7, 8, 9, and 10 above who made application for a position in the coordinated CSXT Signal Shop facility at Savannah but were unable to obtain such a position because of the allocations provided for in Section 4 above were previously filled; and to those employees who, as a result of this transaction, are unable to obtain a regular position on their respective property, such employees to be considered as a group without regard to home property affiliation or allocation.

(b) If any such positions remain to be filled, they will be offered to SBD employees in accordance with Section 19 of this Agreement.

12. The assignment of positions, exercises of seniority and related matters resulting from this Agreement will be handled through conference and agreement between the Management and the BRS General Chairmen or their duly authorized representatives in advance of the effective date of coordination.

13. Employees initially assigned to positions in the coordinated CSXT Signal Shop at Savannah, Georgia must report for such assignment on the effective date of this coordination, unless prevented from doing so by a bona-fide sickness or other unavoidable cause, or forfeit all rights to any position in the coordinated CSXT Signal Shop facility.

14. (a) Employees initially assigned a position in the coordinated CSXT Signal Shop at Savannah, Georgia in accordance with the terms of this Agreement shall establish seniority in the class to which initially assigned as of the effective date of coordination and they shall be ranked in that class of work based upon their seniority in that class on their home property.

(b) Employees covered by Sub-section (a) above who also hold seniority on their home property in a lower class covered by this Agreement in Section 3 above, shall also establish seniority in that particular class in the coordinated CSXT Signal Shop at Savannah, Georgia as of the effective date of the coordination, and shall be ranked in that class of work based on their seniority in that class on their home property.

(c) In the event that two or more employees have the same seniority date in a particular class, the employee having the earlier employment date in the Signal Department with the Carriers will be the senior of such employees in ranking for that class. If two (or more) such employees have the same employment date in the Signal Department with the Carriers, their

ranking in the class will be determined by the date of their respective application for employment in the Signal Department with the Carrier.

(d) The ranking of employees pursuant to this Section 14 will not be utilized to displace employees who are assigned positions in the initial filling of such positions pursuant to the terms of this Agreement. Employees may not utilize their rankings in particular classes for displacement until they acquire a right to exercise such seniority subsequent to the initial filling.

15. (a) Employees initially assigned a position in the coordinated CSXT Signal Shop at Savannah, Georgia pursuant to the terms of this Agreement shall retain, and continue to accumulate, seniority on their home property.

(b) Should such employees so desire to return to their home property subsequent to the effective date of coordination, they may submit application for bulletined positions on their home property and such applications will be considered the same as if they were working on the home property at the time the application was submitted. The terms and conditions under the Schedule Agreement on the employee's home property will govern in the bulletining, awarding and reporting for such positions.

(c) Successful applicants for positions on their home property (as referred to in this Section 15) will forfeit all seniority rights in the coordinated CSXT Signal Shop at Savannah, Georgia effective with the date that they return to their home property.

(d) Should employees referred to in this Section 15 subsequently be unable to retain a position in the coordinated CSXT Signal Shop because of force reductions, etc., they may elect to become furloughed employees on the coordinated CSXT Signal Shop seniority roster (subject to recall therein as provided in Section 19 of this Agreement); or exercise their cumulative seniority on their home property as provided in the terms and conditions of the BRS Schedule Agreement covering that home property.

(e) In the event that employees referred to in Sub-section (d) above elect to exercise seniority on their home property they shall forfeit all seniority on the coordinated CSXT Signal Shop seniority roster.

16. The positions identified in Appendix "B", attached hereto and made a part hereof, will be abolished effective 11:59 P.M. on the day before this coordination becomes effective. Effective 12:01 A.M. the positions identified in Appendix "C", attached hereto and made a part hereof, and referred to in Sections 3 and 4 above will be considered as established in the coordinated CSXT Signal Shop at Savannah, Georgia.

17. (a) New positions above the rank of Signalman subsequently established in the coordinated CSXT Signal Shop at Savannah, Georgia; and subsequent vacancies on existing positions above the rank of Signalman to be filled in

the coordinated CSXT Signal Shop at Savannah, Georgia will be bulletined for a period of three (3) work days to employees located in the coordinated CSXT Signal Shop at Savannah, Georgia. Such positions will be filled in accordance with the terms and conditions of the Schedule Agreement between the former SCL and BRS and the award shall be made within five (5) calendar days of the date the bulletin closes.

(b) Should employees located in the coordinated CSXT Signal Shop at Savannah, Georgia be absent from duty for the entire bulletin period account sickness or vacation, within three (3) working days of such employees returning to service they may submit a belated application for assignments which were bulletined and, if assigned the positions, and such positions were previously awarded and occupied, the former successful applicants will be returned to their former positions and all such employees thus displaced will return to their former positions. The former successful applicant will not establish new seniority unless the former applicant worked the position thirty (30) or more consecutive work days.

(c) The parties recognize that positions of Signalman in the coordinated CSXT Signal Shop may be utilized in any area of work that falls within their responsibility. In lieu of bulletining vacant positions, a work area preference list will be maintained. Signal Shop employees will be required to submit to the proper Carrier officer their written request, with copy to the designated shop representative, for work areas desired. Vacant Signalmen's positions will be assigned to Signalmen based on the preference list in seniority order. It is understood that the present three general work areas, i.e., wiring, relay and electronic repair and refurbishing, are subject to change by requirements of the service.

18. (a) Subsequent vacancies on the original sixty-six positions established in this coordinated CSXT Signal Shop at Savannah, Georgia pursuant to Section 4 of this Agreement; vacancies on new positions subsequently established in this coordinated CSXT Signal Shop at Savannah, Georgia pursuant to Sub-section (b) of Section 19 of this Agreement; or vacancies on such positions in the operation which are subsequently abolished and established which are not filled in accordance with Section 17 above will then be filled by recalling employees furloughed on the coordinated BRS roster covering the CSXT Signal Shop at Savannah, Georgia.

(b) If vacancies are not filled in accordance with Sub-section (a) above, such will then be filled in accordance with the provisions of Section 19 of this Agreement with the property allocation of the original vacancy being used in determining those employees having a prior right to filling such position.

19. (a) Vacancies on existing positions in the coordinated CSXT Signal Shop at Savannah, Georgia, or those resulting from the establishment and filling of new positions in this facility, which are not filled in accordance with Sections 17 and 18(a) above, will accrue to Carriers' signal employees

on these properties before resorting to new hires. Signal employees holding seniority on these properties desiring assignment in the Savannah Signal Shop facility must make application in writing on the appropriate form (Appendix "F"), with copy to the General Chairman, and such form shall remain in effect until cancelled in writing. An employee who declines such employment when offered must reapply in accordance with the above before reconsideration.

(b) The term "new position" as used in this Section 19 is interpreted to mean any new position that is established in the coordinated CSXT Signal Shop at Savannah, Georgia that exceeds the total number of positions initially established in this coordinated facility [sixty-six (66)].

(c) In awarding vacancies resulting from the subsequent establishment of new positions (as such term is defined hereinabove), "Dismissed" employees (as such term is defined by the "New York Dock Conditions") on the properties covered by this agreement who are entitled to protective allowances under a protective arrangement as a result of the transaction covered by this Agreement shall be recalled for this work. Employees in this category shall be considered as a group and recalled in the order of their seniority, with allocated home property having preference.

(d) If the positions referred to herein are not filled in accordance with Sub-section (c) above, applications from employees shall be considered on the basis of the allocation provided in Appendix "D", attached hereto and made a part hereof.

Example: The first new position (as that term is defined herein) is allocated for initial filling by employees of SCL submitting application; the second new position is allocated for initial filling by employees of L&N; etc.

(e) If the positions still are not filled in the manner provided above, applications received from employees on properties other than to which allocated will be considered, as a group, in seniority order.

20. (a) Employees who do not hold any seniority on the coordinated CSXT Signal Shop seniority roster who are awarded positions in that coordinated operation pursuant to the provisions of Sections 18 or 19 of this Agreement will establish seniority in the class of work of the position to which assigned effective with the first date worked. That same seniority date in a lower class will also be established by such employees who are awarded positions in higher classes of work within the coordinated CSXT Signal Shop provided they held seniority in that (those) particular classes of work on their home property.

(b) Except as provided in Sub-section (c) below, employees referred to in this Section 20 who have sufficient seniority to hold a position in the Signalman craft on their home property shall not retain and continue to accumulate seniority on their home property. Employees who are furloughed on

their home property because they do not have sufficient seniority to hold a position in the Signalman craft shall retain and continue to accumulate seniority on their home property until they stand for recall to home property, at which time they forfeit all seniority in the coordinated Signal Shop at Savannah, Georgia if they accept recall to home property or forfeit all home property seniority if they decline recall to home property.

(c) Employees securing a position in the coordinated Signal Shop pursuant to this Section 20 and becoming furloughed therein within six (6) months shall be considered as if they had held a temporary position therein and be permitted to return to their home property and reactivate their former seniority.

21. Copies of all bulletins and abolishment notices issued within the coordinated Signal Shop at Savannah, Georgia will be furnished to the General Chairman parties signatory hereto and a designated shop employee at the time such bulletins and/or notices are issued. When positions are to be filled in accordance with Section 19, all General Chairmen will be so advised in writing of the positions, the current list of applicants, and the successful applicants.

22. The Carrier will provide adequate training and/or retraining in all phases of signal shop work to all employees assigned to the coordinated CSXT Signal Shop at Savannah, Georgia with the understanding that any home study required for Foremen or Technicians to qualify will be performed on the employee's own time. Training and/or retraining programs shall commence within six (6) months of the date of coordination.

23. (a) Should the Carrier elect to fill temporary vacancies on permanent positions located in the coordinated CSXT Signal Shop which are expected to be of 60 calendar days' duration, or longer, such vacancies will be filled by the Carrier through the processes set forth in Sections 17, 18 and 19 of this Agreement. Employees awarded temporary vacancies on permanent positions (or who are awarded a vacancy resulting from the original position being filled from within the coordinated CSXT Signal Shop) and who do not hold seniority on the coordinated CSXT Signal Shop seniority roster will not establish any seniority.

(b) When the temporary vacancy ceases, the employees so involved will return to their former positions held prior to being awarded the temporary vacancy (or resulting vacancy).

Note: Should a permanent vacancy arise in the coordinated Signal Shop while an employee is occupying a temporary vacancy in the coordinated Signal Shop, that employee may submit application for the permanent vacancy and the application will be considered on the same basis as if the employee were working on his home property.

24. Vacancies on positions in the coordinated CSXT Signal Shop pending assignment under Sections 17, 18, 19 and 23 may be filled on a temporary basis and if not filled from within the Shop, they will be filled from qualified BRS-represented employees located on the SCL seniority roster of Signalman who live within 30 miles of the Shop facility and who make written request to the Officer in charge of the coordinated CSXT Signal Shop to be considered in filling such temporary work. Written requests for this temporary service will be given consideration based upon the class of work in which the temporary service is required and the seniority standing of the employees making written request in that class of work. Provided that the employees making written request are qualified and their services can be spared at the location where currently working, employees will be utilized in seniority order. Employees so used for this temporary service will not establish seniority on the coordinated CSXT Signal Shop seniority roster. Once employees are placed in this temporary service pursuant to their written request they will remain in that temporary service in the coordinated CSXT Signal Shop until (1) released by the supervision or (2) the particular vacancy on which they are performing temporary service is filled pursuant to the terms of this Agreement, whichever comes first. Employees may withdraw their request for this temporary service at any time, provided that the request for withdrawal is made in writing; however, should the written withdrawal of the request for this temporary service be made while the employee is performing temporary service in the coordinated CSXT Signal Shop, the employee must remain in that service pending fulfilling of either of the two conditions set forth hereinabove.

25. (a) In the event of a force reduction in the coordinated CSXT Signal Shop, the position of the junior employee in the class of work involved will be abolished first. Employees exercising seniority to a lower class of work will displace the junior employee in that class.

Note: For purposes of this Rule 25(a), should it be necessary to abolish a position of Lead Signalman in the class of work covering Lead Signalman/Signalman, the position of Lead Signalman held by the junior-most employee will be abolished. Should it be necessary to abolish a position of Signalman in the class of work covering Lead Signalman/Signalman, the position of Signalman held by the junior-most employee will be abolished.

(b) The abolishment of positions in the coordinated CSXT Signal Shop will be accomplished in accordance with the applicable provisions of the Schedule Agreement between former SCL and BRS except that a copy of abolishment notices will be furnished to all General Chairman parties signatory to this Agreement.

(c) When a bulletined position is abolished and subsequently reestablished within sixty (60) calendar days, the last regular assigned incumbent, if holding seniority on the coordinated CSXT Signal Shop seniority

roster, will be assigned thereto and any employees still holding seniority on the same roster who were displaced from their position(s) as a result of the abolishment will be returned to their positions (unless such employees would have been displaced for other reasons subsequent to the abolishment by a senior employee). If not filled in this manner, the provisions of Sections 17, 18 and 19 of this Agreement will be applicable.

26. All employees assigned positions in the coordinated CSXT Signal Shop at Savannah, Georgia shall be subject to the terms and conditions of the Schedule Agreement between former SCL and BRS (except to the extent that such terms are modified by the terms of this Agreement). They will, however, be represented by their home Carrier General Chairman and/or other designated Union representatives in the handling of any claims or grievances, including discipline matters, which may arise. Any settlement of a claim or grievance with the BRS General Chairman for A&WP, B&O, B&OCT, C&O-CD, C&O-PM, CRR, L&N or B&O-WM Committees involving an SCL Agreement rule will not constitute an interpretation binding on the BRS General Chairman of the SCL Committee.

27. (a) The employee protective benefits and conditions as set forth in the New York Dock Conditions, attached hereto as "Appendix E", shall be applicable to this transaction.

(b) Any employee determined to be a "displaced" or "dismissed" employee as a result of this transaction, who is otherwise eligible for protective benefits and conditions under some other job security agreement, conditions or arrangements, shall within forty-five (45) days from the date affected be notified in writing by the Carrier (with copy to the General Chairman) of his monetary protective entitlement under this Agreement and, within forty-five (45) days of being advised of his monetary protective entitlement under the provisions of this Agreement, such employee will elect in writing between the protective benefits and conditions of this Agreement and the protective benefits and conditions under such other arrangement (with copy of such election to the General Chairman). Should any employee fail to make an election of benefits during the period set forth in this Paragraph (b), such employee shall be considered as electing the protective benefits and conditions of this Agreement.

(c) Each dismissed employee shall provide Carrier's designated officer with the following information for the preceding month in which he is entitled to benefits no later than the tenth (10th) day of each subsequent month on a standard form provided by Carrier:

(1) The day(s) claimed by such employee under any unemployment insurance act.

(2) The day(s) claimed by such employee worked in other employment, the name and address of the employer and the gross earnings made by the dismissed employee in such other employment. Gross earnings from such employment will be

reduced by reasonable expense associated with production of such earnings.

(d) If the employee referred to in Sub-section (c) has nothing to report account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Sub-section (c), the form annotated "Nothing to report."

(e) The failure of any employee to provide the information as required in Sub-section (c) shall result in the withholding of all protective benefits during the month covered by such information pending receipt by the Carrier's designated officer of such information from the employee. When the required information is received, the Carrier shall pay protective benefits to which the employee is entitled within thirty (30) days, however no such claim for protective benefits shall be honored beyond ninety (90) days from the time specified in Sub-section (c) of this Section 27.

(f) Any relocation expenses claimed as the result of this Agreement must be turned in to the designated CSXT Carrier officer and must be accompanied by proper receipts or such expense will not be considered for payment.

28. MOVING EXPENSES - The moving expenses provided for in this Agreement shall be those provided in ARTICLE I, Section 9, of the New York Dock Conditions appended hereto as "Appendix E." In lieu thereof, however, employees who are required to transfer to a new point of employment which requires them to move their residence may elect the benefits provided for in Article VIII of the National BRS Agreement of November 16, 1971 (as amended by Article XII of the National BRS Agreement of January 8, 1982) which makes reference to the similar benefits provided for in Section 10 (see Appendix "G") of the so-called Washington Job Protection Agreement of May, 1936 except that such employees opting for this benefit shall be granted five (5) working days instead of "two working days" provided in Section 10(a) of said Agreement; and in addition to such benefits the employee shall receive a transfer allowance of $400.00.

29. LOSSES FROM HOME REMOVAL - (a) The benefits for losses from home removal provided for in this Agreement shall be those provided in ARTICLE I, Section 12, of the New York Dock Conditions appended hereto as "Appendix E." In lieu thereof, however, employees who are required to transfer to a new point of employment which requires them to move their residence may elect the benefits provided for in Article VIII of the National BRS Agreement of November 16, 1971 (as amended by Article XII of the National BRS Agreement of January 8, 1982) which makes references to the similar benefits provided for in Section 11 of the so-called Washington Job Protection Agreement of May, 1936. (See Appendix "G")

(b) As a matter of policy on the part of CSXT and without any future precedent value, in lieu of the provisions of Section 12 of the New York Dock Conditions or Section 11 of the so-called Washington Job Protection Agreement of May, 1936 employees entitled to the benefits of this Section 29 may elect to accept a payment equal to 15% of the appraised fair market value of their residence, such option to be in accordance with current policy of the CSXT Real Estate Department. Employees electing this option release CSXT from any and all present or future obligations with respect to the employees' residence at time of transfer.

(c) Employees electing to transfer to positions in the coordinated CSXT Signal Shop at Savannah, Georgia in the initial filling of such positions as provided in this Agreement, and who transfer to a new point of employment which requires them to move their residence shall, for purposes of this Agreement, be considered as having been "required to transfer to a new point of employment" for purposes of this Section 29 as well as Section 28 hereinabove.

(d) Any employees who are required to transfer to a new point of employment and who move their residence to the new point of employment, and who elect the benefits provided in Sub-section (b) of this Section 29, will forfeit such benefits in the event that they voluntarily return to their former point of employment (or any point of employment within fifty (50) normal highway miles thereof) within a period of one (1) calendar year. The benefit allowed under Sub-section (b) above and forfeited pursuant to this Sub-section (d) shall be deducted from the employees' paychecks in equal installments over a three-year period.

30. Employees who transfer to the coordinated CSXT Signal Shop at Savannah, Georgia pursuant to Sections 5, 6, 7, 8, 9, 10 and 11 of this Agreement will be credited with prior service under existing agreements applicable to them prior to the coordination for purposes of vacation, personal leave days and other service-related benefits under the Schedule Agreement between former SCL and BRS.

31. In the interest of expediency, the filing of any question or dispute resulting from the transaction covered in this Agreement may be handled, in writing, directly from the appropriate General Chairman to the designated Director of Labor Relations, CSXT. Response will be furnished no later than sixty (60) calendar days from receipt of such question or dispute. In the event a Carrier officer responds, in writing, to an employee regarding matters covered by this Agreement, that officer shall furnish the appropriate General Chairman a copy of such response and documents furnished the employee.

32. For convenience, references to gender, if any, in this Agreement are made in the masculine gender. It is understood and agreed by the parties to this Agreement that references to the masculine gender include both the masculine gender and the feminine gender.

33. This Agreement supersedes the Memorandum Agreement of March 13, 1986, and all addenda attached thereto or agreements reached in connection therewith, covering establishment of a coordinated SCL/L&N/CRR/A&WP Signal Shop at Savannah, Georgia.

34. To the extent that this Agreement may conflict with provisions of the Schedule Agreement between former SCL and BRS, or any other agreement entered into previous to the date of coordination as provided in Section 33 of this Agreement, the provisions of this Agreement shall prevail.

35. The BRS parties signatory hereto shall be furnished a minimum of thirty (30) days' written advance notification prior to effecting the provisions of this Agreement.

36. This Agreement, with all attachments referred to herein, shall constitute the required agreement as stipulated in Article I, Section 4, New York Dock Conditions.

Signed at Jacksonville, Florida this 14th day of April, 1987.

FOR THE BROTHERHOOD OF RAILROAD SIGNALMEN:

C. A. Cleghorn, General Chairman
(B&OCT Committee)

R. B. Flowers

R. B. Flowers, General Chairman
(L&N Committee)

C. T. Green

C. T. Green, General Chairman
(B&O and B&O-WM Committees)

G. G. Gross

G. G. Gross, General Chairman
(SCL Committee)

FOR THE CARRIERS:

W. H. Morse, Jr.

W. H. Morse, Jr.
Director of Labor Relations
The Baltimore and Ohio
Railroad Company
The Baltimore and Ohio Chicago
Terminal Railroad Company
The Chesapeake and Ohio
Railroad Company
CSX Transportation, Inc.
(Former SCL, L&N,
A&WP, CRR)

H. H. Parker, General Chairman
(C&O-CD and C&O-PM Committees)

H. B. Sykes, General Chairman
(CRR Committee)

C. R.Vaught, General Chairman
(A&WP Committee)

APPROVED:

W. D. Pickett, Vice President

V. M. Speakman, Jr., Vice President

BCM5.87/02/19A

APPENDIX "A"

Amendment to the Scope Rule of the Schedule Agreement between former SCL and BRS

All wiring and/or fitting up of signal cases, instrument housings and/or relay houses for locations on B&O (including former WM), C&O (CD and PM), B&OCT and CSXT (former SBD, i.e., SCL, L&N, CRR and A&WP) properties will be performed exclusively by Carrier employees represented by BRS on any of such properties or in the coordinated Signal Shop at Savannah, Georgia.

Printed circuit boards and modules of electronic devices for the former SCL property will continue to be repaired, inspected and tested by Carrier employees represented by BRS to the extent volume increases due to storm damage prohibit expedient repair and/or technology and equipment are available on the property to do so within the time frame such equipment is needed to prevent interruption of service and to safeguard the signal systems. It is understood that the Carrier will assume the burden of proof in its decisions to utilize other than BRS-represented Carrier employees in the repair, testing and inspection of printed circuit boards and modules of electronic devices.

Lathe work in connection with rebuilding signal equipment at the coordinated CSXT Signal Shop at Savannah, Georgia will be performed by Carrier employees represented by BRS.

BCM0410.1/LRNO

APPENDIX "B"

POSITIONS TO BE ABOLISHED

Barboursville Shops (C&O)

	Job Title
1.	Foreman
2.	Lead Signalman
3.	Lead Signalman
4.	Signalman
5.	Signalman
6.	Signalman
7.	Signalman
8.	Signalman
9.	Signalman
10.	Signalman
11.	Signalman
12.	Signalman
13.	Signalman
14.	Signalman

Cumberland Signal Repair Shop (B&O)

	Job Title
1.	Foreman
2.	Lead Signalman
3.	Signalman
4.	Signalman
5.	Signalman
6.	Signalman
7.	Signalman
8.	Signalman
9.	Signalman
10.	Signalman
11.	Signalman
12.	Signalman
13.	Signalman
14.	Signalman
15.	Signalman
16.	Signalman
17.	Signalman
18.	Signalman
19.	Signalman
20.	Signalman

Saginaw (C&O-PM)

	Job Title
1.	Foreman
2.	Signalman
3.	Signalman
4.	Signalman
5.	Signalman
6.	Signalman

APPENDIX "C"

POSITIONS TO BE ESTABLISHED

Position No.	Job Title	Assigned Hours	Assigned Days	Rest Days	Rate of Pay (Incl. COLA)
1.	Foreman-Signal Shop	7:00A-3:30P	M-F	Sat-Sun	$3074.41
2.	Foreman-Signal Shop	7:00A-3:30P	M-F	Sat-Sun	3074.41
3.	Foreman-Signal Shop	7:00A-3:30P	M-F	Sat-Sun	3074.41
4.	Electronic Technician	7:00A-3:30P	M-F	Sat-Sun	3036.47
5.	Electronic Technician	7:00A-3:30P	M-F	Sat-Sun	3036.47
6.	Electronic Technician	7:00A-3:30P	M-F	Sat-Sun	3036.47
7.	Electronic Technician	7:00A-3:30P	M-F	Sat-Sun	3036.47
8.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
9.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
10.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
11.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
12.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
13.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
14.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
15.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
16.	Lead Signalman	7:00A-3:30P	M-F	Sat-Sun	13.93
17.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
18.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
19.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
20.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
21.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
22.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
23.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
24.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
25.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
26.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
27.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
28.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
29.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
30.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
31.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
32.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
33.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
34.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
35.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
36.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
37.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
38.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
39.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
40.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
41.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82

POSITIONS TO BE ESTABLISHED

Position No.	Job Title	Assigned Hours	Assigned Days	Rest Days	Rate of Pay (Incl. COLA)
42.	Signalman	7:00A-3:30P	M-F	Sat-Sun	$13.82
43.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
44.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
45.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
46.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
47.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
48.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
49.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
50.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
51.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
52.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
53.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
54.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
55.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
56.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
57.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
58.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
59.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
60.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
61.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
62.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
63.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
64.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
65.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82
66.	Signalman	7:00A-3:30P	M-F	Sat-Sun	13.82

IS.87/02/02a

APPENDIX "D"

INITIAL ALLOCATION TABLE

(Section 3 of Implementing Agreement)

SCL	22
L&N	13
B&O	13
C&O-CD	9
C&O-PM	4
CRR	2
A&WP	1
WM	1
B&OCT	1
	66

SUBSEQUENT ALLOCATION OF NEW POSITIONS

67 - SCL	79 - SCL	91 - C&O-CD
68 - L&N	80 - L&N	92 - SCL
69 - B&O	81 - B&O	93 - L&N
70 - SCL	82 - C&O-CD	94 - B&O
71 - SCL	83 - C&O-CD	95 - C&O-CD
72 - L&N	84 - SCL	96 - SCL
73 - B&O	85 - L&N	97 - SCL
74 - C&O-CD	86 - B&O	98 - L&N
75 - SCL	87 - SCL	99 - B&O
76 - L&N	88 - SCL	100 - SCL
77 - B&O	89 - L&N	
78 - SCL	90 - B&O	

I5.87/02/20a

APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions,

responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the even they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances -(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance.- A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits.- No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.-Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbusement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized respresentatives cannot settle any dispute or controvesy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to selects its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before Febraury 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article 1 of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or other wise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.

APPENDIX "F"

_____
(Property Seniority Roster)

_____
(Date)

Mr. W. J. Scheerer (J360)
Chief Engineer-Communications and Signals
CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Dear Sir:

Accept this as my application for positions (vacancies) in the Coordinated CSXT Signal Shop at Savannah, Georgia per the provisions of Section 19 of the Implementing Agreement of April 14, 1987 in the class(es) listed below:

____ Foreman

____ Technician

____ Leading Signalman/Signalman

Name	ID Number	Present Job Title
_____	_____	_____

Home Address	Work Location
_____	_____

Home Telephone Number	Work Telephone Number
_____	_____

_____
Signature

Copy: Mr. _____
General Chairman

JMC6/415/LRNO

ARTICLE XII - CHANGES OF RESIDENCE DUE TO TECHNOLOGICAL, OPERATIONAL OR ORGANIZATIONAL CHANGES

Insofar as applicable to the employees covered by this Agreement, Article VIII of the Agreement of November 16, 1971 is amended, effective January 1, 1982, to read as follows:

When a carrier makes a technological, operational, or organizational change requiring an employee to transfer to a new point of employment requiring him to move his residence, such transfer and change of residence shall be subject to the benefits contained in Sections 10 and 11 of the Washington Job Protection Agreement, notwithstanding anything to the contrary contained in said provisions, except that the employee shall be granted 5 working days instead of "two working days" provided in Section 10(a) of said Agreement; and in addition to such benefits the employee shall receive a transfer allowance of $400. Under this provision, change of residence shall not be considered "required" if the reporting point to which the employee is changed is not more than 30 miles from his former reporting point.

NOTE: The above paragraph applies not only to the employee who is initially displaced under the circumstances described but also to any other employee who is subsequently displaced under the circumstances described and is required to move his residence.

WASHINGTON JOB PROTECTION AGREEMENT

Section 10(a) Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall release him from any further obligation under this contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements and are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

APPENDIX "S" - IMPLEMENTING AGREEMENT

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

their Employees Represented by

BROTHERHOOD OF RAILROAD SIGNALMEN

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS (the "transaction");

WHEREAS, in its Decision No. 89 served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related track leases; and

APPENDIX "S"
(continued)

WHEREAS, the parties signatory hereto desire to reach an agreement that provides, among other things stipulated herein, for the selection and assignment of employees necessary to implement the initial division of CRC's operations, to implement CSXT's transfer of certain CRC signal work to CSXT's facility at Savannah, Georgia and to Jacksonville, Florida, and to implement NSR's transfer of certain CRC signal work to the NSR signal shop at Roanoke, Virginia, as well as providing for the application of the New York Dock conditions' monetary benefits and other procedural protections to BRS-represented employees affected by these coordinations/transactions; and

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that have been imposed by the STB in this proceeding to the extent they apply to the coordinations/transaction identified in the Carrier's Notice of August 24, 1998;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC, CSXT, NSR and CRC may effect one or more of the following coordinations or rearrangements of forces:

a. BRS-represented employees will be allocated among CSXT, NSR, and CRC as provided in Appendix A.

b. The work on the allocated CRC lines to be operated by CSXT will be operated in accordance with the terms and conditions outlined in Article II of this agreement.

c. The work on the allocated CRC lines to be operated by NSR will be operated in accordance with the terms and conditions outlined in Article II of this agreement.

d. The CRC system signal shop at Columbus, Ohio ("C&S Shop") will be closed, and work from the allocated lines to be operated by NSR will be transferred to the NSR Signal Shop at Roanoke, Virginia, and work from the allocated lines to be operated by CSXT will be transferred to the CSXT facility at Savannah, Georgia. This coordination may be accomplished at different times for CSXT and NSR.

e. The CRC system service desk at Columbus, Ohio ("trouble desk") will be closed, and work from the allocated lines to be operated by NSR will be transferred to the NSR reporting desk at Atlanta, Georgia, and work from the allocated lines to be operated by CSXT will be transferred to the CSXT centralized control center at Jacksonville, Florida. This coordination may be accomplished at different times for CSXT and NSR.

f. The parties recognize that, after the transaction, CRC will no longer possess the system supports, the trouble desk, or the training facility it formerly had available. Therefore, to permit operation of the Shared Assets Areas in a reasonable and efficient manner:

1. Signal construction projects that are over and above the capabilities of the CRC work force may be provided on Shared Assets Areas by CSXT Northern Lines or NSR Eastern Region-North forces in accordance with their respective collective bargaining agreements and/or practices so long as there are no CRC-BRS employees furloughed on that seniority district.

2. CRC may purchase equipment such as pre-wired signal cases, bungalows and other items from CSXT or NSR.

3. CRC may utilize NSR, CSXT, or other concerns to provide signal training. Expenses for CRC employees trained under this provision will continue to be paid under Article V - Expenses of the current CRC Training Agreement.

4. Work formerly performed at the trouble desk for the properties which will comprise the Shared Assets Areas shall be performed by the BRS-represented employees) assigned to the CRC dispatching office(s).

Section 2

Shop and Service Desk coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

(a) By bulletins giving a minimum of fifteen (15) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred will be abolished, and (except for the positions at the NSR reporting desk in Atlanta) concurrently therewith the positions that will be established at the location to which the work is being transferred will be advertised for a period of seven (7) days to all employees holding regular BRS assignments at the transferring location; the positions at the NSR reporting desk in Atlanta will be offered, as determined by NSR, to CRC trouble desk employees allocated to NSR. Positions in Roanoke will be offered to all NSR-allocated employees. Preference will be given first to active employees in the C&S Shop,

then to active employees on prior rights district 23, and last to other active NSR-allocated employees.

APPENDIX "S"
(continued)

(b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be notified in writing of the award together with the date and time to report to the officer in charge at the receiving location. The employees so notified shall report upon the date and at the time specified unless other arrangements are made with the proper authority or they are prevented from doing so due to circumstances beyond their control.

(c) Employees transferring under this section will have their seniority date (s) dovetailed in accordance with the procedures set forth in Article II on the appropriate roster(s) at the receiving location.

ARTICLE II

Section 1

Upon advance written notice by CSXT, NSR and CRC under Article I Section 1, CRC employees will be allocated to CSXT, NSR and CRC, as detailed in Appendix A, and each such employee will be employed exclusively by either CSXT or NSR or CRC.

Those employees who become NSR employees will perform service under the terms of the agreement designated as the separate BRS-NSR Eastern Region-North Agreement (which is the NW Agreement as amended by Side Letters 1 through 10). All employees holding a regular assignment will continue to hold that regular assignment under the newly applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions.

Those CRC employees who become CSXT employees and will perform service under the terms of the agreement between BRS and CSX Transportation (CSXT-Northern Agreement). This agreement will be applied to cover all of the former CRC territories operated by CSXT as shown on the maps included as Attachment "B". All employees holding a regular assignment will continue to hold that regular assignment under the newly applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions.

CRC employees who transfer to the CSXT facility at Savannah, Georgia or the CSXT control center at Jacksonville, Florida will become employees exclusively of CSXT and will be subject to the CSXT-BRS agreement in effect at the applicable facility. CRC

employees who transfer to the NSR signal shop at Roanoke, Virginia or the NSR reporting desk at Atlanta, Georgia will become employees exclusively of NSR. Employees who transfer to the NSR signal shop at Roanoke will be subject to the NW-BRS agreement in effect at that facility. Employees who transfer to the NSR reporting desk at Atlanta will work under the practices applicable at that facility.
APPENDIX "S"
(continued)

Those CRC employees who remain in the Shared Assets Areas will continue to perform service under the applicable CRC/BRS agreement except as modified elsewhere herein.

Section 2

On the effective date of this Agreement, the seniority districts on the NSR-operated territories will be handled in accordance with the NSR Easter Region-North Agreement.

Similarly, on the effective date of this Agreement, the seniority districts on the CSXT-operated territories will be handled in accordance with the CSXT Northern Lines Agreement.

On the effective date of this Agreement, the seniority districts in the Shared Assets Areas will be realigned to establish one seniority district for each Shared Assets Area.

Section 3

The seniority dates of BRS-represented employees on CRC, on CSXT at Jacksonville and Savannah, and on NSR at Roanoke as recorded on existing rosters will be accepted as correct. Except for former CRC employees transferring to Jacksonville or Savannah (which are covered by Side Letter 11), when the above referenced rosters are integrated or names are integrated into new or existing rosters, and as a result thereof, employees on such rosters have identical seniority dates, then the roster standing among such employees shall be determined as follows:

1. earlier hire date shall be ranked senior;

2. employee with earlier month and day of birth within any calendar year shall be ranked senior.

Section 4

When seniority rosters are integrated, employees who hold a regular assignment on the NSR-operated or CSXT-operated territories at the time of the integration (i.e., "active employees") will be dovetailed using their seniority dates as shown on the respective rosters and their names listed in dovetailed order on the roster. The appropriate Railroad

and the Organization will jointly agree to these rosters. Thereafter, employees' rights to exercise seniority will be governed by the applicable provisions of the collective bargaining agreement.

Section 5

Employees will be transitioned to the payroll cycles of their new employer where applicable. The transition may result in a change in pay day, temporary pay hold back, and/or pay period for these employees, as well as a one-time adjustment in pay periods to convert to the new pay cycle. The parties will meet to discuss the application of this provision.

APPENDIX "S"
(continued)

ARTICLE III

Former CRC employees who become employees of NSR under Article II, Section 1 above shall be credited with prior service for vacation, personal leave and other benefits provided NSR agreement employees which are granted on the basis of qualifying years of service in the same manner as though all such time spent had been in the service of NSR.

Likewise, former CRC employees who become employees of CSX under Article II, Section 1 above shall be credited with prior service for vacation, personal leave and other benefits now provided under the applicable CSXT agreement and which are granted on the basis of qualifying years of service in the same manner as though all such time spent had been in the service of CSXT.

ARTICLE IV

(a) In order that the provisions of the first proviso set forth in Article I, Section 3 of the conditions contained in New York Dock may be properly administered, each employee determined to be a "displaced employee" or a "dismissed employee" as a result of a coordination/transaction made pursuant to this Agreement who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within thirty (30) days after having established "displaced" or "dismissed" status under the conditions set forth in New York Dock conditions, elect between the benefits under such other arrangement and this Agreement. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3 of the New York Dock conditions.

(b) In the event an employee, defined in paragraph (a) of this Article, fails to make such election within the said thirty (30) day period after having been notified, he or she shall continue to be entitled to the protective benefits under the provisions of such other protective conditions or arrangement, and will not be subject to the protective benefits of this Agreement.

(c) There shall be no duplication of protective benefits receivable by any employee under this Agreement and any other agreement or protective arrangement.

ARTICLE V

An employee who is eligible to receive a dismissal allowance under New York Dock, or who is furloughed and eligible to receive benefits under any other protective or stabilization arrangement, may at any time be offered a position at any location on any of the railroad properties upon which he or she holds seniority. Such employee shall be given thirty (30) days' written notice of such offer and must elect one of the following options prior to the expiration of the notice period: (1) to accept the offer and receive the agreed-to relocation benefits; (2) to resign from all service and accept a lump sum payment in accordance with the New York Dock
APPENDIX "S"
(continued)

conditions; or (3) to be furloughed without protection during the furlough. In the event an employee fails to make such an election within the 30-day notice period, the employee shall be considered to have elected Option 3.

ARTICLE VI

The parties further agree that after the initial division of the use and operation of CRC's assets between CSXT and NSR pursuant to this agreement, if either CSXT or NSR serves a subsequent notice related to the Application but limited to a coordination of its CRC allocated assets and not affecting the other carriers, then only that carrier needs to be the party to the subsequent implementing agreement. The parties further agree that this does not waive any right of the employees and is limited only to the number of carrier parties to subsequent implementing agreements.

ARTICLE VII

This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions and all other conditions, which have been imposed in Decision No. 89 by the STB in Finance Docket No. 33388.

Signed at Washington, D. C. this 14th day of December, 1998.

FOR BROTHERHOOD OF
RAILROAD SIGNALMEN

General Chairman, BRS

General Chairman, BRS

General Chairman, BRS

Approved:

Vice President, BRS

FOR NORFOLK SOUTHERN RAILWAY COMPANY
And Its Railroad Subsidiaries

Vice President Labor Relations

FOR CONSOLIDATED RAIL CORPORATION

Asst. Vice President Labor Relations

FOR CSX TRANSPORTATION, INC.
And Its Railroad Subsidiaries

Vice President Labor Relations

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37749
Docket No. CL-37724
06-3-03-3-155

The Third Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12977) that:

I. Claim of the System Committee of the TCU (CN2/0235) that:

(1) Carrier violated the terms of the Clerical Agreement, particularly Rule 1 -- Scope, as well as other applicable rules when on January 1, 2002 it abolished the position of Yard Clerk 4105-101 Luke, MD., hours of assignment 6:00 A.M. to 2:00 P.M., Monday through Friday (rest days Saturday and Sunday) and transferred its duties and responsibilities to Customer Service Center, at Jacksonville, FL a position not coming under the Scope of the Collective Bargaining Agreement.

(2) As a result of this improper transfer of work and abolishment of position, the Carrier will be required to compensate the incumbent of Position 4105-101, Claimant T. H. Delauder, ID No. 1502147, 8 hours per day, Monday through Friday, at the pro rata rate, commencing on the date his assignment was abolished, (January 1, 2002) and continuing until the violation is corrected, the work returned and the Claimant's position re-established.

(3) Carrier will further be required to compensate Claimant T. H. Delauder, under the provisions of Rule 64 – Diversion of the CBA, for all time worked outside of the hours of his previous assignment of Yard Clerk which was improperly abolished on January 1, 2002, until such time as the assignment is re-established and the claimant is returned as the incumbent.

II. Claim of the System Committee of the TCU (CN02/0236) that:

(1) Carrier violated the terms of the Clerical Agreement, particularly Rule 1 – Scope, as well as other applicable rules when on January 1, 2002 it abolished the position of Yard Clerk 4105-101 Luke, MD., hours of assignment 4:00 P.M. to 12:00 A.M., Thursday through Monday (Rest days Tuesday and Wednesday) and transferred its duties and responsibilities to Customer Service Center, at Jacksonville, FL., a position not coming under the Scope of the Collective Bargaining Agreement.

(2) As a result of this improper transfer of work and abolishment of position, the Carrier will be required to compensate the incumbent of Position 4105-101, Claimant V. H. Johnson, ID No. 1502229, 8 hours per day, Thursday through Monday, at the pro rata rate, commencing on the date his assignment was abolished, (January 1, 2002) and continuing until the violation is corrected, the work returned and the Claimant's position re-established.

(3) Carrier will further be required to compensate Claimant V. W. Johnson, under the provisions of Rule 64 – Diversion of the CBA, for all time worked outside of the hours of his previous assignment of Yard Clerk which was improperly abolished on January 1, 2002, until such time as the assignment is re-established and the claimant is returned as the incumbent."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The matter in dispute centers on the Carrier's November 8, 2001 notice to the Organization of its intent to abolish two Yard Clerk positions at Luke, Maryland, and combine that work with that performed by other Clerks in the Carrier's Customer Operations Center at Jacksonville, Florida. The two Yard Clerk positions at Luke that had performed the transferred work were abolished on January 1, 2002.

While the critical facts are not disputed, the parties hold materially different views concerning which of the processes set forth in several of their understandings should govern analysis of their rights and remedies in the instant case.

The Carrier argues that its notice of transfer and consolidation was proper and consistent with both Agreement Rule 1 – Scope, the C&O Job Stabilization Agreement effective June 1, 1999, and its past practice in handling analogous situations.

The Organization asserts that there is no authority under the Agreement to remove work from one Agreement and transfer it to incumbents covered by another. It maintains that, "[a]ny transfer of this type where two (2) railroads as well as two (2) separate Collective Bargaining Agreements are involved, have always required the transaction to be handled via a New York [Dock] Notice." It contends that the Carrier's position conflicts with both past arbitral precedent on the

property and is inconsistent with the arguments it made before the Surface Transportation Board in filings for the acquisition of Conrail.

Understanding the parties' respective positions requires brief reference to historical background. The record shows that CSX Transportation, Inc., achieved its mass as one of the nation's largest freight railroads in part through consolidation with various other lines, including the Seaboard Coast Line Railroad Company, the Louisville and Nashville Railroad Company, the Chesapeake and Ohio Railway Company, the Baltimore and Ohio Railroad Company and other Carriers. More recently, it and Norfolk Southern Corporation received authorization from the Surface Transportation Board (STB) to acquire and divide between them portions of Consolidated Rail Corporation.

In connection with the Conrail acquisition, CSXT, Norfolk Southern, Conrail and the Organization entered into an "Implementing Agreement" dated November 2, 1998 (effective June 1, 1999) amending the Carrier's July 1, 1980, "C&O Job Stabilization Agreement" (itself an amended version of the "Job Protection Agreement of February 7, 1965") to address labor issues raised by the integration and control of portions of Conrail's operations.

The Carrier asserts that in serving its notice on November 8, 2001, it acted in accordance with Articles III and VII of the modified C&O Job Stabilization Agreement and in keeping with its past practice in handling such situations, and that its notice so advised the Organization. By letter of declination dated October 22, 2002, it amplified on that position in part as follows:

> ". . . you contend that the Agreement (Master Implementing Agreement) signed July 31, 2002, 'should be applied to these cases. . . .' The parties agreed to apply the MIA Agreement retroactively to specific identified cases. The parties did not agree to apply the MIA Agreement to the Luke, Maryland work transfer.
>
> . . . [the positions] were abolished and the duties thereof were properly transferred to clerical positions at Jacksonville, Florida in accordance with the terms [of] Article III of the amended Feb. 7, 1965 C&O Job Stabilization Agreement. Records further reflect

that the clerical employees involved at both locations are covered by the amended Feb. 7 Job Stabilization Agreement.

In this connection, Article VII, Section 2 of the amended Feb. 7, 1965 Job Stabilization [Agreement] provides:

Section 2

In the event of merger or consolidation of two or more carriers . . . subsequent to the date of this Agreement, the merged, surviving or consolidated carrier will constitute a single system for the purposes of this Agreement, and the provision hereof shall apply accordingly. . . ."

Upon due consideration of the extensive authority cited by the parties, we conclude that the Board lacks authority to decide the dispute. The Organization's claims were initially filed on behalf of the incumbents of the abolished positions alleging violation of, "Rule 1 – Scope, as well as other applicable rules. . . ." Notwithstanding, they consistently have been pled thereafter in terms of violations of New York Dock Notice provisions, maintaining that that Articles III and VII of the modified C&O Job Stabilization Agreement are inapplicable.

The Railway Labor Act, Title I, Section 3, First (I) invests the Board with jurisdiction to resolve disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. . . ." The crucial determinants are not the words of the grievance, but the rights and remedies it invokes. Because it not clear that this dispute can be resolved solely by reference to the Agreement, it is not of the kind or character contemplated by the statute as appropriate for resolution by the Third Division. Accordingly, we find the Carrier's jurisdictional objections persuasive.

The claim will be dismissed without prejudice to the parties' right to refer it to a New York Dock tribunal for the purpose of determining whether the work transfers between the locations involved here are subject to Article VIII – Dispute Procedure of the modified C&O Job Stabilization Agreement or to Article 11-Arbitration of Disputes under New York Dock conditions. The contentions of the

parties with respect to the merits and remedies may then be considered by that Board.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of March 2006.

I-229-87

Carrier's Ex XX, Page 1.

SSA agt.

CSX TRANSPORTATION
Employee Relations Department
J. T. Williams, Director

R. D. Hiel, Senior Manager
(904) 359-1797

October 21, 1991

500 Water Street
Jacksonville, FL 32202

File: CSXT Labor Agreement 1-229-87

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 19
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Dear Sir:

This refers to previous discussions regarding the establishment of a work week consisting of four, ten hour days, for gang mechanics only, who will have their winter headquarters for 1991-1992 at the Fairmont, West Virginia, Equipment Shop.

The parties have met and have agreed as follows, without precedent or prejudice to either party's position, and with the further understanding that the handling herein will not be referred to in any other matter:

1. The assignments for gang mechanics a the Fairmont Shop will consist of four, ten hour days per week. These mechanics will continue to receive the monthly rate of pay in effect for gang mechanics.

2. Overtime for gang mechanics in these positions will begin after ten hours.

3. Gang mechanics accepting assignment to these positions will be reimbursed for reasonable and necessary expenses for lodging and meals; if not provided by the Carrier.

4. Gang mechanics will be given a mileage allowance at the prevailing CSXT rate (currently 27.5 cents per mile) if they drive their personal vehicle between their home and the Fairmont Shop. It is understood that this allowance is payable for one round trip per week only.

5. In consideration of Carrier's ability to take at least seven (7) vehicles per month (currently assigned to gang mechanics) out of service, a weekly lump sum travel allowance of fifty-dollars will be given to each mechanic that accepts assignment to one of these positions. If, for unforseen circumstances, a mechanic would require the use of a company vehicle that he has turned in, arrangements will be made between the employee and local supervision to arrange transportation to and from the Shop.

6. This understanding amends Side Letter No. 4 of CSXT Labor Agreement No. 1-229-87, December 9, 1987 (SSA Agreement) for the 1991-1992 winter repair season, and will become null and void at the beginning of the 1992 production season.

Yours very truly,

J. P. Wilkerson

AGREED:

A. J. Sarcone, Genl. Chrmn.

J. Coker, General Chairman

APPROVED:

E. B. Kostakis, Pres.-Dir. Genl. Chrmn.

E. B. KOSTAKIS, PRESIDENT - DIR. GEN. CHAIRMAN

JOHN K. HOLIHAN, SECRETARY-TREASURER

INTERNATIONAL ASSOCIATION of MACHINISTS

and AEROSPACE WORKERS

District Lodge No.19

729 SUNRISE AVENUE, SUITE 502
ROSEVILLE, CALIFORNIA 95661
(916) 969-6364

RECEIVED
DEC 26 1991
CSX TRANSPORTATION
EMPLOYEE RELATIONS

December 19, 1991

REPLY TO: ALEX J. SARCONE
GENERAL CHAIRMAN
DISTRICT 19, I.A.M.A.W.
2326 LUCINA AVENUE
PITTSBURG, PA. 15210
PHONE (412) 881-0679

Mr. J. T. Williams,
Director - Employee Relations
CSX Transportation, Inc.
500 Water St., J-455
Jacksonville, FL 32202

FILE: CSXT Labor Agreement

Dear Sir:

Enclosed you will find a fully executed copy of the Agreement establishing a work week consisting of four, ten-hour days for monthly rated Gang Mechanics only.

This is to advise the Agreement pertains only to monthly-rated Gang Mechanics who will have their winter headquarters for 1991-1992 at the Fairmont, West Virginia Equipment Shop.

If the above correctly reflects our understanding, please sign in the space provided below and forward a copy to this office.

Very truly yours,

Alex J. Sarcone,
General Chairman
IAM & AW

J. A. Coker,
General Chairman
IAM & AW

J. T. Williams,
Director - Employee Relations
CSXT

sg

Enclosure

cc: E. B. Kostakis, Pres. Dir. Gen. Chrmn.
R. L. Reynolds, Asst. To The Pres. Dir. Gen. Chrmn.
R. J. McCarthy, Railroad Coordinator

MEMORANDUM OF AGREEMENT
BETWEEN
CSX TRANSPORTATION, INC.
(FORMER CHESSIE SYSTEM RAILROADS-C&O, B&O and B&OCT)
AND
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS
(DISTRICT 22)
AND
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

Pursuant to Carrier's Notice of August 3, 1987 of intent to transfer and coordinate Engineering (MofW) Department equipment repair work and employees from and to locations as shown in Attachment A hereto, the Carrier and the Employees, desirous of implementing an orderly transaction, have conferred, and

IT IS AGREED:

Article I - Consolidation of Seniority Districts

A. Seniority Districts for IAM represented and SMW represented Engineering Department (MofW) Mechanics employed on the former C&O, B&O, and B&OCT, (including those affected by the August 3, 1987 Coordination Notice) will be consolidated by dovetailing the seniority of the employees on the separate district seniority rosters into a consolidated seniority district roster, which shall be known as the former "Chessie System" seniority roster, as shown in Attachment B hereto. Said rosters shall be dovetailed on the date following the date the above referenced coordination is implemented and the seniority dates to be dovetailed and any prior right entitlements shall be determined by the relative seniority standing and the location to which assigned upon the date the seniority rosters are dovetailed.

B. Mechanics involved in the consolidation of seniority districts provided for above will retain all prior rights (including prior "prior rights") to positions advertised with headquarters on their former seniority districts. All "prior rights" Mechanics on a particular prior rights district must stand for regular assignment before an employee without prior rights on that territory may be assigned to work on it.

C. The dovetailed seniority roster, showing prior right districts, prior-prior right districts, and headquarters locations are shown on Attachment B hereto.

D. 1. If at any time the Carriers further change the headquarters points within the consolidated seniority district as shown in Attachment C hereto and made part hereof, and an employee is as a result of such changes required to change his residence (per definition contained in Article IV, Section 3 of the Master Transfer Agreement effective January 1, 1976) such employee will be provided the benefits contained in Article IV, Section 1 of the aforementioned Master Transfer Agreement.

2. It is further understood that a change of headquarters for Division or Traveling Mechanics which also would involve a change of

residence requires that the position be abolished if requested by the incumbent within ten (10) days from receipt of written notice thus allowing the incumbent to exercise seniority should he choose to do so rather than move his residence to the new headquarters location. In the event the incumbent chooses to exercise seniority to another position to which entitled, the position established with a new headquarters would then be advertised in accordance with the Schedule Agreement.

Article II - Establishment of four (4) classes of Mechanics in the Engineering (MofW) Department

A. Division Mechanic - will be headquartered on the current Operating Division as shown in Attachment C and will report to the Division Engineer or his designee. The Division Mechanic will be assigned duties of maintaining and repairing other than production equipment, such as cranes, air compressors, dozers, backhoes, etc., on the Division to which assigned. However, a Division Mechanic may be assigned for short periods of time to assist a traveling or gang mechanic to return production equipment to service if no other Mechanics are readily available.

B. 1. Traveling Mechanic - will be headquartered on the Regions as shown in Attachment C and will report to the designated equipment supervisor. Traveling Mechanics may be assigned to support Division Mechanics, Gang Mechanics, or perform other work of their craft on the region upon which they are headquartered.

2. In the event a need should arise to temporarily assign a Traveling Mechanic outside his region, he may be so assigned provided the work location in the other region is located in highway miles closer to his region than the headquarters of the nearest Traveling Mechanic in the region to which temporarily assigned.

C. 1. Gang Mechanic - will be headquartered at the equipment of the particular production gang(s) to which assigned. Should the gang move more than sixty (60) miles beyond the territory described, pursuant to Paragraph 2 below, the incumbent may request that the position be abolished and upon receipt of such written request the Carrier shall abolish the position within three (3) working days from date of receipt of the request and readvertise the position pursuant to the applicable bulletin rule.

2. Once each calendar year sufficiently in advance of the production season, all Gang Mechanics will be advised in writing by the Carrier as to the territory (major subdivisions including connecting subdivisions of less than 60 miles in length) to be worked by each production gang for the coming production season. Should any Gang Mechanic submit a written request to his supervisor within ten (10) days after receipt of the aforementioned written notice of gang assignment that his position be abolished said position will be abolished within three (3) working days and readvertised pursuant to the applicable bulletin rule.

3. Gang Mechanics will be assigned to perform off season repairs to the equipment utilized by their respective gang(s) when not engaged in

production work. The Carrier shall ensure suitable indoor facilities are available during inclement weather.

4. For purposes of this Agreement, the term "Division" will be the Operating Divisions (Baltimore, Chicago, Corbin, Detroit and Huntington) in effect on October 1, 1987, as shown in Attachment D hereto except that on the Corbin and Chicago Divisions, this Agreement is applicable only to the former Chessie System portion thereof. The term "Consolidated Seniority District" includes the territory defined as consolidated seniority districts described in the March 1, 1985 Memorandum Agreement, shown in Attachment E hereto. Further, should the off season or winter repair location be located outside the Consolidated Seniority District territory and more than sixty (60) miles from his home, the mechanic may elect to have his position abolished in the same manner as described in Paragraph C1 above.

Where a gang is scheduled to work in more than one Consolidated Seniority District territory the preponderance of the work will determine the "home" Consolidated Seniority District for purposes of this Paragraph 4.

D. 1. Shop Mechanic - will be headquartered at either the Eastern Region Shop at Fairmont, W. Va. or the Western Region Shop at Columbus, Ohio. Shop Mechanics will report to the designated equipment supervisor at the shop. Duties of the Shop Mechanics will include major overhaul and heavy repair to equipment utilized in the Engineering (MofW) Department. Shop Mechanics will also be assigned to maintain and repair components such as, but not limited to, pumps, hydraulic cylinders, small engines, track drills, and other similar equipment used upon the line of road in the Engineering (MofW) Department.

2. Shop Mechanics will not be regularly assigned to work away from their shop headquarters, except as provided in Paragraph (3) below, but they may be assigned to work away from the shop to fill temporary vacancies of thirty days or less or in emergencies. When it is necessary to send a Shop Mechanic upon line of road the principle of seniority will be observed.

3. A reasonable number of seasonal rail force positions (not to exceed sixteen) may be established from time to time to perform the work formerly performed by the rail gangs. These positions will be posted at the Region Shop upon the region where the preponderance of the work is to be performed. Employees holding seniority at the shop at which the positions are posted will indicate their preference for such positions in writing and should a position(s) remain vacant, the position(s) will then be offered to the other regional shop and if thereafter a vacancy still exists, the position(s) will be filled in accordance with the applicable rules of the Schedule Agreement.

4. All positions established at the Regional Shops will be bulletined. Such bulletins shall include the specific, preponderant duties of the position in addition to the standard information required by the Schedule Agreement bulletin rule.

Article III - Rates of Pay and Expenses

A. 1. Division, Traveling and Gang Mechanics will be paid on a salary basis pursuant to Rule 15 of the Schedule Agreement. The hours per month contemplated in Rule 15 of the Schedule Agreement will be increased from 213 to 232 and 2/3 resulting in a new monthly salary of $3,080.55 as of the effective date of this agreement. (Should the 1987 Tentative IAM&AW National Agreement be consummated prior to implementation of this agreement, the wage adjustments contained therein will be applied to this agreement and the monthly salary increased accordingly upon the effective date of this agreement.)

2. Salaried Mechanics will be paid the applicable overtime rates for routine maintenance or repair work performed on Saturdays, all work performed on Sundays, and for all work in excess of 232 and 2/3 hours in a month.

3. All time spent by the salaried Mechanics in the furtherance of the Carrier's business, i.e., picking up parts, delivering parts, transporting parts or equipment, etc. will be considered as "on duty" time for purposes of computing time worked under the provisions of this agreement.

B. 1. Shop Mechanics will be paid on an hourly basis pursuant to Rule 1 of the Schedule Agreement.

2. Shop Mechanics who are awarded or assigned permanent positions to perform work upon line of road formerly performed by the rail gangs (Gang Mechanics) shall be paid the monthly salary while working such positions. Further, while working such positions the headquarters point shall be the location of the equipment to which assigned.

C. Division, Traveling, and Shop Mechanics will be allowed actual, reasonable expenses while working away from their headquarters. Gang Mechanics will be allowed actual, reasonable expenses while away from their domicile when required to travel more than sixty (60) highway miles from their domicile to the location of the equipment to which assigned. However, reasonable and actual meal expenses will be allowed on any day the Gang Mechanic is required to work more than ten (10) hours per day.

Article IV - Transportation

A. All Division and Traveling Mechanics will be assigned a carrier vehicle for use in the performance of their duties and for transportation to and from their headquarters point.

B. All Gang Mechanics will be furnished suitable transportation for use in the performance of their duties, and transportation to and from their gang (equipment).

C. When sent on line of road, all Shop Mechanics will be provided a carrier vehicle or other suitable transportation. In the event the Mechanic requests to use his own vehicle and such request is granted by his supervisor the Mechanic will be allowed the Carrier's authorized rate per

mile for travel in connection with such assignment.

Article V - Scope of the Amendments contained herein

A. All agreements currently in effect covering the Engineering Department (MofW) Mechanics employed upon the former Chessie System (B&O and B&OCT) Carriers are hereby abrogated and upon the effective date of this agreement all such Mechanics will be subject to the former C&O Chesapeake District Agreement, including all amendments thereto, and all other agreements, understandings, practices, and other contractual arrangements currently in effect for those C&O Chesapeake District Engineering Department (MofW) Mechanics.

B. The provisions set forth herein and agreed upon are meant to supersede similar provisions in the current C&O Chesapeake District Agreement as that agreement existed immediately prior to the effective date of this agreement. In the event that any provision of this agreement conflicts with a provision of the existing agreement the provisions of this agreement will apply. Where no such conflict exists the applicable provisions of the C&O Chesapeake District Schedule Agreement (including the MofW Supplement thereto, as amended) and all other agreements remain in full force and effect.

C. For convenience, all references to gender in this Agreement are made in the masculine gender. It is understood and agreed by the parties that references to gender include both the masculine gender and feminine gender.

D. This agreement will become effective January 4, 1988.

Signed at Jacksonville, Florida this 9th day of December 1987.

FOR THE IAM&AW:

W. D. Snell, Asst. Pres.-
Dir. General Chairman

A. J. Sarcone, General Chairman

FOR THE SMWIA:

A. R. Hicks, General Chairman

FOR THE CARRIERS:

W. H. Morse, Jr.
Director of Labor Relations

1202.A/LRNOARM

Attachment "A"

CSX TRANSPORTATION
Labor Relations Department

600 Water Street
Jacksonville, FL 32202

Jacksonville, Florida, December 8, 1987

File: 16-000-13

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This letter constitutes revised notice under Article I, Section 1, of the C&O-B&O-WM-B&OCT Agreement of Carrier's intent to transfer and coordinate MofW Department equipment repair work and employees from and to locations shown below, effective on or about January 4, 1987:

PRESENT FORCE	PROPOSED FORCE			
	Division Machs.	Traveling Machs.	Gang Machs.	Shop Machs.
Maryland Div.				
Baltimore - 8 Div. Machs.	Balto-1	Balto-2	6	Fairmont-1
Cumberland - 9 Div. Machs.	Cumb.-1	Cumb.-1	5	
Pittsburgh Division				
Fairmont - 10 Shop Machs				Fairmont-16
Fairmont - 10 Div. Machs	Grafton-1	Fairmont-5	4	
Parkersburg - 1 Div. Mach		Parkersburg-1		
Dunbar - 9 Div. Machs	Dunbar-1	Dunbar-1	4	
Riker - 3 Div. Machs	Riker-1	Riker-1		
Salamanca - 1 Div. Mach				
Berwood - 1 Div. Mach				

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

PRESENT FORCE	PROPOSED FORCE			
	Division Mechs.	Traveling Mechs.	Gang Mechs.	Shop Mechs.
West Virginia				
Huntington - 9 Div. Mechs	Hgtn-1	Hgtn-2	6	
Hinton - 6 Div. Mechs		Hinton-1	2	Fairmont-2
				Columbus-2
Shelby - 2 Div. Mechs		Shelby-1	1	
Paintsville - 5 Div. Mech	Paintsville-1	Paintsville-1	2	
Russell - 1 Div. Mech	Russell-1			
Raleigh - 1 Div. Mech	Raleigh-1			
Virginia Division				
Richmond - 7 Div. Mechs	Richmond-1	Richmond-1	1	Fairmont-6
Clifton Forge - 7 Div. Mechs	CF-1	CF-2	2	
Ohio Division				
Columbus - 25 Div. Mechs		Columbus-5	4	Columbus-17
Malbridge - 1 Div. Mech				
Chillicothe - 1 Div. Mech	Chillicothe-1			
Western Division				
DeCoursey - 7 Div. Mechs	DeCoursey-1	DeCoursey-1	2	Columbus-7
Washington - 1 Div. Mech	Washington-1	Hamilton-1		
Indianapolis - 3 Div. Mechs				
Peru - 1 Div. Mech				
Hamilton - 1 Div. Mech				
Lima - 4 Div. Mech	Lima-1	Dayton-1	2	
Michigan Division				
Grand Rapids - 9 Div. Mechs	G.R.-1	G.R.-1	1	Columbus-10
Plymouth - 2 Div. Mechs	Plymouth-1		1	
Saginaw - 6 Div. Mechs		Saginaw-1	1	
Blenheim, Ont. - 1 Div. Mech	Blen-1			
Chicago Division				
Chicago - 5 Div. Mechs	Chicago-1	Chicago-2	2	
Garrett - 5 Div. Mechs		Garrett-2	2	Columbus-4
Akron - 6 Div. Mechs	Akron-1	Akron-1	1	

System Mechs

C&O Northern - 4	Columbus-4
C&O Southern - 4	Fairmont-4

In addition, Carrier proposes to perform the B&O System mechanic work out of the Fairmont Shop.

Very truly yours,

W. H. Horse, Jr.
Director of Labor Relations

X3342.B/LRNOMLW

Attachment "B"

FORMER CHESSIE SYSTEM ENGINEERING DEPARTMENT IAM/SMW SENIORITY ROSTER

DECEMBER 8, 1987

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
Castelline, M. A.	1598672	B&OCT	CHI	B&OCT	B&OCT	08-15-47	07-20-27
Reusser, James	2465771	DET	GR	MI	MI	11-03-52	10-07-28
Senese, J. A.	1598673	B&OCT	CHI	B&OCT	B&OCT	04-17-54	11-28-27
Jones, Richard G.	2442279 (1)	DET	SAG	MI	MI	10-11-55	09-20-26
Liston, R. H.	1109673	BALT	CUMB	CUMB	MD	01-21-57	03-18-30
Ndèl, Lawrence L.	1401945 (2)	CHI	GAR	AKR W	CHI	02-21-57	09-15-34
Seebaugh, B. M.	1116543	BALT	PKBG	MON W	PI	03-22-57	11-01-31
Grenke, A. A.	1105680	BALT	CUMB	CUMB	MD	05-02-57	03-16-28
Cales, O. E.	2230883	HUNT	R'NEL	NF&G	WV	01-07-58	08-11-29
*Coburn, B. J.(SMW)	1710365 (1)	DET	LIMA	TOL IN E		03-27-59	04-12-27
Sisk, R. A.	1118545 (1)	BALT	CUMB	CUMB	MD	03-01-63	11-20-26
Smith, H. C., Jr.	1205229	BALT	BO-W	PI E	PI	09-30-63	02-18-39
Boyd, Orbie	2066070 (1)	HU	SHELBY	ASH	WV	04-01-64	12-11-25
Boyd, Gradis C.	2270122 (1)	HU	SHELBY	ASH	WV	06-01-65	06-16-27
Cross, M. W.	1598679 (1)	B&OCT	CHI	B&OCT	B&OCT	02-16-65	10-02-36
Tarrant, George E.	2456099	DET	SAG	MI	MI	09-28-65	08-25-39
Small, J. A.	1118555		F'MONT	F'MONT		03-11-66	11-19-34
Clites, P. H.	1115691	BALT	CUMB	CUMB	MD	05-19-66	12-23-30
Frederick, E. J.	1206466	BALT	BO-W	PI E	PI	05-23-66	04-01-24
Jones, R. O.	1407618 (1)	BALT	BUF	BUF	PI	06-13-66	06-13-24
*Duckworth,H.L.(SMW)	1109782 (1)	BALT	F'MONT	MON		07-01-66	04-17-27
Scalf, S. A.	2270264	CORBIN	COV	CI TERM	WE	09-08-66	03-19-28
Grissom, A. L.	1206870 (1-F)	CORBIN	CINN	CI TERM	WE	09-12-66	12-16-38
Malinowski, A. R.	1206110	BALT	BALT	BALT	MD	10-14-66	04-03-36
Duncan, D. L.	1118923		F'MONT	F'MONT		01-03-67	04-21-44
Swisher, J. R. (A)	1413157		F'MONT	F'MONT		04-17-67	03-02-31
Mosier, G. R.	1501244 (2)	DET	LIMA	ST.LOU	WE	08-01-67	05-17-36
Burtch, R. A.	1500346 (2)	CHI	GAR	AKR W	CHI	10-23-67	12-29-42
Thornton, Dale	1403534	BALT	BO W	PI E	PI	10-23-67	01-16-31
Volker, Robert A.	2456304	DET	SAG	MI	MI	01-12-68	05-26-36
Bedford, John H.	2607441	DET	G RAP	MI	MI	03-18-68	04-07-34
Fitzgerald, D. L.	2066072	HU	C FGE	C FGE	VA	07-08-68	09-12-36

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
King, H. K.	1503533	BALT	BO-W	PI E	PI	07-23-68	07-25-42
Born, Phillip E.	2066090 (2)	DET	WALB	HOCK	OH	08-24-68	11-02-41
Cline, Roy C.	2476572 (2)	DET	G RAP	MI	MI	10-07-68	12-13-31
Hudson, D. R.	1503761	CHI	WASH IN	ST LOU	WE	10-07-68	09-16-36
McKee, M. H.	1504291	BALT	SAL NY	BUF	PI	12-05-68	12-18-34
Depp, T. G.	1504310	BALT	RIKER	BUF	PI	12-11-68	03-16-46
*Wingate, C. S. (SMW)	1710590 (1)	DET	LIMA	TOL IN E		02-03-69	04-07-23
*Brock, R. L. (SMW)	1206460	DET	LIMA	TOL IN E		06-30-69	07-14-47
Landis, R. B.	1205556	BALT	CUMB	CUMB	MD	07-23-69	07-16-46
Trainham, Alonzo A.	2205007	HU	N NEWS	RI	VA	08-11-69	02-27-32
Ford, Lloyd K.	2611336 (2)	DET	G RAP	MI	MI	09-16-69	09-18-39
Kinner, Donald W.	2611464 (1-2)	HU	P'VIL	ASH	WV	10-09-69	01-14-32
Seeders, J. E.	1110700	BALT	CUMB	CUMB	MD	12-24-69	07-29-29
Grube, D. B.	1507079	BALT	RIKER	BUF	PI	04-13-70	05-26-33
Zambori, Samuel D.	2608733	DET	SAG	MI	MI	07-09-70	06-17-48
Miles, K. E.	2606919	CORBIN	COV	ST LOU	WE	07-29-70	08-17-43
Rabb, Victor B.	2611369	DET	SAG	MI	MI	10-26-70	12-01-44
Davenport, Ralph J.	2611924	HU	RUSS	HU	WV	03-06-71	08-19-42
Nelson, Carlton C.	2082757	HU	C FGE	C FGE	VA	03-18-71	04-17-41
Myers, D. L.	1509775 (1-2)	CHI	WASH IN	ST LOU	WE	05-24-71	03-14-31
Rich, Dale	2615401	DET	PLY	MI	MI	06-08-71	05-22-37
Stevens, Lucian Earl	2613029	HU	HU	HU	WV	06-28-71	05-20-48
Snyder, John	2609752	DET	PLY	MI	MI	07-30-71	04-24-46
Jefferson, W. E.	1250206		F'MONT	F'MONT		10-05-71	08-13-36
Morton, Gary D.	2630193	HU	COL	O NK	OH	12-10-71	03-04-47
Lomas, Manual	2455580	DET	SAG	MI	MI	03-23-72	06-17-31
White, Richard E.	2076035	HU	RI	RI	VA	08-04-72	11-09-42
Tidwell, W. J.	1206462	CHI	WASH IN	ST LOU	WE	09-06-72	06-19-42
Myers, B.	1206537	CHI	WASH IN	ST LOU	WE	12-31-72	03-14-46
Weyand, George G.	1501680	DET	AKR	AKR E	CHI	04-30-73	07-16-43
*Tighe, P. D. (SMW)	1116106 (1)	BALT	F'MONT	MON		06-11-73	10-29-38
Retzl, L.	1598900	B&OCT	CHI	B&OCT	B&OCT	07-12-73	10-14-46
Drew, Gary B.	2617191	DET	G RAP	MI	MI	10-26-73	02-01-45
Elliot, J. R.	1512680		F'MONT	F'MONT		03-25-74	04-25-31
Freedman, L. B.	1110970	BALT	BALT	BALT	MD	03-26-74	01-30-26
Arnold, H. L.	2612023	HU	HINTON	HINTON	WV	04-01-74	04-04-46

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
*Nestor, G. V. (SMW)	1506861	BALT	F'MONT	MON		05-10-74	12-25-38
Keating, Richard	2617699	DET	PLY	MI	MI	05-28-74	02-15-37
*Pitts, Lee C.(SMW)	1512815	DET	LIMA	TOL IN E		07-29-74	01-07-52
O'Brien, Peter J.	2615246 (2)	HU	C FGE	C FGE	VA	07-31-74	10-04-49
Cabell, Baxter D.	2073462 (2)	HU	HU	HU	WV	08-05-74	01-15-40
Hall, William A.	2618084	HU	RI	RI	VA	08-19-74	09-29-42
Urbank, William J.	1513731 (2)	DET	AKR	AKR E	CHI	08-29-74	03-02-50
Owens, S. R.	1513029	CHI	WASH IN	ST LOU	WE	10-21-74	12-10-50
*Vigar, R. J. (SMW)	2611912 (1-F)	CORBIN	PERU	CHI	WE	10-25-74	02-19-44
Edds, Audrey N.	2618625	HU	HIN	HIN	WE	01-24-75	04-13-48
Hege, A. E.	1501775	BALT	BALT	BALT	MD	04-22-75	05-25-49
*Woods, M. S. (SMW)	1514635	DET	LIMA	TOL IN E		04-28-75	09-14-42
Adkins, H. E., Jr.	2618626	HU	HIN	HIN	WV	06-14-75	07-06-45
Wortham, David J.	2619341	HU	RI	RI	VA	08-25-75	01-11-50
*Ebbeskotte,K.(SMW)	1515304 (2)	DET	LIMA	TOL IN E		09-15-75	02-12-50
*Powell, R. G (SMW)	1511044	CHI	IND IN	TOL IN W		11-01-75	09-27-53
Cunningham, T. D.	2615341	HU	COL	HOCK	OH	01-15-76	05-20-52
Rittenhouse, R. T.	1514727	BALT	RIKER	BUF	PI	01-20-76	08-19-46
Myers, D. P.	1515954	CHI	WASH IN	ST LOU	WE	04-05-76	05-25-49
Penrod, Dwight	2630197 (1)	HU	COL	O NK	OH	04-20-76	12-20-30
Deyling, David W.	1516241	DET	AKR	AKR E	CHI	05-03-76	06-10-47
*Pitts, D. M. (SMW)	1515453	DET	LIMA	TOL IN E		06-04-76	02-04-47
Riley, C. M.	1504100	BALT	CUMB	CUMB	MD	06-28-76	01-08-50
Kanaar, Steven C.	2617694 (2)	DET	WALB	HOCK	OH	07-09-76	10-19-51
Webb, Nolan Lewis	2618856	HU	HU	HU	WV	07-19-76	07-03-40
Risher, Jerry A.	2615035	DET	G RAP	MI	MI	08-09-76	12-15-44
Jewell, Dewey B.	2618784 (2)	DET	G RAP	MI	MI	08-13-76	08-01-56
Phillips, W. L.	2086803	COR	CHILL	CD	OH	08-23-76	01-29-37
Miller, Leslie A.	1516998 (2)	HU	COL	O NK	OH	11-26-76	09-24-54
Ballowe, Athel M.	2612225	HU	RI	RI	VA	01-21-77	02-01-41
Boone, Jerry A.	2612187	HU	C FGE	C FGE	VA	01-24-77	09-07-41
Fitzwater, Lee C.	1513192	DET	AKR	AKR E	CHI	04-24-77	02-10-56
Decker, A. J.	1517826	CHI	WASH IN	ST LOU	WE	05-31-77	07-20-50
Roberts, Dale E.	2630199	HU	COL	O NK	OH	06-20-77	06-09-50
Williams, A.	1511379	CHI	WASH IN	ST LOU	WE	08-08-77	07-26-48
McCallister, John A.	2620102	HU	HU	HU	WV	08-18-77	10-29-53

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
Coiner, Michael D.	2620625	HU	HU	HU	WV	09-14-77	07-08-52
Wenzel, William R.	2619368	NRRG	SYS	NRRG	NRRG	10-24-77	01-21-48
Sherman, Steven L..	2616928	DET	SAG	MI	MI	11-18-77	10-26-54
Holbin, Edward D.	2618546	DET	COL	MI	MI	02-24-78	10-02-53
Hendee, Paul C.	2619944	DET	G RAP	MI	MI	04-21-78	01-14-55
Leadingham, R. E.	2618908	HU	P'VIL	ASH	WV	05-04-78	01-06-57
Gonzoles, M.	1597852	B&OCT	CHI	B&OCT	B&OCT	05-21-78	01-19-54
Merritt, Kevin L.	2621527	HU	HU	HU	WV	12-01-78	05-10-57
Lipscomb, C. C.	1516847	BALT	CUMB	CUMB	MD	06-02-78	06-18-41
Seeders, J. E. Jr.	1519039	BALT	CUMB	CUMB	MD	06-09-78	03-23-54
Forson, Charles D.	2621248	HU	COL	HOCK	OH	07-03-78	07-21-53
Adams, James	1206606	BALT	BO-W	PI E	PI	08-21-78	08-04-48
Shuman, Roy R.	1502301		F'MONT	F'MONT		09-14-78	01-26-50
Knisley, K.	1513658	BALT	CUMB	BALT	MD	10-23-78	12-17-55
Dillon, Roger D.	2620387	HU	P'VIL	ASH	WV	05-31-78	06-26-52
Roe, William M.	2630200	HU	COL	O NK	OH	12-06-78	09-29-49
Morgan, Michael W.	2618929	HU	C FGE	C FGE	VA	01-22-79	11-16-41
*Cox, Don H. (SMW)	1520225	CHI	IND IN	TOL IN W		01-22-79	11-13-29
Thomas, James N.	2625396	SRRG	SYS	SRRG	SRRG	02-12-79	05-02-43
Spurling, R. T.	1517734		F'MONT	F'MONT		02-12-79	12-18-39
Bruce, Larry A.	2630195	HU	COL	O NK	OH	02-17-79	11-03-48
*Ebbeskotte,L.(SMW)	1520267	DET	LIMA	TOL IN E		02-26-79	01-25-57
Shuyler, R. F. Jr.	1508114		F'MONT	F'MONT		05-10-79	06-30-48
Field, Peter J..	2618011	DET	BLEN	CAN	MI	05-18-79	01-04-48
Picardi, Kenneth	2625782	DET	G RAP	MI	MI	05-23-79	04-04-49
*Linger, R. J.(SMW)	1500455	BALT	F'MONT	MON		06-08-79	10-11-43
Whipple, Bruce C.	2619364	DET	G RAP	MI	MI	06-15-79	04-07-49
Coleman, John	1521192	DET	AKR	AKR E	CHI	08-15-79	11-02-56
Long, George Jr.	1521396	DET	AKR	AKR E	CHI	09-24-79	2-23-54
Buss, Michael G.	2626200	DET	G RAP	MI	MI	10-05-79	09-18-60
*Cox, Larry E.(SMW)	1521451	CHI	IND IN	TOL IN W	WE	10-22-79	09-16-40
Weick, Michael L.	1520495	CHI	GAR	AKR W	CHI	01-07-80	09-11-55
Mullins, Michael K.	2619879	HU	P'VIL	ASH	WV	01-21-80	08-09-55
Damron, Michael H.	1521544		F'MONT	F'MONT		01-22-80	05-21-51
Leyh, W. G.	1518270	BALT.	BALT	BALT	MD	03-14-80	02-19-57
Alexa, William A.	2624451	DET	G RAP	MI	MI	04-18-80	03-03-59

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
Smith, Craig A.	2627130	DET	G RAP	MI	MI	09-11-80	12-15-59
Sheffield, Duane	1521640	CHI	GAR.	AKR W	CHI	09-11-80	03-23-50
Long, L. B.	1522242	CHI	WASH IN	ST LOU	WE	11-12-80	01-20-35
Davis, Michael	2627600 (2)	SRRG	SYS	SRRG	SRRG	11-17-80	07-01-40
Tackett, Walker	1522246	CHI	GAR	AKR W	CHI	11-19-80	05-01-37
Callahan, M. E.	2630196	HU	COL	O NK	OH	12-05-80	08-28-54
*Hardebeck,H.C.(SMW)	1250588	DET-COR	LIMA	TOL IN E		01-05-81	05-10-43
Leister, F. W.	1522267	BALT	BO W	PI E	PI	01-05-81	05-27-34
Hein, J. W.	1522300	BALT	BALT	BALT	MD	1-28-81	08-27-52
Keyser, Michael W.	2620426	NRRG	SYS	NRRG	NRRG	02-02-81	08-27-57
Orndorff, R. D.	1522307	BALT	BALT	BALT	MD	02-09-81	08-19-44
Young, R. A.	1522595	BALT	BALT	BALT	MD	02-16-81	06-19-42
*Jennings,R. C.(SMW)	1503290	BALT	F'MONT	MON		02-19-81	03-15-45
Henderson, Joe	1522324	WRRG	SYS	WRRG	WRRG	03-09-81	09-09-48
Smith, T. M.	1522165	BALT	B'WOOD	MON W	PI	03-18-81	01-24-40
Natchman, Eric L.	2627805	NRRG	SYS	NRRG	NRRG	03-23-81	02-17-53
Leasure, P. B.	1521440	BALT	RIKER	BUF	PI	06-24-81	01-01-42
Blankenship, L. A.	2628405 (2)	SRRG	SYS	SRRG	SRRG	07-27-81	09-21-48
Steele, Mark A.	2630201	HU	COL	O NK	OH	08-10-81	08-25-54
McGlothan, J. A.	1597556	B&OCT	CHI	B&OCT	B&OCT	08-20-81	09-24-46
Brown, Barry W.	2627343	HU	C FGE	C FGE	VA	09-29-81	10-24-48
Morgan, Joseph E.	2627607	HU	C FGE	C FGE	VA	09-29-81	01-20-36
Thomas, Carl	2622655	HU	COL	HOCK	OH	10-26-81	04-02-40
Smith, Dan	2621190	HU	COL	HOCK	OH	10-28-81	02-03-45
Pollard, James O.	2629028	SRRG	SYS	SRRG	SRRG	11-23-81	08-15-27
Hess, Gregory L.	1523147	DET	AKR	AKR E	CHI	12-01-81	06-30-54
Tackett, Shelton E.	1523148	CHI	GAR	AKR W	CHI	12-01-81	11-29-55
*Duckworth, G.A.(SMW)	1518626	BALT	F'MONT	MON		12-04-81	03-28-53
Sanford, Adair	1514611		F'MONT	F'MONT		02-22-82	03-11-45
Lees, J. Scott	1523192	BALT	BO W	PI E	PI	03-04-82	07-18-55
Johnson, David D.	1523347	BALT	BO W	PI E	PI	06-24-82	07-18-55
Riffe, Alfred S.	1523402	CHI	GAR	AKR W	CHI	11-06-82	06-05-52
*Lee, Dale E. (SMW)	1504726	BALT	F'MONT	MON		12-03-82	08-12-48
Phipps, Charles D.	2622135	HU	COL	HOCK	OH	02-14-83	05-23-46
Clay, Kenneth M.	2622975	HU	HU	HU	WV	02-25-83	11-16-53
Henderson, Frank D.	2625277 (2)	HU	HU	HU	WV	02-25-83	03-03-40

NAME	ID. NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE
Russo, John	2607776	DET	G RAP	MI	MI	02-28-83	02-02-49
Shanholtz, Robert L.	2630432	OH	COL	OH	OH	05-16-83	08-04-40
*Rollyson,D. R.(SMW)	1514707	BALT	F'MONT	MON		05-24-83	09-05-53
Jarrell, Gene H.	2625488	HU	HU	HU	WV	06-09-83	01-30-42
Johnson, William E.	2628588	OH	COL	OH	OH	06-24-83	02-11-46
Russell, John L.	2628188	OH	COL	OH	OH	06-27-83	07-07-48
Rose, Tarrell H.	2607422	HU	COL	HOCK	OH	06-27-83	07-06-49
*Wagoner, R. H.(SMW)	1520904	BALT	F'MONT	MON		08-10-83	09-09-48
Felton, G. K.	1517327	BALT	CUMB	CUMB	MD	08-30-83	06-29-58
Wilt, Lewis O.	2630343	OH	COL	OH	OH	07-09-84	08-13-36
Zinsky, David A.	1508256	BALT	BO W	PI E	PI	08-25-84	05-30-51
Fry, Forster	2629311	HU	HU	HU	WV	09-11-84	05-26-36
*Duckworth,C.E.(SMW)	1522386	BALT	F'MONT	MON		10-19-84	10-02-29
*Brock, H.B. (SMW)	1522452	BALT	F'MONT	MON		11-26-84	12-06-43
*Dillon, T. L.(SMW)	1522420	BALT	F'MONT	MON		12-03-84	09-27-55
Taylor, Anthony E.	2625491	HU	HIN	HIN	WV	04-16-85	02-18-58
Depriest, David D.	2624940	HU	RI	RI	VA	06-24-85	01-09-53
Murphy, John M.	2624778	HU	RI	RI	VA	10-08-85	10-13-56
Bush, George	2624378	DET	G RAP	MI	MI	11-11-85	12-13-56
Burnett, Thomas Jr.	2619933	HU	COL	HOCK	OH	11-20-85	12-16-40
Davis, K. O.	2607421	HU	COL	HOCK	OH	11-20-85-2	05-08-40
Perry, Marvin D.	2629517	OH	COL	OH	OH	12-11-85	06-16-46
Gilkerson, Toney	2626419	HU	P'VIL	ASH	WV	12-17-85-1	04-19-58
Adkins, Kim	2627929	HU	P'VIL	ASH	WV	12-17-85-2	07-05-56
Bitler, Peter	2618017	NRRG	SYS	NRRG	NRRG	03-03-86	01-27-44
Killen, Richard D.	2612652	OH	COL	OH	OH	03-10-86	11-30-43
King, Larry	2613447	HU	HIN	HIN	WV	07-25-86	11-07-37
Waugh, Paul D.	2622083	OH	COL	OH	OH	09-02-86	12-08-58
Gumbert, William F.	2629333	OH	COL	OH	OH	09-18-86	06-16-53
VanCleve, Paul M.	2618159	SRRG	SYS	SRRG	SRRG	09-19-86	01-15-46
Maynard, Fred	2627681	HU	HIN	HIN	WV	09-22-86	07-04-45
Lewis, Carlyle	2626793	HU	RI	RI	VA	09-29-86	10-25-51
Lester, Ronald L.	2094329	OH	COL	OH	OH	09-30-86	06-02-41
Rose, Richard A.(SMW)	1515368	BALT	F'MONT	MON	-	04-01-87	
Canterbury, R. L.	2622284	OH	COL	OH	OH	08-03-87	01-13-51
Griffith, J. W.	2624817	OH	COL	OH	OH	08-03-87	03-15-52
Morris, D. E.	2605761	OH	COL	OH	OH	09-08-87	07-31-49

NAME	ID NO.	DIV'N	LOC'N	PRIOR DIST	PRIOR CONSL DIST	SENIORITY DATE	BIRTH DATE

Footnotes:

1. On Long Term Disability.
   1-F Disability - See File
2. Promoted to Noncontract.
* Not Consolidated

SEB.roster/67

Attachment "C"

HEADQUARTERS - DIVISION AND TRAVELING MECHANICS

Eastern Region - Fairmont, West Virginia

Division Mechanics	Traveling Mechanics
Baltimore, Md. - 1	Baltimore, Md. - 2
Cumberland, Md. - 1	Cumberland, Md. - 1
Grafton, W. Va. - 1	Fairmont, W. Va. - 5
Dunbar, Pa. -1	Parkersburg, W. Va. - 1
Riker, Pa. - 1	Dunbar, Pa. - 1
Huntington, W. Va. - 1	Riker, Pa. - 1
Raleigh, W. Va. - 1	Huntington, W. Va. - 2
Richmond, Va. - 1	Richmond, Va. - 1
Clifton Forge, Va. - 1	Clifton Forge, Va. - 2
	Hinton, W.Va. - 1

Western Region - Columbus, Ohio

Division Mechanics	Traveling Mechanics
Paintsville, Ky. - 1	Shelby, Ky. - 1
Russell, Ky. - 1	Paintsville, Ky. - 1
Chillicothe, Ohio - 1	Columbus, Ohio - 5
DeCoursey, Ky. - 1	DeCoursey, Ky. - 1
Washington, Ind. - 1	Hamilton, Ohio - 1
Lima, Ohio - 1	Dayton, Ohio - 1
Grand Rapids, Mich. - 1	Grand Rapids, Mich. - 1
Plymouth, Mich. - 1	Saginaw, Mich. - 1
Blenheim, Ont. - 1	Chicago, Ill. - 2
Chicago, Ill. - 1	Garrett, Ind. - 2
Akron, Ohio - 1	Akron, Ohio - 1

1202.0/LRNOARM

Attachment "E"

APPENDIX V

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

CONSOLIDATED SENIORITY DISTRICTS
HEADQUARTERS

Virginia Division

Richmond
Newport News
Clifton Forge

Maryland Division

Baltimore
Cumberland

West Virginia Division

Huntington
Russell
Paintsville
Shelby
Rainelle
Hinton

Pittsburgh Division

Parkersburg
Benwood
Bowest
E. Salamanca
Riker

Ohio Division

Columbus
Chillicothe
Walbridge

Western Division

Washington
Cincinnati Terminal

Chicago Division

Akron
Garrett
Chicago

Michigan Division

Grand Rapids
Saginaw
Plymouth
Blenheim

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 1

Mr. W. D. Snell, Asst. Pres.-Dir. Gen. Chm.
Int'l. Assoc. of Machs. and Aerosp. Wkrs., Dist. 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
Int'l. Assoc. of Machs. and Aerosp. Wkrs., Dist. 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

As agreed by the parties those Mechanics affected by the Carriers' August 3, 1987 notice will be entitled to any retroactive pay due upon the consummation of the 1987 Tentative National Agreement even though such Mechanics may elect a separation allowance pursuant to the Master Transfer Agreement.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

1202.B/LRNOARM

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 2

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During negotiations it was understood and agreed that any employe currently holding seniority on the single Machinist Seniority Roster on the B&OCT would be "red circled" or designated as retaining all current rights to MofW or Locomotive Shop positions to which such current B&OCT Machinists may be entitled.

However, in the future any employe who is hired from the outside (or transferred from another CSXT Carrier) will establish seniority on either the B&OCT Locomotive Shop Seniority Roster or the former Chessie System Engineering Department IAM/SMW Seniority Roster in accordance with the applicable terms of the Schedule Agreement.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines
are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

1202.C/LRNOARM

Carrier's Ex XX, Page 24.

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 3

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

As discussed, any employee who is required to relocate his residence in this coordination will, if he elects the provisions of Article IV, Section 1(c) of the Master Transfer Agreement, be allowed 15 per cent of the fair market value of his residence, in lieu of the 7 per cent and 10 per cent allowances specified therein.

In addition, the Carrier will allow each employee who transfers pursuant to the August 3, 1987 notice, the option of:

(a) The five working days off with pay and reimbursement for other expenses associated with the transfer as provided in Article IV, Section 1(a) of the Master Transfer Agreement and reimbursement for the cost of acquiring license for one automobile, including the

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use tax and any cost of re-titling such automobile, as provided in Article IV, Section 1(f); or

(b) In lieu of, and in full settlement of, any claim for expenses associated with the initial transfer arising under Article IV, Section 1(a) and (f) above (except moving van expenses, losses from home removal and the so-called "lace curtain allowance"), an allowance of $2500.00 to be paid in accordance with the following schedule:

(1) Effective with the date of transfer $1,500.00.

(2) Within 30 days of notification to the Carrier officer-in-charge at the new location of completion of his move, $1.000.00.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

1202.D/LRNOARM

CSX TRANSPORTATION

Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 4

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Wokrkers, District 2
2326 Lucina Avenue
Pittsburgh, Pensylvania 15210-4140

Gentleman:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

It is not the intent of the parties that monthly rated Mechanics be assigned to work more than eight (8) hours per day during the off/winter repair season except as necessary to meet unusual service requirements or in an emergency.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

1202.E/LRNOARM

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CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 5

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the schedule agreement rules and other matters covering those MofW Mechanics affected by the amendments to the schedule agreements and/or those affected by the carriers' coordination notice of August 3, 1987.

As discussed in conference, the repair of Motive Power (Locomotive) and Mechanical (Car) Department equipment, such as Fork Lifts, Mobile Cranes, and other shop machinery and equipment historically maintained and repaired by the Michigan Division Mechanics, will, following the coordination, continue to accrue to such mechanics, until otherwise agreed upon by the parties.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Very truly yours,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

1202.F/LRNOAHY

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CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987
Side Letter No. 6

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During negotiations it was understood and agreed that should any mechanic be required to change his residence (per definition contained in Article IV, Section 3 of the Master Transfer Agreement) as a result of an exercise of seniority resulting from the coordination referenced above, such mechanic would be entitled to the benefits provided for in Article IV, Section 1 of the Master Transfer Agreement notwithstanding that such change of residence is within the boundaries of his seniority district as it existed on the day prior to the coordination.

1202.G/LRNOARM

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

1202.G/LRNOARM

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 7

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the schedule agreement rules and other matters covering those MofW Mechanics affected by the amendments to the schedule agreements and/or those affected by the carriers' coordination notice of August 3, 1987.

During the discussions held in connection with the above referenced agreement it was agreed that those Machinists currently holding seniority at the Barboursville Reclamation Plant (Shop) and the Martinsburg Shop should retain bidding rights to any Mechanic (Machinist) position established pursuant to the terms of the Agreement as long as those employes maintain an employe relationship. Those employes are identified in the list attached hereto.

However, subsequent to the effective date of this agreement all employes establishing seniority at either Barboursville or Martinsburg will be considered as having "point" seniority and subject as such to the applicable rules of the schedule agreement.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Very truly yours,

W. H. Morse, Jr.
Director of Labor Relations

I Concur:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

1202.H/LRNOARM

BARBOURSVILLE MACHINISTS

EXPERIENCED IN EQUIPMENT

NAME	ID NUMBER	SENIORITY DATE	REMARKS
LeGRAND, A. A., JR.	2066067	4-04-60	
FORD, H. D.	2066068	9-06-60	
RANSON, R. O.	2080318	10-12-65	
BLEDSOE, V. L.	2607291	2-26-68	
RAMEY, R. D. (a)	2608708	8-26-68	
SNIDER, J. D. (a)	2615765	9-23-71	
STILLWELL, G. W.	2630334	10-01-76	
KNEPPER, J. D.	2630332	12-06-76	
HINCHMAN, J. E.	2624215	7-19-78	
FREELS, J. R.	2624552	8-23-78	
ESTEP, S. D.	2624790	9-14-78	
DUNKLE, C. N.	2624752	10-02-78	
DOBY, M. F. (a)	2624843	10-18-78	
PARSONS, J. E.	2625844	5-31-79	
LAWHON, R. D.	2626694	1-02-80	
LOVEJOY, A. T.	2627199	5-12-80	
GOTHARD, J. L.	2629555	11-21-85	

(a) Promoted to Lead Machinist

SEB.21/67

MARTINSBURG MACHINISTS

EXPERIENCED IN EQUIPMENT

NAME	ID NUMBER	SENIORITY DATE	REMARKS
DECKER, P. K.	1116854	11-24-58	
GRUBBS, F. L.	1116944	11-16-62	Extended Layoff

NOT EXPERIENCED

MCDANIEL, K. W.	1116807	3-24-55	

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No.8

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

This will confirm our understanding reached during conference that those gang mechanic assignments for the 1988 production season will be posted in conjunction with the gang mechanic positions offered pursuant to the coordination resulting from the August 3, 1987 notice and the schedule agreement amendments agreed to in conjunction therewith.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

1202.I/LRNOARM

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 9

Mr. W. D. Snell, AP-Dir. Gen. Chm.
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
Hamden, Connecticut 06514

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers International
Association
2312 Miller Road
Huntington, West Virginia 25701

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

It was understood and agreed that in the application of Article I, Section A that a Traveling Mechanic or Division Mechanic could be assigned to perform repairs on a limited basis on a prior rights territory notwithstanding that a "prior rights" Mechanic may be in furlough status. However, such assignments cannot exceed two (2) consecutive working days or seven (7) calendar days within any calendar month. Further, it was understood that not more than one Mechanic would be subject to such assignments on any prior right territory at any given time.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 10

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucins Avenue
Pittsburgh, Pennsylvania 15210-4140

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

Paragraph B2 of the Implementing Agreement expresses the intent of the parties that the mechanics should travel only to the extent necessary to meet service requirements and work should be assigned with that intent in mind. Accordingly, it is understood that the Organizations reserve the right to file and progress claims and/or grievances in the event a dispute should arise in connection with the assignment of mechanics pursuant to the terms and conditions of this agreement.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

1202.K/LRNOARM

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 11

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the schedule agreement rules and other matters covering those MofW Mechanics affected by the amendments to the schedule agreements and/or those affected by the carriers' coordination notice of August 3, 1987.

This will confirm our understanding that all IAM/SMW represented employes currently holding positions (and those subsequently filling positions) in the Maintainence of Way (Engineering) Department on the former C&O, B&O, and B&OCT carriers will, as a result of this agreement, become employes of the former C&O Railway Company and be subject to all agreements, including amendments thereto, in effect between the IAM and the former C&O as of the date of the coordination.

This will also confirm that all prior service earned by any employe now or subsequently affected by the aforementioned agreement upon any former Chessie System carrier will be credited as service time under this agreement for the purposes of vacation, personal days, and other "service time" related benefits.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines
are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 12

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and the SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During conference, it was agreed by the parties as follows:

1. The incumbent mechanic will continue his present union affiliation and representation status should he be awarded a position in the coordinated operation.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

2. Thereafter should a position in a SMWIA prior right territory held by an incumbent SMWIA mechanic become vacant due to retirement, resignation, death, dismissal for cause, etc., the position will be offered first to qualified SMWIA Engineering Mechanics in active or furloughed status in that territory and if none are available, the position will then accrue to IAM mechanics.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

A. R. Hicks, General Chairman, SMWIA

W. D. Snell, Asst. Pres.-Dir. Gen. Chm., IAM&AW

A. J. Sarcone, General Chairman, IAM&AW

1202.M/LRNOARM

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 13

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

It was understood and agreed that all Engineering Department (MofW) Mechanics who may be in furlough status would be eligible to bid for any or all positions advertised pursuant to Attachment "A". However, such furloughed Mechanics will not be awarded any position bid for until consideration has been given to all active Mechanics covered by the above referenced Agreement.

It was also agreed that any successful bidder. (active or furloughed) would be entitled to any applicable moving or expense benefits due as a result of relocating to the awarded position.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours very truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

MLW343.A/LRNOMLW

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 14

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During negotiations it was understood and agreed that at Columbus and Fairmont the implementation of Paragraph 4 of Article II, Section D would not occur until sixty (60) calendar days from the effective date of the Coordination inasmuch as that much time would be required to install the machinery and other equipment necessary to comply with the intent of the language contained in that particular section of the agreement referred to above.

In any event, the Carrier will readvertise all jobs at both Columbus and Fairmont within sixty (60) calendar days of the effective date of the Coordination in compliance with the aforementioned agreement provisions.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines
are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours very truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

X2342.A/LRNOMLW

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 15

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW and SMWIA signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During the negotiations the parties recognized the importance of ensuring that all Mechanics holding regular assignment at the Regional Shops (Columbus or Fairmont) be trained to perform all work within the shop in order that vacancies created due to vacation, illness, and other absences could be filled pursuant to existing rules without interruption to the Carrier's service.

Accordingly, it was agreed that the Carrier would have the right to temporarily reassign any employe from his regularly assigned, bid in job to another position for training purposes for a period of time, not to exceed two work weeks in any two (2) month period, or eight (8) work weeks in any calendar year, beginning upon the effective date of the coordination referred to above and continuing for twenty four (24) months thereafter.

The above training provisions contained herein will also apply to

new hires or other than Engineering Department transferees with the twenty four (24) month period referred to above beginning the first day worked at either of the Regional Shops referred to in this Agreement.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours very truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

X2342.B/LRNOMLW

CSX TRANSPORTATION
Labor Relations Department

500 Water Street
Jacksonville, FL 32202

December 9, 1987

Side Letter No. 16

Mr. A. R. Hicks, General Chairman
Sheet Metal Workers' International
Association
2312 Miller Road
Huntington, West Virginia 25701-4834

Mr. W. D. Snell, Assistant President-
Directing General Chairman
International Association of Machinists
and Aerospace Workers, District 22
P. O. Box 4324
2600 Dixwell Avenue
Hamden, Connecticut 06514-1833

Mr. A. J. Sarcone, General Chairman
International Association of Machinists
and Aerospace Workers, District 22
2326 Lucina Avenue
Pittsburgh, Pennsylvania 15210-4140

Gentlemen:

This has reference to CSXT Labor Agreement No. 1-229-87 between the former Chessie System Carriers, C&O, B&O, and B&OCT and the IAM&AW signed at Jacksonville, Florida on December 9, 1987, pertaining to the former Chessie System MofW Mechanics and the understandings reached by the parties in regards to certain changes in the Schedule Agreement rules and other matters covering those MofW Mechanics affected by the amendments to the Schedule Agreements and/or those affected by the Carriers' coordination notice of August 3, 1987.

During our discussions it was understood and agreed that the dovetailed former Chessie System Seniority Roster attached as "Attachment B" would be used to determine the successful bidder for any position advertised pursuant to the Carrier's coordination notice while recognizing that the actual dovetailing of seniority dates pursuant to this agreement would occur the day following the date of the coordination implemented pursuant to the Carrier's Notice of August 3, 1987. The parties agree that the aforementioned Attachment "B" is for the one time bidding purpose only and the former Chessie System Consolidated Seniority Roster (Engineering Department) cannot be accurately determined until the coordination referred to above is implemented. It is also understood and agreed that once the coordination is implemented and the Consolidated Seniority Roster published, said Consolidated Seniority Roster will be open for protest for a ninety (90) day period from the date the roster is delivered to, and receipt thereof acknowledged by, each Mechanic shown thereon.

CSX Distribution Services, CSX Equipment, CSX Rail Transport and American Commercial Lines
are business units of the CSX Transportation Group.

If the foregoing correctly reflects our understanding, please sign in the space provided.

Yours very truly,

W. H. Morse, Jr.
Director of Labor Relations

AGREED:

W. D. Snell, Asst. Pres.-Dir. Gen. Chm.

A. J. Sarcone, General Chairman

A. R. Hicks, General Chairman

X3342.A/LRNOMLW

Carrier's Ex XX, Page 51.

PZ656081		PAGE 1											
	CONSOLIDATED SENIORITY ROSTER												
	ROADWAY MECHANICS												
14.07.31													
07/07/05					PRIOR								
SEQ NO	RS ST	ID DATE	SENIORITY RIGHTS	BIRTH RIGHTS	PRIOR SHOP		PRIOR		FLD/			CRAFT	CRAFT	CRAFT	
1	DI		RH THRIFT JR	154125	08/26/68	0	11/09/41	SC	FLD			BMWE			
2	SL		TG DEPP	504310	12/11/68	0	03/16/46	BO	FLD	IAMAW					
3	OC		JW FRAZIER	602876	02/24/69	0	09/26/44	CR	FLD			BMWE			
4	AC		DR MUIR	771558	06/16/69	0	02/27/50	CA	SHOP			BMWE			
5	SF		GW WHITE JR	158327	12/22/69	0	10/05/45	SC	FLD			BMWE			
6	AC		S STACY	373234	04/06/70	1	02/01/47	PR	FLD			BMWE			
7	AC		SD ZAMBORI	608733	07/09/70	0	06/17/48	CO	FLD	IAMAW					
8	AC		KE MILES	606919	07/29/70	0	08/17/43	CO	FLD	IAMAW					
9	AC		AR MARBUTT	186167	12/04/70	0	12/10/46	LN	FLD	IAMAW					
10	SK		FD KISSELSTEIN	789443	03/01/71	0	09/27/45	NY		IAMAW					
11	AC		JD SNYDER	609752	07/30/71	0	04/24/46	CO	FLD	IAMAW					
12	AC		EA HADDIX JR	770979	11/08/71	0	03/13/48	CA	SHOP			BMWE			
13	AC		TM STEPHENS	196214	11/09/71	0	08/13/45	GA	FLD			BMWE			
14	AC		GD MORTON	630193	12/10/71	0	03/04/47	CO	FLD	IAMAW					
15	AC		AR BASS	161987	01/17/72	0	07/22/52	SC	FLD			BMWE			
16	AC		DE GILFUS	782708	04/06/72	0	01/11/48	NY	FLD	IAMAW					
17	AC		AM WILLIAMS	186206	05/29/72	0	05/03/47	LN	FLD	IAMAW					
18	AC		JE TAYLOR	196217	05/29/72	1	07/02/53	GA	FLD			BMWE			
19	AC		RD CAUDILL	186227	09/01/72	0	04/12/47	LN	FLD	IAMAW					
20	AC		JF BUXTON	771468	11/08/72	0	04/16/44	CA	SHOP			BMWE			
21	RD		BL MYERS	206537	12/31/72	0	03/14/46	CO	SHOP	IAMAW					
22	IN		EB VANN	186283	01/04/73	0	06/13/36	LN	FLD	IAMAW					
23	AC		LJ RETZL	598900	07/12/73	0	10/14/46	CT	FLD	IAMAW					
24	DI		EW CHAPPELL	166915	08/13/73	0	10/10/42	SC	SHOP	IAMAW					
25	SL		LD MASTERS	605448	09/25/73	0	10/11/51	CR	FLD			BMWE			
26	AC		CB KENT	166893	11/05/73	0	09/09/48	SC	FLD			BMWE			
27	AC		H WHITAKER	186448	12/28/73	0	08/27/47	LN	FLD	IAMAW					
28	RD		DR STORY	186446	03/11/74	0	03/20/49	LN	SHOP	IAMAW					
29	AC		DW WARNER	769975	03/25/74	0	02/19/50	PR	FLD	IAMAW					
30	AC		HL ARNOLD	612023	04/01/74	0	04/04/46	CO	FLD	IAMAW					
31	AC		JW PATE	186454	05/15/74	0	09/01/51	LN	FLD	IAMAW					
32	AC		KE ROGERS	776945	05/28/74	0	08/22/52	NY	FLD	IAMAW					
33	AC		LC PITTS	512815	07/29/74	0	01/07/52	BO	FLD					SMW	
34	AC		RE OWENS	769962	10/02/74	0	08/03/49	PR	FLD	IAMAW					
35	AC		LA CHESHIRE	186501	12/12/74	0	04/17/48	LN	FLD	IAMAW					
36	AC		FD KENT	170206	02/16/75	0	01/17/50	SC	FLD			BMWE			
37	AC		AE HEGE	501775	04/22/75	0	05/25/49	BO	FLD	IAMAW					
38	AC		HG JONES	774738	08/11/75	0	10/11/47	NY	FLD	IAMAW					
39	AC		JB SMITH	775685	09/05/75	0	02/25/50	PR	FLD			BMWE			
40	AC		RE STURGILL	180989	09/26/75	0	01/29/47	LN	FLD	IAMAW					
41	AC		ME DONANT	774814	09/29/75	0	11/03/52	CA	SHOP			BMWE			
42	OR		PR GOSS	774816	09/29/75	2	11/09/51	CA	SHOP			BMWE			
43	AC		GP NELSON	775891	10/20/75	0	08/15/48	PR	FLD			BMWE			
44	AC		LW SHAFER	773668	10/20/75	1	05/15/47	PR	FLD			BMWE			
45	AC		RG POWELL	511044	11/01/75	0	09/27/53	CO	FLD					SMW	
46	AC		A SKIDMORE	186536	12/30/75	0	12/16/49	LN	FLD	IAMAW					
47	AC		TD CUNNINGHAM	615341	01/15/76	0	05/20/52	CO	FLD	IAMAW					
48	AC		MD WILES	773954	03/01/76	3	10/30/52	CA	SHOP			BMWE			
49	AC		RA HOOD	770513	03/08/76	1	01/07/55	CA	SHOP			BMWE			
50	AC		TH NABLO	782737	04/01/76	0	01/05/47	NY	FLD	IAMAW					
51	AC		JP GRZYBOWSKI	789148	04/01/76	1	12/03/54	NY	FLD	IAMAW					
52	AC		AE BARTON	789524	04/01/76	2	10/11/53	NY	FLD	IAMAW					
53	IP		DP MYERS	515954	04/05/76	0	05/25/49	BO	FLD	IAMAW					
54	AC		DW DEYLING	516241	05/03/76	0	06/10/47	BO	FLD	IAMAW					
55	AC		DD BRISTOL	789274	05/26/76	0	09/01/54	NY	FLD	IAMAW					

Carrier's Ex YY, Page 1.

SEQ NO.	RS ST	ID DATE	SENIORITY RIGHTS	BIRTH RIGHTS	PRIOR SHOP	PRIOR	FLD/				CRAFT	CRAFT	CRAFT	
56		AC	DM PITTS	515453	06/04/76	0	02/04/47	BO	FLD				SMW	
57		AC	GW BROWER SR	769920	06/09/76	0	08/29/52	PR	FLD			BMWE		
58		NS	MM FARINO	789723	06/21/76	0	01/12/41	NY	FLD	IAMAW				
59		AC	JL FUGATE	773635	06/21/76	1	08/10/48	PR	FLD			BMWE		
60		AC	NL WEBB	618856	07/19/76	0	07/03/40	CO	FLD	IAMAW				
61		OC	DB JEWELL	618784	08/13/76	0	08/01/56	CO		IAMAW				
62		AC	GA BURTON	774933	08/16/76	0	01/01/60	NY	FLD	IAMAW				
63		AC	RP LONG	775827	09/13/76	0	10/26/53	PR	FLD			BMWE		
64		SF	KE EBBESKOTTE	515304	09/15/76	0	02/12/50	BO	FLD				SMW	
65		AC	RB FRANK	789923	10/25/76	0	03/26/53	NY	FLD	IAMAW				
66		UB	LC SMITH JR	171159	10/26/76	1	12/17/46	SC	SHOP			BMWE		
67		AC	RC COX	171160	10/26/76	2	10/17/53	SC	FLD			BMWE		
68		AC	JE GRIFFIN	171183	11/15/76	0	12/22/47	SC	FLD			BMWE		
69		AC	MR FINLEY	770102	11/26/76	1	10/29/53	PR	FLD			BMWE		
70		UB	MD FLOWERS	731091	11/26/76	2	06/26/52	PR	FLD			BMWE		
71		AC	JW VANOVER	186626	11/29/76	0	01/12/53	LN	FLD	IAMAW				
72		OC	MF STUTTS	171262	12/21/76	0	06/05/48	SC		IAMAW				
73		AC	NV COOK SR	925933	01/06/77	0	05/02/45	NY	FLD	IAMAW				
74		AC	LC FITZWATER	513192	04/24/77	0	02/10/56	BO	FLD	IAMAW				
75		DI	EE WOODS	186780	05/24/77	0	02/21/50	LN	FLD	IAMAW				
76		AC	DE ROBERTS	630199	06/20/77	0	06/09/50	CO	FLD	IAMAW				
77		AC	AL WILLIAMS	511379	08/08/77	0	07/26/48	CO	FLD	IAMAW				
78		AC	JA MCCALLISTER	620102	08/18/77	0	10/29/53	CO	FLD	IAMAW				
79		AC	RV TUCKER	773433	10/04/77	0	09/03/49	NY	FLD	IAMAW				
80		AC	CA CHRISTMAN	925839	10/04/77	1	10/11/51	PR	FLD			BMWE		
81		OC	MD RITCHIE	774741	10/19/77	0	11/09/39	NY		IAMAW				
82		NS	WR WENZEL	619368	10/24/77	0	01/21/48	CO	FLD	IAMAW				
83		AC	WF COWN	775684	11/21/77	0	11/07/48	PR	FLD			BMWE		
84		SF	LA MILLER	516998	11/26/77	0	09/24/54	CO		IAMAW				
85		AC	JO HENSLEY	609665	11/28/77	0	09/27/55	CR	FLD			BMWE		
86		SK	WH SCOTT	172625	01/03/78	0	08/26/41	SC	FLD			BMWE		
87		AC	SW BICKETT	187044	01/31/78	0	05/05/51	LN	FLD	IAMAW				
88		AC	CD CRAIG	773670	03/10/78	0	06/21/54	PR	FLD			BMWE		
89		SL	MA GIANNETTI	791183	04/03/78	0	07/21/50	CA	SHOP			BMWE		
90		AC	PG HENDEE	619944	04/21/78	0	01/14/55	CO	FLD	IAMAW				
91		AC	RE LEADINGHAM	618908	05/04/78	0	01/06/51	CO	FLD	IAMAW				
92		AC	MF GONZALEZ	597852	05/21/78	0	01/19/54	CT	FLD	IAMAW				
93		AC	RD DILLON	620387	05/31/78	0	06/26/52	CO	FLD	IAMAW				
94		AC	JE SEEDERS	519039	06/09/78	0	03/23/54	BO	FLD	IAMAW				
95		AC	CD FORSON	621248	07/03/78	0	07/21/53	CO	FLD	IAMAW				
96		OC	WC JOHNSON	172941	07/03/78	1	10/04/54	SC	FLD			BMWE		
97		AC	JR BISHOP	770684	08/01/78	0	07/31/51	PR	FLD			BMWE		
98		AC	J ADAMS	206606	08/21/78	0	08/04/48	BO	FLD	IAMAW				
99		AC	JG TURNER	321442	09/16/78	0	09/30/48	RF	SHOP			BMWE		
100		AC	KS KNISELY JR	513658	10/23/78	0	12/17/55	BO	FLD	IAMAW				
101		OC	CL FRENCH	186983	11/06/78	0	04/04/53	LN	FLD	IAMAW				
102		AC	JH PEARSON	321356	11/29/78	0	08/26/48	RF	SHOP			BMWE		
103		AC	KL MERRITT	621529	12/01/78	0	05/10/57	CO	FLD	IAMAW				
104		NS	MW MORGAN	618929	01/22/79	0	11/16/41	CO	FLD	IAMAW				
105		NS	JN THOMAS	625396	02/12/79	1	05/02/43	CO	FLD	IAMAW				
106		AC	SR KING JR	175160	05/07/79	0	08/02/55	SC	SHOP			BMWE		
107		AC	PJ FIELD	618011	05/18/79	0	04/01/48	CO	FLD	IAMAW				
108		AC	KR PICARDI	625782	05/23/79	0	04/04/49	CO	SHOP	IAMAW				
109		AC	BC WHIPPLE	619364	06/15/79	0	04/07/49	CO	FLD	IAMAW				
110		OC	NV NIHOUL JR	175238	07/09/79	0	08/31/56	SC				BMWE		
111		AC	DL WARNER	770076	07/18/79	0	09/26/54	PR	FLD			BMWE		
112		SF	PJ OBRIEN	615246	07/31/79	0	10/04/49	CO	FLD	IAMAW				
113		AC	RF BREWER	186555	08/14/79	0	03/19/53	CE	FLD			BMWE		
114		NS	JJ COLEMAN JR	521192	08/15/79	0	11/02/56	BO	FLD	IAMAW				
115		AC	H GALBREATH JR	167760	09/13/79	0	10/16/51	SC	FLD	IAMAW				

SEQ NO	RS ST	ID DATE	SENIORITY RIGHTS	BIRTH RIGHTS	PRIOR SHOP	PRIOR		FLD/			CRAFT	CRAFT	CRAFT
116		AC	WD HODGES	162452	09/24/79	1	07/18/48	SC	FLD			BMWE	
117		AC	GA JONES JR	187294	10/03/79	0	10/17/46	LN	FLD		IAMAW		
118		AC	MK MULLINS	619879	01/21/80	0	08/09/55	CO	FLD		IAMAW		
119		RD	DL BREWER	186352	03/03/80	0	03/11/43	LN	SHOP		IAMAW		
120		AC	WG LEYH	518270	03/14/80	0	02/19/57	BO	FLD		IAMAW		
121		IN	A LARRIMORE	175685	07/07/80	0	04/10/54	SC			IAMAW		
122		AC	TP NORTON	775883	09/02/80	0	09/22/55	PR	FLD			BMWE	
123		AC	DR SHEFFIELD	521640	09/11/80	0	03/23/50	BO	SHOP		IAMAW		
124		AC	CA SMITH	627130	09/11/80	1	12/15/59	CO	SHOP		IAMAW		
125		OC	ML DAVIS	627600	11/17/80	0	07/01/40	CO	FLD		IAMAW		
126		AC	HD HIGDON	187481	11/24/80	0	03/04/44	LN	FLD		IAMAW		
127		AC	RE SINGLETON	187520	12/08/80	0	09/23/58	LN	FLD		IAMAW		
128		SK	JA MCINTYRE	177517	12/08/80	1	01/08/37	SC	SHOP		IAMAW		
129		AC	G COX JR	177518	12/15/80	0	11/27/49	SC	FLD		IAMAW		
130		AC	JE THOMAS	187525	12/30/80	0	01/13/57	LN	FLD		IAMAW		
131		AC	SS BURNETT	172563	01/05/81	3	01/08/48	SC	FLD			BMWE	
132		AC	MW KYSER	620426	02/02/81	1	08/27/57	CO	FLD		IAMAW		
133		AC	RD ORNDOFF	522307	02/09/81	0	08/19/44	BO	SHOP		IAMAW		
134		AC	JA HENDERSON	626551	03/09/81	0	09/09/48	CO	SHOP		IAMAW		
135		AC	WS STRICKLAND	177770	03/09/81	1	11/07/55	SC	FLD			BMWE	
136		AC	TM SMITH	522165	03/18/81	0	01/24/40	CO	FLD		IAMAW		
137		AC	RE BLAKE	177787	03/20/81	0	09/28/54	SC	FLD		IAMAW		
138		AC	EL NACHTMAN	627805	03/23/81	0	02/17/53	CO	SHOP		IAMAW		
139		AC	EE CORBIN	186816	05/08/81	0	08/01/52	LN	FLD		IAMAW		
140		DI	PB LEASURE	521440	07/06/81	0	01/01/42	BO	FLD		IAMAW		
141		AC	DR GILNER	768243	07/16/81	0	12/31/47	PR	FLD			BMWE	
142		OC	LA BLANKENSHIP	628405	07/27/81	0	09/21/48	CO			IAMAW		
143		AC	MA STEELE	630201	08/10/81	0	08/25/54	CO	FLD		IAMAW		
144		AC	TA SAPP JR	177898	08/17/81	0	10/23/53	SC	FLD		IAMAW		
145		AC	TJ STRUFFOLINO	774580	08/24/81	0	07/31/53	NY	FLD		IAMAW		
146		AC	FO CORBIN	188030	09/10/81	0	08/27/54	LN	FLD		IAMAW		
147		AC	JE MORGAN JR	627607	09/29/81	0	01/20/36	CO	FLD		IAMAW		
148		AC	TL HILKEY	187051	11/29/81	0	05/08/55	LN	FLD		IAMAW		
149		OR	SE TACKETT	523148	12/01/81	0	11/29/55	CO	SHOP		IAMAW		
150		AC	JL HERBERT	188143	12/02/81	0	09/30/44	LN	FLD		IAMAW		
151		AC	WL STUCKEY	188062	12/09/81	0	02/20/56	LN	FLD		IAMAW		
152		AC	JS LEES	523192	03/04/82	0	01/11/55	BO	FLD		IAMAW		
153		AC	LD STAINROD	188197	04/02/82	0	01/07/45	LN	FLD		IAMAW		
154		AC	DA SUTTON	773375	05/10/82	0	08/17/55	PR	FLD			BMWE	
155		AC	DC COBB	789264	05/12/82	0	03/18/53	NY	FLD		IAMAW		
156		SK	MJ MURPHY	775920	07/06/82	0	10/18/51	PR	FLD			BMWE	
157		AC	BA HUFF	188344	11/22/82	0	03/12/57	LN	FLD		IAMAW		
158		OR	DE LEE	504726	12/03/82	0	08/12/48	BO	SHOP				SMW
159		AC	RL JAMES	188283	12/20/82	0	07/15/51	LN	SHOP		IAMAW		
160		AC	CD PHIPPS	622135	02/14/83	0	05/23/46	CO	FLD		IAMAW		
161		DI	KM CLAY	622975	02/25/83	0	11/16/53	CO	FLD		IAMAW		
162		AC	NR HARRIS	187618	04/18/83	0	04/23/59	LN	FLD		IAMAW		
163		AC	MH EALY	188493	05/24/83	1	10/25/48	LN	FLD		IAMAW		
164		DI	GH JARRELL	625488	06/09/83	0	01/30/42	CO	FLD		IAMAW		
165		AC	KM KEETON	187698	06/27/83	1	02/02/61	LN	FLD		IAMAW		
166		AC	JL RUSSELL	628188	06/27/83	2	07/07/48	CO	FLD		IAMAW		
167		AC	DW BELEW	196029	06/29/83	0	07/01/55	LN	FLD		IAMAW		
168		AC	WT HOFELICH	187676	07/13/83	0	02/28/56	LN	FLD		IAMAW		
169		AC	BH SELPH	171937	08/10/83	0	11/05/43	SC	FLD			BMWE	
170		AC	RB OLIVER	177582	08/15/83	0	09/04/43	SC	FLD			BMWE	
171		AC	RE KIRLIN	770667	11/07/83	0	08/09/53	PR	FLD			BMWE	
172		AC	EG AKERS JR	166443	12/05/83	0	07/17/46	SC	FLD		IAMAW		
173		AC	JE CARTER	172150	02/23/84	0	09/07/56	SC	FLD		IAMAW		
174		AC	VH PARKER	196363	04/26/84	0	04/30/45	LN	FLD		IAMAW		
175		AC	HB BROCK	522452	11/26/84	0	12/06/43	BO	FLD				SMW

SEQ NO	RS ST	ID	SENIORITY DATE	RIGHTS	BIRTH RIGHTS	PRIOR SHOP		PRIOR	FLD/			CRAFT	CRAFT	CRAFT	
176		AC	TL DILLON	522420	12/03/84	0	09/27/55	BO	FLD					SMW	
177		AC	WE DANIELS	154883	12/05/84	0	07/02/46	SC	FLD				BMWE		
178		AC	GW REED	187840	12/07/84	0	11/24/60	LN	FLD	IAMAW					
179		AC	AB TAYLOR	625491	04/16/85	0	02/18/58	CO	FLD	IAMAW					
180		AC	LJ SHAWLER	196982	05/10/85	0	05/10/55	LN	FLD	IAMAW					
181		SK	TD MOODY	185588	06/01/85	0	11/16/51	LN	FLD	IAMAW					
182		AC	GF BUSH JR	624378	11/11/85	0	12/13/56	CO	FLD	IAMAW					
183		AC	T GILKERSON	626419	12/17/85	0	04/19/58	CO	FLD	IAMAW					
184		AC	RS STOCKSDALE	188482	03/11/86	0	08/24/57	LN	FLD	IAMAW					
185		AC	RB COLE	176656	04/01/86	1	04/21/51	SC	SHOP	IAMAW					
186		RD	DR STRONG	177833	04/01/86	2	09/23/60	SC		IAMAW					
187		AC	JJ FRANTZ	789666	04/15/86	0	01/01/60	NY	FLD	IAMAW					
188		AC	JJ SANTILLO	790129	08/13/86	0	05/17/55	NY	FLD	IAMAW					
189		AC	PD WAUGH	622083	09/02/86	0	12/08/58	CO	SHOP	IAMAW					
190		DI	BE GRADICK	140045	01/29/87	0	11/08/44	SC	FLD	IAMAW					
191		AC	RA ROSE	515368	04/01/87	0	10/03/51	BO	SHOP					SMW	
192		AC	RE PENROD	770858	04/06/87	0	03/15/52	NY	FLD	IAMAW					
193		AC	JS LAMB	790162	07/13/87	0	03/26/50	NY	FLD	IAMAW					
194		IN	JJ RZASA	790163	07/20/87	0	06/09/58	NY	FLD	IAMAW					
195		AC	GJ DUFFUS III	790165	10/01/87	0	04/16/68	NY	FLD	IAMAW					
196		AC	CS UHLMAN	937081	10/05/87	0	07/07/56	NY	FLD	IAMAW					
197		AC	SA PAHLS	926066	05/18/88	0	07/29/58	NY	FLD	IAMAW					
198		AC	DW MADDEN	622307	06/27/88	1	03/06/57	CO	FLD	IAMAW					
199		SF	DD RISNER	622305	06/28/88	0	07/30/59	CO	FLD	IAMAW					
200		AC	MA RUSSELL	790249	07/11/88	0	12/12/66	NY	FLD	IAMAW					
201		AC	JF NEEL	187065	07/25/88	0	01/03/51	LN	FLD	IAMAW					
202		AC	PW LYNN	168712	06/12/89	0	05/21/56	SC	FLD	IAMAW					
203		OC	R MUSGROVE	174436	06/22/89	0	05/19/55	SC	FLD				BMWE		
204		AC	LL BROWN III	172138	04/24/90	0	08/12/58	SC	FLD	IAMAW					
205		AC	RW HINNANT	320002	06/04/90	0	06/18/65	SC	FLD				BMWE		
206		OC	JR FREELS	624552	02/27/91	0	07/05/48	CO	SHOP	IAMAW					
207		AC	JD REED	187925	04/01/91	0	03/24/60	CR	FLD				BMWE		
208		OC	JR SORENSEN	174850	11/04/91	0	09/30/57	GA	FLD				BMWE		
209		RD	JA HOWELL	606862	09/07/93	1	07/06/47	NE	SHOP	IAMAW					
210		AC	TP ALLEY	320818	09/20/93	0	03/11/55	NE	SHOP				BMWE		
211		AC	FM DUHAMEL	320819	09/20/93	1	01/17/64	NE	FLD				BMWE		
212		AC	M HARRISON SR	179250	09/21/93	0	12/01/53	NE	SHOP	IAMAW					
213		AC	FE MILLIS	179253	09/27/93	0	03/07/65	NE	SHOP	IAMAW					
214		AC	AB MEYER	179252	09/27/93	1	08/25/69	NE	SHOP				BMWE		
215		AC	DQ CHERRY	179255	10/04/93	1	08/09/67	NE	FLD	IAMAW					
216		AC	AL LAWHORN JR	179259	10/11/93	2	11/20/61	NE	SHOP	IAMAW					
217		AC	SA ROBERTS	179261	10/11/93	3	01/26/67	NE	FLD	IAMAW					
218		AC	JS BROWN	179257	10/11/93	4	07/12/68	NE	SHOP				BMWE		
219		AC	AF ELLIOTT	320305	10/25/93	0	09/12/55	NE	FLD	IAMAW					
220		AC	TE HUNTER	179314	06/20/94	1	02/06/65	NE	SHOP	IAMAW					
221		OR	BS MAHANES	179315	06/20/94	2	10/29/69	NE	SHOP				BMWE		
222		AC	DB LELEUX	179368	11/28/94	1	03/10/49	NE	SHOP	IAMAW					
223		AC	JW MELTON	179370	11/28/94	3	02/19/68	NE	SHOP	IAMAW					
224		AC	SF JOHNSON	179380	01/03/95	1	04/29/52	NE	SHOP	IAMAW					
225		AC	WE BEVERLY JR	179377	01/03/95	2	01/31/59	NE	SHOP					SMW	
226		AC	HF LAYNE	179727	03/06/95	0	06/19/51	NE	SHOP	IAMAW					
227		AC	CD CASHION	377624	06/19/00	0	01/01/56	NE	FLD	IAMAW					
228		OC	DM BAILEY	377626	06/19/00	1	07/06/58	NE	SHOP	IAMAW					
229		AC	JC STAFFORD	377634	06/19/00	4	01/18/80	NE	FLD					SMW	
230		SL	BA HALSEY	378623	09/15/00	0	01/01/60	NE	SHOP	IAMAW					
231		AC	AD SCHWARTZ	379012	10/02/00	0	09/04/66	NE	FLD	IAMAW					
232		AC	RA LUTTRELL	374488	10/09/00	0	12/04/62	NE	FLD				BMWE		
233		AC	JA RAINWATER	373051	10/16/00	0	01/01/51	NE	FLD	IAMAW					
234		AC	AD SHEPHERD	379146	10/16/00	1	01/15/73	NE	SHOP	IAMAW					
235		AC	LA GRENIER JR	925861	10/17/00	0	02/08/56	NE	FLD	IAMAW					

SEQ NO.	RS ST	ID DATE	SENIORITY RIGHTS	BIRTH RIGHTS	PRIOR SHOP	PRIOR	FLD/			CRAFT	CRAFT	CRAFT	
236	AC		JC KNITT	379299	10/21/00	0	08/08/61	NE	FLD		BMWE		
237	AC		RL BIENVENUE	375592	10/23/00	0	02/08/47	NE	FLD	IAMAW			
238	AC		MH KENNEDY	379300	10/23/00	1	11/14/63	NE	FLD	IAMAW			
239	AC		EE NUCKOLS	379530	11/12/00	0	04/24/55	NE	FLD		BMWE		
240	AC		D FINDLEY	379546	11/13/00	0	12/28/52	NE	FLD		BMWE		
241	AC		GM SMITH JR	379518	11/13/00	1	07/31/56	NE	SHOP	IAMAW			
242	AC		B WENSEL SR.	379541	11/13/00	2	04/01/77	NE	FLD	IAMAW			
243	AC		MG POTEETE	380139	02/20/01	2	03/14/53	NE	FLD	IAMAW			
244	AC		DL MCCARTY JR	380178	02/26/01	0	10/15/70	NE	FLD	IAMAW			
245	AC		H WHITAKER JR	380179	02/26/01	1	07/27/71	NE	FLD	IAMAW			
246	WA		H KENNEDY	379791	04/02/01	0	05/21/56	NE	FLD		BMWE		
247	AC		RE LOVE	380490	05/07/01	0	07/28/57	NE	FLD	IAMAW			
248	AC		B THOMASON	380496	05/07/01	1	08/26/72	NE	FLD	IAMAW			
249	AC		RL LEONARD	380556	05/21/01	0	04/18/62	NE	FLD	IAMAW			
250	AC		BD SNOOK	380766	07/09/01	0	01/03/58	NE	FLD	IAMAW			
251	SL		J SPEAKE	380767	07/09/01	1	11/09/70	NE	FLD	IAMAW			
252	AC		AW LEACH	380875	07/30/01	0	03/04/72	NE	SHOP	IAMAW			
253	AC		CS FURCHES	609459	09/10/01	0	01/10/47	NE	FLD		BMWE		
254	AC		CS EADS	202564	09/11/01	0	01/18/71	NE	FLD		BMWE		
255	AC		AP RICHARDSON	381167	10/08/01	0	12/05/61	NE	SHOP	IAMAW			
256	AC		WP TRAINUM	381166	10/08/01	1	08/19/73	NE	SHOP	IAMAW			
257	AC		SN SAIN	381469	01/14/02	0	04/10/58	NE	FLD	IAMAW			
258	AC		JR STOKELY	381468	01/14/02	1	10/28/64	NE	FLD	IAMAW			
259	AC		BE DEFIBAUGH	381470	01/14/02	2	09/22/66	NE	FLD	IAMAW			
260	AC		JW SPEAKE	380423	02/19/02	0	10/24/74	NE	FLD		BMWE		
261	AC		RL MILES	775238	02/25/02	0	06/03/53	NE	FLD		BMWE		
262	AC		RA WADE	378128	04/01/02	0	08/16/61	NE	FLD	IAMAW			
263	AC		D PHELPS	381987	04/15/02	0	05/20/60	NE	FLD	IAMAW			
264	AC		SF HALTERMAN	382124	04/22/02	0	07/24/46	NE	FLD	IAMAW			
265	AC		BA LORD	382123	04/22/02	1	04/06/58	NE	SHOP	IAMAW			
266	AC		AG SIMPSON	382171	04/29/02	0	05/03/58	NE	FLD	IAMAW			
267	AC		JJ THEODORE	382172	04/29/02	1	08/22/58	NE	FLD	IAMAW			
268	AC		ML KING	382169	04/29/02	2	07/09/67	NE	FLD	IAMAW			
269	AC		RD WILT	382545	05/20/02	0	04/17/52	NE	SHOP	IAMAW			
270	OR		KL DOUSTOUT	382541	05/20/02	1	10/01/53	NE	SHOP	IAMAW			
271	AC		MS MACE	382543	05/20/02	2	07/21/61	NE	SHOP	IAMAW			
272	AC		R ROBINSON	382546	05/20/02	3	07/30/62	NE	SHOP	IAMAW			
273	AC		DE MAHONEY	382544	05/20/02	4	11/11/64	NE	SHOP	IAMAW			
274	NS		JI HAYS	382542	05/20/02	5	10/19/74	NE	SHOP	IAMAW			
275	AC		PD WHITE	380557	06/03/02	0	02/14/52	NE	SHOP	IAMAW			
276	AC		JK WAGNER	376434	06/17/02	0	10/29/62	NE	FLD	IAMAW			
277	AC		CD BLARE	535928	08/26/02	0	09/26/77	NE	FLD	IAMAW			
278	AC		DE WINE	539124	01/03/03	0	02/13/60	NE	FLD	IAMAW			
279	AC		JA PHILIPPS	539126	01/03/03	1	10/27/62	NE	FLD	IAMAW			
280	AC		GL BANKS	539595	03/03/03	0	01/24/62	NE	SHOP	IAMAW			
281	AC		CM HUDDLESTON	539594	03/03/03	1	10/18/71	NE	FLD	IAMAW			
282	AC		RN LAWLER	539592	03/03/03	3	03/23/72	NE	FLD	IAMAW			
283	AC		SL HENDERSON	539590	03/03/03	5	11/04/74	NE	SHOP	IAMAW			
284	AC		M MACE JR.	539589	03/03/03	6	09/15/80	NE	SHOP	IAMAW			
285	AC		LA ALVIS	539889	03/31/03	1	04/12/56	NE	FLD	IAMAW			
286	AC		MW AKERS	539879	03/31/03	2	12/03/58	NE	SHOP	IAMAW			
287	AC		RJ SAWYER	539885	03/31/03	3	01/24/62	NE	FLD	IAMAW			
288	AC		CK BREWER	539884	03/31/03	4	12/03/64	NE	SHOP	IAMAW			
289	AC		T CAMPBELL	539887	03/31/03	5	02/05/66	NE	SHOP	IAMAW			
290	AC		TE WRIGHT JR.	539886	03/31/03	6	04/02/75	NE	FLD	IAMAW			
291	AC		JA PROVENZANO	208056	04/01/03	0	08/15/68	NE	FLD	IAMAW			
292	AC		MD DEFIBAUGH	653946	04/28/03	0	06/07/73	NE	FLD	IAMAW			
293	AC		AA KESSLER	654128	05/12/03	0	12/11/60	NE	FLD		BMWE		
294	AC		SL HIGGINBOTHAM	654118	05/12/03	1	06/19/69	NE	FLD	IAMAW			
295	AC		RM BEAL	378243	05/27/03	0	02/12/52	NE	FLD	IAMAW			

SEQ NO.	RS ST	ID DATE	SENIORITY RIGHTS	BIRTH RIGHTS	PRIOR SHOP		PRIOR	FLD/			CRAFT	CRAFT	CRAFT	
296	AC		DS ZAHORANSKY	570838	07/07/03	2	07/20/67	NE	FLD		IAMAW			
297	AC		WD GREEN	570931	07/14/03	1	06/24/67	NE	FLD		IAMAW			
298	AC		CW DUCKERT	570998	07/21/03	0	09/30/77	NE	FLD		IAMAW			
299	AC		HE MOORE	571166	08/04/03	0	11/10/52	NE	FLD		IAMAW			
300	AC		RL BROWN	571167	08/04/03	1	06/09/56	NE	FLD		IAMAW			
301	AC		DR WEBB	571170	08/04/03	2	01/12/63	NE	FLD		IAMAW			
302	AC		TL PLESS	571177	08/04/03	3	01/10/71	NE	FLD		IAMAW			
303	AC		VK BOWLING	571253	08/18/03	0	08/08/54	NE	FLD		IAMAW			
304	AC		JC BRIGMAN	571405	09/15/03	0	05/31/70	NE	FLD		IAMAW			
305	AC		EL ISTAD	571485	10/06/03	0	03/25/67	NE	FLD		IAMAW			
306	AC		DB STINNETT	572311	03/22/04	0	12/30/69	NE	FLD		IAMAW			
307	AC		TC STINSON	572637	04/26/04	0	04/03/58	NE	FLD		IAMAW			
308	AC		JE STAFFORD	573497	07/12/04	0	04/01/77	NE	FLD		IAMAW			
309	AC		GA WALKER	574308	10/11/04	0	02/19/66	NE	FLD		IAMAW			
310	AC		RL MUNDIE	574571	11/15/04	0	10/18/61	NE	SHOP		IAMAW			
311	AC		PB KASNY	105015	11/29/04	0	05/01/53	NE	SHOP		IAMAW			
312	AC		JA EDWARDS	104987	11/29/04	1	01/12/79	NE	FLD		IAMAW			
313	AC		RD ADAMS	117925	01/24/05	0	03/07/69	NE	FLD		IAMAW			
314	AC		GR FIELDS JR	117924	01/24/05	1	09/15/82	NE	FLD		IAMAW			
315	AC		CB FURCHES	208377	06/06/05	0	03/27/69	NE	FLD			BMWE		
316	AC		CE CARNAL	539130	06/12/05	0	11/21/74	NE	FLD		IAMAW			
317	AC		RP TRUITT	208727	06/20/05	0	07/16/73	NE	FLD			BMWE		
318	AC		SL WEST	208948	07/05/05	0	09/30/61	NE	SHOP				SMW	
319	AC		KW NEWBERRY	208944	07/05/05	1	07/19/62	NE	SHOP				SMW	
320	AC		FE MORGAN	208943	07/05/05	2	12/10/64	NE	SHOP		IAMAW			
321	AC		RJ PARM	208945	07/05/05	3	08/14/65	NE	SHOP		IAMAW			
322	AC		WE ROBBINS	208946	07/05/05	4	01/06/73	NE	SHOP		IAMAW			
323	AC		ME AIKEN	209341	07/25/05	0	03/25/56	NE	FLD		IAMAW			
324	AC		EF DEALE	209489	08/01/05	0	03/04/59	NE	SHOP		IAMAW			
325	AC		JD HENSLEY	209491	08/01/05	1	02/14/81	NE	SHOP		IAMAW			
326	AC		MC DENHAM	570920	08/16/05	0	08/09/63	NE	SHOP		IAMAW			
327	AC		CM DUNCAN	209847	08/29/05	0	4/26/1970	NE	FLD		IAMAW			
328	AC		SS DUNCAN	211407	01/16/06	0	8/24/1972	NE	FLD		IAMAW			
329	AC		GB JACKSON	212719	2/6/2006	0	4/14/1965	NE	FLD		IAMAW			
330	AC		BE WHITIS	212713	2/6/2006	1	1/11/1976	NE	FLD		IAMAW			
331	AC		BA MATTHEWS	213530	3/27/2006	0	6/16/1964	NE	FLD		IAMAW			
332	AC		SA SHANDEL	214366	5/15/2006	0	6/17/1970	NE	FLD		IAMAW			
333	AC		JM DEPRIEST	214672	5/22/2006	0	7/17/1967	NE	FLD		IAMAW			
334	AC		RE FOSTER	214673	5/22/2006	1	9/8/1972	NE	FLD		IAMAW			
335	AC		JL LEFFINGWELL	215089	6/19/2006	0	6/7/1967	NE	FLD		IAMAW			
336	AC		SW ELLIOTT	215082	6/19/2006	1	12/10/1968	NE	SHOP		IAMAW			
337	AC		CL HARLOW III	215077	6/19/2006	2	11/21/1971	NE	SHOP		IAMAW			
338	AC		CD TAYLOR	215086	6/19/2006	3	4/12/1974	NE	SHOP		IAMAW			
339	AC		RJ BONISTALLI	215072	6/19/2006	4	4/30/1976	NE	SHOP		IAMAW			
340	AC		DC JOHNSON JR	215084	6/19/2006	5	2/11/1984	NE	SHOP		IAMAW			
341	AC		K MOORE	215156	06/26/06	0	8/24/1959	NE	FLD		IAMAW			
342	AC		VL MCCRAY	215246	07/10/06	0	5/6/1966	NE	FLD		IAMAW			
343	AC		DM BURNETT	215247	7/10/2006	1	2/15/1967	NE	FLD		IAMAW			
344	AC		CJ DOMIANO	215457	7/24/2006	0	4/14/1967	NE	FLD		IAMAW			
345	AC		WW HUTCHISON	217858	9/11/2006	0	12/1/1954	NE	SHOP			BMWE		
346	AC		J BALDERSON SR	217865	9/11/2006	1	10/20/1966	NE	SHOP			BMWE		
347	AC		M BELL	217861	9/11/2006	2	6/7/1968	NE	SHOP			BMWE		
348	AC		S HODI	217864	9/11/2006	3	11/11/1968	NE	FLD			BMWE		
349	AC		VA JOBB	217869	9/11/2006	4	10/14/1969	NE	SHOP			BMWE		
350	AC		SW HALL	217860	09/11/06	5	9/29/1970	NE	FLD			BMWE		
351	AC		WE BOWLES	217871	9/11/2006	6	10/13/1972	NE	SHOP			BMWE		
352	AC		NE DARLINGTON	217870	9/11/2006	7	5/24/1980	NE	SHOP			BMWE		
353	AC		EG SLAUGHTER	222525	10/2/2006	0	3/25/1973	NE	FLD		IAMAW			
			353								259	82	12	0

SEQ. NO	RS ST	ID DATE	SENIORITY RIGHTS	SENIORITY RIGHTS	BIRTH SHOP	PRIOR	PRIOR	FLD/			CRAFT	CRAFT	CRAFT	
											73%	23%	3%	353
								Side Letter #2 %s			76%	19%	5%	
ST (STATUS) CODES·				# OF EMPLOYEES				Difference			-3%	+4%	-2%	
DI - DISABILITY								8						
SL - SICK > 30								5						
OC - OFFICIAL								13						
AC - ACTIVE								268						
SF - SENIORITY DATE FROZEN								5						
SK - SICK								6						
RD - RETIRED DISABILITY								6						
IN - INACTIVE								3						
SU - SUSPENSION								1						
OR - ACTIVE OTHER ROSTER								6						
IP - INJURY ON-DUTY								1						
NS - SETTLEMENT								7						
UB - UNION BUSINESS								2						
PI - PHYS INCAPACITATED								1						
RE - RESIGNED								1						
WA - CALLED TO ACTIVE MILITARY DUTY								1						
EMPLOYEES ACTIVE ON THIS ROSTER.								268						
EMPLOYEES NOT ACTIVE ON THIS ROSTER:								66						
TOTAL EMPLOYEES ON THIS ROSTER.								334						

22 of 112 DOCUMENTS

NORFOLK & WESTERN RAILWAY COMPANY et al., PETITIONERS v. AMERICAN TRAIN DISPATCHERS' ASSOCIATION et al. CSX TRANSPORTATION, INC., PETITIONER V. BROTHERHOOD OF RAILWAY CARMEN ET AL.

No. 89-1027

SUPREME COURT OF THE UNITED STATES

499 U.S. 117; 111 S. Ct. 1156; 113 L. Ed. 2d 95; 1991 U.S. LEXIS 1709; 59 U.S.L.W. 4189; 118 Lab. Cas. (CCH) P10,598; 102-69 Fulton County D. Rep. 17B; 136 L.R.R.M. 2727; 91 Cal. Daily Op. Service 1970; 91 Daily Journal DAR 3215

December 3, 1990, Argued
March 19, 1991, * Decided

* Together with No. 89-1028, CSX Transportation, Inc. v. Brotherhood of Railway Carmen et al., also on certiorari to the same court.

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

DISPOSITION:

279 U.S. App. D. C 239, 880 F.2d 562, reversed and remanded.

DECISION:

49 USCS 11341(a) held to exempt rail carriers from obligations under collective bargaining agreements as necessary to effect consolidations approved by Interstate Commerce Commission.

SUMMARY:

These two, consolidated cases presented the question whether *49 USCS 11341*(a)--which provides that, where the Interstate Commerce Commission (ICC) has approved a rail carrier consolidation, a carrier in the consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [the carrier] carry out the transaction"--exempts a carrier in an approved consolidation from legal obligations arising under a collective bargaining agreement. In one case, following approval by the ICC of the consolidation of two rail carriers, the newly consolidated carriers had proposed for reasons of efficiency to transfer certain employees of one carrier to another city. The labor union representing the affected employees contended that (1) the carriers' proposal involved a change in the collective bargaining agreement between the carrier and its employees that was subject to mandatory bargaining under the Railway Labor Act (RLA) *(45 USCS 151* et seq.); and (2) the carriers were required to preserve the affected employees' rights under the collective bargaining agreement and their right to union representation under the RLA. After negotiations failed to resolve these issues, arbitration was sought pursuant to conditions imposed by the ICC generally upon rail carrier mergers to protect the interests of carrier employees. The arbitration committee ruled in the carriers' favor, stating that the proposed transfer of employees was an incident of the ICC-approved merger and that the provisions of the collective bargaining agreement and the RLA could be abrogated as necessary to implement the merger. On appeal, the ICC affirmed the ruling of the arbitration committee, stating that because the employee transfer was incident to the approved merger, it was by virtue of 11341(a) not subject to conflicting laws. In the second case, a carrier formed by an ICC-approved consolidation proposed to close a repair shop and transfer the shop's employees to a similar shop at a different location. The union representing the employees contended that this proposal contravened its collective bargaining agreement. An arbitration committee ruled that (1) the collective bargaining agreement could be superseded to

the extent that it impeded an operational change authorized or required by the ICC's approval of the consolidation; and (2) the repair work at the shop the carrier proposed to close could be transferred, because such a transfer was necessary to the original consolidation; but (3) employees protected against transfer by the collective bargaining agreement could not be transferred. On appeal, the ICC affirmed the ruling regarding the transfer of work, and reversed the ruling regarding the transfer of employees, stating that preventing the transfer of employees would effectively prevent implementation of the consolidation *(4 ICC2d 641)*. On appeal of both cases, the United States Court of Appeals for the District of Columbia Circuit, considering the cases together, reversed and remanded the cases to the ICC, holding that 11341(a) does not authorize the ICC to relieve a party of obligations under a collective bargaining agreement, which obligations impede implementation of an approved consolidation *(279 App DC 239, 880 F2d 562)*.

On certiorari, the United States Supreme Court reversed and remanded for further proceedings. In an opinion by Kennedy, J., joined by Rehnquist, Ch. J., and White, Blackmun, O'Connor, Scalia, and Souter, JJ., it was held that 11341(a) exempts a carrier in an ICC-approved consolidation from any legal obligations imposed by a collective bargaining agreement to the extent necessary to carry out the consolidation, because (1) the language of 11341(a), exempting carriers from "the antitrust laws and all other law, including State and municipal law," is clear, broad, and unqualified, and includes the Railway Labor Act, which gives legal and binding effect to collective bargaining agreements between rail carriers and their employees; (2) this interpretation of 11341(a) makes sense of the consolidation provisions of the Interstate Commerce Act, which were designed to promote economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure; and (3) this interpretation of 11341(a) will not lead to bizarre results, inasmuch as the immunity provision does not exempt carriers from all law, but rather from all law as necessary to carry out an approved transaction.

Stevens, J., joined by Marshall, J., dissented, expressing the view that the exemption in 11341(a) does not include obligations imposed by private contracts.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
COURTS §775
INTERSTATE COMMERCE COMMISSION §39
LABOR §41
STATUTES §82
consolidation of rail carriers -- exemption from other laws -- collective bargaining agreements --

Headnote [1A][1B][1C][1D][1E][1F]

49 USCS 11341(a), a part of the Interstate Commerce Act, exempts a rail carrier in a consolidation approved by the Interstate Commerce Commission from any legal obligations imposed by a collective bargaining agreement to the extent necessary to carry out the consolidation, because (1) the language of 11341(a), exempting carriers from "the antitrust laws and all other law, including State and municipal law," is clear, broad, and unqualified, and includes the Railway Labor Act, which gives legal and binding effect to collective bargaining agreements between rail carriers and their employees; (2) the principle of ejusdem generis--which states that when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration, but which does not control when the whole context dictates a different conclusion--does not require a different result, inasmuch as (a) because repeals of the antitrust laws by implication from a regulatory statute are strongly disfavored, Congress may have determined that it should make a clear and separate statement to include antitrust laws within the general exemption of 11341(a), (b) the otherwise general term "all other law" includes, but is not limited to, "State and municipal law," showing that "all other law" refers to more than laws related to antitrust, and (c) the fact that "all other law" entails more than "the antitrust laws," but is not limited to "State and municipal law," reinforces the conclusion, inherent in the word "all," that the phrase "all other law" includes federal law other than the antitrust laws; (3) this conclusion is supported by prior case law in which the United States Supreme Court, construing a statute which was the immediate precursor of 11341(a) and which was substantially identical to it, held that the contract rights under state law of minority shareholders--who contended that the terms of an ICC-approved merger diminished the value of their shares as guaranteed by the corporate charter--did not survive the merger agreement found by the ICC to be in the public interest; (4) this interpretation of 11341(a) makes sense of the consolidation provisions of the Interstate Commerce Act, which were designed to promote economy and efficiency in interstate transportation by removing the burdens of excessive expenditure while also requiring the ICC to accommodate to the greatest extent possible the interests of affected carrier employees before approving a consolidation; and (5) this interpretation of 11341(a) will not lead to bizarre results, inasmuch as the immunity provision of the statute does not exempt carriers from all law, but rather from all law as necessary to carry out an approved consolidation. (Stevens and Marshall, JJ., dissented from this holding.)

[***LEdHN2]

APPEAL §1662
mootness -- interpretation of statute -- alternative basis for decision on remand --
Headnote:[2A][2B]

On certiorari from a judgment of a United States Court of Appeals which (1) held that *49 USCS 11341*(a)--which provides that, where the Interstate Commerce Commission (ICC) has approved a rail carrier consolidation, a carrier in the consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [the carrier] carry out the transaction"--does not exempt a rail carrier in an approved consolidation from obligations imposed by a collective bargaining agreement; (2) reversed rulings by the ICC in two cases stating that under 11341(a), carriers in approved consolidations who proposed to implement the consolidations by taking measures which allegedly violated collective bargaining agreements, were not obligated to honor the collective bargaining agreements or to engage in procedures mandated by the Railway Labor Act (RLA) *(45 USCS 151* et seq.) for the resolution of labor disputes, and (3) remanded the cases for consideration by the ICC (a) whether 13341(a) could operate to *override provisions of the RLA, and (b) whether, under* "labor-protective" conditions promulgated by the ICC pursuant to *49 USCS 11347* and applying to rail carrier consolidations, an arbitration committee hearing a labor dispute arising from an approved railroad merger may override provisions of a collective bargaining agreement, the United States Supreme Court--where the ICC, on remand from the United States Court of Appeals, has (1) adhered to the Court of Appeals' ruling that 11341(a) does not authorize it to override provisions of a collective bargaining agreement; (2) ruled that 11341(a) authorizes it to foreclose resort to RLA remedies for modification and enforcement of collective bargaining agreements, at least to the extent of its authority under 11347 to impose labor-protective conditions on rail carrier consolidations; (3) remanded its decision to the parties for further negotiation or arbitration; and (4) predicated the analysis in its remand order on the correctness of the Court of Appeals' interpretation of 11341(a)--will not dismiss the case as moot, because (1) the Supreme Court's definitive interpretation of 11341(a) may affect the ICC's remand order; (2) the ICC's compliance with the Court of Appeals' mandate does not affect the correctness of the Court of Appeals' decision; and (3) the alternative basis offered by the ICC for its remand order does not end the controversy between the parties, inasmuch as the parties retain an interest in the validity of the ICC's original order because the Court of Appeals may again disagree with the ICC's interpretation of 11341(a) on review of the ICC's order on remand.

[***LEdHN3]
ADMINISTRATIVE LAW §276
judicial review -- construction of statute --
Headnote:[3]

When reviewing a federal administrative agency's interpretation of a federal statute, the United States Supreme Court begins with the language of the statute and asks whether Congress has spoken on the subject before it; if the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.

[***LEdHN4]
CONTRACTS §87
legal force --
Headnote:[4]

A contract has no legal force apart from the law that acknowledges its binding character.

SYLLABUS:

Once the Interstate Commerce Commission (ICC) has approved a rail carrier consolidation under the conditions set forth in Chapter 113 of the Interstate Commerce Act (Act), *49 U S C. § 11301 et seq.*, a carrier in such a consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction . . .," § 11341(a). In these cases, the ICC issued orders exempting parties to approved railway mergers from the provisions of collective-bargaining agreements. The Court of Appeals reversed and remanded, holding that § 11341(a) does not authorize the ICC to relieve a party of collectively bargained obligations that impede implementation of an approved transaction. Reasoning, *inter alia*, that the legislative history demonstrates a congressional intent that § 11341(a) apply to specific types of positive laws and not to common-law rules of liability, such as those governing contracts, the court declined to decide whether the section could operate to override provisions of the Railway Labor Act (RLA) governing the formation, construction, and enforcement of the collective-bargaining agreements at issue.

Held: The § 11341(a) exemption "from all other law" includes a carrier's legal obligations under a collective-bargaining agreement when necessary to carry out an ICC-approved transaction. The exemption's language, as correctly interpreted by the ICC, is clear, broad, and unqualified, bespeaking an unambiguous congressional intent to include any obstacle imposed by law. That language neither admits of a distinction between positive enactments and common-law liability rules nor supports the exclusion of contractual obligations. Thus, the ex-

emption effects an override of such obligations by superseding the law -- here, the RLA -- which makes the contract binding. Cf. *Schwabacher v. United States, 334 U.S. 182, 194-195, 200-201* This determination makes sense of the Act's consolidation provisions, which were designed to promote economy and efficiency in interstate transportation by removing the burdens of excessive expenditure. Whereas § 11343(a)(1) requires the ICC to approve consolidations in the public interest, and § 11347 conditions such approval on satisfaction of certain labor-protective conditions, the § 11341(a) exemption guarantees that once employee interests are accounted for and the consolidation is approved, the RLA -- whose major disputes resolution process is virtually interminable -- will not prevent the efficiencies of consolidation from being achieved. Moreover, this reading will not, as the lower court feared, lead to bizarre results, since § 11341(a) does not exempt carriers from all law, but rather from all law *necessary* to carry out an *approved* transaction. Although it might be true that § 11341(a)'s scope is limited by § 11347, and that the breadth of the exemption is defined by the scope of the approved transaction, the conditions of approval and the standard for necessity are not at issue because the lower court did not pass on them and the parties do not challenge them here Pp. 127-134.

COUNSEL:

Jeffrey S Berlin argued the cause for petitioners in both cases. With him on the briefs for petitioners in No. 89-1027 were Mark E. Martin and William P. Stallsmith, Jr James S. Whitehead, Nicholas S. Yovanovic, and James D. Tomola filed briefs for petitioner in No. 89-1028.

Jeffrey S. Minear argued the cause for the federal respondents in support of petitioners in both cases pursuant to this Court's Rule 12.4. On the briefs were Acting Solicitor General Roberts, Deputy Solicitor General Shapiro, Lawrence S. Robbins, Robert S. Burk, Henri F. Rush, and John J. McCarthy, Jr.

William G. Mahoney argued the cause for the union respondents in both cases. With him on the brief was John O'B. Clarke, Jr. +

+ Richard T. Conway, Ralph J. Moore, Jr., D. Eugenia Langan, and David P. Lee filed a brief for the National Railway Labor Conference as amicus curiae urging reversal.

JUDGES:

Kennedy, J., delivered the opinion of the Court, in which Rehnquist, C.J., and White, Blackmun, O'Connor, Scalia, and Souter, JJ., joined. Stevens, J , filed a dissenting opinion, in which Marshall, J., joined, post, p. 134.

OPINION:

[*119] [***101] [**1158] JUSTICE KENNEDY delivered the opinion of the Court.

[***LEdHR1A] [1A]The Interstate Commerce Commission has the authority to approve rail carrier consolidations under certain conditions. *49 U. S C. § 11301 et seq.* A carrier in an approved consolidation "is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction. . . ." § 11341(a). These cases require us to decide whether the carrier's exemption under § 11341(a) "from all other law" extends to its legal obligations under a collective-bargaining agreement. We hold that it does.

I

A

"Prior to 1920, competition was the *desideratum* of our railroad economy." *St. J oe Paper Co v. Atlantic Coast Line R. Co., 347 U S 298, 315 (1954).* Following a period of Government ownership during World War I, however, "many of the railroads were in very weak condition and their continued survival was in jeopardy." *Id , at 315.* At that time, the Nation made a commitment to railroad carrier consolidation as a means of promoting the health and efficiency of the railroad industry. Beginning with the Transportation Act of 1920, ch. 91, 41 Stat. 456, "consolidation of the railroads of the country, in the interest of economy and efficiency, became an established national policy . . . so intimately related to the maintenance of an adequate and efficient rail transportation system that the 'public interest' in the one cannot be dissociated from that in the other." *United States v. Lowden, 308 U.S. 225, 232 (1939).* See generally *St.* [**1159] *Joe Paper Co.* v. *Atlantic Coast Line R. Co., supra,* at 315-321.

Chapter 113 of the Interstate Commerce Act, recodified in 1978 at *49 U. S. C. § 11301 et seq.*, contains the current statement of this national policy. The Act grants the Interstate Commerce Commission exclusive authority to examine, condition, and approve proposed mergers and consolidations of [*120] transportation carriers within its jurisdiction. § 11343(a)(1). The Act requires the Commission to "approve and authorize" the transactions when they are "consistent with the public interest." § 11344(c). Among the factors the Commission must consider in making its public interest determination are "the interests of carrier employees affected by the proposed transaction." § 11344(b)(1)(D). n1 In authorizing a merger or consolidation, the Commission [***102]

"may impose conditions governing the transaction." § 11344(c). Once the Commission approves a transaction, a carrier is "exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let [it] carry out the transaction." § 11341(a).

n1 Section § 11344(b)(1) provides:

"In a proceeding under this section which involves the merger or control of at least two class I railroads, as defined by the Commission, the Commission shall consider at least the following:

"(A) the effect of the proposed transaction on the adequacy of transportation to the public.

"(B) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction.

"(C) the total fixed charges that result from the proposed transaction.

"(D) the interest of carrier employees affected by the proposed transaction.

"(E) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region."

When a proposed merger involves rail carriers, the Act requires the Commission to impose labor-protective conditions on the transaction to safeguard the interests of adversely affected railroad employees. § 11347. In *New York Dock Railway -- Control -- Brooklyn Eastern Dist. Terminal, 360 I. C. C. 60, 84-90,* aff'd *sub nom. New York Dock Railway v. United States, 609 F.2d 83 (CA2 1979),* the Commission announced a comprehensive set of conditions and procedures designed to meet its obligations under § 11347. Section 2 of the *New York Dock* conditions provides that the "rates of pay, rules, working conditions and all collective [*121] bargaining and other rights, privileges and benefits . . . under applicable laws and/or existing collective bargaining agreements . . . shall be preserved unless changed by future collective bargaining agreements." *360 I. C. C., at 84.* Section 4 sets forth negotiation and arbitration procedures for resolution of labor disputes arising from an approved railroad merger. *Id., at 85.* Under § 4, a merged or consolidated railroad which plans an operational change that may cause dismissal or displacement of any employee must provide the employee and his union 90 days' written notice. *Ibid.* If the carrier and union cannot agree on terms and conditions within 30 days, each party may submit the dispute for an expedited "final, binding and conclusive" determination by a neutral arbitrator. *Ibid.* Finally, the *New York Dock* conditions provide affected employees with up to six years of income protection, as well as reimbursements for moving costs and losses from the sale of a home. See *id., at 86-89* (§§ 5-9, 12).

B

The two cases before us today involve separate ICC orders exempting parties to approved railway mergers from the provisions of collective-bargaining agreements.

1. In No. 89-1027, the Commission approved an application by NWS Enterprises, Inc., to acquire control of two previously separate rail carriers, petitioners Norfolk and Western Railway Company (N&W) and Southern Railway Company (Southern). See *Norfolk Southern Corp. -- Control -- Norfolk & W. R. Co. and Southern R. Co., 366 I. C. C. 173* [**1160] *(1982).* In its order approving control, the Commission imposed the standard *New York Dock* labor-protective conditions and noted the possibility that "further displacement [of employees] may arise as additional coordinations occur." *366 I. C. C., at 230-231.*

In September 1986, this possibility became a reality. The carriers notified the American Train Dispatchers' Association, the bargaining representative for certain N&W employees, [*122] that they proposed to consolidate all "power distribution" -- the assignment of locomotives to particular trains and facilities -- for the N&W-Southern operation. To effect the efficiency move, the carriers informed the union that they would transfer work performed at the N&W power distribution center in Roanoke, Virginia, to the Southern [***103] center in Atlanta, Georgia. The carriers proposed an implementing agreement in which affected N&W employees would be made management supervisors in Atlanta, and would receive increases in wages and benefits in addition to the relocation expenses and wage protections guaranteed by the *New York Dock* conditions. The union contended that this proposal involved a change in the existing collective-bargaining agreement that was subject to mandatory bargaining under the Railway Labor Act (RLA), 44 Stat. 577, as amended, *45 U. S. C. § 151 et seq.* The union also maintained that the carriers were required to preserve the affected employees' collective-bargaining rights, as well as their right to union representation under the RLA.

Pursuant to § 4 of the *New York Dock* procedures, the parties negotiated concerning the terms of the implementing agreement, but they failed to resolve their differences. As a result, the carriers invoked the *New York Dock* arbitration procedures. After a hearing, the arbitration committee ruled in the carriers' favor. The committee noted that the transfer of work to Atlanta was an incident of the control transaction approved by the

ICC, and that it formed part of the "additional coordinations" the ICC predicted would be necessary to achieve "greater efficiencies." The committee also held it had the authority to abrogate the provisions of the collective-bargaining agreement and of the RLA as necessary to implement the merger. Finally, it held that because the application of the N&W bargaining agreement would impede the transfer, the transferred employees did not retain their collective-bargaining rights.

[*123] The union appealed to the Commission, which affirmed by a divided vote. It explained that "it has long been the Commission's view that private collective bargaining agreements and [Railway Labor Act] provisions must give way to the Commission-mandated procedures of section 4 [of the *New York Dock* conditions] when parties are unable to agree on changes in working conditions required to implement a transaction authorized by the Commission." App. to Pet. for Cert. in No. 89-1027, p. 33a Accordingly, the Commission upheld the arbitration committee's determination that the "compulsory, binding arbitration required by Article I, section 4 of *New York Dock*, took precedence over RLA procedures whether asserted independently or based on existing collective bargaining agreements" *Id.*, at 35a. The Commission also held that because the work transfer was incident to the approved merger, it was "immunized from conflicting laws by section 11341(a)." *Ibid* Noting that "imposition of the collective bargaining agreement would jeopardize the transaction because the work rules it mandates are inconsistent with the carriers' underlying purpose of integrating the power distribution function," the Commission upheld the decision to override the collective-bargaining agreement and RLA provisions. *Id*, at 37a.

2. In No. 89-1028, the Commission approved an application by CSX Corporation to acquire control of the Chessie System, Inc., and Seaboard Coastline Industries, Inc. *CSX Corp.– Control – Chessie System, Inc, and Seaboard Coastline Industries, Inc.*, [***104] *363* [**1161] *I. C. C. 521 (1980).* Chessie was the parent of the Chesapeake and Ohio Railway Company and the Baltimore and Ohio Railway Company; Seaboard was the parent of the Seaboard Coast Line Railroad Company. In approving the control acquisition, the Commission imposed the *New York Dock* conditions and recognized that "additional coordinations may occur that could lead to further employee displacements." *363 I. C. C., at 589*

[*124] In August 1986, the consolidated carrier notified respondent Brotherhood of Railway Carmen that it planned to close Seaboard's heavy freight car repair shop at Waycross, Georgia, and transfer the Waycross employees to Chessie's similar shop in Raceland, Kentucky. The carrier informed the Brotherhood that the proposed transfer would result in a net decrease of jobs at the two shops. Pursuant to *New York Dock*, the carrier and the union negotiated concerning the terms of an agreement to implement the transfer. The sticking point in the negotiations involved a 1966 collective-bargaining agreement between the union and Seaboard known as the "Orange Book." The Orange Book provided that the carrier would employ each covered employee and maintain each employee's work conditions and benefits for the remainder of the employee's working life. The Brotherhood contended that the Orange Book prevented CSX from moving work or covered employees from Waycross to Raceland

When negotiations broke down, both the union and the carrier invoked the arbitration procedures under § 4 of *New York Dock*. The arbitration committee ruled for the carrier. It agreed with the union that the Orange Book prohibited the proposed transfer of work and employees. It determined, however, that it could override any Orange Book or RLA provision that impeded an operational change authorized or required by the ICC's decision approving the original merger. The committee then held that the carrier could transfer the heavy repair work, which it found necessary to the original control acquisition, but could not transfer employees protected by the Orange Book, which it found would only slightly impair the original control acquisition. Both parties appealed the award to the Commission.

A divided Commission affirmed in part and reversed in part. The Commission agreed the committee possessed authority to override collective-bargaining rights and RLA rights that prevent implementation of a proposed transaction. [*125] It reasoned, however, that "imposition of an Orange Book employee exception would effectively prevent implementation of the proposed transaction." *CSX Corp. – Control – Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 4 I. C C. 2d 641, 650 (1988).* The Commission thus affirmed the arbitration committee's order permitting the transfer of work but reversed the holding that the carriers could not transfer Orange Book employees.

3. The unions appealed both cases to the United States Court of Appeals for the District of Columbia Circuit. The Court of Appeals considered the cases together and reversed and remanded to the Commission. *Brotherhood of Railway Carmen v. ICC, 279 U S. App. D. C. 239, 880 F. 2d 562 (1989).* The court held that § 11341(a) does not authorize the Commission to relieve a party of collective-bargaining [***105] agreement obligations that impede implementation of an approved transaction. The court stated various grounds for its conclusion. First, because the court did not read the phrase "all other law" in § 11341(a) to include "all legal obstacles," it found "no support in the language of the statute"

to apply the statute to obligations imposed by collective-bargaining agreements. *Id, at 244, 880 F. 2d, at 567.* Second, the court analyzed the Transportation Act of 1920, ch. 91, § 407, 41 Stat. 482, which contained a predecessor to § 11341(a), and found that Congress "did not intend, when it enacted the immunity provision, to override contracts." *279 US. App. D. C, at 247, 880 F. 2d, at 570.* The court noted that Congress had "focused nearly exclusively . . . on specific [**1162] types of laws it intended to eliminate -- all of which were positive enactments, not common law rules of liability, as on a contract." *Ibid.* The court further noted that Congress had often revisited the immunity provision without making it clear that it included contracts or collective-bargaining agreements. *Ibid.* Finally, the court did not defer to the ICC's interpretation of the Act, presumably because it determined that the Commission's interpretation was belied by the contrary "'unambiguously [*126] expressed intent of Congress,'" *id., at 244, 880 F. 2d, at 567* (quoting *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc., 467 US 837, 843 (1984)).*

In ruling that § 11341(a) did not apply to collective-bargaining agreements, the court "declined to address the question" whether the section could operate to override provisions of the RLA. *Brotherhood of Railway Carmen, supra, at 247-250, 880 F. 2d, at 570-573* It also declined to consider whether the labor-protective conditions required by § 11347 are exclusive, or whether § 4 of the *New York Dock* conditions gives an arbitration committee the right to override provisions of a collective-bargaining agreement. *279 U.S. App. D. C., at 250, 880 F 2d, at 573.* The court remanded the case to the Commission for a determination on these issues.

After the Court of Appeals denied the carriers' petitions for rehearing, the carriers in the consolidated cases filed petitions for certiorari, which we granted on March 26, 1990. *494 US. 1055 (1990)* n2 We now reverse.

n2 On September 9, 1989, the Commission also filed a petition for rehearing, and requested the court to refrain from ruling on the petition until the Commission could issue a comprehensive decision on remand addressing issues that the Court of Appeals left open for resolution. On September 29, 1989, the Court of Appeals issued an order stating that the Commission's petition for rehearing would be "deferred pending release of the ICC's decision on remand." App. to Pet. for Cert. in No. 89-1027, p. 54a.

On January 4, 1990, the Commission reopened proceedings in the case remanded to it. On May 21, 1990, two months after we granted the carriers' petitions for certiorari, the Commission issued its remand decision. *CSX Corp. -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., 6 I. C. C. 2d 715 (1990).* In its decision, the Commission adhered to the Court of Appeals' ruling that § 11341(a) did not authorize it to override provisions of a collective-bargaining agreement. The Commission held, however, that § 11341(a) authorized it to foreclose resort to RLA remedies for modification and enforcement of collective-bargaining agreements "at least to the extent of [its] authority" to impose labor-protective conditions under § 11347. *Id, at 754* The Commission explained that the § 11347 limit on its § 11341(a) authority "reflects the consistency of the overall statutory scheme for dealing with CBA modifications required to implement Commission-approved mergers and consolidations." *Id., at 722.* The Commission remanded its decision to the parties for further negotiation or arbitration.

On December 4, 1990, the union respondents petitioned the Court of Appeals for review of the Commission's remand decision. The petition raises three issues: (1) whether § 11341(a) authorizes the ICC to foreclose employee resort to the RLA; (2) whether § 11347 authorizes the ICC to compel employees to arbitrate changes in collective-bargaining agreements; and (3) whether abrogation of employee contract rights effected a taking in violation of the Due Process and Just Compensation clauses of the Fifth Amendment.

[*127] [***106]

[***LEdHR1B] [1B]II

Title *49 U. S. C § 11341*(a) provides:

> ". . . A carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. . . ."

We address the narrow question whether the exemption in § 11341(a) from "all other law" includes a carrier's legal obligations under a collective-bargaining agreement.

[***LEdHR1C] [1C] [***LEdHR2A] [2A]By its terms, the exemption applies only when *necessary* to carry out an *approved* transaction. These predicates, however, are not at issue here, for the Court of Appeals [**1163] did not pass on them and the parties do not challenge them. For purposes of this decision, we assume, without deciding, that the Commission properly considered the public interest factors of § 11344(b)(1) in approving the original transaction, that its decision to override the carrier's obligations is consistent with the labor-protective requirements of § 11347, and that the override was necessary to the implementation of the transaction within the meaning of § 11341(a) Under these [*128] assumptions, we hold that the exemption from "all other law" in § 11341(a) includes the obligations imposed by the terms of a collective-bargaining agreement. n3

[***LEdHR2B] [2B]

n3 On May 23, 1990, and again on September 19, 1990, the union respondents filed motions to dismiss the case as moot. They argued that in light of the alternative ground for decision offered by the ICC on remand from the Court of Appeals, see n. 2, *supra*, the meaning and scope of § 11341(a) was no longer material to the dispute. The union respondents reassert their mootness argument in their brief on the merits. Brief for Respondent Unions 18.

We disagree. The Commission predicated the analysis in its remand order on the correctness of the Court of Appeals' interpretation of § 11341(a). Thus, our definitive interpretation of § 11341(a) may affect the Commission's remand order. Agency compliance with the Court of Appeals' mandate does not moot the issue of the correctness of the court's decision. See, *e. g., Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 791, n. 1 (1985); Schweiker v. Gray Panthers, 453 U.S. 34, 42, n. 12 (1981); Maher v. Roe, 432 U S. 464, 468-469, n. 4 (1977).* In addition, the alternative basis offered by the Commission on remand does not end the controversy between the parties. The parties retain an interest in the validity of the ICC's original order because the Court of Appeals may again disagree with the Commission's interpretation of the Act in its review of the remand order.

[***LEdHR1D] [1D] [***LEdHR3] [3]As always, we begin with the language of the statute and ask whether Congress has spoken on the subject before us. "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron, 467 U S , at 842-843* [***107] The contested language in § 11341(a), exempting carriers from "the antitrust laws and all other law, including State and municipal law," is clear, broad, and unqualified. It does not admit of the distinction the Court of Appeals drew, based on its analysis of legislative history, between positive enactments and common-law rules of liability. Nor does it support the Court of Appeals' conclusion that Congress did not intend the immunity clause to apply to contractual obligations.

[*129]

[***LEdHR1E] [1E] By itself, the phrase "all other law" indicates no limitation. The circumstance that the phrase "all other law" is in addition to coverage for "the antitrust laws" does not detract from this breadth. There is a canon of statutory construction which, on first impression, might seem to dictate a different result. Under the principle of *ejusdem generis*, when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration. See *Arcadia v. Ohio Power Co., 498 U.S. 73, 84-85 (1990).* The canon does not control, however, when the whole context dictates a different conclusion. Here, there are several reasons the immunity provision cannot be interpreted to apply only to antitrust laws and similar statutes. First, because "repeals of the antitrust laws by implication from a regulatory statute are strongly disfavored," *United States v. Philadelphia Nat. Bank, 374 U.S. 321, 350 (1963),* Congress may have determined that it should make a clear and separate statement to include antitrust laws within the general exemption of § 11341(a). Second, the otherwise general term "all other law" "includes" (but is not limited to) "State and municipal law." This shows that "all other law" refers to more than laws related to antitrust. Also, the fact that "all other law" entails more than "the antitrust laws," but is not limited to "State and municipal law," reinforces the conclusion, inherent in the [**1164] word "all," that the phrase "all other law" includes federal law other than the antitrust laws. In short, the immunity provision in § 11341 means what it says: A carrier is exempt from *all law* as necessary to carry out an ICC-approved transaction.

[***LEdHR1F] [1F] [***LEdHR4] [4]The exemption is broad enough to include laws that govern the obligations imposed by contract. "The obligation of a contract is 'the law which binds the parties to perform their

agreement.'" *Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 429 (1934)* (quoting *Sturges v. Crowninshield, 4 Wheat 122, 197 (1819)).* A contract depends on a regime [*130] of common and statutory law for its effectiveness and enforcement

> "Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge." *Farmers and Merchants Bank of Monroe v. Federal Reserve Bank of Richmond, 262 U.S 649, 660 (1923)*

[***108] A contract has no legal force apart from the law that acknowledges its binding character. As a result, the exemption in § 11341(a) from "all other law" effects an override of contractual obligations, as necessary to carry out an approved transaction, by suspending application of the law that makes the contract binding.

Schwabacher v. United States, 334 U S. 182 (1948), which construed the immediate precursor of § 11341(a), § 5(11) of the Transportation Act of 1940, ch. 722, § 7, 54 Stat. 908-909, n4 supports this conclusion. In *Schwabacher*, minority stockholders in a carrier involved in an ICC-approved merger complained that the terms of the merger diminished the value of their shares as guaranteed by the corporate charter [*131] and thus "deprived [them] of contract rights under Michigan law. . . ." *334 U S, at 188.* We explained that the Commission was charged under the Act with passing upon and approving all capital liabilities assumed or discharged by the merged company, and that once the Commission approved a merger in the public interest and on just and reasonable terms, the immunity provision relieved the parties to the merger of "restraints, limitations, and prohibitions of law, Federal, State, or municipal," as necessary to carry out the transaction. *Id., at 194-195, 198.* We noted that before approving the merger, the Commission had a duty "to see that minority interests are protected," and emphasized that any such minority rights were, "as a matter of federal law, accorded recognition in the obligation of the Commission not to approve any plan which is not just and reasonable." *Id, at 201.* Once these interests were accounted for, however, "it would be inconsistent to allow state law to apply a liquidation basis [for valuation] to what federal law designates as a basis for continued public service." *Id, at 200.* Relying in part on the immunity provision, we held the contract [**1165] rights protected by state law did not survive the merger agreement found by the Commission to be in the public interest. *Id, at 194-195, 200-201.* Because the Commission had disclaimed jurisdiction to settle the shareholders' complaints, we remanded the case to the Commission to ensure that the terms of the merger were just and reasonable. *Id, at 202.*

> n4 Section 5(11) of the Transportation Act of 1940 provided:
>
> "Any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are hereby relieved from the operation of the antitrust laws and all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission. . . ."
>
> The recodification of this language in § 11341(a) effected no substantive change. See H. R. Rep. No. 95-1395, pp. 158-160 (1978). See also *ICC v Locomotive Engineers, 482 U.S. 270, 299, n. 12 (1987)* (Stevens, J., concurring in judgment).

Just as the obligations imposed by state contract law did not survive the merger at issue in *Schwabacher*, the obligations imposed by the law that gives force to the carriers' collective-bargaining agreements, the [***109] RLA, do not survive the merger in this case. The RLA governs the formation, construction, and enforcement of the labor-management contracts in issue here. It requires carriers and employees to make reasonable efforts "to make and maintain" collective-bargaining agreements, *45 U. S. C § 152* First, and to refrain from making changes in existing agreements except in [*132] accordance with RLA procedures, *45 U. S. C §§ 152* Seventh, 156. The Act "extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements." *Slocum v Delaware, L. & W R. Co, 339 U S. 239, 242 (1950).* As the law which gives "legal and binding effect to collective agreements," *Detroit & T. S. L. R. Co. v. United Transportation Union, 396 U.S. 142, 156 (1969),* the RLA is the law that, under § 11341(a), is superseded when an ICC-approved transaction requires abrogation of collective-bargaining obligations. See *ICC v. Locomotive Engineers, 482 U S*

270, 287 (1987) (Stevens, J., concurring in judgment); *Brotherhood of Locomotive Engineers v. Boston & Maine Corp., 788 F 2d 794, 801 (CA1 1986); Missouri Pacific R. Co v United Transportation Union, 782 F. 2d 107, 111 (CA8 1986); Burlington Northern, Inc. v American Railway Supervisors Assn, 503 F 2d 58, 62-63 (CA7 1974); Bundy v. Penn Central Co, 455 F 2d 277, 279-280 (CA6 1972); Nemitz v. Norfolk & Western R. Co, 436 F. 2d 841, 845* (CA6), aff'd, *404 U.S. 37 (1971); Brotherhood of Locomotive Engineers v Chicago & N. W R. Co, 314 F. 2d 424 (CA8 1963), Texas & N. O R. Co. v Brotherhood of Railroad Trainmen, 307 F. 2d 151, 161-162 (CA5 1962), Railway Labor Executives Assn. v. Guilford Transp. Industries, Inc., 667 F. Supp. 29, 35 (Me. 1987),* aff'd, *843 F 2d 1383 (CA1 1988)*

Our determination that § 11341(a) supersedes collective-bargaining obligations via the RLA as necessary to carry out an ICC-approved transaction makes sense of the consolidation provisions of the Act, which were designed to promote "economy and efficiency in interstate transportation by the removal of the burdens of excessive expenditure." *Texas v United States, 292 U.S 522, 534-535 (1934).* The Act requires the Commission to approve consolidations in the public interest. *49 U. S C. § 11343*(a)(1). Recognizing that consolidations in the public interest will "result in wholesale dismissals and extensive transfers, involving expense to [*133] transferred employees" as well as "the loss of seniority rights," *United States v. Lowden, 308 U.S. 225, 233 (1939),* the Act imposes a number of labor-protecting requirements to ensure that the Commission accommodates the interests of affected parties to the greatest extent possible. *49 U. S C §§ 11344*(b)(1)(D), 11347; see also *New York Dock Railway -- Control -- Brooklyn Eastern District Terminal, 360 I. C. C. 60 (1979).* Section 11341(a) guarantees that once these interests are accounted for and once the consolidation is approved, obligations imposed by laws such as the RLA will not prevent the efficiencies of consolidation from being achieved. If § 11341(a) did not apply to bargaining [***110] agreements enforceable under the RLA, rail carrier consolidations [**1166] would be difficult, if not impossible, to achieve. The resolution process for major disputes under the RLA would so delay the proposed transfer of operations that any efficiencies the carriers sought would be defeated. See, *e g, Burlington Northern R. Co. v Maintenance of Way Employes, 481 US 429, 444 (1987)* (resolution procedures for major disputes "virtually endless"); *Detroit & T. S. L. R. Co. v. United Transportation Union, 396 U.S. 142, 149 (1969)* (dispute resolution under RLA involves "an almost interminable process"); *Railway Clerks v Florida East Coast R. Co., 384 U.S. 238, 246 (1966)* (RLA procedures are "purposely long and drawn out"). The immunity provision of § 11341(a) is designed to avoid this result.

We hold that, as necessary to carry out a transaction approved by the Commission, the term "all other law" in § 11341(a) includes any obstacle imposed by law. In this case, the term "all other law" in § 11341(a) applies to the substantive and remedial laws respecting enforcement of collective-bargaining agreements. Our construction of the clear statutory command confirms the interpretation of the agency charged with its administration and expert in the field of railroad mergers. We affirm the Commission's interpretation of § 11341(a), not out of deference in the face of an [*134] ambiguous statute, but rather because the Commission's interpretation is the correct one.

This reading of § 11341(a) will not, as the Court of Appeals feared, lead to bizarre results. *Brotherhood of Railway Carmen v. ICC, 279 US. App. D. C., at 244, 880 F. 2d, at 567.* The immunity provision does not exempt carriers from all law, but rather from all law necessary to carry out an approved transaction. We reiterate that neither the conditions of approval, nor the standard for necessity, is before us today. It may be, as the Commission held on remand from the Court of Appeals, that the scope of the immunity provision is limited by § 11347, which conditions approval of a transaction on satisfaction of certain labor-protective conditions. See n. 2, *supra* It also might be true that "the breadth of the exemption [in § 11341(a)] is defined by the scope of the approved transaction. . . ." *ICC v. Locomotive Engineers, supra, at 298* (Stevens, J , concurring in judgment). We express no view on these matters, as they are not before us here.

The judgment of the Court of Appeals is reversed, and the cases are remanded for proceedings consistent with this opinion.

It is so ordered.

DISSENT BY:

STEVENS; MARSHALL

DISSENT:

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

The statutory exemption that the Court construes today had its source in § 407 of the Transportation Act of 1920 (1920 Act). 41 Stat. 482. Its wording was slightly changed in 1940, 54 Stat. 908-909, and again in 1978, 92 Stat. 1434. There is, however, no claim that either of those amendments modified the coverage [***111] of the exemption in any way. It is therefore appropriate to

begin with a consideration of the purpose and the text of the 1920 Act.

[*135] Before the First World War, the railroad industry had been the prime target of antitrust enforcement. n1 In 1920, however, Congress adopted a new national transportation policy that expressly favored the consolidation of railroads. The policy of consolidation embodied in the 1920 Act would obviously [**1167] have been frustrated by the federal antitrust laws had Congress not chosen to exempt explicitly all approved mergers from these laws. Section 407 of that Act provided, in part:

> "The carriers affected by any order made under the foregoing provisions of this section . . . shall be, and they are hereby, relieved from the operation of the 'antitrust laws,' . . . and of all other restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable them to do anything authorized or required by any order made under and pursuant to the foregoing provisions of this section." 41 Stat. 482

n1 See *United States v Trans-Missouri Freight Assn., 166 U S 290 (1897); United States v. Joint Traffic Assn., 171 U.S. 505 (1898); Northern Securities Co. v. United States, 193 U S. 197 (1904); United States v. Terminal Railroad Assn. of St. Louis, 224 U.S. 383 (1912), United States v. Union Pacific R. Co., 226 U S. 61 (1912); United States v. Pacific & Arctic R. & Nav Co., 228 U.S. 87 (1913)*

Both the background and the text of § 407 make it absolutely clear that its primary focus was on federal antitrust laws. Sensibly, however, Congress wrote that section using language broad enough to cover any other federal or state law that might otherwise forbid the consummation of any approved merger or prevent the immediate operation of its properties under a new corporate owner. Not a word in the statute, or in its legislative history, contains any hint that the approval of a merger by the Interstate Commerce Commission (ICC) would impair the obligations of valid and otherwise enforceable private contracts.

Given the present plight of our Nation's railroads, it may be wise policy to give the ICC a power akin to, albeit greater [*136] than, that of a bankruptcy court to approve a trustee's rejection of a debtor's executory private contracts. n2 Through nothing short of a *tour de force*, however, can one find any such power in *49 U. S. C. § 11341*, or in either of its predecessors. Obviously, consolidated carriers would find it useful to have the ability to disavow disadvantageous long-term leases on obsolete car repair facilities, employment contracts with high salaried executives whose services are no longer needed, as well as collective-bargaining agreements that provide costly job security to a shrinking work force. If Congress had intended to give the ICC such broad ranging power to impair contracts, it would have done so in language much clearer than anything that can be found in the present Act

n2 *Section 365 of the Bankruptcy Code, 11 U. S. C. § 365*, allows a trustee to assume or reject a debtor's executory contracts and unexpired leases subject to the *subsequent* approval of the bankruptcy court. Collective-bargaining agreements can be rejected only if the additional requirements of *11 U. S. C. § 1113* are met.

[***112] The Court's contrary conclusion rests on its reading of the "plain meaning" of the present statutory text and our decision in *Schwabacher v. United States, 334 U.S. 182 (1948)*. Neither of these reasons is sufficient. Moreover, the Court's reading is inconsistent with other unambiguous provisions in the statute.

I

With or without the *ejusdem generis* canon, I believe that the normal reader would assume that the text of § 11341 encompasses the antitrust laws, as well as other federal or state laws, that would otherwise prohibit rail carriers from consummating approved mergers, and nothing more See *ante*, at 128. That text contains no suggestion that whenever a criminal law, tort law, or any regulatory measure impedes the efficient operation of a new merged carrier, the carrier can avoid such a restriction by virtue of the ICC approval of that merger. Nor does the text of § 11341 contain any suggestion [*137] that such an approval would impair the obligation of private contracts. n3 Rather, as [**1168] both an application of the *ejusdem generis* canon and an examination of the legislative history show, the purpose of the exemption was to relieve the carriers "from the operation of the antitrust *and other restrictive or prohibitory laws*." H. R. Conf. Rep. No. 650, 66th Cong., 2d Sess., 64 (1920) (emphasis added).

n3 As Judge D. H. Ginsburg, writing for the Court of Appeals, noted:

> "We cannot sustain the ICC's position that this provision empowers it to override a [collec-

tive-bargaining agreement (CBA)]. First, and most important, the ICC's position finds no support in the language of the statute. By its terms, § 11341(a) contemplates exemption only from 'the antitrust laws and from all other law' to the extent necessary to carry out the transaction. Nowhere does it say that the ICC may also override contracts, nor has it ever, in any of the various iterations since its initial enactment in 1920, included even a general reference to 'contracts,' much less any specific reference to CBAs. Nor has the ICC explained how we can read the term 'other law,' as it has done, to mean 'all legal obstacles.' *Dispatchers*, J. A. 207. None of the Supreme Court decisions, discussed below, authorizing the ICC to abrogate an 'other law' even suggests that the term means 'all legal obstacles.' The ICC itself, prior to its 1983 decision in *DRGW*, recognized as much. See *Gulf, Mobile & Ohio R. R. Co. -- Abandonment, 282 I. C. C. 311, 335 (1952)* ('None of the decisions in the [Supreme Court] cases . . . relates to private contractual rights, but refers [sic] to State laws which prohibit in some way the carrying out of the transaction authorized.')." *Brotherhood of Railway Carmen v. ICC, 279 U.S. App. D. C. 239, 244, 880 F. 2d 562, 567 (1989).*

The Court speculates that the reason the 1920 Congress explicitly referred to the antitrust laws was simply to avoid the force of the rule that repeals of the antitrust laws by implication are not favored, citing *United States v. Philadelphia Nat. Bank, 374 U.S. 321, 350 (1963)* In that case, however, the rule was announced in the context of the industry's argument that federal regulatory approval of a transaction exempted the transaction from the antitrust laws even though the regulatory statute was entirely silent on the subject of exemption. *Ibid.* The authority cited in the *Philadelphia* [*138] decision to support this rule sheds no light on the question whether a statute creating a broad exemption for mergers would naturally be read to include all statutes that otherwise would have prohibited the consummation [***113] of a merger of large rail carriers. n4

n4 All but two of the cases that the Court cited in the *Philadelphia* decision to support the rule against implicit repeals of the antitrust statutes arose under a regulatory framework in which there was no mention of exemption. *United States v. Philadelphia Nat. Bank, 374 U S. 321, 350, n. 28 (1963).* See *United States v. Trans-Missouri Freight Assn., 166 U.S., at 314-315; United States v. Joint Traffic Assn., 171 U S. 505 (1898); Northern Securities Co. v. United States, 193 U S., at 343, 374-376* (plurality and dissenting opinions); *United States v. Pacific & Arctic R. & Nav Co, 228 U S, at 105, 107; Keogh v. Chicago & Northwestern R. Co, 260 U.S 156, 161-162 (1922); Central Transfer Co. v. Terminal Railway Assn. of St. Louis, 288 U S. 469, 474-475 (1933); Terminal Warehouse Co. v. Pennsylvania R. Co, 297 U.S. 500, 513-515 (1936); United States v. Borden Co, 308 U S 188, 197-206 (1939), United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 226-228 (1940); Georgia v. Pennsylvania R. Co., 324 U S. 439, 456-457 (1945); United States Alkali Export Assn., Inc. v. United States, 325 U S. 196, 205-206 (1945); Allen Bradley Co. v. Electrical Workers, 325 U S. 797, 809-810 (1945); Northern Pacific R. Co. v. United States, 356 U.S. 1, 9 (1958); United States v. Radio Corp. of America, 358 U.S. 334 (1959); California v. FPC, 369 U.S. 482 (1962), Silver v. New York Stock Exchange, 373 U S. 341 (1963)* The other two cases involve regulations with explicit exemptions from the antitrust laws, but do not support the position taken by the Court in this case. In *Maryland & Virginia Milk Producers Assn, Inc. v United States, 362 U.S 458 (1960),* this Court held that § 6 of the Clayton Act's exemption of agricultural cooperatives from the antitrust law only protected the formation of those associations; once formed they could not engage in any further conduct that would violate the antitrust laws. In *Pan American World Airways, Inc. v. United States, 371 U S. 296 (1963),* the Court held that the exemption relieving airlines from the operation of the antitrust laws when certain transactions were approved by the Civil Aeronautics Board did not exempt the airlines from all antitrust violations, but only exempted them from violations stemming from activity explicitly governed by the regulatory scheme.

Of greater importance, however, is the Court's rather remarkable assumption that an exemption "from 'all other [*139] law'" should be read to encompass the restraints created [**1169] by private contract. n5 *Ante*, at 129-130. Even if the text of the present Act could bear that reading, it is flatly inconsistent with the text of the 1920 Act, which relieved the participating carriers "from the operation of the 'antitrust laws' . . . and of all other restraints or prohibitions by law, State or federal. . ." 41 Stat. 482. Moreover, given the respect that our legal system has always paid to the enforceability of private contracts -- a respect that is evidenced by express language in the [***114] Constitution itself n6 -- there should be a powerful presumption against finding an

implied authority to impair contracts in a statute that was enacted to alleviate a legitimate concern about the antitrust laws. Had Congress intended to convey the message the Court finds in § 11341, it surely would have said expressly that the exemption was from all restraints imposed by law or by private contract. n7

n5 Again Judge Ginsburg's observation is pertinent:

"Moreover, the ICC's proposed insertion of 'all legal obstacles' into the statutory language would lead to most bizarre results. Under the ICC's reading, it could set to naught, in order to facilitate a merger, a carrier's solemn undertaking, in a bond indenture or a bank loan, to refrain from entering into any such transaction without the consent of its creditors. *Cf Gulf, Mobile & Ohio, 282 I. C. C. at 331-35* (declaring itself without power, in an abandonment context, to relieve a carrier from its 'contractual obligations for the payment of rent'). We do not think it likely that Congress would grant the ICC a power with so much potential to destabilize the railroad industry; we are confident, however, that it would not do so without so much as a word to that effect in the statute itself. Never, either in its decisions here under review or in prior cases, has the ICC offered any justification for this most unlikely reading of the Act." *279 U.S. App. D. C, at 244-245, 880 F. 2d, at 567-568.*

n6 "No State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." U S. Const., Art. I, § 10, cl. 1.

n7 After reviewing the legislative history, Judge Ginsburg concluded:

"From our review of this history, we are confident that Congress did not intend, when it enacted the immunity provision, to override contracts. First, Congress focused nearly exclusively, in the hearings and debates on the 1920 Act, on specific types of laws it intended to eliminate -- all of which were positive enactments, not common law rules of liability, as on a contract. *Cf. Association of Flight Attendants v. Delta Air Lines, Inc, 879 F 2d 906, 917 (D. C. Cir. 1989)* Indeed, Commissioner Clark, who presented the immunity idea to the House and Senate Commerce Committees in the hearings cited above, did not once suggest, over the course of several days and several hundred pages, that the proposed immunity might relieve a carrier of its obligations under negotiated agreements with third parties." *279 U S. App. D C, at 247, 880 F. 2d, at 570*

[*140] II

In my opinion, the Court's reliance on the decision in *Schwabacher v. United States, 334 U.S. 182 (1948),* is misplaced. In that case, the owners of two percent of the outstanding preferred stock of the Pere Marquette Railway brought suit in the United States District Court to set aside an ICC order approving a merger between that corporation and the Chesapeake and Ohio Railway Corporation. In approving the merger, the ICC had found that the market value of plaintiffs' preferred shares ranged, at different times, from $ 87 to $ 99 per share, and that the stock that they received in exchange pursuant to the merger agreement would have realized about $ 90 and $ 111 on the same dates. Thus, the terms of the merger, as applied to the plaintiffs' class, were just and reasonable. Plaintiffs contended, however, that the exchange value of their shares amounted to $ 172 50 per share because the merger was a "liquidation" as a matter of Michigan law, and the Pere Marquette Charter provided that in the event of liquidation or dissolution, the preferred shareholders were entitled to receive full payment of par value plus all accrued unpaid dividends.

The ICC order approving the merger did not resolve the Michigan law question. The ICC considered the issue too insignificant to affect the validity of the entire transaction, and left the matter for resolution by negotiation or later litigation. On appeal from the [**1170] District Court's judgment sustaining the ICC order, this Court held that the ICC's finding that the exchange value was just and reasonable foreclosed any other claim that the dissenting shareholders might assert [*141] concerning the value of their shares. Whatever Michigan law might provide for the preferred shareholders in the event of a winding-up or liquidation could not determine the just and reasonable value of shares in the continuing enterprise. The essence of the Court's holding is set forth in this passage:

"Since the federal law clearly contemplates merger as a step in [***115] continuing the enterprise, it follows that what Michigan law might give these dissenters on a winding-up or liquidation is irrelevant, except insofar as it may be reflected in current values for which they are entitled to an equivalent. It would be inconsistent to allow state law to apply a liquidation basis to what federal law des-

ignates as a basis for continued public service. . . .

"We therefore hold that no rights alleged to have been granted to dissenting stockholders by state law provision concerning liquidation survive the merger agreement approved by the requisite number of stockholders and approved by the Commission as just and reasonable. Any such rights are, as a matter of federal law, accorded recognition in the obligation of the Commission not to approve any plan which is not just and reasonable." *Id., at 200-201.*

It is true that the effect of the *Schwabacher* decision was to extinguish whatever contractual rights the dissenting shareholders possessed as a matter of Michigan law. But the Court did require the ICC, on remand, to consider whatever value the Michigan law claims might have in connection with its final conclusion that the merger plan was "just and reasonable." A fair reading of the entire opinion makes it clear that the holding was based more on the ICC's "complete control of the capital structure to result from a merger," *id., at 195,* than on the exemption at issue in this case. *Schwabacher* cannot fairly be read as authorizing carriers to renounce private contracts that limit the benefits achievable through the merger.

[*142] III

There is tension between the Court's interpretation of the exemption that is now codified in *49 U S. C. § 11341*(a) and the labor-protection conditions set forth in *49 U; S. C. § 11347* The latter section requires an ICC order approving a railroad merger to impose conditions that are "no less protective" of the employees than those established pursuant to the Rail Passenger Service Act, 84 Stat. 1337, as amended, *45 U. S. C. § 565.* One of the conditions established by the Secretary of Labor under the latter Act was essentially the same as § 2 of the *New York Dock* conditions described by the Court, *ante*, at 120-121. As the Court notes, that condition provides that the benefits protected "'under applicable laws and/or existing collective bargaining agreements . . . shall be preserved unless changed by future collective bargaining agreements.'" *Id.*, at 121 (citation omitted). This provision unambiguously indicates that Congress intended and expected that collective-bargaining agreements would survive any ICC approved merger.

As I noted in my separate opinion in *ICC v. Locomotive Engineers, 482 U.S. 270, 298 (1987),* the statutory immunity provision in § 11341 is self-executing and becomes effective at the time of the ICC approval "The breadth of the exemption is defined by the scope of the approved transaction, and no explicit announcement of exemption is required to make the statute applicable." *Ibid.* [***116] (footnote omitted). In neither of the cases before the Court today did the ICC approval of the merger purport to modify or terminate any collective-bargaining agreement The ICC approval orders were entered in 1980 and [**1171] 1982 and contained no mention of either of the proposed transfers of personnel that are now at issue and about which the union was first notified several years after the ICC orders were entered. n8

n8 In the ICC order approving the merger of Chessie System, Inc., and Seaboard Coastline Industries, Inc., the ICC discussed how the coordination of facilities would generate significant cost reductions and improved economic efficiency. *CSX Corp. -- Control -- Chessie System, Inc., and Seaboard Coast Line Industries, Inc., 363 I. C. C. 521, 556 (1980).* The ICC noted:

"These savings will spring from common-point coordination projects, mechanical and engineering department coordinations, locomotive and car utilization improvements, and internal rerouting efficiencies. Each of these projects is discussed separately below." *Ibid.*

In the discussion that followed, the ICC did discuss plans to expand the car production facilities at Raceland, Kentucky, in order to make cars for a member line that had been buying its cars from an independent manufacturer. The ICC found that the applicants had failed to show that the public would derive any benefit from this plan. There was no discussion of the consolidation of that facility by closing Seaboard's car repair shop in Waycross, Georgia. Nor did the ICC discuss the consolidation of locomotive works in *Norfolk Southern Corp. -- Control -- Norfolk & W. R. Co. and Southern R. Co., 366 I. C. C. 173 (1982).*

[*143] I cannot subscribe to a late-blooming interpretation of a 71-year-old immunity statute that gives the Commission a roving power -- exercisable years after a merger has been approved and consummated -- to impair the obligations of private contracts that may "prevent the efficiencies of consolidation from being achieved." *Ante*, at 133. The Court's decision may represent a "better" policy choice than the one Congress actually made in 1920, cf. *West Virginia University Hospitals, Inc.* v. *Ca-*

sey, ante, at 100-101, but it is neither an accurate reading of the command that Congress issued in 1920, nor is it a just disposition of claims based on valid private contracts.

I respectfully dissent.

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Supreme Court's application of the rules of ejusdem generis and noscitur a sociis. *46 L Ed 2d 879.*

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Breach of collective bargaining agreement as unfair labor practice under National Labor Relations Act, as amended *(29 USCS 158). 6 ALR Fed 589.*