

● PGF Railroads Subject File Box 176

Railroads

P.S.F. K. ...

725

BASIC DAILY WAGE RATES
For
LOCOMOTIVE ENGINEERS, FIREMEN, HELPERS, HOSTLERS AND HOSTLERS' HELPERS
on
RAILROADS IN THE UNITED STATES
EFFECTIVE, OCTOBER 1, 1937.

PASSENGER SERVICE

Classification of Locomotives (Weight on Drivers)	EASTERN RAILROADS			WESTERN RAILROADS				SOUTHEASTERN RAILROADS		
	Engineer	Fireman	Electric Helper	Engineer	FIREMAN		Electric Helper	Engineer	Fireman	Electric Helper
					Coal	Oil				
Less than 80,000 lbs.....	\$7.06	\$5.34	\$5.34	\$7.00	\$5.30	\$5.30	\$5.30	\$7.00	\$5.35	\$5.35
80,000 to 100,000 lbs.....	7.06	5.43	5.34	7.00	5.38	5.30	5.30	7.00	5.43	5.35
100,000 to 140,000 lbs.....	7.15	5.51	5.34	7.09	5.46	5.30	5.30	7.09	5.51	5.35
140,000 to 170,000 lbs.....	7.23	5.69	5.34	7.17	5.62	5.46	5.30	7.17	5.67	5.35
170,000 to 200,000 lbs.....	7.32	5.77	5.34	7.26	5.70	5.54	5.30	7.26	5.75	5.35
200,000 to 250,000 lbs.....	7.41	5.86	5.51	7.34	5.78	5.62	5.46	7.34	5.83	5.51
250,000 to 300,000 lbs.....	7.49	5.86	5.51	7.43	5.78	5.62	5.46	7.43	5.83	5.51
300,000 to 350,000 lbs.....	7.58	5.94	5.51	7.51	5.86	5.70	5.46	7.51	5.91	5.51
350,000 to 400,000 lbs.....	7.66	6.03	5.51	7.60	5.94	5.78	5.46	7.60	5.99	5.51
400,000 to 450,000 lbs.....	7.75	6.12	5.69	7.68	6.02	5.86	5.62	7.68	6.07	5.67
450,000 to 500,000 lbs.....	7.84	6.20	5.69	7.77	6.10	5.94	5.62	7.77	6.15	5.67
500,000 lbs. and over.....	7.92	6.29	5.69	7.85	6.18	6.02	5.62	7.85	6.23	5.67
Mallets regardless of weight.....	8.14	6.63	.....	8.07	6.50	6.30	.....	8.07	6.55	.....
Minimum earnings from mileage, overtime, or other rules applicable for each day service is performed....	7.97	6.08	6.08	7.90	5.99	5.99	5.99	7.90	6.04	6.04

FREIGHT SERVICE

Through and Irregular Freight, Pusher, Helper, Mine Run or Roustabout, Belt Line or Transfer, Wreck, Work, Construction, Snowplow, Circus Trains, Trains Established for the Exclusive Purpose of Handling Milk and all Other Unclassified Service.

Classification of Locomotives (Weight on Drivers)	EASTERN RAILROADS			WESTERN RAILROADS				SOUTHEASTERN RAILROADS		
	Engineer	Fireman	Electric Helper	Engineer	FIREMAN		Electric Helper	Engineer	Fireman	Electric Helper
					Coal	Oil				
Less than 80,000 lbs.....	\$7.79	\$5.82	\$5.82	\$7.72	\$5.79	\$5.79	\$5.79	\$7.72	\$5.84	\$5.84
80,000 to 100,000 lbs.....	7.88	5.90	5.82	7.81	5.87	5.79	5.79	7.81	5.92	5.84
100,000 to 140,000 lbs.....	7.97	6.07	5.82	7.90	6.03	5.87	5.79	7.90	6.08	5.84
140,000 to 170,000 lbs.....	8.22	6.25	5.82	8.15	6.19	6.03	5.79	8.15	6.24	5.84
170,000 to 200,000 lbs.....	8.40	6.42	5.82	8.32	6.35	6.19	5.79	8.32	6.40	5.84
200,000 to 250,000 lbs.....	8.57	6.59	5.99	8.49	6.52	6.35*	5.95	8.49	6.56	6.00
250,000 to 300,000 lbs.....	8.72	6.76	5.99	8.64	6.67	6.67	5.95	8.64	6.72	6.00
300,000 to 350,000 lbs.....	8.87	7.03	5.99	8.79	6.92	6.92	5.95	8.79	6.97	6.00
350,000 lbs. and over.....	9.08	7.11	5.99	9.00	6.99	6.99	5.95	9.00	7.04	6.00
Mallets, less than 275,000 lbs.....	9.62	7.11	.....	9.54	6.99	6.99	.....	9.54	7.04	.....
Mallets, 275,000 lbs. and over.....	9.86	7.44	.....	9.77	7.30	7.30	.....	9.77	7.35	.....

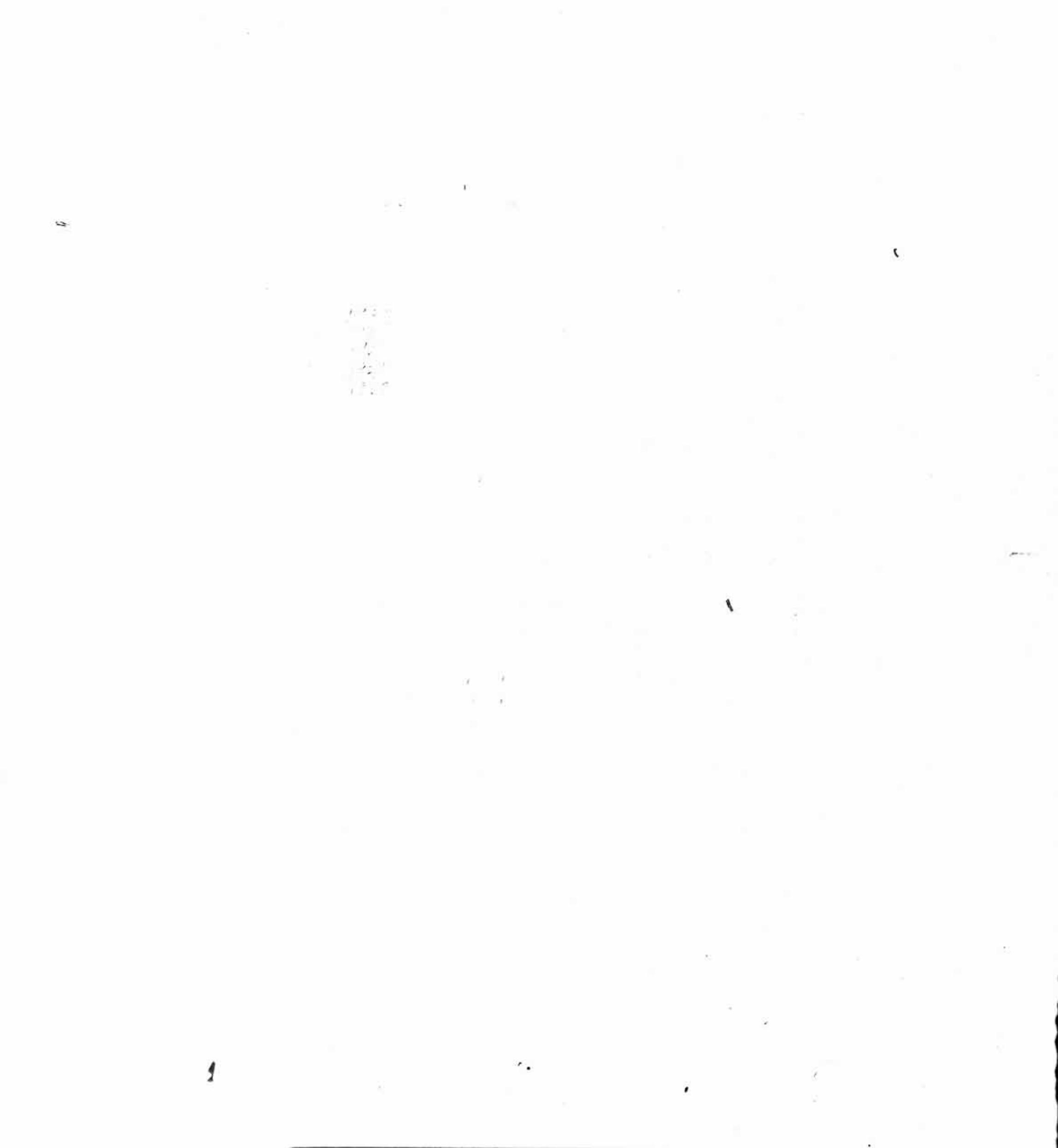
*Oil Differential Not to Apply on Locomotives weighing over 215,000 lbs. on Drivers.
For Local or Way Freight Service, 52 cents per 100 miles or less for engineers and 40 cents per 100 miles or less for firemen shall be added to the through freight rates, according to class of engine.

YARD SERVICE

Classification of Locomotives (Weight on Drivers)	EASTERN RAILROADS			WESTERN RAILROADS			SOUTHEASTERN RAILROADS		
	Engineer	Fireman	Electric Helper	Engineer	Fireman	Electric Helper	Engineer	Fireman	Electric Helper
Less than 140,000 lbs.....	\$7.66	\$6.12	\$6.12	\$7.60	\$6.07	\$6.07	\$7.60	\$6.07	\$6.07
140,000 to 200,000 lbs.....	7.84	6.25	6.12	7.77	6.19	6.07	7.77	6.19	6.07
200,000 to 300,000 lbs.....	8.01	6.37	6.12	7.94	6.31	6.07	7.94	6.31	6.07
300,000 lbs. and over.....	8.18	6.55	6.29	8.11	6.47	6.23	8.11	6.47	6.23
Mallets, less than 275,000 lbs.....	8.83	7.32	.....	8.75	7.19	.....	8.75	7.19	.....
Mallets, 275,000 lbs. and over.....	9.08	7.58	.....	9.00	7.43	.....	9.00	7.43	.....

HOSTLING SERVICE

Classification	EASTERN RAILROADS		WESTERN RAILROADS		SOUTHEASTERN RAILROADS	
	Engineer	Fireman	Engineer	Fireman	Engineer	Fireman
Outside Hostlers	\$6.80		\$6.71		\$6.71	
Inside Hostlers	6.12		6.07		6.07	
Hostlers' Helpers	5.51		5.51		5.51	



PSF: Railroads
[1938]

~~Public Affairs~~
file

The White House today made public the report of the Emergency Board appointed by the President under the Railway Labor Act to investigate the national wage reduction controversy existing between the Class I railroads and certain of their employees.

The Emergency Board was created on September 27, 1938, by proclamation of the President. Its members are Dean James M. Landis, Professor Harry A. Millis and Judge Walter P. Stacy.

The report of the Emergency Board makes the following findings:

1. The wages of Railway Labor are not high even as compared with wages in other comparable industries.
2. A horizontal reduction of wages on a national scale would not meet the financial emergency of the industry, since the savings would not be distributed merely to the needy roads.
3. A wage reduction in the railroad industry would run counter to the trend of wage rates in industry generally.
4. The financial distress of the carriers which has obtained since October 1937 when the last wage increases were granted, is as yet a short-term situation. As such, it cannot be regarded as grounds for a wage reduction especially in view of present indications of an improvement in the business of the carriers.
5. In the light of these findings, the Board concludes that the proposal of the carriers for a reduction of the wages of railway labor should not be pressed and recommends that the carriers withdraw and cancel the notices which would put such a reduction into operation as of December 1, 1938.

THE EMERGENCY BOARD

The Emergency Board, composed of James M. Landis, Harry A. Millis and Walter P. Stacy, was created by the President September 27, 1938, under the provisions of the Railway Labor Act, to investigate and report its findings concerning a wage controversy between the Class I railroads and certain of their employees.

HEARINGS

Public hearings were held by the Board from September 30 to October 17, 1938, in Washington, D. C.

HISTORY OF THE PRESENT DISPUTE

On May 12, 1938 the carriers involved served notice on certain of their employees of a 15% wage cut to take effect July 1, 1938. It was agreed to negotiate the matter on a national basis, but efforts at settlement were fruitless and mediation failed to adjust the dispute. The carriers then announced that the wage-cuts would take effect October 1, 1938, and the employees, on September 26, announced their intention to call a nation-wide strike unless the wage-cut proposals were withdrawn. On the following day the President, following the procedure presented in the Railway Labor Act, created the Emergency Board to investigate the dispute and to report within 30 days.

THE ISSUE PRESENTED BY THIS PROCEEDING

The ultimate issue in this proceeding, the carriers contend, is whether under all the facts and circumstances involved the carriers' wage reduction proposal is reasonable and justified. But even further the carriers contend in the "absolute ultimate" - to use their expression - the issue is what, under all the facts and circumstances involved, would be a fair and reasonable disposition of the pending wage controversy, with due regard to the condition, necessities and rights of both the carriers and their employees.

THE CONDITION OF THE RAILROADS

The report of the Board examines closely the present condition of the railroads. It finds that the operating revenues of Class I Railways declined from a level of approximately \$6,000,000,000 during the 1921-1930 period to a level of between \$2,000,000,000 and \$3,000,000,000 in the 1931-1938 period. The net income of the roads, the report finds, "which stood in 1929 at \$897,000,000 has declined seriously since then," and although net income showed an upturn in 1936, the first six months of 1938 have resulted in a deficit of \$181,253,596.

The report states that in 1929 "95.75 per cent of the railroads in point of mileage were operating with a net income, whereas from 1931 to 1937 that ratio has never been higher than 61 per cent. In 1932 it stood at 32.14 per cent and for the first six months of 1938 it stood at 13.17 per cent. Both dividend rates and dividend payments have declined, as has the market value of railroad securities."

The report attributes the declines in gross and net operating revenues not only to general declines in business activity but to other causes which, the report says, "have been operative and will continue to affect the density of railroad traffic independently of any revival of business activity. Chief among these causes", the report continues, "has been the rapid development of new and competitive means of transportation. The private automobile, inland waterways, the pipe line, the truck, the bus, the airplane - all have taken their toll. The number of passengers carried by commercial airlines has risen from 5,782 in 1926 to 1,102,707 in 1937 and is certain to increase to even greater numbers." Express, freight and mail carried by airplane in recent years, the report finds, have also shown sharp increases.

"Registration of passenger automobiles has increased 168.4 per cent since 1921", the report states, while "the revenue of the railroads from passenger traffic during the same period decreased 61.6 per cent. Much of the passenger traffic of the railroads must be recognized to have become permanently diverted from the railways. Even what is now carried is, upon the whole, carried at an out-of-pocket cost."

Tractors, trailers, pipe lines and barge lines have all drawn traffic away from the railroads, the report finds, and relocations of industrial plants, the development of other forms of power and new methods of producing power have also had their effect.

This competitive situation, the report states, has had the effect of reducing railroad rates and fares with the result that the average revenue per ton-mile of freight has fallen. Moreover, a serious effect of this

competitive situation has been to produce in many instances rates which are based on the presence, or absence of competition rather than rates which are the "just and reasonable rates that should otherwise obtain."

"Maintenance", the report states, "has naturally suffered as net railway income declined. The maintenance situation is described as one of "continued skimping". Purchases of materials and supplies have also lagged behind earlier years.

The report observes that the railroads have made efforts to cut their operating expenses. "Locomotives with more power, heavier rails, better grades and better roadbeds have all contributed to improving the productivity of the railroad plant", the report states, adding that "this Board cannot, of course, pass any judgment upon the question of whether the management of the roads, considering the limits of their resources, has kept pace as rapidly as it should with the possibilities of improving productivity and service to the degree that science and invention during these years have made feasible. Opinions upon such a subject naturally vary and find expression too frequently from those whose want of information is no barrier to their desire to generalize."

While the funded indebtedness of the roads, in relation to total investment, has fallen, the amount of money going to pay fixed charges has increased. "In 1921, 11.2 cents of every dollar of operating revenue went to pay fixed charges. In 1937 it took 15.4 cents, low and high points for the intervening period being respectively 10.2 cents in 1923 and 21.9 cents in 1933."

The percentage of railroads, on a mileage basis, in the hands of trustees or receivers, which from 1921 to 1932 never exceeded 9 per cent, rose to 27 per cent in 1935 and 31 per cent as of July 31, 1938.

THE CASE PRESENTED BY THE RAILROADS

The report summarizes the argument of the railways as follows:

"Broadly stated, the argument is not only that the railroads are in a desperate financial condition, that for too long a time have sacrifices been demanded of ownership so that fairness attends this request of labor, but also that the proposal is not made in disregard of the existing level of wages of railway labor since, under the circumstances as they now exist, that level is too high when measured in comparison with wage levels elsewhere."

The distressed condition of the industry is the major argument of the carriers in behalf of a wage reduction. They cite the skrinking volume of traffic, diminishing operating revenues, declining net income, the deficits, the meager return on investment, and the many roads in receivership or trusteeship.

The carriers point also to certain additional factors that make for the necessity of effecting operating economies. One of these is that increases in tax costs resulting from the Social Security Act and the Railroad Retirement Act add 5-3/4 per cent, or about \$103,500,000 annually, to the payrolls. Another argument advanced by the roads is that rate increases no longer offer a possible solution, nor is there hope of an increase in traffic. The roads, too, are doubtful as to the possibility of aid from the Government. They deny the employees' claim that economies could save \$1,000,000 a day; maintenance and other expenditures, they say, are already being skimped.

The one avenue open in the present emergency, in the judgment of the carriers, is to effect a saving on labor costs. Reduction in wage rates, they feel, would afford "quick financial relief", would make possible increased expenditures for maintenance, repairs and the purchase of equipment, with consequent benefits in terms of employment.

The carriers contend that a reduction in railway wage rates is just, for, they maintain, railway wages today whether stated in cents per hour, dollars per week or dollars per year are at the highest peak ever attained, while the cost of living is considerably lower than it was in 1929 or 1920. The carriers maintain that annual earnings are the most meaningful measure of railway wages, for upon their amount and the cost of living the economic welfare of the worker depends. The roads state that average annual earnings which stood at \$1,796 in 1920, fell to \$1,361 in 1933 and reached a level of about \$1800 for 1938. Furthermore, if these earnings are adjusted to the United States Bureau of Labor Statistics "Cost of Living" index, the average weekly earnings of \$33.73 in 1938 would have 4.4 per cent more purchasing power than the \$31.64 had in 1936, 17.7 per cent more than the \$26.10 had in 1935 and 25.7 per cent more than the \$32.07 had in 1929. The carriers conclude that "a movement of over 25 per cent in real purchasing power of weekly earnings in a period of nine years is a most unusual movement. * * * This advance of 25.7 per cent in real wages within nine years has taken place at a time in our history when other things have not been pursuing a normal upward course. In 1929 all things in general turned down. But in the face of that general depression we find these real earnings per week of railway employees showing this extraordinary rise contrary to all other trends."

THE DEFENSE PRESENTED BY THE EMPLOYEES

Railway labor, according to the report, recognizes the unfortunate present plight of the railroads and their need for relief. They differ with the roads, however, as to the reasons for this condition. While recognizing the effect of forces such as competitive means of transportation and the relocations of industries, the employees feel that the present difficulty arises in part from unwise financial practices in the past, over-capitalization, the burden of fixed charges, and excessive and unwise dividend distributions during prosperous years, the consequences of which, they state, should not be imposed upon labor in the form of a demand for lower wages.

Second, as a solution to the railroad problem, the employees offer in place of the proposed wage cuts a broad program for the industry. The employees pledge their cooperation in seeking (a) rate increases wherever practicable, (b) the liberalization of the Government lending policy, (c) equality of treatment by Congress of all forms of transportation, (d) the withdrawal of Federal Government competition in transportation, (e) restatement of the rate making rule so as to recognize the right of carriers to a fair return upon the value of their property, (f) amendment of the Interstate Commerce Act so as to give the Commission greater power over state rates, (g) amendment of the Revenue Act to exempt railroads from the Undistributed Profits Tax and certain state taxes, (h) surrender by the Federal Government of its land grant privileges, (i) enactments of suitable statutes of limitations as to claims of shippers for reparations, (j) insistence that the relocation of bridges resulting from the improvement of navigable waters should be built at Federal expense.

The employees' program for the industry further claims that wastes aggregating \$1,000,000 a day are capable of being eliminated. This program of "preventable wastes" was advanced by Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce.

The employees contend, in short that the railroads should, in those ways, put their house in order before they entitle themselves to call upon labor to make a sacrifice.

Third, the employees attack the proposal of reduced wages as being unwise in that it fails to meet the real needs of the carriers. A horizontal pay reduction of 15%, the employees assert, would net the carriers as a whole estimated savings of \$250,000,000. These savings, however, would be distributable to the various roads in proportion to their payrolls and not in proportion to their needs.

To illustrate their point the employees divide the roads into three groups - those in receivership or trusteeship, those that are problem roads in the sense that continuing prosperity is a condition of their remaining above water, and those whose strength is such that even in these times of adversity no pressing need attaches to them. The estimated savings of \$250,000,000 would be distributed among these three groups in the following fashion: Some \$60,200,000 or 24.1 per cent of the total savings would go to roads in receivership or trusteeship, roads that in 1937 had a net deficit after fixed charges of \$100,161,909. Some \$48,150,000 or 19.3 per cent of the total savings would go to a group of roads not in receivership or trusteeship but which have been designated by Chairman Splawn of the Interstate Commerce Commission as problem roads. The balance or \$141,650,000 representing 56.6 per cent of the total savings would go to roads not within these classes. It may here be observed that of this \$141,650,000, some \$92,150,000, or 56.6 per cent of the total savings, would go to roads which have either had net income after fixed charges for every year from 1929 through 1937 or roads having such continuous net income except for a net deficit in the year 1932. It may further be observed that of this \$92,150,000, some \$84,300,000 would go to eight roads within the above category, which eight roads would receive 33.7 per cent of the total estimated savings to be produced by the proposed wage reduction.

Fourth, the employees assert that the present wage scale is justifiable because of the increased productivity of railway labor and the increased responsibility that it is now required to assume. They assert that during the last 17 years there has been a steady decrease in the number of employees per mile of track operated, in the number of hours worked per mile of track operated, and in the total compensation of employees per mile of track operated. This lowering of the cost of labor's services, the employees insist, justifies their resistance to any wage reduction. Moreover, they state that substantially the same mileage, and approximately the same tonnage, is moved over the rails today as was moved in 1920 by approximately half the men.

Fifth, the employees express the opinion that recent improvements in general business conditions and in the volume of traffic militate against a wage reduction.

Sixth, the employees maintain that the proposal for a wage reduction was hastily conceived and without regard to its effect upon wage level movements in other industries. They maintain that a railroad wage reduction would inevitably be followed by wage cuts in other industries; that it is contrary to the present sound national policy

to maintain wage rates and to bring low wages up to a tolerable level; that if railway wage reductions were followed by wage reductions in industry generally, it would bring a further loss of jobs on the railroads.

Seventh, the employees maintain that, contrary to the statements of the carriers, railway wages do not compare favorably with wage levels and trends in other industries. The only fair measure of earnings, they state, is the hourly wage. The average hourly earnings were 70.5¢ in 1920 and fell to a low of 59.8¢ in 1923. Although they reached 66.9¢ in 1931, they fell again in 1933 to 60.9¢. For the first half of 1936, the average hourly earnings were 73.1¢. This was 8.5¢ higher than in 1936, 20% higher than in 1933, 12.3¢ higher than in 1929, but only 2.6% or 3.7¢ higher than in the second half of 1920.

The employees object to the adjusted earnings figure used by the carriers. They contend not only that index numbers cannot properly measure the cost of living, but that they neglect "the most important element in considering costs of living", the added cost to the family of purchasing new items which have since come into the customary standard of living of wage earners.

Findings and Recommendations of the Board

In its report, the Board makes the following findings and recommendations:

Proposed legislative programs. - "The Board has had presented to it programs, more or less specific, for the relief of the railroad industry.

"These programs have been offered as alternatives to the present proposal. Whatever their ineffectiveness may be in affording the 'quick financial relief' which the carriers claim is their present need, the evidence before the Board has impressed it with the necessity that now rests on Government for a complete and thorough-going reconsideration of the relationship of the railroad industry to our national well-being."

* * *

"The hearings before this Board have thoroughly impressed it with the fact that both carriers and railway labor have now a vital and common concern in the working out of an adequate, national transportation policy. Both cooperation and imagination can be expected to be forthcoming from railway labor as well as from the carriers. Whatever may be the disposition of this present proceeding, the existing willingness to work together for what is fully realized to be a common end dare not be lost by strife over a question essentially small in the light of the ultimate benefits that are bound to accrue from some better answer to the general railway problem."

* * *

"One cautionary word, however, deserves to be said. Concern over the railroads is tripartite in character. To the interest of management and of the men must be added the interest of the public. In some of the proposals that have been advanced, the public interest seems not to have been fully appreciated. It must be remembered that it is this third party that in the last analysis supports the entire structure, for the railroads exist for the public and not the public for the railroads."

* * *

"This Board is also hopeful that the outlines of a more vigorous, more farseeing financial policy can be pursued by management with the cooperation of Government so as to avoid not only the financial losses of the past but also the creation of corporate structures with too little flexibility inherent in them to permit them to survive a period of declining business activity. These and kindred considerations, it is true, do not promise the 'quick financial relief'

offered by a wage reduction. Some of the proposals, however, foreshadow relief in the not too distant future. And others, though the relief they may afford will take longer for realization, have, perhaps, an ultimate significance to the welfare of the railroad industry of such importance that their realization should not be jeopardized by discord between men and management over the means for securing immediate relief. Both men and management must realize that after this Board shall have discharged its function, whatever its decision, they will still be living with the railroads. Their livelihood, their success, will depend upon how ably each can grasp the problem of the other."

* * *

The prevention of "wastes" as a substitute for wage reduction. It was asserted before the Board that wastes aggregating \$1,000,000 a day could be prevented and that the pursuit of such a course by the carriers would obviate the need for effecting savings through a wage reduction. The elimination of such waste, however desirable, the Board finds, constitutes a long-term measure which affords little in the way of immediate relief.

* * *

The relevancy of the increased productivity of labor. "There has been increased productivity of railway labor. This may have resulted from several causes, among them increased efficiency of the employees and modernization of plant and equipment. Insofar as the increased productivity is shown to have resulted from the increased efficiency of labor or to have caused heavier responsibilities or sacrifices to rest upon the employees, this should be recognized in their compensation. Insofar, however, as the increased productivity is shown to have resulted from the efficiency of management or from investment of capital in modernized plant and equipment, that is not true except as additional sacrifice or responsibility is incidentally imposed upon the workers. Rather, such gain should go to the carriers insofar as necessary to yield a fair return, beyond which it should go to the public through better service and lower charges."

Relevancy of the cost of living. - The Board is inclined to believe that, on the whole, wage earners and other consumers find that the same incomes go somewhat farther today than in 1929 or in 1920 in meeting normal wants. These considerations become relevant, however, only when a reduction of wages is justified on other grounds.

Comparative relevancy of average hourly, weekly, and annual earnings. - The Board, when drawing conclusions concerning trends and comparative levels of pay, places main reliance upon average hourly earnings.

Trends in wages and earnings of railway labor and of labor in other industries. - "No evidence is found that railway employees have benefited more than have employees in other industries taken as a whole. Indeed, their gains in hourly earnings have been not quite as large."

Current rates of pay of railway employees and of other comparable workers. - "No general assumption can be indulged in * * * that wages of large groups of railway labor are on a level that is higher than wages for such comparable class of labor that we have been able to find."

General Conclusions. -

The Board observes that "the suggestion that has been entertained by some of suspending for a period of time, more or less dependent upon the volume of traffic, the wage increases granted in 1937 would introduce a somewhat inequitable element, assuming for the purpose of illustration that a reduction of about that percentage should be made. This flows from the fact that differentials in wage rates among the various groups of railway employees exist. That the differentials prior to 1937 operated too favorably in behalf of the more highly paid employees seems tacitly to have been admitted at that time, for the increases benefited percentagewise the lower-paid groups of employees more than those in the higher brackets. Consequently, to suspend these increases would be to operate according to the analogy of regressive rather than progressive taxation - making the burdens fall with undue weight upon those least able to meet them."

"Some adjustments are now taking place through the processes^{of} reorganization. The unusual percentage of carriers now in receivership or trusteeship thus need not necessarily disturb one. It may, indeed, be desirable from a broad standpoint that that percentage should increase, provided only that the processes of reorganization will result in real and not make-shift readjustments. No sacrifices of note need be asked for to preserve values that already have been long dead and whose burial is now merely a matter of the proper amenities of finance."

* * * *

"We have thus far dealt with the problem from the standpoint that the carriers' inability to pay is characterized by a short term aspect. To date it is so. The employees emphasize the fact that an upturn in the volume of business has already taken place. * * * Naturally, we cannot rest our conclusion merely upon a prevalent but possibly unwarranted optimism. It may, indeed, eventuate that operating revenues will fail to return within a reasonable period to 1937 levels or thereabouts."

If the occasion should arise for the carriers to reduce wages, the Board believes it would be well for them to consider these drawbacks of wage reduction upon a horizontal national scale - (a) the failure of such a proposal to distribute the benefit of the savings to the needier roads; (b) the fact that a horizontal wage reduction falls alike upon all classes of labor, upon the better paid and the less well paid alike.

* * * *

"Examination of the data above detailed leads us consequently to the conclusion that the level of wages of railway labor is not high when compared with wage levels in other industries. Nor do wage trends show that railway wages have advanced proportionately greater than wages in other industries. Instead they seem to show a slight lag, though on the other hand, they show greater resistance to decline than wages in other industries. Furthermore, no justification arises for a wage reduction from the current wage situation in other industries. There, no general movement to reduce wages has made its appearance. These considerations lead us to the conclusion that the carriers' proposal can derive no sustenance from the contention that railway wages as a whole are too high."

* * * *

"We conclude that no horizontal reduction upon a national scale of the wages of railway labor should be pressed by the carriers at this time."

PSF: Railroads

file

LOUIS B. WEHLE
FIFTY BROADWAY
NEW YORK

April 20, 1938.

Dear Bill:

You asked me this morning to send you my draft of April 12th of suggestions for a railroad guaranty; and I shall do so below. This draft resulted from the talk on April 4th between you, Sam Rosenman and myself. The trial draft of message I made on April 12th dealt with three points: taxation, railroads, and public works relief. This letter, sent you in duplicate, can carry the suggestions on the two latter points for what they may be worth to our friend to whom you will be handing this letter.

I.

The suggested railroad guaranty was predicated upon an earlier paragraph in the imaginary message in which there was acquiescence in a substantial modification of the undistributed profits tax. If there is to be no such modification, I doubt whether the railroad guaranty should be undertaken; because, under those circumstances, the guaranty would have to be larger and longer to bridge over to a period of traffic recovery; and I would not be willing to sponsor railroad guaranties in larger amounts or over such a period of time as to make them a habit.

However, at your request, and for whatever use their suggestive value may have, I am sending along the railroad guaranty suggestions, and they were as follows:

" Second: The railroads. They collectively constitute our greatest single employer of labor and our greatest buyer. They are languishing from want of traffic, their most crucial immediate need. The railroads' long-range problem must be dealt with comprehensively after a

reasonable period for study and consideration. In the meantime, the immediate problem is to safeguard them from further collapse while the larger problem is being worked out.

Our stimulation of business including railroads through R.F.C. loans, and our practical removal of the tax on undistributed corporate profits, should within the present calendar year bring about a large increase in business activities, which should, in turn, bring traffic to the railroads as great, or perhaps greater in volume than did the year 1936. But in the meantime, before such a degree of recovery can take place, their credit must be maintained and supported to a reasonable extent to prevent lay-offs and to check the dangerous demoralization of the railroad bond market. I therefore urge Congress, as an emergency measure at this Session, to peg the railroads' position with a limited guaranty. Such a guaranty with an outside limit of, say, \$500,000,000, should, on conditions presently outlined, operate in two ways. First, it should guarantee to every railroad which in the calendar years 1934-5-6 had an average annual operating deficit, against incurring in the calendar year 1938 an operating deficit greater than its average deficit in those test years. Second, in the case of every railroad which did not in those three years have an average annual operating deficit, the Government should guarantee such railroad against any operating deficit in the year 1938.

But such guaranty should be subject at least to the following four conditions: The first condition should be that the Government's liability to any railroad under such guaranty shall be reduced to the extent that in 1938 such railroad's expenditures for capital improvements or for maintenance shall be greater than the average annual expenditure for

such purposes in the three test years. This is to prevent a railroad's fattening itself indirectly out of Federal funds. As a second condition, the Government's liability as guarantor should be reduced to the extent that in 1938 the state and local taxes accrued and paid shall exceed the average of such taxes in the three test years,- this to prevent the Federal guarantee being employed indirectly to enrich states or municipalities. The third condition attached to the Federal emergency one-year guaranty to any railroad should be, that payment under it shall be reduced pro rata to the extent that the aggregate of wages and salaries in 1938 shall exceed the aggregate expended for such purposes in the year 1937.

There seems reason to believe that the estimate of \$500,000,000* represents the outside figure which the Federal Government might be called upon to pay under such a guaranty. The Act should set the aggregate limit at this figure; and should provide, as a fourth condition, that the amount payable under the collective guaranty to any railroad may be reduced pro rata, in order that the aggregate paid to all railroads shall not be in excess of the stated limit.

For the amount of any moneys paid by the Government pursuant to such guaranty, the railroad should be required by the Act to give its unsecured non-interest bearing note payable on or before, say, fifteen

*This amount of maximum guaranty was predicated upon a relatively early business recovery to be accelerated by tax adjustment. If these adjustments are not to be made, the improvements in traffic which may come will not be due to the recovery of business and the revival of more normal traffic volumes. Therefore, the suggested amount of the guaranty would be inadequate; yet, I would be unwilling to suggest a larger or longer guaranty because of its obvious advantages and disadvantages.

April 20, 1938.

years from date. Such note should under the Act be entitled to the sovereign's priority over any debt other than a preexisting mortgage debt of the company. Under the terms of such note, the railroad should be limited in its reserves and prohibited from paying stock dividends while any part of such note remains unpaid; with the further proviso that if and when the railroad, (or its successor after reorganization), shall have had the ability over a period of, say, three successive years, to serve fully all its outstanding bonds and any R.F.C. loans, the Government-guaranty note, or such part as is then unpaid, shall thereafter, so long as such ability shall continue, carry interest at 3% and shall be amortized at the annual rate computed on the number of years of the note's remaining life. Thus, of the maximum amount which might be paid out by the Federal Government under its emergency guaranty, a substantial proportion may come to be repaid."

Let me remind you again that in my opinion the foregoing suggestions on the technique of a railroad guaranty are intended for consideration only when such a guaranty is advisable; and unless, through tax and other adjustments, there should be a strong chance of early spontaneous resumption of business, I would not consider the guaranty advisable.

II.

As a further part of such a message, you and Sam and I were inclined on April 4th to recommend a statement discountenancing the use by labor of dangerous weapons. When I started in to draft such a statement, I found that it could best be made incident to the public works program and as part of a symmetrical limitation, both upon labor and

upon capital. Hence the following draft:

"Third: Public works relief. We must for the present continue to resort to public works for reduction of unemployment. Its chief advantages over any form of direct relief need not be discussed. Made work is better than no work. Another advantage is that public works give employment for beyond the works themselves,- in the mines, forests, and heavy industries where the materials are produced. I am asking the Congress to appropriate \$ _____ for public works to help in tiding over what should be a short period of acute unemployment. If in November, 1938, that period should threaten to be prolonged, we can then take any further action at a special session of Congress. Strong preference should be given under the statute to self-liquidating projects, and to works to which at the outset the states and the municipalities contribute a substantial proportion of the cost.

But we have learned that public works relief must be flexibly geared so that when conditions improve there may be a quick shift of man-power and of working capital into normal private industry. We must avoid the creation of any vested interest in emergency makeshifts, and it seems that such vested interests can be avoided only by reducing the profit motive both of labor and of capital as far as practicable in connection with public works relief. I therefore urge that under the Act compensation to labor employed on public works be on a basis 15% lower than the compensation being paid in the locality as certified by the Department of Labor; and that prices paid for certain classes of materials shall be strictly competitive and shall be at least 15% lower than the commercial prices either obtainable in the locality as certified by the Federal Trade Commission, or as estimated by it as being obtain-

able there for similar quantities. Such a price limitation should apply especially to prices paid, whether by way of purchase, (or of rentals for construction equipment), for all forms of steel or steel products; for copper, bronze and other metal products; for pipe, plumbing, electrical plant, machinery, cement or other road and construction materials; for stone, sand, brick, lumber, flooring, roofing and composition materials of all major classes.

Another form of protection to the community should accompany henceforth any extension of our emergency public works relief, especially if both wages and prices in public works are to be keyed to current standards obtaining in outside private work. On the one hand, the Federal Government should sternly check illegal combinations for artificial fixing of commercial prices, not only of the materials above referred to, but also of the necessaries of life. Such practices, especially at such a time, cannot be tolerated. They must be promptly and severely dealt with either under existing laws or new ones,- a matter which must in due time be considered by us outside the scope of this message.

On the other hand, we cannot condone, either, the pursuit by labor of illegal means for arbitrarily enforcing its demands, whether in connection with the public works themselves or in connection with private works. The Federal Government has now created administrative agencies for the peaceful settlement of labor disputes; and this Administration is pledged to extend further its projected system for establishing fair labor standards throughout all industry. There can be no public acquiescence in the illegal seizure or occupancy of property of an employer to force the granting of labor's demands. To condone such practices is to legitimize for all purposes the use of violence, and to

Hon. William C. Bullitt.

-7-

April 20, 1938.

surrender the fundamental principles of our civilized order. The Federal Government, and the states as well, should meet this evil by the stern enforcement of existing laws."

III.

The needle will, in general, point north in spite of magnetic disturbances. But we must give the needle what chance we can. The true north is Justice, and the ship is Democracy. Now and then the ship can get too far off her course for safety. The purpose of such policies as are suggested above would be to clarify the motivations that affect the atmosphere around the binnacle.

Yours,

A handwritten signature in cursive script, appearing to read 'W.C. Bullitt', with a long horizontal flourish extending to the right.

Hon. William C. Bullitt,
The Anchorage,
Washington, D. C.

PSF: Railroads

The so-called Managers' Committee representing the railroads has power of attorney binding every railroad in the United States, with possibly three or four exceptions, none of the exceptions being trunk lines. No other railroad officers can represent or speak for the railroads.

The best Clement, Gray and Norris can do is to consult with you "amicus curiae", and then, if the labor people will give you assurances of their willingness to recommend a certain settlement to their associates, the three officers you have called in will then be in a position to use their influence with the Managers' Committee, who alone can settle it for the railroads.

Gross earnings

July 1938 \$ 249,600,000
" 1933 293,700,000

Last 3 months 1936 } #
with 3 " 1937 } 2,750,000,000

PSF: Railroads
Personal
Railroad files

A. There is reason to believe that the two parties can be brought to agree if the basis were suggested by the President.

B. There need not be a reduction in wages.

C. There is every justification, however, for a ^{Suspension} ~~reduction~~, for which there is ample precedent. Men and management voluntarily agreed to a ^{Suspension} ~~reduction~~ of 10% effective February 1, 1932, and this ^{Suspension} ~~reduction~~ continued by common consent until June 30, 1934. At the suggestion of the President it was further continued for an equivalent of six months, being restored gradually through a period of nine months. So that this ^{Suspension} ~~reduction~~ of 10% was actually effective for a period of 35 months.

D. Through collective bargaining wages were increased 5 cents per hour August 1, 1937 for non-operating employees, and on October 1, 1937 wages of train service groups were increased ~~14~~ cents per day.

E. While the negotiations were proceeding, traffic began declining until it reached approximately the level of 1933. Some of the railroads already bankrupt and barely meeting payrolls, with three or four exceptions they are all in financial difficulties; forces have been cut deeply and unemployment drastically increased, an inevitable result in the circumstances. Forces should be increased, but cannot be, because of the necessity of balancing income with outgo.

It is suggested that the President send for the labor leaders first, and make it as his suggestion that they agree to a ~~reduction~~^{Suspension} of the amount of the increases granted respectively on August 1 and October 1, 1937, preserving however any minimums recently provided by law, the ~~reduction~~^{Suspension} to remain in effect until the gross traffic of the railroads for a period of six successive months reaches the level of a test period which would include the last three months of 1936 and the first three months of 1937, which would bring it to the level of the period at which the negotiations for an increase in wages were inaugurated.

F. The President can say with the utmost propriety that he has not discussed this matter with the railroad managers, but would be perfectly willing to do so and to urge it upon them if labor itself will agree.

ROBERT A. LOVETT
59 WALL STREET
NEW YORK CITY

file

PSF: Railroads

April 20, 1938.

PERSONAL

The Honorable William C. Bullitt,
The Anchorage Apartments,
1900 "Q" Street N.W.,
Washington, D.C.

Dear Bill:

You asked me on Monday night to send you a short memorandum on an emergency program for certain borderline railroads which we discussed briefly when I had the pleasure of seeing you in Washington a week or so ago. The memorandum which I enclose gives merely the roughest outline of the background against which to view the suggestions, and it sets out the suggestions themselves in condensed form. Since the program itself can be changed in detail with considerable ease, I merely touched the high spots, and have mentioned those elements which seem to me to have a particular appeal at this time.

You will quickly see that the suggestions are not in finished shape, and that "plan" is really too big a word to apply to these ideas. On the other hand, there may be some part of the idea which would fit in with other more orderly efforts being made by competent men in Washington. Therefore, my natural reluctance to send you an incomplete job has been quieted by the hope that it might prove useful to you, and by warning you in advance of my fear that there may be flaws in it which might be disclosed if I had time to give this more careful study.

The opinions I have expressed in the attached memorandum are purely personal ones. There has been no real opportunity to check them with railroad officials, and there is nothing in writing about these suggestions except this memorandum.

Since I am not a railroad expert, my views are not worth much and I offer them with very real humility at a time when the desperate illness of the railroads seems to be infecting everything.

Adele and I enjoyed your party a great deal the other night. It was fun to see you again, and I hope we will have another opportunity soon. Meanwhile, with my kindest regards as always, I am

Very sincerely yours,

Robert Lovett

April 20, 1938

MEMORANDUM TO W.C.B.

RE: EMERGENCY PROGRAM FOR CERTAIN RAILROADS

Background

These suggestions are made on the theory that the problem of certain railroads in the present circumstances should be treated from an emergency point of view; that any emergency program should be based on the sound principle of reduction of top-heavy capital structures; that the introduction of the principle of sinking funds is desirable as suggested by this Administration; that the discussion of labor scales may have to be left to more normal times in the case of certain distressed railroads; that any program should require a minimum of Congressional action, and finally, that Government should not be asked to do more than it has done and is now doing for other depressed elements in the national economy.

It is felt that effective handling at this time of the problem presented by borderline railroads in need of financial reorganization will go a great distance toward restoring the confidence of investors in all types of senior securities. While inadequate freight rates and excessive operating personnel wage scales during a time of depression have had obvious influences on investors, one of the principal contributing factors to the fears which have frozen both the senior and junior capital markets is the growing realization by investors that seniority of mortgage position has not meant much under the policies developed by many Trustees in recent years. The tendency to pamper the stockholder at the expense of the bondholder has no doubt to some extent made possible certain abuses which have grown up through the medium of rail holding companies.

Outlined below are the bare bones of a program which might be considered by competent Government authorities in connection with any plans they may make for treating the problem of the borderline railroads. In order to have a specific example for use in this explanation, let us take one of the hardest cases -- that of Baltimore & Ohio

Railroad Company as representing one which appears headed for receivership or bankruptcy. The present indebtedness of the B.&O. is about 670 million dollars, including the obligations to the R.F.C. and the P.W.A. Its mortgage and debenture debt amounts to about 643 million dollars (excluding equipment trust certificates) which requires annual interest service of 33 million dollars, or an average of approximately 4.75%. During the past seven years, it has earned its very heavy interest charges in three out of the seven years and failed to earn fixed charges four times. On the average, during the period it covered its fixed charges 0.97 times. To enable us to use round figures, assume its fixed charges were 32 millions and that as a result of this 1 million reduction it would have earned its fixed charges on the average over the seven-year period 1.00 times. The present interest charges are manifestly beyond its capacity to earn, even over a period of years.

But suppose the interest charges were cut from 32 million to 18 million annually. It would then have earned interest requirements almost two times on the seven-year average. Therefore, if the interest rates could be substantially reduced by, say, one-half, the B.&O. would have earned, on the average, 18 million dollars for interest and have 14 million left over.

The plan suggested below is designed to bring about a) reduction in fixed interest, b) creation of a surplus of earnings now going to interest, which would be diverted to a sinking fund, c) which would be used to purchase in the market below par, or to call at par, the funded debt of the railroad.

Suggestions

1. - Form an agency to be called, say, "Federal Railroad Mortgage Corporation", to be capitalized at, say, 50 million dollars. The R.F.C. would then subscribe to the capital stock and the F.R.M.C. would be authorized to borrow up to, say, 100% of all its assets used as collateral with the R.F.C. It would be complementary to, and not competitive with, the R.F.C. and would perform only a specialized service. It would have to work as an arm of the R.F.C. and its assets would generally be contracts from the reorganized railroad to pay F.R.M.C. the agreed total interest, or alternately, bonds for which it has exchanged its own obligations.

2. - The function of the F.R.M.C. would be to assist in the reorganization of railroads conforming to standards and regulations to be laid down by it and to undertake guaranties or to issue its own securities against obligations of railroads who would agree to a program of voluntary capital reorganization.

Any railroad which would agree to a voluntary reorganization along certain established lines would then be in a position to have its bonds either endorsed by the F.R.M.C. carrying a substantially lower rate of interest, or to turn its present bonds in to the F.R.M.C. and exchange them for bonds of that Corporation. For example, assume the B.&O. went to the F.R.M.C. for reorganization. The first step would be for the F.R.M.C. either to guarantee by endorsement $X\%$ interest on the existing B.&O. bonds or to issue its own obligations in exchange for them. This would permit the first mortgage bondholder, for example, to receive a guaranteed obligation bearing interest at, say, 3% , the second mortgage bondholder to receive a bond bearing, say, 2% interest, and the junior bond debenture holders might receive, say $1\frac{1}{2}\%$. If the total of this fixed interest charge did not exceed 18 million dollars, there would be on the average over a period of time, an additional 14 million left over from the B.&O. earnings. This additional 14 million dollars would be set up as a cumulative fixed charge on the B.&O., payable to the F.R.M.C., which, in turn, by the terms of the agreement, under which its guaranty was given, would use it for purchase in the market or call at par of bonds and debentures until they retired. Taking the past seven-year average as a base, the effect of this sinking fund operation on the basis of call at par with interest on called bonds accumulating for the sinking fund, would be to retire the entire top-heavy funded debt (670 millions) of the B.&O. in about 35 years. This period of time is substantially less than that for which railroads try to borrow money.

3. - Obviously, as the funded debt is retired through sinking fund, the preferred stock and common stock which now have almost no value and would probably be wiped out through reorganization, would acquire a value through the progressive reduction of debt. This would be the inducement to the equity owners of the property.

But since the plan depends on the give-up of current income by the funded debt holders, some way should be provided to permit them to regain some portion of the interest which they have abandoned. This could easily be done through giving them warrants to buy common stock at some equitable price, since the retirement of their own debt and the foregoing of interest by them make the creation of an equity value possible. In theory, if the procedure were mathematical, bondholders would be paid off by the end of about 35 years and the preferred and common stock holders would own the road, with no funded debt. This would, of course, be unjust to the old funded debt holders.

4. - It is felt that rail labor, the majority of institutional investors, and rail management in these distressed cases would be favorably disposed to some such plan. Insurance companies, savings banks, etc., are vitally interested, not solely because of the dollars they may have in a particular trouble-case, but also because in their own and in the public interest it is essential to have them as buyers if a capital market is to be restored. The rail security problem is hanging over the entire long-term capital market. The voluntary nature of the program is one of its weaknesses. But here, in contrast to such programs in the past, a valuable quid pro quo is offered to the consenting security holders -- the guaranty of a third party. Furthermore, the weight of public opinion might well swing strongly against any group which obstructed the guaranty program and forced involuntary receivership through suit or otherwise.

5. - Figures used in this informal memo are very rough and contain many guesses. They are given only as approximations and should be used as such. Short summaries of figures for the B.&O. and Southern Pacific Systems are attached as exhibits giving the figures of those roads relating to gross revenues, balances available for fixed charges, interest requirements, etc.

4/20/38

BALTIMORE & OHIO RAILROAD COMPANY

The Baltimore & Ohio would benefit particularly by the treatment outlined for the Southern Pacific in the accompanying memorandum. The present indebtedness of the Baltimore & Ohio is approximately \$670,000,000 including the obligations to the R.F.C. and the P.W.A. Rates of interest range from 4% to 6% and the average interest rate is approximately 4.75%. With this relatively high rate of interest the Baltimore & Ohio would show a large saving by an exchange of its bonds for bonds guaranteed by a special agency of the United States Government bearing an average interest rate of, let us say, 2 1/2%.

The annual fixed charge of the Baltimore & Ohio amounts to approximately \$33,000,000. Over a period of years the earnings of the Baltimore & Ohio have been as follows:

Year	Gross Revenues	Bal. for Fixed Charges	(000 omitted)		Fixed Charges Times Earned
			Fixed Charges	Surplus after Fixed Charges	
1937	\$169,436	\$31,463	\$32,184	\$ 721 (d)	0.98
1936	168,993	37,432	32,393	4,539	1.14
1935	141,843	29,758	32,939	3,181 (d)	0.90
1934	135,539	28,516	32,341	3,826 (d)	0.88
1933	131,792	33,650	33,445	205	1.01
1932	125,883	26,788	33,123	6,335 (d)	0.81
1931	172,753	35,584	32,156	3,428	1.11
Average	149,463	31,884	32,726	842 (d)	0.97

(d) Deficit.

The Baltimore & Ohio has approximately \$643,000,000 mortgage and debenture debt including obligations to the R.F.C. and P.W.A. but excluding equipment trust certificates. If this indebtedness were to be exchanged for the above mentioned guaranteed bonds there would be an annual saving of approximately \$13,700,000. It will be noted from the above table that in the 1931-1937 period the Baltimore & Ohio failed to earn its fixed charges by an average amount of nearly \$1,000,000 a year, thus the potential saving of \$13,700,000 a year should be reduced, therefore, to \$12,700,000. Over a period of years it should be possible to count on applying this average annual saving of \$12,700,000 as a sinking fund for the purchase of the proposed bonds if available in the market at less than 100 or for redemption at 100. For conservatism, let us assume that all bonds acquired for the sinking fund are obtained at 100. Let us also assume that bonds acquired for sinking fund continue to draw interest for the benefit of the sinking fund. With such a sinking fund it would be possible to retire the entire funded debt of the Baltimore & Ohio of about \$670,000,000 stated above within a period of thirty-five years.

April 20, 1938.

SOUTHERN PACIFIC COMPANY

This road has been particularly hard hit by its inability to reduce expenses sufficiently rapidly to meet the decline in business. Moreover, it has recently suffered from flood conditions in California.

The following table showing the earnings record of the Southern Pacific Company and Transportation System Companies combined indicates that over a period of time--year in and year out excluding such abnormal years as 1932 and 1933--it has been able to earn more than the amount of its fixed charges. It also indicates that average earnings over a period of years, including the bad years, have been in excess of the total amount of fixed charges.

Year	(000 omitted)				
	Gross Revenues	Balance for Fixed Charges	Fixed Charges	Surplus after Fixed Charges	Fixed Charges Times Earned
1937	\$225,017	\$31,460	\$30,708	\$ 757	1.02
1936	204,339	45,525	30,577	14,948	1.49
1935	163,360	34,376	30,579	3,797	1.12
1934	149,193	55,037	31,006	4,031	1.13
1933	129,361	25,391	30,882	4,991d.	0.84
1932	142,597	25,583	30,673	5,090d.	0.83
1931	198,642	45,325	30,586	14,739	1.48
Average	173,287	34,742	30,715	4,027	1.13

(d) Deficit.

NOTE: Above figures do not include deficit of separately operated solely controlled affiliated companies.

What this road has been able to do in the past it should be able to do in the future.

On December 31, 1937 the Southern Pacific Company and Transportation System Companies combined reported \$698,409,937 funded indebtedness outstanding in the hands of the public. The mortgage, debenture and secured indebtedness (excluding equipment trust certificates) bore rates of interest ranging from 3 3/4% to 5%. The average rate of interest was 4.20%. The actual amount of this debt was \$654,031,435 and the annual interest requirement on it was \$27,557,357.

If the \$654,031,435 indebtedness mentioned above were to be exchanged for bonds guaranteed by a special agency of the United States Government bearing an average interest rate of, let us say, 2 1/2%, the annual requirement of this portion of the debt would be only \$16,350,736. This represents a saving of \$11,206,571 annually over the present payments.

SOUTHERN PACIFIC COMPANY - 2

As indicated above, it seems fair to assume that the Southern Pacific during the coming years should, on the average, be able to earn at least the full amount of its fixed charges. It should be possible, therefore, to count on applying the above-mentioned saving of \$11,206,571 as a sinking fund for the purchase of the proposed bonds in the market if obtainable below 100 or, if not so obtainable, for redemption at 100. For purposes of conservatism, let us assume that all bonds to be acquired by the sinking fund are obtained at a price of 100. Let us also assume that interest on the bonds so acquired for sinking fund is allowed to accumulate for the benefit of the sinking fund and is added to the annual instalments of such fund. It is computed that within about thirty-eight years this sinking fund would have been sufficient to retire the entire funded indebtedness of the company stated above of \$698,409,937 on December 31, 1937.

AR

PSF: Railroads

THE WHITE HOUSE
WASHINGTON

file
personal

9/21/38

MEMO FOR THE PRESIDENT

George Harrison telephoned and asked me to give you a message.

He says that the six gentlemen have by mutual accord agreed that just as soon as the wage question is out of the way, they will start right in at work on the job you gave them.

Said he wanted you to have this word because some press reports, particularly the New York Times this morning, were very misleading. Says the six are in accord.

MHM

1
~~fact~~ ~~file~~

PSF: Railroads

318 Keith Bldg.
Chicago, Illinois.
November 12, 1941.

The President,
The White House,
Washington, D. C.

Dear Mr. President:

In our letter of November 7th your attention was directed to the action taken by the General Chairmen of the five transportation brotherhoods rejecting the recommendation of the Emergency Board in connection with the wage dispute between these organizations and the railroads.

In view of the fact that the employees are now compelled to pursue the only course left open to them or accept unfair and unjust treatment, unless the employers can be prevailed upon to acknowledge the rights of the men, dates have today been designated for a strike to become effective.

The employees represented by these organizations are to engage in a strike on approximately one-third of the railroads at 6 AM Sunday, December 7; one-third at 6 AM Monday, December 8; and the remainder at 6 AM Tuesday, December 9, 1941. We feel that you should be personally advised of this action.

Respectfully yours,

A. J. Hamilton
Grand Chief Engineer, BIE.

E. J. Goff on ans
Assistant President, BIE.

H. W. Travers
President, ORC.

A. F. Whitney
President, BRT.

T. C. Cashner
President, S. of M. A.

BRIGHT, THOMPSON & MAST
ATTORNEYS AT LAW
SOUTHERN BUILDING
WASHINGTON, D. C.

FRANK S. BRIGHT
HUSTON THOMPSON
OSCAR P. MAST

TELEPHONE
NATIONAL 0133
CABLE
"BRIGHT"

November 11, 1941.

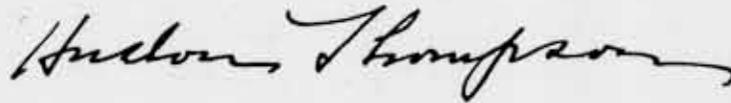
Major General Edwin M. Watson,
The White House,
Washington, D.C.

My dear "Ed":

Personal and Confidential.

Following my conversation with you over
the phone yesterday and your suggestion that I prepare
a short memo for the President, I am enclosing the
same in this letter.

Cordially yours,



Huston Thompson

Enc

BRIGHT, THOMPSON & MAST

ATTORNEYS AT LAW
SOUTHERN BUILDING
WASHINGTON, D. C.

FRANK S. BRIGHT
HUSTON THOMPSON
OSCAR P. MAST

TELEPHONE
NATIONAL 0133
CABLE
"BRIGHT"

November 11, 1941.

Honorable Franklin D. Roosevelt,
The White House,
Washington, D.C.

My dear Mr. President:

I am in receipt of correspondence which Wayne L. Morse, Chairman of our Emergency Board, has sent to you. In addition, I am suggesting a few thoughts about procedure. In confidential talks with Whitney and others they all said the last thing they wanted was a strike, so I am sure that there will be an approach to you, after the meeting of the Fourteen Non-operating Unions, November 13th. May I suggest that the approach come from the parties rather than from you.

I suggest the calling in, in advance of any conferences with the parties, of Joe Eastman and perhaps Claude Porter. Both sides seem to have complete confidence in Eastman. Porter has given me confidential approval of the report. He is a member of the Finance Board and would be able to tell what moneys would have to be raised by rate increase.

I think it would be perhaps wise to see the litigants separately at first and learn their inmost feelings and then bring them together again.

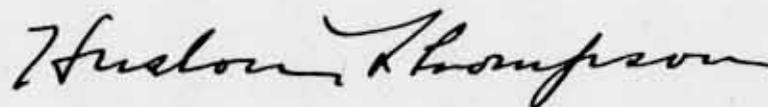
I have roughly estimated the following. If the percentage of the Five Operating Groups was raised from our figure of $7\frac{1}{2}\%$ to $8\frac{1}{2}\%$ it would mean an increase of approximately \$7,500,000. If the Fourteen Non-operating Groups were raised from 9% to 10% it would mean an increase of approximately \$121,000,000. The Fourteen Non-operating Groups are offered by our findings a raise in terms of percentages of $13\frac{1}{2}\%$ on their wages and $1\frac{1}{2}\%$ for their vacations, with a total 15% increase. Thus our total over all raise for both groups is above 10%.

Hon. Franklin D. Roosevelt.

Nov. 11, 1941.

In arriving at our percentages a majority of the Board considered carefully the following, among many subjects: (a) Increased cost of living; (b) Comparison of the wage scale of the operating groups and the higher ones of the non-operating groups as compared with other industries. The white collared man, the preacher, the lawyer, the doctor, etc. all were lower; (c) The fact that many middle class people had their investments in life insurance based to a considerable extent on railroad securities; (d) Increased cost to the public if rates are increased. The impetus to inflation of too high a raise; (e) The loss of railroad business in raising rates through the competition of the trucks, airplanes, and other means.

Cordially yours,



Huston Thompson

THE FOURTEEN COOPERATING RAILROAD LABOR ORGANIZATIONS

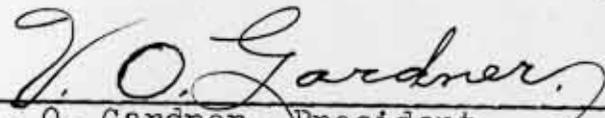
November 13th, 1941.

Dear Mr. President:

The representatives of more than 800,000 organized railroad workers, members of the Fourteen Standard Cooperating Railroad Unions, today **unanimously** expressed their dissatisfaction and complete disappointment in the report made to you on pending national wage dispute.

A more complete statement in this respect is attached. It is the purpose of the railway employes to pursue the present controversy over wage rates, etc., until a satisfactory adjustment is reached.

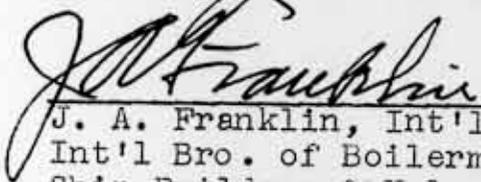
Respectfully yours,



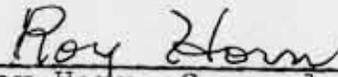
V. O. Gardner, President,
The Order of Railroad Telegraphers



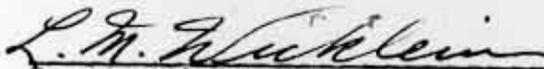
H. J. Carr, Gen. Vice President,
Int'l Ass'n of Machinists,



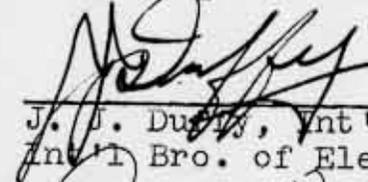
J. A. Franklin, Int'l President
Int'l Bro. of Boilermakers, Iron
Ship Builders & Helpers of A.



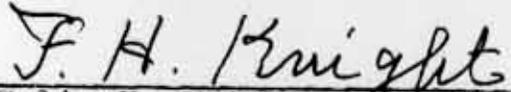
Roy Horn, General President,
Int'l Bro. of Blacksmiths,
Drop Forgers & Helpers



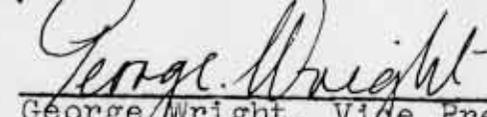
L. M. Wicklein, Gen. Vice Pres.
Sheet Metal Workers' Int'l Ass'n



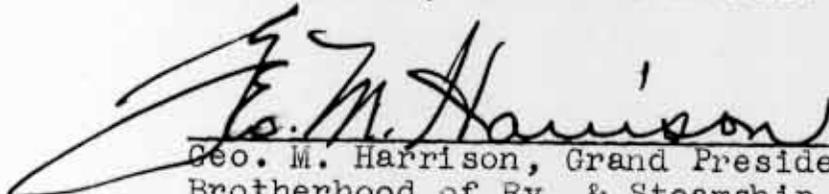
J. J. Duffy, Int'l Vice Pres.
Int'l Bro. of Elec. Workers



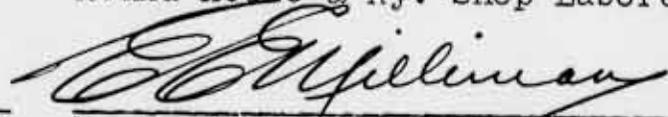
Felix H. Knight, Gen. President,
Bro. Railway Carmen of America



George Wright, Vice President,
Int'l Bro. of Firemen, Oilers,
Round House & Ry. Shop Laborers



Geo. M. Harrison, Grand President
Brotherhood of Ry. & Steamship
Clerks, Freight Handlers, Express
& Station Employes



E. E. Milliman, President,
Brotherhood of Maintenance of
Way

A. E. Lyon

A. E. Lyon, Grand President
Bro. of Railroad Signalmen of
America

James J. Delaney

James J. Delaney, President,
Nat'l Org. Masters, Mates &
Pilots of America

Samuel J. Hogan

Samuel J. Hogan, President,
Nat'l Marine Engineers'
Beneficial Ass'n

Joseph P. Ryan

Joseph P. Ryan, President,
Int'l Longshoremen's Ass'n

Honorable Franklin D. Roosevelt,
President of the United States,
The White House,
Washington, D. C.

RAILWAY EMPLOYEES' DEPARTMENT
Room 520 America Fore Bldg., 844 Rush St.
Fort Dearborn Station
CHICAGO, ILL.

Via "AIR" Mail
Special Delivery

Hon. Franklin D. Roosevelt,
The White House,
Washington, D. C.



Via "AIR" Mail
Special Delivery

WASHINGTON
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930AM
D.C.

DEL

1941

THE FOURTEEN COOPERATING RAILROAD LABOR ORGANIZATIONS

November 13th, 1941

MEMO TO THE SECRETARY
OF THE PRESIDENT.

I would appreciate you attaching the enclosed statement to the letter addressed to the President today signed by the Fourteen Cooperating Railroad Labor Organizations which I overlooked attaching.

Many thanks.

Stenographer.

STATEMENT OF THE FOURTEEN COOPERATING RAILROAD
LABOR ORGANIZATIONS ON EMERGENCY BOARD REPORT
TO THE PRESIDENT, NOVEMBER 5th, 1941.

- - - - -

The refusal of the President's Emergency Board to grant an increase in prevailing contract wages (except as to certain minimums), and recommending only temporary additions to wage payments for a limited period of time, is most disappointing to the employes. The clearly established facts show that wages of these railroad workers, on the average, are but 63 $\frac{1}{2}$ % per hour and are 35% below wages paid similar workers in other comparable industries.

Railroad wages have not been increased since 1937. Every person informed of current developments knows that wage scales throughout American industries have been rising. If railroad workers are to be denied an increase in their wage levels during periods of industrial activity, then there is no possibility of improving their position. If railroad workers cannot raise their wage levels in periods of industrial activity, then it might be appropriately asked: "When can wage standards be raised?"

The Board admits wage standards in other industries are rising, but completely ignores this fact in its recommendations. While the Board pays lip-service to the "system of orderly procedure" required by the Railway Labor Act in the consideration and disposition of controversies over wage changes, it substitutes "compromise" for "justice" in the interest of unanimity among the Board Members. Orderly procedure as a substitute for economic warfare cannot survive unless it produces justice.

While the Board states another factor influencing its decision is rising food prices, at the same time it denies any relief to the employes of short line railroads except a minimum wage of 40¢ per hour.

The recommendation of the Board completely ignores its own findings that economic changes are occurring rapidly and are unpredictable. The Report points out that wholesale prices of 28 basic commodities have already jumped by more than 55% since August, 1939, and that retail prices and living costs have risen substantially and will follow this general trend.

In spite of these facts, the astounding suggestion is made that railroad wage levels continue unchanged and that a temporary bonus of 9¢ per hour be provided to meet this condition.

The proposal for temporary additions to wage payments ignores all past history of wage fixing and introduces a new element that the Board itself denounced in disposing of the carriers' proposed bonus plan.

A bonus plan in any form is no answer to this question, nor can it be tolerated by railroad labor.

Not only is the Board's suggestion inadequate to meet its own conclusions, but it entirely ignores other admitted facts disclosing that railroad wages are far behind those in other industries.

While the Board dwells at length upon the virtue of an adequate minimum wage, it dismisses this problem with the indefensible recommendation that employes of trunk line railroads be paid a minimum wage of not less than 45¢ and employes of short lines 40¢ per hour. If this is the Board's view of an adequate minimum wage, then there is little difficulty in understanding how it ignored its plain duty in the general wage issue.

The recommendation of 6 days' vacation with pay is a disgrace to an industry that gains a large share of its business from vacation activities of the people. The record in this case abundantly shows that industry generally grants more liberal vacations, but the Board makes the amazing suggestion that the employes should sacrifice some of their normal working conditions to permit application of this slight concession. This is wholly unsatisfactory.

The facts and the record in this case warrant an increase in contract wage rates that will give to railroad labor equality of treatment with other labor of similar skill and minimum wages in line with those established through collective bargaining in other major industries. The railroad employes want freedom of opportunity to protect themselves against rising prices and to participate in generally increasing wage levels. This cannot be done in view of the restrictions suggested by the Board.

Railroad employes believe in orderly procedure, but they are not willing to accept injustice. They are determined to press their demands for equitable consideration and relief against present intolerable wage standards and to gain reasonable vacations.

RAILWAY EMPLOYEES' DEPARTMENT

Room 520 America Fore Bldg., 844 Rush St.

Fort Dearborn Station

CHICAGO, ILL.



AIR MAIL SPECIAL DELIVERY



Special Delivery - Air Mail

Secretary to the President of
the United States,
The White House,
Washington, D. C.

AIR MAIL, SPECIAL DELIVERY

WASHINGTON
NOV 12 7
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D. C.



1941

Proposed Release

PSF: Railroads

Railroad
Strike

Washington, D. C.
Nov. 15, 1941.

MEMO TO: Secretary McIntyre, The White House.

FROM: The National Mediation Board.

At your request, the National Mediation Board submits the following in connection with the rejection of the Emergency Board Report by the Chief Executives of the Five Transportation Brotherhoods.

PROPOSED RELEASE

"The Chief Executives of the Five Transportation Brotherhoods, Engineers, CONDUCTORS, Firemen, Brakemen and Switchmen have advised that they have rejected the findings or conclusions of the Emergency Board I appointed under the provision of Section 10 of the Railway Labor Act (the report was made public Nov. 5th) and that Enginemen, Trainmen and Yardmen, will begin a nation-wide strike December 7, 1941."

"The Chief Executives of the fourteen non-operating railroad labor organizations, i. e. Clerks, Shopmen, Telegraphers, Maintenance men, etc. have rejected the findings of the Board, but have not threatened a strike or set a date."

"The Railroad Managements have accepted the Emergency Board Report."

"I have asked for further coal parleys and I now ask for further railroad parleys. There must be no railroad strike. All disputes in the railroad industry have, for 15 years, been settled under the law -- the Railway Labor Act, and it must not fail now."

"The Railroads cannot operate without coal and the coal mines cannot operate without the railroads. The National Defense Program is dependent on both the railroads and the coal mines."

"I have requested the representatives of the railroads and the employees to meet at Chicago, Monday, November 17, 1941, and hold further conferences in consideration of the Emergency Board Report, and in the event the parties do not come to an understanding, to arbitrate under the legal provisions of the Railway Labor Act, so that orderly democratic principles may be followed."

"It may be, if the three groups named in the proclamation creating the Emergency Board are not successful in settling the dispute or disputes, that several arbitration plans will have to be discussed under the provisions of the Railway Labor Act."

Respectfully submitted,
THE NATIONAL MEDIATION BOARD.

MEMORANDUM

To: Mr. Marvin H. McIntyre, Secretary to the President.
From: National Mediation Board.
Date: November 15, 1941.
Subject: Background Observations on the Current Railroad Labor Situation

Basically, the appointment of the Emergency Board, in whose recommendations both groups of railroad labor organizations--those representing the operating employees and those representing the non-operating employees--are now voicing their disappointment, had to be created by the President because of the inability of the parties concerned to compose their differences in direct conferences or in mediation. The railroads were willing to arbitrate, but the labor organizations were not, electing instead to precipitate the creation of an Emergency Board. Under these circumstances it is not unfair to hold that the employees should now abide by the recommendations of the Board. This, however, they appear to be unwilling to do, alleging all kinds of faults with the report of the Board.

In this connection, it might be recalled that when Mr. George M. Harrison some time early in September discussed the railroad labor situation with the President and indicated that his group of labor organizations would not find it feasible to agree to arbitrate their differences with the railroads and that, as a consequence, a presidential Emergency Board might have to be appointed, he suggested that this would be preferable since the government would then be telling the parties what would be expected of them.

The leaders of the train and engine service or operating employees have now authorized their constituents to strike beginning December 7 for the purpose ostensibly of forcing more favorable consideration from the railroads than recommended by the Emergency Board. The non-operating employees and their labor organizations have, however, simply "rejected" the report of the Board but have not indicated what they have in mind by way of securing more favorable consideration from the railroads. The railroads, on the other hand, while also expressing their disappointment in the awards of the Board, have nevertheless indicated their willingness to accept its findings.

As matters stand at the moment, therefore, the reactions of the principals immediately concerned with the report of the Emergency Board are all in and the position of each is clear. The problem, therefore, is what should be done with respect to the situation from now on.

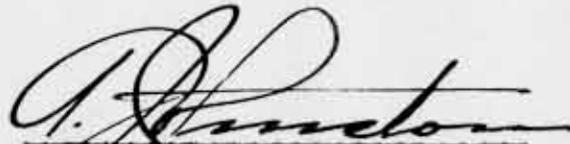
Chicago, Illinois.
November 12, 1941.

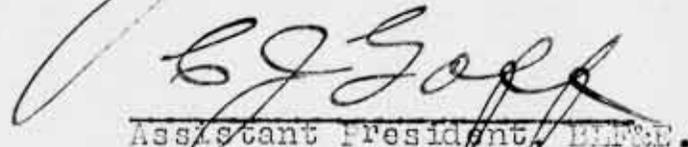
Mr. Robt. F. Cole, Secty.,
National Mediation Board,
Washington, D. C.

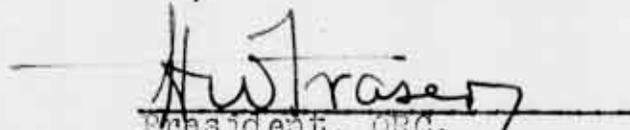
Dear Sir:

Herewith, for the information of the National
Mediation Board, copy of communication we have this
day addressed to the President of the United States.

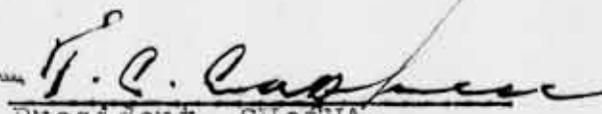
Yours very truly,


Grand Chief Engineer, BEE.


Assistant President, BEE&E.


President, ORC.


President, BRT.


President, SUofNA.

National Mediation Board		
RECEIVED	NOV 17 1941	11:15 AM
U. S. DEPARTMENT OF LABOR		

Encl.

Chicago, Illinois.
November 12, 1941.

The President,
The White House,
Washington, D. C.

Dear Mr. President:

In our letter of November 7th your attention was directed to the action taken by the General Chairmen of the five transportation brotherhoods rejecting the recommendation of the Emergency Board in connection with the wage dispute between these organizations and the railroads.

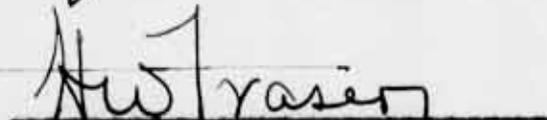
In view of the fact that the employes are now compelled to pursue the only course left open to them or accept unfair and unjust treatment, unless the employers can be prevailed upon to acknowledge the rights of the men, dates have today been designated for a strike to become effective.

The employes represented by these organizations are to engage in a strike on approximately one-third of the railroads at 6 AM Sunday, December 7; one-third at 6 AM Monday, December 8; and the remainder at 6 AM Tuesday, December 9, 1941. We feel that you should be personally advised of this action.

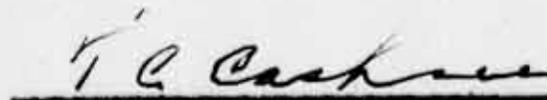
Respectfully yours,

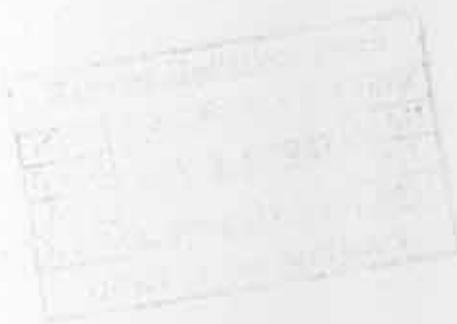

Grand Chief Engineer, BLE.


Assistant President, BLF&SE.


President, ORC.


President, BRT.


President, SUBINA.



TO SECRETARY FOR OFFICE STAMP

National Mediation Board		
MPV	RECEIVED	OSB
GVB	NOV 13 1941	GAC
ACB		DIL
KCB	REFERRED	RFC
Office of the Secretary		

INFORMATION

Please read and relay to next member promptly.

Date Forwarded

Mr. Lewis.....
Mr. Doyor.....
Mr. Cook.....
gac 11/13/41

10
~~10~~
P S F: Railroads

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

SUNSET LODGE No. 55



**RESPECTFULLY REFERRED
FOR ACKNOWLEDGMENT
AND CONSIDERATION**

M. M. Dwyer

**AFFILIATED WITH
THE AMERICAN FEDERATION
OF LABOR**

New Orleans La.
November 8, 1941.

Hon F. D. Roosevelt,
Pres, United States,
White House,
Washington D. C.

Dear Mr. President;

The emergency fact finding board appointed by you, for the railroads have rendered their decision, which if put to a secret ballot I am sure that a majority of the railroad employees will accept.

I was and am still Division Chairman, that handled the taking of strike ballot in March on the vacation issue and in September on the increase in pay the ballot was 100 per cent at that time for strike, since the board has rendered their decision, the same ones that vote for strike are in favor of abiding by the decision of the board.

I would suggest in the interest of the old employees, that have been working for the railroads 30 and 40 years that before the Union Leaders are allowed to call out these men that you force them to take a secret ballot that will be taken on the Company property, and that a member from the Union and 1 company employee count the secret ballot.

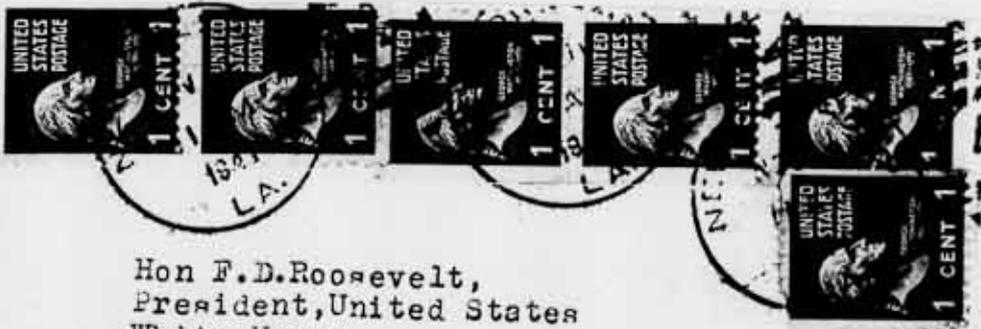
The older railroad employees during your administration, received the Railway Labor Act, Railroad Retirement, and unemployment Insurance, and they all appreciate these improvements over past conditions, and at the present time I feel that we can not let you down and tie up Defense Production and we do not want to go on a STRIKE.

Yours Sincerely.

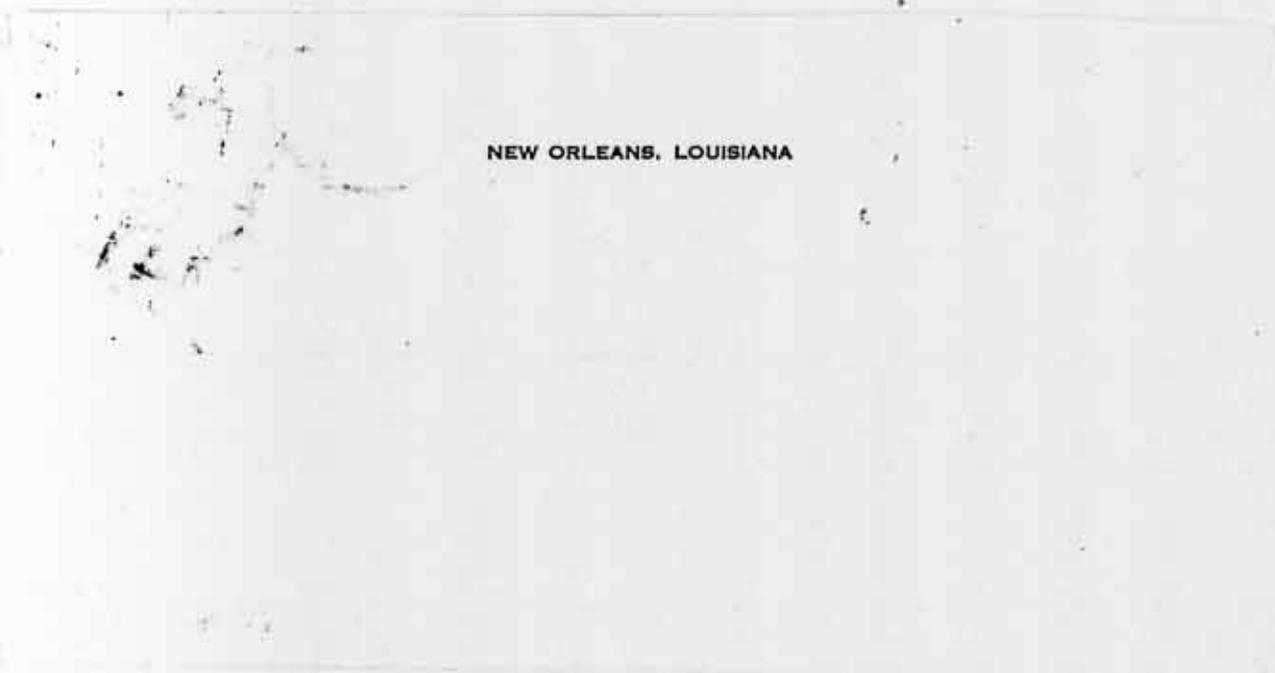
Division Chairman
Sunset Lodge #55
Union Card #65
Texas New Orleans RR

L. A. McWhirter
4202 Dauphine st
New Orleans La.

L.A. McWhirter
4202 Davenport St
New Orleans

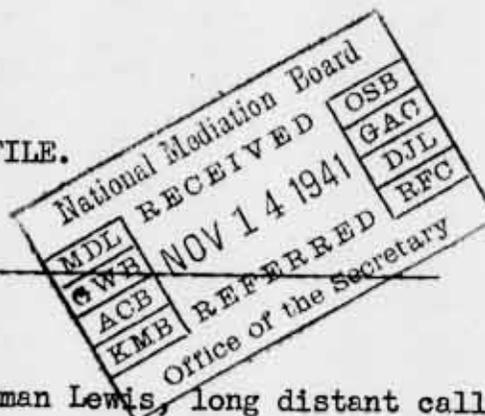


Hon F.D. Roosevelt,
President, United States
White House
Washington D.C.



NEW ORLEANS, LOUISIANA

MEMORANDUM FOR FILE.



At the suggestion of Chairman Lewis, long distant call was placed to Mr. L. A. McWhirter, 4202 Dauphine Street, New Orleans, Louisiana, to ascertain whether a letter dated November 8, 1941 addressed to the President of the United States unsigned, but showing his type written name as the writer, was authentic.

Mr. McWhirter advised that the failure to sign the letter was an oversight and that the letter was legitimate. He also advised that it expressed practically the unanimous sentiment of all the men with whom he had discussed the recommendation of the President's Emergency Board.

November 13, 1941.

PSF: Railroads

1
Railroad
file

THE WHITE HOUSE
WASHINGTON

November 19, 1941

MEMORANDUM FOR MR. DAVID LEWIS:

To read and take into the Pres-
ident; and leave with him.

THE WHITE HOUSE
WASHINGTON

11-18-41

MEMORANDUM FOR THE PRESIDENT:

B.B. 'phoned me and reported: "After a conversation last night with DAW. I believe that if nine or ten Railroad Presidents met with representatives of the Unions, something will develop. I know there is now a serious difference of opinion among the Railroad Presidents on this issue. This will take it off the President's back and I believe something could be worked out."

E. A. Tamm
EAT

OFFICE OF THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF GOVERNMENT REPORTS

WASHINGTON, D. C.

November 17, 1941

PSF: Railroads

*Brotherhoods
for your information*

CONFIDENTIAL MEMORANDUM TO THE PRESIDENT:

Charles M. Hay, St. Louis, who represented the Brotherhoods as attorney before the Railway Mediation Board in Chicago, tells me the three things that offer possibility of preventing the strikes are, in the order of their importance:

1. Elimination of the proposal that any agreement shall be binding until the end of 1942. (This would leave the regular processes of taking up proposed changes in contracts in effect, as provided under the Railway Labor Act.)

2. Agreement by the roads not to bring up for mediation during the emergency period controversies over rules, which they have announced they will submit to mediation following disposal of the wage disputes. (The men apparently fear adverse changes in present rules.)

3. Some further increase in wages for the lower paid men. (The Mediation Board apparently allowed a percentage increase, based on increased cost of food, and the point is made that this increased cost is as great in the case of the lower paid men as in the case of the higher paid men and can't be a matter of percentage.)

Mr. Hay reports serious concern on the part of the Brotherhood heads because a C.I.O. contract (Automobile Workers) with the Ford plant is giving certain men doing railroad work for Ford considerably better pay than the Brotherhoods have been able to get for their men doing the same work. Brotherhood heads indicate fear of a C.I.O. raid on their membership or a serious drive to take the railroad unions into the C.I.O.

This is given to me by Mr. Hay as a friend of the Administration, which he has been.

Lowell Mellett
Lowell Mellett

PSF: Railroads

ASSOCIATION OF AMERICAN RAILROADS
TRANSPORTATION BUILDING
WASHINGTON, D. C.

J. J. PELLEY
PRESIDENT

Railroad file

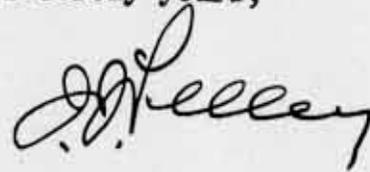
November 25, 1941.

My dear Mr. President:

This will acknowledge and thank you for your letter of today, in which you advise, as the result of conference in relation to the railroad problem, that you are, on your own motion, reconvening the Emergency Board, and have requested the Board to commence its hearings on Friday, November 28th.

You may be assured that the railroad representatives will be ready to appear before the Board at that time for the presentation of their side of the case.

Very sincerely yours,



Honorable Franklin D. Roosevelt
The President
The White House
Washington, D. C.

THE WHITE HOUSE
WASHINGTON

PSF: Paulson file

11-26-41

MEMORANDUM FOR THE PRESIDENT:

Mr. David Lewis brought in this memorandum, and says that he and the other members of his Board think it important that the President read this before he meets with the National Mediation Board, the members of which arrive here during the morrow.

The hours of arrival are so uncertain that it is believed safer to have a meeting with the President sometime Friday morning, if that meets with the President's convenience and pleasure.

Mr. Eastman has also read and approved the memorandum.

Emm
E.M.W.

MEMORANDUM

To: The President
 From: National Mediation Board
 Date: November 26, 1941

Sub-
 ject: PENDING RAILROAD LABOR SITUATION

I.

From Mr. David J. Lewis, who has been attending your conferences on the pending railroad labor difficulties along with Messrs. Eastman, Meade, and Fahy, the National Mediation Board understands that you plan to meet with the Emergency Board tomorrow--Thursday, November 27--prior to the time it will rehear the parties to the controversy. Our Board also understands that representations have been made to you about the diversity of opinion that prevailed among the members of the Emergency Board in Chicago before they compromised their differences, that four members wanted to recommend wage increases of 15 per cent and 15 cents, respectively, for the operating and non-operating employees, that only one member was low, and that the majority yielded to this individual in the interest of making a unanimous report to you, with the result that grave injustice was done to the employees.

The facts as regards this alleged diversity of opinion, as revealed by the minutes of the Board for October 28, 1941, are as follows:

Issues	Position of Each Board Member				
	WILLITS	POWELL	THOMPSON	BONBRIGHT	MORSE Chairman
1 Proposed wage raise should be for temporary period ending December 31, 1942	: Yes	: Yes	: Yes	: Yes	: Yes
2 Increase in wages for train and engine service employees (Johnston-Whitney group)	: 5% to 7½%	: 5% to 7½%	: 7½%	: 7%	: 10%
3 Increase in wages for non-operating employees (Jewell-Harrison group)	: 5¢ to 7½¢	: 5¢ to 7½¢	: 7½¢	: 10¢	: 12¢
4 Vacations with pay	: 1 wk of 6 days	: 1 wk of 6 days	: 1 wk of 6 days	: 1 wk of 6 days	: 7 days
5 Minimum hourly wages	: 45¢	: 45¢	: 45¢	: 45¢	: 50¢
6 Date recommendations should be effective	: Sept. 1, 1941	: Sept. 1, 1941	: Sept. 1, 1941	: Sept. 1, 1941	: Sept. 1, 1941

First, you will note that there was virtual unanimity among the members on four issues, namely: 1. temporary period of wage raises; 4. vacations with pay; 5. minimum hourly wages; and 6. date recommendations should be effective. Second, you will note that on the wage issue (2. and 3.) the divergence in reality was chiefly between one member--Chairman Morse--and

the four remaining members, the majority, who wanted to give less than he proposed. The compromise finally reached in reality, except for one item (10 cents for the non-operating employees), therefore was more than what the majority felt should be recommended.

II.

The Emergency Board, which sat in this case, was constituted of men of outstanding integrity and independence of thought. Its appointment by you was heralded with great acclaim, and the hearings before the Board will attest to the confidence the parties manifested in the Board.

It is our view, if the recommendations of the Emergency Board are now to be reviewed by it in the light of the situation which has arisen since it reported to you on November 5, 1941, that the status of the Board as an independent judicial body voicing its own views on the record before it should be most carefully maintained. If any other impression should be created, it would, we fear, have unfortunate results for the future, and the reactions, so far as individual members of the Board are concerned, might also be dangerous.

The possible creation of such an impression could be wholly avoided if a representative of the railroads--Mr. Fred J. Gurley (who has been acting as Chairman of the Railroads' Conference Committee)--and two representatives of the employees--Messrs. Alvaney Johnston and B. M. Jewell (who have been acting, respectively, as Chairmen of the Employees' Conference Committees) meet at the same time you meet tomorrow morning with the Emergency Board. We realize, however, that you may prefer to see the Board alone.

The 7½ percent for train service employes
equals about 6.75¢ per hour

The total annual increase for these employes
was estimated to be 53 or 54 million

Increase this 2.25¢ per hour to 9¢ or an
annual increase of 17 or 18 million

The 9¢ recommended for non-operators was estimated
by Board to cost 107 million

Increase ½¢ to 9½¢ annual additional cost of
10 or 11 million

Total Increase of 27 to 29 million

Further consideration to be given to an increase
in pay on or about July first if living costs have
increased any substantial amount.

11-1-41

Railway file

PSF: Railroads

November 26, 1941

The Honorable Franklin D. Roosevelt
The White House
Washington, D. C.

My dear Mr. President:

Some of the Washington correspondents indicate that you may have had the Railway Labor Act in the back of your mind in considering how to recast and strengthen the sequence of agencies and procedures dealing with industrial relations under the Defense Program.

In that case you will likely have drawn WILLIAM M. LEISERSON, senior member of the National Labor Relations Board, into your counsels. If not, let me suggest that you do.

My suggestion is the quintessence of what might immediately serve you out of our six months canvass of Industrial Relations and Defense which came to a head this month in our Graphic Special, MANNING THE ARSENAL FOR DEMOCRACY. (Attached)

Last week, Mr. Lubin expressed his warm appreciation of the project; and would, I feel sure, be sympathetic also to this suggestion of mine.

For Leiserson has long been mulling over the need for what he

calls an "articulated system" of our "mechanisms" for labor relations. We counted ourselves altogether fortunate in getting him to freshly-mint his experience and thinking in a full length appraisal of The Public and Labor Relations (page 611).

In this (in advance of the captive mine clash) he reviewed the situation in which the half hundred federal and state agencies attempting to deal with industrial controversies have found themselves; and the gaps and twilight zones between negotiation, conciliation, mediation and arbitration. Nor was he by any means merely negative.

With the old War Labor Board as backdrop, and the Railway Labor Act as measuring rod, he analyzed tools, procedures, stages and also methods for bringing these into being that carry confidence with management, labor and the public.

Thinking it through, you would find his treatment refreshing and reinforcing. But even more, you would find him at once a canny and creative counselor as controversy in Congress may beat upon next steps in this field, and as dour and haywire proposals may be injected into the debate if not into the legislation itself.

Sincerely,

Paul Kellogg

pk js e

MEMO. Re - WILLIAM M. LEISERSON

Your contacts and confidence in him surely need no reinforcement from me, for he was serving on the Railway Labor Board under your appointment when you transferred him to the National Labor Relations Board at a critical stage in its work. Nonetheless, here are some items.

x x x

Years before, as impartial chairman in the garment trades, the demand for his services was so widespread that beginning with one clothing center (New York), he was covering four, as I recall it, before he was through.

He had a hand in labor adjustments in World War days.

He wrote the charter for labor relations under the TVA.

He had handled some of the toughest situations in railroad labor relations when you transferred him to the NLRB.

x x x

But Leiserson is more than an ace negotiator, conciliator, mediator or what have you. More than an effective administrator, or a deep-reaching philosopher in this field.

In his structural grasp of the factors and procedures involved, his is the clearest statescraft I have come upon.

My association with him goes back to our Pittsburgh Survey days together. And in our editorial work we have repeatedly tapped his acumen.

Thus in the mid-thirties, at the time of the sit-down strikes, we enlisted him to write for our Survey Graphic an article which compared the seasoned federal scheme covering labor relations in interstate commerce with fragmentary and improvised government agencies of that sort when it came to industry as a whole.

x x x

Only this year, Mr. WILLIAM H. DAVIS, chairman of the National Defense Mediation Board; Mr. SIDNEY HILLMAN, associate director general, OPM; and Mr. LEISERSON were three of our chief counselors in shaping the fifth of our CALLING AMERICA series of Survey Graphic. As you will see -

Mr. DAVIS leads off the number with a luminous portrayal of the organic principles and processes that offer alternatives to resort to raw force in the economic field; or raw legislative compulsion.

Mr. HILLMAN leads off the section on Labor with his trenchant faith in the democratic process of evolving, rather than pronouncing - labor policy.

Mr. LEISERSON, in turn, leads off the section on Government with his overall analysis which concluded as follows:

WANTED: A National Labor Relations System

This survey should make plain that all the elements of a permanent national policy for maintaining stable labor relations and settling disputes peacefully are now available in various agencies of the federal and state governments. What remains to be done is to unify the federal machinery into a national system, with state and local hook-ups. But this calls for a set of principles and policies governing mediation, arbitration, and investigation of labor disputes, together with appropriate administrative regulations.

Congress may promulgate such a code, as it did when it implemented machinery for protesting organization and bargaining rights in the National Labor Relations Act. Or the task may be accomplished by administrative action of the government after agreement with representatives of labor and management, as was done in establishing the War Labor Board. The main patterns already have been drawn in the provisions of the Railway Labor Act and the New York Mediation Act.

Unless a unified, articulated system of labor relations' mechanisms is built on these patterns, there will continue to be such "activity" in labor "situations" by many kinds of mediation contrivances, but there will be as many strikes as ever. Such contrivances are useful in settling strikes; only a carefully designed system of adjustment agencies, operating on preventive principles and policies, can settle labor disputes before they break out into strikes. Only so can we maintain peaceful industrial relations.

FOR THE PRESS

IMMEDIATE RELEASE

DECEMBER 2, 1941

The President received this afternoon the following resume of the agreement between the President's Emergency Board and representatives of the various organizations involved in the threatened railway strike:

"December 2, 1941

"The President
The White House

"Mr. President:

"Your Emergency Board is honored and pleased to report to you that its proposals for a mediation settlement of the threatened railway strike have been accepted or acquiesced in by the representatives and spokesmen for the contending parties.

"It will be necessary for the representatives of some of the labor organizations to submit the proposed settlement to meetings of their general chairmen for final approval. These meetings will be held in Chicago on December 4. However, your Emergency Board has been assured that the representatives of these organizations who participated in the mediation negotiations will recommend the approval of the proposals contained in the mediation agreement. We are confident that the specific proposals for settlement of the railway dispute which we submitted to the parties will be formally approved without change by all of the parties. The railroad officials have already accepted the mediation proposals.

"The provisions of the mediation settlement are as follows:

"(1) All wage increases set forth in the mediation agreement shall be increases in basic rates of pay and not temporary wage increases. You will note that the Board's recommendation on this point in its Report of November 5, 1941 was that wage increases should be for a temporary period running to December 31, 1942, at which date the wage structure of the industry should be reviewed in light of the then existing economic conditions of the industry and of the country.

The carriers agreed in the mediation negotiations to increases in basic rates of pay on condition that the railway labor organizations would in turn agree to a moratorium for the period of the national emergency on proposals for changes in rules. This moratorium creates dual obligations in that both labor and management agree that they will not press for rules changes during the emergency period. The exact details and conditions of the agreement for a moratorium are to be worked out by the parties in accordance with the terms as expressed to the Emergency Board during the mediation negotiations.

"(2) The retroactive dates for wage increases shall be as follows:

(a) The employees shall receive retroactive pay for the period from September 1 to December 1, 1941, said retroactive pay based upon the wage recommendations as set forth in the Emergency Board's Report of November 5, 1941.

(b) The pay increases provided for in the mediation agreement shall be effective December 1, 1941.

"(3) The wage increases provided for in the mediation agreement are:

- (a) The Five Operating Organizations shall receive a wage increase of $9\frac{1}{2}$ cents per hour in basic hourly wage rates. Translated in terms of an increase per day this amounts to an addition of 75 cents per day.
- (b) The employees of the Fourteen Cooperating Organizations shall receive an increase in basic hourly wage rates of ten cents per hour, or a basic daily wage increase of 80 cents.
- (c) The 10 cents per hour increase for the employees of the Fourteen Cooperating Organizations shall apply also to the employees of the Railway Express Agency.

Your attention is called to the fact that the spokesmen for the Railway Express Agency who participated in the mediation negotiations have informed the Board that the Railway Express Agency will not agree to a mediation settlement calling for a wage increase of 10 cents per hour for its employees. However, inasmuch as all of the other employer groups have agreed to such a wage increase, and in light of the fact that the representatives of the employees have assured the Board that they will recommend to their men an acceptance of the proposed mediation settlement and the calling off of the strike, it is the view of the Board that the management of the Railway Express Agency should be requested to join in the mediation settlement.

It should be distinctly understood by you that the Board makes the above suggestion simply because it believes that a balancing of all interests warrants it. It should be remembered by all concerned that mediation negotiations are characterized primarily by principles of compromise. The employee groups, as well as the carriers, made many concessions and offered many compromises which constituted recessions from original positions. It would seem best under all the circumstances for the Railway Express Agency to become a party to the mediation settlement. However, it appears that the Railway Express Agency believes that it can make a more satisfactory settlement by negotiations, even though such a policy may involve the risk of a strike of its employees.

We call your attention to the fact that the Railway Express Agency constitutes but a very small portion of the employer interests involved in this dispute. Furthermore, it is to be noted that the other carrier groups did not insist that the completion of a mediation settlement be held up until the Railway Express Agency could negotiate what it considered to be a better settlement or could see its way clear to join in the mediation settlement which the other carriers were willing to accept.

It also should be stated that the Railway Express Agency is a financial subsidiary in all practical effects to the carrier organizations, and hence the Board felt that there should not be any further delay in settling the major disputes until such time as the Railway Express Agency might see fit to join in the settlement or negotiate another one. This view was shared by the other carriers.

However, as we shall state in our official Report which will be submitted to you tomorrow, there is a marked difference between what your Emergency Board has approved as a mediation settlement and what it would recommend on the basis of the formal record submitted to it by the parties at the long hearings in Chicago from September 16 to October 22, 1941, and at the two-day reargument in Washington, November 28 and 29, 1941.

As the Board stated to the parties yesterday, it is still of the opinion that all of the major recommendations set forth in its Report of November 5, 1941 are amply supported by the official record, and flow from an application to that record of the "preponderance-of-the-evidence" test. Therefore, if the Railway Express Agency issue were to be determined on the basis of the formal record, the Board would reiterate the recommendation which it made in its Report of November 5, 1941.

"(4) The recommendation in the Report of November 5, 1941 that there shall be a vacation of six consecutive work days with pay for all employees in the Fourteen Cooperating Organizations who work substantially throughout the year, or who are attached to the industry as a result of reasonably continuous employment, shall be approved, with the additional provision that employees in the Clerk and Telegrapher classifications who have given two years of service shall receive a nine day vacation with pay, and those who have a record of three years of service or more shall receive an annual vacation of twelve days with pay. It has been agreed by the parties that the details covering the rules, conditions, and arrangements which shall govern the granting of vacations shall be worked out by the parties in negotiations immediately following the acceptance of the mediation settlement.

The parties have agreed with the Emergency Board that if they are unable to reach an agreement within a reasonable time upon all the details of the vacation proposal, they will submit all disagreements to a member of the Board selected by them, or to some other third party agreed to by them, for final settlement. They have agreed that the decision of any such referee shall be binding upon them as to vacation arrangements and as to the formula which shall determine what particular employees shall receive vacations.

"(5) The wage increases provided for in the mediation settlement shall apply to all of the Class II and Class III railroads represented in the Chicago hearings by the Carrier Conference Committees. However, the wage increases shall not be made applicable to the so-called Short Lines which were not represented by the Carriers' Conference Committees, and which did not join with the carriers in a national handling of their disputes. For the most part these Short Lines were those represented by Mr. C. A. Miller and Mr. J. M. Hood.

As to these latter Short Lines, the recommendations covering them as set forth in the Emergency Board's Report of November 5, 1941, shall continue to govern the final settlement of their disputes. Briefly, this means that a basic minimum wage of 40 cents per hour shall be fixed for their employees, and such other wage increases as can be agreed upon through direct negotiations between management and the employees or which are arrived at through the future operations of the procedures of the Railway Labor Act shall govern.

The Board is satisfied that the employees of the Short Lines should receive some increase in wages at this time. But in view of the fact that there are so many differences between the Short Lines and the Class I railroads, and because in the opinion of the Board it has never had presented to it sufficient evidence or information to justify its making a specific recommendation on the amount of the wage increase which should be granted to the employees in the Short Lines, it has taken the position that the matter should be referred to the parties for further negotiations.

"The Board is satisfied that the parties themselves should have little difficulty in reaching a negotiated wage settlement for the Short Lines, but if they should become deadlocked over it, the procedures of the Railway Labor Act are available to them.

"The foregoing, Mr. President, is a brief resume of the provisions of the mediation settlement which was submitted to the parties by the Board late yesterday afternoon. It is submitted to you at this time because the Board appreciates the fact that it is important that an early release announcing the provisions of the settlement should be made to the American people.

"This letter will be followed by a much more detailed report which the Board hopes to have ready for submission to you sometime Wednesday, December 3. The final Report of the Board will set forth the conclusions which it reached on the record of the reargument hearings, and the conclusions which it reached in the mediation proceedings.

"The parties are continuing to work with the Board in the preparation of a formal mediation agreement based upon the provisions of settlement which the Board submitted to them yesterday. The formal agreement will undoubtedly be signed by the parties later on this week.

"You will find attached a copy of the transcript of record which was made at the final mediation session. It contains the proposals of the Board and the commitments of the parties.

"It should be said that neither side obtained all that it wanted out of the mediation proceedings, but it was gratifying to see that all of them recognized that when they went into mediation it was essential that they demonstrate a willingness to compromise their differences and adopt a give and take policy.

"Their attitudes and sincere efforts to reach a settlement which characterized all of their relations with the Board during mediation are a credit to themselves and their principals, and their final willingness to join in the settlement represents a distinct service to their country in this time of great emergency.

"Mr. President, your Board awaits your further pleasure.

Yours respectfully,

Wayne L. Morse, Chairman

Thomas Reed Powell

James C. Bonbright

Joseph H. Willits

Huston Thompson

PRESIDENT'S EMERGENCY BOARD"

REMINDER

EMERGENCY BOARD REPORT - POINTS

Railroad files PSF: Railroads

1. Addition to pay temporary - not basic, except for minimum rates.
2. Rates effective September 1, 1941 - expire December 1, 1942.
3. Five Operating Brotherhood employees $7\frac{1}{2}\%$ increase.
4. 14 Cooperating Labor Organizations' employees 9¢ per hour increase.
5. Shortline Basic Minimum Wage 40¢ per hour minimum.
Other Railroads - minimum wage 45¢ per hour, including Express Agency
6. Express Agency Employees increase $7\frac{1}{2}\%$ per hour.
7. Some increase for employees of Shortlines should be agreed upon among the parties.
8. Six-day vacations for employees represented by 14 Cooperating Organizations.
9. Modification of Rules referred to parties for negotiations, etc.

PSF: Railroads

file

THE RAILWAY LABOR ACT

Being An Act To provide for the prompt disposition of disputes between carriers and their employees and for other purposes

(U. S. Code, Title 45, Chapter 8)¹

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I²

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

¹ (Public, No. 257, 69th Cong.) (H. R. 9463); (Approved May 20, 1926), The Railway Labor Act (44 Stat. L. 577).

(Public, No. 442, 73rd Cong.) (H. R. 9861), An Act to amend the Railway Labor Act approved May 20, 1926. (Approved June 21, 1934.)

That Section 1 of the Railway Labor Act is amended to read as follows: (Followed by text governing carriers by railroad and related transportation agencies.) (48 Stat. L. 926.)

² Title II, (Public, No. 487, 74th Cong.) (S. 2496), An Act to amend the Railway Labor Act. (Approved Apr. 10, 1936.)

That the Railway Labor Act, approved May 20, 1926, as amended, herein referred to as "Title I" is hereby further amended by inserting after the enacting clause the caption "Title I" and by adding the following Title II. (Followed by Title II governing air carriers.) (48 Stat. L. 1185.)

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the Supreme Court of the District of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

SEC. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to

commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

"Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on

the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

"Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon

conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

SEC. 3. Section 3 of the Railway Labor Act is amended to read as follows:

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative or any division of the Board.

"(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee', to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that

fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

"(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue

in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

"(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

"(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

"(u) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

"(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as

provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 4 of the Railway Labor Act is amended to read as follows:

"NATIONAL MEDIATION BOARD

"Sec. 4. First. The Board of Mediation is hereby abolished, effective thirty days from the approval of this Act and the members, secretary, officers, assistants, employees, and agents thereof, in office upon the date of the approval of this Act, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this Act had not been passed. There is hereby established, as an independent agency in the executive branch of the Government, a board to be known as the 'National Mediation Board', to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after the approval of this Act, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term of which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a salary at the rate of \$10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this Act. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

"All cases referred to the Board of Mediation and unsettled on the date of the approval of this Act shall be handled to conclusion by the Mediation Board.

"A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

"Second. The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

"Third. The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with the Classification Act of 1923, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 3, and boards of arbitration, in accordance with the provisions of this section and sections 3 and 7, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

"Fourth. The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, and such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

"Fifth. All officers and employees of the Board of Mediation (except the members thereof whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or com-

pensation to conform to the duties to which such officers and employees may be assigned.

"All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures."

SEC. 5. Section 5 of the Railway Labor Act is amended to read as follows:

"FUNCTIONS OF MEDIATION BOARD

"SEC. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

"Third. The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 7 of this Act:

"(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 7 of this Act, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to

appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

"If an arbitrator named by the Mediation Board, in accordance with the provisions of this Act, shall be removed by such Board as provided by this Act, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly to select another arbitrator in the same manner as provided in this Act for an original appointment by the Mediation Board.

"(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this Act. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

"(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy, it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

"(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

"(e) Within sixty days after the approval of this Act every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft

or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

"(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession."

SEC. 6. Section 6 of the Railway Labor Act is amended to read as follows:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

ARBITRATION

SEC. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrator chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings; *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board

may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

SEC. 8.² The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this Act;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided,* That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same

²Section 8 as contained in Railway Labor Act, approved May 20, 1926.

district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

SEC. 8.* If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a

*Section 8 as contained in Public. No. 442, amendment to Railway Labor Act, approved June 21, 1934.

ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

EMERGENCY BOARD

SEC. 10. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

GENERAL PROVISIONS

SEC. 11. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 12. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

SEC. 13. (a) Paragraph "Second" of subdivision (b) of section 128 of the Judicial Code, as amended, is amended to read as follows:

"Second. To review decisions of the district courts, under section 9 of the Railway Labor Act."

(b) Section 2 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit court of appeals and of the Supreme Court, and for other purposes", approved February 13, 1925, is amended to read as follows:

"Sec. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes', approved September 26, 1914; and under section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply.

SEC. 14. Title III of the Transportation Act, 1920, and the Act approved July 15, 1913, providing for mediation, conciliation, and arbitration, and all acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office upon the date of the passage of this Act, shall receive their salaries for a period of 30 days from such date, in the same manner as though this Act had not been passed.

TITLE II

SECTION 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

SEC. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof.

SEC. 203. The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this title in the same manner and to the same extent as are the disputes covered by section 5 of title I of this Act.

SEC. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, Title I, of this Act.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent

National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

SEC. 205. When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this Act, to select and designate four representatives who shall constitute a board which shall be known as the National Air Transport Adjustment Board. Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by title I of this Act for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 3 of title I of this Act. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 3 of title I of this Act. The powers and duties prescribed and established by the provisions of section 3 of title I of this Act with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this title. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory

to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

SEC. 206. All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving any dispute arising from any cause between any common carrier by air engaged in interstate or foreign commerce or any carrier by air transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on the date of approval of this Act, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

SEC. 207. If any provision of this title or application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 208. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this Act.

Approved, April 10, 1936.

REPORT
TO
THE PRESIDENT
AND
EMERGENCY BOARD

REPORT
TO
THE PRESIDENT
BY THE
EMERGENCY BOARD

APPOINTED SEPTEMBER 10, 1941
UNDER SECTION 10 OF THE RAILWAY LABOR ACT

TO INVESTIGATE THE FACTS AS TO THE DISPUTES
BETWEEN CERTAIN COMMON CARRIERS BY RAIL
AND CERTAIN OF THEIR EMPLOYEES RESPECT-
ING VACATIONS WITH PAY, RULES OF
SERVICE, AND WAGE INCREASES,
AND TO REPORT THEREON.

November 5, 1941



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**LETTER OF TRANSMITTAL
SETTING FORTH RECOMMENDATIONS**

Washington, D. C., November 5, 1941

THE PRESIDENT
The White House

MR. PRESIDENT:

The Emergency Board appointed by you on September 10, 1941, in accordance with the provisions of the Railway Labor Act, has the honor to submit herewith its findings and recommendations based upon the record made by the parties at the Board's hearings on the pending nation-wide railway labor disputes.

The Report of the Board sets forth in some detail the pertinent surrounding facts and circumstances involved in the disputes, the contentions of the parties, and the Board's findings and recommendations on each of the issues of the case. Subject to certain modifications and qualifications as stated in the Report, the major recommendations of the Emergency Board are as follows:

(1) The Board believes that the many uncertainties besetting any analysis of the economy of this country for the duration of the existing national emergency make it unwise to recommend changes in basic wage rates at this time except for minimum rates hereinafter suggested for the railroads. Therefore, all wage increases recommended by the Board are proposed as temporary additions to wages, effective as of September 1, 1941, and to terminate automatically on December 31, 1942, unless the parties extend the arrangement by agreement. This Board recommends that on or about December 31, 1942, the wage structure in the railroad industry should be examined in light of the existing economic conditions of the railroad industry and of the country.

(2) The employees in the Five Operating Brotherhoods should receive a wage increase of seven and one-half percent over their present wage rates.

(3) The employees in the Fourteen Cooperating Railroad Labor Organizations should receive an addition of 9 cents per hour—equivalent to an average increase of thirteen and one-half percent.

(4) A week's vacation of six consecutive working days, effective January 1, 1942, should be granted during the year of 1942 and each year thereafter to those employees of the Fourteen Cooperating Railroad Labor Organizations who were regularly attached to the railroad industry during the year preceding their vacation.

It shall be understood that wherever more favorable arrangements exist with regard to vacations either by agreement or custom, these arrangements shall be continued.

(5) The rules dispute between the carriers and the employees in the Fourteen Cooperating Railroad Labor Organizations should be re-submitted for further consideration and determination under the procedures of the Railway Labor Act. This Board assumes that whatever changes may be made in the application of present rules,

BK 79-555 (732, 111)

the basic guarantees to railroad labor as to seniority and craft and class lines will be preserved.

It is the Board's opinion that the rules dispute is one which lends itself to settlement by negotiation, mediation, arbitration, or hearings before a Special Emergency Board. It is not one which should be settled by a test of economic force. If a Special Emergency Board is appointed to hear the dispute, it should have among its members persons thoroughly versed in the practical problems of railroad labor and of railroad operations.

(6) The employees of the Railway Express Agency should receive a wage increase of seven and one-half cents per hour.

(7) It is to be understood that the wage increases recommended by the Board for the period to December 31, 1942, shall be added to present wage rates. However, the Board further recommends that a permanent basic minimum wage of forty cents per hour shall be established for the employees of the so-called Short Lines, and a permanent basic minimum wage of forty-five cents per hour shall be established for all other employees in the railroad industry, including the Railway Express Agency, and that no one shall be paid below these basic wage figures for his class of employment. Except for the employees of the Short Lines, these recommendations involve no further monetary addition since the wage increases as recommended will bring railroad workers in their respective classes up to or above the suggested basic minimum wage rates.

(8) The Emergency Board is unable to recommend a specific wage increase for the employees of the so-called Short Lines beyond the proposed forty cent minimum, because the record of the case does not contain sufficient data on which to base an intelligent wage recommendation applicable to them. Most of the Short Lines are in a precarious financial condition and are characterized by other distinguishing factors justifying further consideration of their wage problem through the procedures of the Railway Labor Act.

Hence, it is the opinion of the Board that some wage increase for the employees of the Short Lines should be agreed upon among the parties through the processes of negotiation, mediation, arbitration, and if necessary, the findings of another Emergency Board.

(9) The above recommendations, except insofar as they are qualified in this Report, shall be applied to the employees of all parties listed in the Proclamation of September 10, 1941.

The Board is pleased to report to you, Mr. President, that the conduct of the parties throughout this case has exemplified a most desirable way to be followed by American employees and employers in settling their differences over labor relations. The hearings have demonstrated the value of the judicial process in which reason reigns as contrasted with the procedures of economic force in which might seldom makes right.

The members of the Board await your further pleasure.

Respectfully submitted,

WAYNE L. MORSE, *Chairman*

THOMAS REED POWELL

JAMES C. BONBRIGHT

JOSEPH H. WILLITS

HUSTON THOMPSON

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REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD APPOINTED SEPTEMBER 10, 1941 UNDER SECTION 10 OF THE RAILWAY LABOR ACT

To investigate the facts as to the disputes between certain common carriers by rail and certain of their employees respecting vacations with pay, rules of service, and wage increases, and to report thereon.

II. INTRODUCTION

The jurisdiction, powers and duties of this Emergency Board were created and established by the terms of a proclamation issued on September 10, 1941, by President Franklin D. Roosevelt.

The proclamation reads:

"WHEREAS the President, having been duly notified by the National Mediation Board that a dispute between the carriers listed on the attached exhibit "A"* and certain of their employees as they are represented by the following labor organizations:

- Brotherhood of Locomotive Engineers
- Brotherhood of Locomotive Firemen and Enginemen
- Order of Railway Conductors of America
- Brotherhood of Railroad Trainmen
- Switchmen's Union of North America

"WHEREAS the President, having been duly notified by the National Mediation Board that certain disputes between the carriers listed on the attached exhibit "B"* and certain of their employees as they are represented by the following labor organizations:

- International Association of Machinists
- International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America
- International Brotherhood of Blacksmiths, Drop Forgers and Helpers
- Sheet Metal Workers' International Association
- International Brotherhood of Electrical Workers
- Brotherhood Railway Carmen of America
- International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers
- The Order of Railroad Telegraphers
- Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
- Brotherhood of Maintenance of Way Employees

* See Appendix C-1.

Brotherhood of Railroad Signalmen of America
 National Organization Masters, Mates and Pilots of America
 National Marine Engineers' Beneficial Association
 International Longshoremen's Association

"WHEREAS the President, having been duly notified by the National Mediation Board that certain disputes between the carrier listed on the attached exhibit "C"* and certain of its employees as they are represented by the following labor organizations:

Brotherhood of Railway and Steamship Clerks, Freight Handlers,
 Express and Station Employes
 International Association of Machinists
 International Brotherhood of Blacksmiths, Drop Forgers and
 Helpers

which disputes have not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, now threaten substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service;

"NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, by virtue of the power vested in me by the Constitution and laws of the United States, and by virtue of and under the authority in me vested by section 10 of the Railway Labor Act, as amended, do hereby create a board to be composed of five persons not pecuniarily or otherwise interested in any organization of railway employees or any carrier, to investigate the aforementioned disputes and report its findings to me within 30 days from this date.

"The members of this board shall be compensated for and on account of such duties in the sum of seventy-five dollars (\$75) for every day actually employed with or upon account of travel and duties incident to such board. The members will be reimbursed for and they are hereby authorized to make expenditures for expenses for themselves and of the Board, including traveling expenses and in conformity with Public, No. 212, 72d Congress, approved June 30, 1932, 11:30 a.m., not to exceed five dollars (\$5.00) per diem for expenses incurred for subsistence.

"All expenditures of the Board shall be allowed and paid for out of the appropriation 'National Mediation Board Appropriation Act, 1942' on the presentation of itemized vouchers properly approved by the chairman of the Board hereby created.

"IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States to be affixed.

"DONE at the City of Washington this 10th day of September in the year of our Lord one thousand nine hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth."

* See Appendix C-1, Exhibit "C," referring only to Railway Express Agency, Inc.

On September 11, 1941, the President appointed the following persons as members of the Emergency Board: Wayne L. Morse of Oregon, Chairman; Thomas Reed Powell of Massachusetts, James C. Bonbright of New York, Joseph H. Willits of New York, and Huston Thompson of the District of Columbia. The letter of appointment received by the members of the Board from the President stated in part:

"The Board will organize and investigate promptly the facts as to such dispute, and on the basis of facts developed, make every effort to adjust the dispute and make a report thereon to me within thirty days from September 10, 1941."

The time for completing the Board report was extended to November 1, 1941, by written stipulation of the parties approved by the President on September 16, 1941, and further extended by written stipulation until November 5, 1941, approved by the President October 22, 1941.*

The Board, with all members in attendance, met in Chicago, Illinois, on September 15, 1941, held a prehearing conference with the representatives of the parties, agreed upon rules of procedure which should govern its hearings, appointed an official reporter, and informed counsel for the parties that the first public hearing on the dispute would be convened at 10 A.M. September 16, 1941, in the auditorium of Kimball Hall, Chicago, Illinois. Thereafter public hearings presided over by the Board continued for thirty-one hearing days, being concluded at 5:30 P.M. Wednesday, October 22, 1941. Witnesses were heard, exhibits introduced, and arguments made. The resulting transcript totaling 7,130 pages plus 436 exhibits comprises the massive record which was submitted by the parties to the Board for analysis and evaluation. This report is based upon that record.

The employees were represented by the Conference Committee of the Transportation Organizations and by the Conference Committee of the Fourteen Cooperating Railroad Labor Organizations. Appearances for the Conference Committee of Transportation Organizations were entered by Charles M. Hay and Carroll J. Donohue, its attorneys, and by officers** of each of the several organizations involved. Appearances for the Conference Committee of Fourteen Cooperating Railroad Labor Organizations were entered by Frank L. Mulholland and Willard H. McEwen, its attorneys, and by B. M. Jewell, its Chairman, and officers** of each of the several organizations involved.

The railroad carriers generally were represented by the Carriers' Conference Committee and by the Carriers' Vacation Conference Committee. Appearances for the Carriers' Conference Committee were entered by J. Carter Fort, Allan P. Matthew, Daniel P. Loomis, William H. Swiggart, Edwin A. Lucas, William T. Joyner, William T. Faricy, Elmer A. Smith, Bruce Dwinnell, Burton Mason, and Burnham Enersen, its attorneys.

Appearances for the Carriers' Vacation Conference Committee were

* See Appendix B.
 ** See Appendix C-2 and C-3.

entered by Joseph F. Johnston, R. J. Hagman, and E. R. Brumley, its attorneys.

The Railway Express Agency appeared in its own behalf, and appearances were entered for it by Albert M. Hartung, L. P. Bergman, C. J. Leary, W. J. MacGreevy, and J. E. Skaggs, its attorneys and officers. The Agency employees, consisting of members of the Clerks, Blacksmiths, and Machinists Organizations, were represented by the Conference Committee of the Fourteen Cooperating Organizations.

The short line railroads were represented by the American Short Lines Railroad Association, appearances being entered by C. A. Miller, its attorney, and by J. M. Hood, its president.

W. R. McMunn appeared specially in behalf of Merchants' Despatch Transportation Corporation to protest its inclusion in the present investigation and report, upon the ground that the company operates a private refrigerator car line only.

The Toledo, Peoria & Western Railroad appeared by Robert G. Sprague, its attorney. The jurisdiction of the Board was conceded. However, Mr. Sprague asked that the Board's recommendation as to this carrier be limited to rates of pay for power house and railway shop employees, contending that only these wage rates were in dispute, as shown by the records of the National Mediation Board.

The Hudson & Manhattan Railroad Company appeared by John E. Buck, its general counsel. Mr. Buck conceded the inclusion of his carrier in the President's proclamation. Nevertheless, he protested its inclusion in any action of the Board because of the successful conclusion of wage, rules, and vacation agreements with its brotherhood and organization employees through the National Mediation Board before the date of the proclamation.

All other appearances representing parties protesting the jurisdiction of the Board and all requests for special appearances before the Board or for special consideration from the Board were made in writing and not in person. The record of such written appearances and requests and the claims which they urged are set forth in an Appendix to the transcript of record of the Board's hearings.

III. BACKGROUND OF THE PRESENT CONTROVERSY

The controversies which led to the President's proclamation originated at various times and between various parties. The carriers are divided into three main groups, the Eastern, Western, and Southeastern. The employees are divided into two groups. The operating men, represented by the Conference Committee of Transportation Organizations, belong to what are commonly known as the Five Brotherhoods. The non-operating men were represented by the Conference Committee of Fourteen Cooperating Railroad Labor Organizations to which they respectively belong.

The proposal for vacations with pay was initiated on May 20, 1940, by a notice served by some or all of the non-operating organizations

on some or all of the rail carriers in each of the Eastern, Southeastern, and Western regions. Thus the vacation dispute is one between substantially all non-operating employees and substantially all carriers, except the Railway Express Agency.

Five days after the vacation proposal, on May 25, 1940, most of the Western carriers served a counter proposal for a reduction in pay to offset any increase in costs in case vacations with pay should become effective. None of the Eastern and Southeastern carriers joined in this counter proposal.

Conferences on the vacation issue were held on the individual properties, but no agreements were reached. It was not until some eight months later, on February 15, 1941, that the fourteen non-operating organizations submitted a strike ballot to their members. On March 14, 1941, the National Mediation Board proffered its services, and mediation proceedings were conducted in Washington, D. C., between March 14 and May 31, 1941. On this latter date the Mediation Board advised the conference committees of the employee organizations and of the carriers that no further mediation was possible. It then proffered arbitration, which on June 16, 1941, was declined by the organizations representing the employees.

In the meantime, issues as to rules of service and as to wages had arisen. On May 26, 1941, all of the Eastern and Western major trunk line carriers notified the five transportation organizations, representing the operating employees, of proposed changes in rules of service. The Southeastern carriers made similar proposals to the operating organizations on June 2. Seven days later those Western carriers which had proposed changes in the operating rules presented to the fourteen non-operating organizations proposals to change the non-operating rules. In this they were joined by all but two of the Southeastern carriers. The Eastern carriers joined in the proposals to change the operating rules but not in those which affected the non-operating rules.

Conferences between the carriers and the two groups of employees involved in the rules issue were held in Chicago from July 24 to July 31, 1941. The rules proposals were rejected by the operating brotherhoods on July 30 and by the non-operating organizations on July 31, and on these two days the disputes were submitted by the carriers to the National Mediation Board.

Meanwhile the wage issue had been initiated on June 10, 1941, by notices sent by some or all of the five operating brotherhoods to the carriers listed in Exhibit "A" of the President's proclamation, and by notices sent by some or all of the fourteen non-operating organizations to the carriers listed in Exhibits "B" and "C" of the President's proclamation. The proposal of the operating brotherhoods was that, effective July 10, 1941, all existing basic daily wage rates be increased 30 percent with a minimum money increase of \$1.80 on the minimum day. That of the non-operating organizations was that, effective July 10, 1941, wages be increased by applying to all rates then in effect

an increase of 30 cents an hour, with a minimum hourly wage of 70 cents.

Following the receipt by the carriers of the wage proposals, different sets of committees of the carriers and of the operating and non-operating groups of employees conferred with respect to them from July 30 to August 5, 1941. In each case the carriers rejected the proposed increases in wages, and neither dispute was at that time submitted to the National Mediation Board.

Upon this failure to come to an agreement, each of the employee groups on August 5 circulated strike ballots returnable September 5, 1941. The five operating brotherhoods listed the carriers' proposal for changes in rules and the brotherhoods' proposal for wage increases. The ballot of the fourteen non-operating organizations listed four issues: vacations with pay, the counter proposal for a 10 percent reduction in pay served by most of the Western carriers, wage increases, and the rules changes proposed by certain carriers. The canvass of the ballots showed an almost unanimous strike vote in each instance.

On August 11, 1941, the National Mediation Board served notice that the carriers had invoked its services, and mediation proceedings embracing all parties and all disputes started on that date. During these mediation proceedings it was agreed between the carriers and the five operating brotherhoods that their rules dispute be held in mediation until the final settlement of their wage dispute. No such agreement was made between the carriers and the fourteen non-operating organizations.

The remaining mediation proceedings were terminated by the National Mediation Board on September 4, 1941, with an offer of arbitration. This offer was accepted by the carriers but declined by each of the employee groups. Five days later, on September 9, 1941, the five operating brotherhoods notified the National Mediation Board that a strike was to become effective on September 15, 16, and 17, 1941. The strike of the fourteen non-operating organizations was called for September 11, 1941. The President's proclamation creating this Emergency Board was issued on September 10, 1941.

The history of the dispute between employees and the Railway Express Agency calls for separate recital because of the separate record made and because of other circumstances presently to be noted. On June 10, 1941, all of the Express Agency employees represented by three organizations separately served notices on the Agency of demands for an increase of wages. These three organizations were the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; International Association of Machinists; and International Brotherhood of Blacksmiths, Drop Forgers and Helpers. The notices of two of the organizations conformed substantially to the wage notices served by other non-operating employees on carriers other than the Express Agency. The notice of the Machinists differed, in that it fixed August 1, 1941, as the proposed effective date of the increase and in that it made no demand

for a fixed minimum wage. No proposal for vacations was made to the Express Agency.

On the same day on which the wage demands were served by the employees, the Agency served separate formal notices on the three organizations for changes in the working rules to effect a restoration of the 48-hour week in lieu of the existing 44-hour week, and to limit the existing vacation rule to employees who have worked not less than 250 days or 2,000 hours during the preceding calendar year. Conferences were held, but no agreement was reached. On July 18, 1941, the services of the National Mediation Board were invoked. The dispute was handled by the National Mediation Board separately from the general wage dispute between the railroads and the non-operating employees. However, the Railway Express Agency was included in the general strike order of the non-operating employees called for September 11, 1941, but it was classified separately in the President's proclamation of September 10, 1941.

IV. THE ISSUES PRESENTED TO THE BOARD

1.

Before presenting in detail the particular proposals on which the Board is asked to make findings and recommendations, it may be well to restate briefly what parties are involved in each dispute and to point out such changes as have taken place with respect to the issues before the Board as compared with the proposals initially made by the parties to each other.

The only proposals made by the employees are for an increase in wages and for the granting of vacations with pay. All of the employees are parties to the wage dispute, but only the non-operating employees presented the vacation proposal. Both proposals were made to rail carriers in each of the Eastern, Southeastern, and Western regions. The wage proposal but not the vacation proposal was made to the Railway Express Agency.

The only wage-reduction proposal was the conditional one of the Western carriers to offset the cost of complying with any vacation proposal.

Only the Western and Southeastern carriers presented proposals to the non-operating employees for changes in rules of service. The rules proposals made by all carriers to the operating employees were postponed for continued mediation pending the report of this Board on the wage issue. Those made to the non-operating employees were submitted to the Board, but counsel for the carriers in his opening statement relieved the Board from the duty of making specific recommendations for the adoption of the particular changes proposed.

The carriers initially filed with the Board no counter proposals to the general wage proposals of the employees. Toward the close of their case in chief, however, the carriers submitted an offer in the form of a so-called Emergency Payment Plan which would adjust

wages for a limited time by variations above but not below the present basic rates.

A counter proposal initially made by the Railway Express Agency to its three non-operating organizations asked for changes in rules which would bring about a restoration of the 48-hour week and for a modification of the existing vacation rule, so as to equalize past benefits and the cost of the proposed wage increase. Under date of October 16, 1941, the formal confirmation of withdrawal of this counter proposal was filed with the Board, such withdrawal having been made orally at the opening hearing of the Board. The Express Agency made a separate record before the Board and asked for a separate recommendation "that as to the dispute between the Railway Express Agency and its employees represented by the Clerks, Machinists, and Blacksmiths Organizations, mediation should be resumed" for the reason that the dispute "was still in mediation when the proclamation was issued."

2.

The various proposals and counter proposals are stated in greater detail as follows:

Wages: Proposal made by the operating employees:

"That effective July 10, 1941, all existing basic daily wage rates be increased thirty (30) percent with a minimum money increase of \$1.80 on the minimum day. The same percentage of increase applied to the basic day will be applied to all arbitraries, miscellaneous rates or special allowances and to daily and monthly guarantees."

Proposal made by the non-operating employees:

"That effective July 10, 1941, there be applied to all rates now in effect an increase of thirty (30) cents an hour, provided that no employee shall be paid less than seventy (70) cents an hour."

The counter proposal of the carriers presented near the close of their case before the Board is in summary as follows:

A sliding-scale "emergency compensation payment" to run from November 1, 1941, to December 31, 1942, effective only above the basic rates of pay and applicable only to them, with a ceiling of 15% increase calculated on weekly wages up to \$30.00—that is, a maximum of \$4.50 per week for men receiving \$30 or more per week.

The percentage factor of variation to be determined from a composite index based on gross revenue and the cost of living, one-half the gross revenue increase being averaged with the full change in the cost of living.

The payment to be applied for a three-month period based on the composite index for November 1, 1941, with adjust-

ments at quarterly intervals, but no adjustment to be made unless the index has moved five points or more from the date of the last adjustment.

Vacations with pay: The non-operating employees submitted to all of the carriers designated in the President's proclamation with the exception of the Railway Agency the following proposal:

"All employees, upon the completion of one year's service, and who are regularly employed, shall effective with the year 1940 and thereafter be given annually two consecutive calendar weeks vacation with pay.

"All other employees, upon the completion of one year's service, shall, effective with the year 1940 and thereafter, be given an annual vacation of one working day with pay for each month during which they earned compensation during the preceding calendar year.

"During the vacation period, the basis of pay for hourly rated employees shall be eight times the hourly rate for the service last performed prior to vacation, and for employees paid on piece work, mileage, daily or monthly basis, at the regular daily rate for the service last performed prior to vacation.

"The vacation period shall generally be between April 1 and September 30 and employees in each seniority district shall be entitled to preferential vacation dates consistent with the requirements of the service and their standing on the seniority roster; provided, however, that by agreement between the Committee representing the employees and the management arrangements may be made for the granting of vacations to individual employees at times outside the limits herein specified."

The sole counter proposal by the carriers was submitted by the Western group as an offset to the vacation with pay proposal of the non-operating employees to compensate for the cost to the carriers of the granting of such vacations. In his opening statement, counsel on behalf of the Western carriers stated that this was not an independent proposal for a wage reduction, but only a counter proposal.

He added also that the 10 percent fixed in the notice was inserted before ascertainment of the cost by the carriers, "with the idea that when the cost of applying the vacation demands as made was ascertained, the 10 per cent figure could be adjusted to such an amount as would be necessary to offset the cost."

Changes in Rules: The rules changes proposed by the Western and Southeastern carriers in their demands on the non-operating employees are in the form of a long memorandum* not fully informative unless read against the background of the rules themselves. Briefly the pro-

* See Appendix C-4.

posal, according to the carriers, was to revise some rules so that, while recognizing and confirming the existence of craft and class lines, essential work may be accomplished without disproportionate sacrifice of reasonable efficiency and economy, so that the rules may be clarified to permit some flexibility in hours, assignments, and starting times, and so that the revised rules would place on a uniform basis the limitation provisions for the presentation and handling of claims and grievances of employees.

Counsel for the carriers, in outlining the rules proposal in his opening statement, informed the Board that the carriers would ask, not for a recommendation in favor of the adoption of the proposed changes but merely for a condemnation of the existing rules as unduly restrictive and for a recommendation that the issue be submitted to mediation and arbitration if adjustments were not otherwise agreed upon.

V. WAGE CONTROVERSIES IN THE RAILROAD INDUSTRY SINCE 1920

Labor disputes in the railway industry have been a matter of Federal concern for over half a century. It is unnecessary to give the details of that history in the present report. However, the present controversy may perhaps be better understood if a brief resume of important labor disputes and settlements is presented here.*

The developments of greatest interest date from the period of World War I. During this war period, unprecedented rises in prices occurred and the cost of living seriously outran the wages received by the railway employees. Demands for increases were already pending when, on December 28, 1917, the Federal government took over the railways. A commission, known as the Lane Commission, was appointed by the Director-General of Railroads to investigate the demands of railway labor for wage increases. This Commission, on April 30, 1918, recommended substantial wage increases on a sliding scale percentage basis for the bulk of railway labor, primarily on the ground that wages of railway labor had not kept pace with the rise in the cost of living. The recommendations, with slight modifications, were made effective by the Director-General on May 25, 1918, by General Order No. 27.

Dissatisfaction on the part of railway labor continued despite some upward wage adjustments granted to particular groups by the Director-General on the recommendation of the Board of Railroad Wages and Working Conditions, a board established in accordance with one of the recommendations of the Lane Commission. In the latter part of 1919 railway labor urged a general increase in wage rates in order to adjust them to the continued rise in the cost of living and to align them with the higher wages paid in other industries. Nothing was done about wages, however, due to the fact that termination of Fed-

* For a fuller description of the history of railway labor controversies see the 1938 Report of the Emergency Board to the President, pp. 3-8.

eral control of the railways was pending. President Wilson, while holding that the problems presented by labor should be dealt with after the roads were returned to their owners, assured labor that there would be provided a mechanism for the consideration of their claims. The Transportation Act of 1920 set up such a mechanism by providing for the establishment of the Railroad Labor Board which was authorized to deal with controversies relating to wages and working conditions.

On July 20, 1920, after considering the claim of railway labor that wages were inadequate, the Board granted wage increases ranging from 12.5 percent to 26.2 percent and averaging about 22 percent for all railroad employees. Due to the business recession of 1920-21, which caused a substantial decline in net operating income, the carriers pressed for a decrease in wages, and proceedings were instituted before the Board. On June 1, 1921, the Board granted wage reductions averaging 12.2 percent. Further reductions in wages covering varying groups of railway employees were granted in 1922.

For a number of reasons both labor and management grew increasingly disinclined to invoke determinations by the Railroad Labor Board, and undertook to deal with wage problems by direct negotiation. In 1926 the Board went out of existence as a result of the enactment of the Railway Labor Act of that year.

The provisions of the Railway Labor Act of 1926 placed emphasis upon the settlement of railway labor disputes through processes of negotiation, mediation, and arbitration. These procedures were used to dissolve controversies concerning one or another group of employees. Up to 1929, increases in wages on the basis of individual agreements were secured by almost all groups of railway employees, though in general, wage rates equivalent to those established in 1920 were not re-established.

The onset of the depression in late 1929 ended further upward wage adjustments. As the depression deepened and net railway operating income declined, the carriers undertook to secure a general reduction in wages. Such a reduction was effected on a national basis by an agreement, reached on January 31, 1932, between the officials of the carriers and the representatives of the employee organizations. This agreement provided that, for a period of one year beginning February 1, 1932, there should be a deduction of 10 percent from the pay check of each employee covered by existing contracts. This agreement provided not for a reduction in the basic wage scales then existing, but for a temporary deduction from basic wages. The agreement was later extended to October 31, 1933, and again to June 30, 1934.

On April 26, 1934, an agreement was reached between the carriers and railway labor for the restoration of the 1932 deduction. It was provided that 2½ percent be restored on July 1, 1934, an additional 2½ percent be restored on January 1, 1935, and the final 5 percent on April 1, 1935.

In 1937, with the improvement in business conditions, railway labor

moved to secure an increase in wages. After prolonged negotiation and mediation, the National Mediation Board, on August 5, 1937, and on October 3, 1937, succeeded in securing settlements which gave to substantially all groups of railway labor wage increases amounting to 5 cents an hour for non-operating service and 5½ cents an hour for train and engine service. Hardly had these agreements been reached when business recession set in and substantial declines in railway net operating income were suffered. This led to an effort on the part of the carriers to effect wage reductions to the amount of 15 percent. Negotiations were entered into early in 1938 by the carriers and the labor organizations to handle the matter on a national basis. Efforts to settle the controversy by negotiation and subsequently by mediation were unsuccessful, and it appeared that a nation-wide strike would be called if the wage reduction proposals of the carriers were not withdrawn. In view of the seriousness of the situation and the threat of the interruption of interstate commerce, the President created an Emergency Board, under section 10 of the Railway Labor Act, to investigate and report respecting the dispute. After extended hearings the Board reported to the President, on October 29, 1938, and presented its conclusion "that no horizontal reduction upon a national scale of the wages of railway labor should be pressed by the carriers at this time." On November 4, 1938, the railroads advised the President that the notices for a 15 percent wage reduction would be withdrawn.

VI. MAJOR CONTENTIONS OF THE PARTIES

The case of all the employees against all the carriers on all the issues was presented on a consolidated record. The non-operating employees presented their case first, and the operating employees adopted as their own much of the testimony and many of the exhibits introduced on behalf of the non-operating organizations. This was especially true with respect to the employees' case on the financial situation of the carriers. There were, however, separate opening statements and separate briefs presented on behalf of the non-operating and of the operating groups.

For the carriers, the situation was somewhat different. The defense of the Railway Express Agency was made on a separate record and was supported by an independent opening statement and an independent brief. The special defense of the Short Lines, although made on the consolidated record, was confined to contentions predicated on their special situation with respect to employees and to the physical and financial peculiarities of their operations.

The other carriers were united in their contentions against the wage proposals of both groups of employees, and the vacation proposal of the non-operating organizations. They were, however, represented by separate committees on the two issues, with separate counsel, separate opening statements and separate briefs. There were

also independent representation, argument, and brief in support of the rules proposal advanced by the Western and Southeastern carriers.

With respect to rules, the carriers involved were the moving party, and the issue is sufficiently separate from those in the wage and vacation controversies to make it advisable to state the opposing contentions in the section confined to the rules dispute. The employees advanced their wage and vacation contentions equally, and without differentiation, against all the carriers, except that the Railway Express Agency was included only in the wage dispute. Their special case against the Express Agency was in the nature of rebuttal against the Agency's claims of independence, separability, and differentiation. These contentions will stand out more clearly when summarized in the section confined to the Express Agency.

With these qualifications we proceed to outline the major contentions of the employees and the major contentions of the carriers. The contentions on both sides were supported by elaborate statistical data. Such proof will not be summarized here, but will be dealt with in the two succeeding sections on railroad wages and their adequacy and on the financial situation of the carriers. The summary which follows is confined to an abstract of the principal arguments of the parties, with no implication of concurrence or dissent on our part.

A. CONTENTIONS OF THE EMPLOYEES

1. *The Fourteen Cooperating Railroad Labor Organizations.*

The employees in the non-operating services based their *wage case* on two main contentions: (1) that the railroad industry is enjoying a high level of prosperity and can afford to grant wage increases; and (2) that both absolutely and relatively the railroad employees are entitled to the wage increases which they have put in issue.

The present prosperity of the carriers is the result of the great expansion in the volume of traffic. The employees express their confidence that still further expansion is inevitable. As volume increases, net income increases at a still higher rate. The recent improvements in operating efficiency and in plant and equipment have already lowered the ratio of wage costs to total costs and will progressively reduce that ratio as traffic approaches nearer and nearer toward full utilization of the combined facilities of the carriers. Other costs than wages will also be less per unit of traffic as the same rails and equipment are more fully employed. A still greater enhancement of net earnings will accrue to those roads which because of past distress have been reorganized with resulting decreases in their fixed charges.

The present and prospective improvements in the condition of the railroad industry as a whole will, it is argued, be reflected in corresponding amelioration of the financial status of most individual roads. If there are still marginal lines which face reorganization, it should be recognized that some of them have long been in a hopeless condi-

tion and that some are controlled by more prosperous roads for which they are remunerative feeders. While the necessity for reorganization is to be regretted, the necessity is due to already existing conditions for which reorganization is the imperative cure. The losses to investors thus registered through reorganization are losses that have long been accruing or accrued. The remedy of reorganization restores the industry itself to a firmer financial position with new safeguards against future deficits in net income. Whatever the unhappy prospects of a few roads, the employees assert that the Board in recommending wage rates for the entire industry should not be influenced by the condition of these marginal lines. It would be essentially unreasonable to penalize the workers of an entire industry because of the uneconomic position or the improvident operation of a small number of roads.

While the carriers in recent years have had to meet competition from which they formerly were free, they have made definite progress in meeting it, and further progress is to be anticipated, as the carriers continue to improve their services and as competing forces of transportation become increasingly subject to governmental regulations and their employees become increasingly unionized.

The employees pointed to factors which would cushion any post-war slump such as occurred after the first World War. Even this recession was a temporary one, and for approximately a decade thereafter the railroad industry enjoyed great prosperity. The carriers, it was protested, advance a peculiar and untenable argument in respect to cycles of depression and of prosperity. Presumably they would resist any attempt to raise wage levels in periods of low earnings, yet they similarly resist such efforts in periods of prosperity, on the theory that, while existing conditions may appear to justify an increase in wages, these conditions may not continue. At the present time, railroad revenues are soaring, properties are being improved, competition is being mastered and financial burdens are being lightened. Hence it was concluded that, if ever there was a time when labor might justifiably press for a larger share in the fruits of the railroad industry, that time is now.

Apart from the improved financial position of the railroads, the employees presented a number of reasons as justifying wage increases and which were summarized under five main heads: (1) wages in the railroad industry have not improved for twenty years; (2) railroad employees possess a high degree of skill in comparison with employees in other industries and for which they are not adequately rewarded; (3) railroad wages are lower than those in other and corresponding employment; (4) railroad employment is irregular; and (5) the cost of living is rapidly advancing.

These contentions, like those dealing with the financial condition of the railroad industry, were supported by extensive statistical material. The various contentions and the data presented in their support were applied also to the issue of the minimum wage.

In advancing these claims for increased wages, the employees declared that they sought, not a favored position among industrial workers, but merely equality of treatment. The requirements of service exacted by railroad employment are as severe as those imposed by any industry upon its employees, and due recognition should be given to the skill and to the responsibilities of the employees involved in performing their work. The railroad workers have for two decades observed a steady improvement in the wages of the American worker, an improvement in which they have not participated, and in which they believe they have a right to share.

With reference to the financial condition of the carriers, the employees drew the conclusion that when the movement for a wage increase comes at a time described as one in which the railroads are receiving a bounteous portion of the mounting earnings of industry, it is essentially unfair that all of the increased profits be diverted to management and invested capital. The employees suffered in the season of depression even more than did the railroads, and now ask for themselves a just division of the fruits of prosperity.

In support of their plan for a two weeks *vacation with pay* for the non-operating groups the employees offered the following propositions: (1) Enlightened thinkers everywhere have considered vacations socially desirable because they provide necessary relief from industrial fatigue and afford opportunity for leisure and change of environment which will contribute to the development of faculties essential to good citizenship. (2) There is a strong and increasing trend toward the granting of vacations to industrial workers. (3) This movement may be extended to the railroad industry without encountering practical difficulties growing out of either the physical structure of the railroads or the present volume of their traffic. (4) The cost of granting vacations to railroad employees would be negligible in view of the financial condition and future prospects of the industry. These propositions were elaborated by citations from reports of employers stating the good effects which have resulted from the adoption of vacation plans for their employees, by records of the rapid increase of agreements providing for vacations, and by testimony as to the important function of vacations in the improvement of the social order.

The vacation plan, it was pointed out, did not propose vacations for those who had not had one year of service. While an employee who had not had substantially full employment during the preceding year might be eligible for a vacation, it was noted that an employee on furlough does not lose his connection with the industry. The railroad service of a furloughed employee is not considered as having been interrupted by a temporary cessation in the performance of active duties. This continuity of the service relationship, though the employment may be intermittent, is recognized by both the Railway Labor Act and the Railroad Unemployment Insurance Act.

2. *The Five Operating Brotherhoods.*

The only issue presented to the Board by the employees in the operating services was that of an increase of wages. Inasmuch as the non-operating organizations had opened the case for the employees and had dealt at length and in great detail with the financial situation and prospects of the carriers, with the claims of the employees that their wages were lower than those of employees in similar occupations in non-railway industries, and with the rising cost of living, the contentions of the operating brotherhoods on these points were mainly cumulative and therefore need not be stated in detail.

The basic contentions of the operating brotherhoods were thus set forth in the introduction to their brief: "The contention of the operating employes that their wages do not fairly and adequately compensate them for the services they render and their consequent proposal for a wage increase rest upon the following considerations:

1. The kind and character and characteristics of the work;
2. The increase in the service performance and responsibility of the men since the fixation of wages at substantially the present level;
3. The increased service performance which is being demanded, and will be demanded of them in the emergency period, upon which we have entered and which will undoubtedly continue for many months and probably for many years;
4. The wages paid and wage trends in other industries;
5. The rise in the cost of living which has already ensued and the certainty of further marked rises."

In elaboration and support of these main positions, the operating group advanced a series of more detailed considerations. They laid emphasis on the fact that the labor of the men in the operating groups is skilled labor. Their work has also other special characteristics. It is attended by more than ordinary physical hazard, by heavy responsibility for the safety of the lives and property of others, by irregular day and night, week-day and Sunday calls to service, by many hours per month spent away from home, with consequent increase in living expenses, and by peculiarities and difficulties of their tasks which are without counterpart elsewhere. Over the past twenty years the service performance of these employees has doubled from the standpoint of the volume of traffic moved, and has greatly increased in responsibility as measured by the value of the traffic units moved. The work of the operating men, though lightened somewhat in physical exertion during the twenty-year period, now demands and receives a higher degree of mechanical knowledge, greater alertness and vigilance, and increased capacity for sound judgment in an emergency.

It is true that the carriers, as they point out, now face more competition than formerly. Their success, however, in the competitive race will depend in large measure upon the quality and capacity of

the men in the service. Upon these men the carriers must rely for success in efficient handling of an expanding volume of traffic with heavier loading and at swifter pace with superior records of on-time arrivals. Upon these men, too, the carriers must rely for the best of relations with all patrons of the service as an important factor in meeting the force of competition.

The operating brotherhoods joined with the fourteen organizations in expressing confidence that the current improvement in the volume of business is not a temporary one, but will continue after the present emergency as it did for a long period after the first World War. They added that the high volume of traffic at the moment, even if there should be a recession later, makes increased demands for service upon the men and that therefore they are entitled to an increase in pay whether the emergency ends tomorrow, next year, or ten years hence.

In connection with the wages of employees in other industries, the operating brotherhoods recognized a difficulty in determining comparability, since the work in the railroad operating service is of a character seldom found outside the railroad industry. This unique character of their work was assigned as an additional reason for wage increases when accompanied by increased service performance on the part of the men and by increased net operating income enjoyed by the carriers.

Finally it was urged that deserved wage increases should not be denied for fear that such an increase might further the tendency toward inflation. While the employees joined with the carriers in a sincere concern over the possibility of excessive inflation, they insisted that it is not within the province of an Emergency Board, serving as an intermediary in the collective bargaining process, to attempt to control or influence such general tendencies by recommending that an increase in wages, even if deserved, should be withheld, because of considerations of a public character that are for other public agencies to weigh and act upon. A somewhat similar point was made about the possible effect of wage increases in furthering the necessity of the financial reorganization of some of the carriers. If by reason of high fixed charges there are roads that cannot pay adequate wages and still meet the interest due to bondholders, then financial reorganization should be regarded as a necessary measure to put the enterprise on a solid footing.

B. CONTENTIONS OF THE CARRIERS

The contentions of the carriers are much more difficult to state in summary form, since to a large extent they necessarily consist in denying, qualifying, or minimizing the arguments of the employees. In general their position was that the proposals of the men are grossly excessive both from the standpoint of the situation of the employees and from that of the past, present, and prospective earnings of the carriers. Here again, as in the case of the employees,

extensive statistical data and testimony were offered to support the positions advanced.

The chief counsel for the carriers on the wage issue pointed out in his closing argument that the question of the reasonableness of wages does not lend itself to solution by any nice formula. A case of this kind, he said, is largely a matter of measuring equities against equities, of trying to weigh conflicting interests in order to reach an equilibrium. By way of illustration he noted that wage fixing might be simple if viewed solely from the standpoint of the immediate interest of the employees, without considering their long-run interest, without considering the interest of the security holders, or of the shippers, or the national interest in a healthy, robust and thriving railroad system. It would be equally simple if viewed solely from the standpoint of any other selected interest in entire disregard of all the rest. But all these interests must be put on the scales of judgment in order to reach a proper balance.

Counsel emphasized the importance of the railway industry in the national economy, the difficulties with which the industry has been beset, the widespread distribution of railroad securities, and the great volume of employment which the railways provide. The health of the industry and its continued power to provide ample and efficient service are, he said, of major importance to the well-being of the nation.

The carriers presented statistical evidence of the long lean period of the thirties which brought about bankruptcies and receiverships of railroads and caused losses to holders of railroad securities. The return on capital invested in the industry has so long been inadequate that the securing of new capital through long term bonds or new issues of stock has become almost impossible. The railroads, it was asserted, need a net operating income of at least a billion dollars a year in order to provide for the necessary improvements and additions to structure and equipment, and to pay adequate dividends to stockholders. The wage increase proposed by the employees would deprive the carriers of all chance of compensation for past deficits and of securing adequate returns to maintain borrowing power. It would, furthermore, throw many roads into receivership and cause additional depreciation in the value of railroad securities. This would result in suffering not only to private investors but also to the millions who have a stake in the financial well-being of banks, insurance companies, and other institutional holders of such securities.

Even the present prosperity of the railroads will not bring in 1941 the net income which is essential to financial health in view of the accumulated deficiencies of the depression years. The current increase in the volume of traffic is due largely, if not wholly, to the defense expenditures, and there is no assurance that such a volume of traffic will be maintained for any considerable period. Those who propose a wage increase have the burden of proof, and they cannot establish

that present conditions are more than temporary and that wage increases should be granted on the assumption that business expansion will long continue. It is to be anticipated that, when the defense emergency is over, traffic volume will decline and the present gains will disappear.

The railroad workers, it is contended, have fared better, and now fare better, than the rank and file of the workers of this country. The average compensation of railway employees is not exceeded in more than a handful of industries for which over-all records are available. As a group, therefore, they are in a relatively favored position. The recent advances in wage rates in a few selected industries engaged in production of defense materials do not afford a fair basis for comparison. Much of the new labor has to be brought from a distance with consequent increased expense to the worker, and the conditions of work and of living are disadvantageous in contrast with the settled employment on the railroads. Many of the recent increases in wages in outside industries are due to factors which raised railroad wages years ago, and are therefore not of significance as evidence of a general trend which should be applied to all wages.

The claims of the employees that they have not been adequately rewarded for their increased productivity, and that the modernized plant and equipment require the use of more skill and effort, are without foundation. The increased productivity is due almost wholly to huge expenditures for the modernization of the plant and to improvement in management. Without the decrease in unit costs of traffic as a result of this modernization, the carriers would have been unable to maintain the scale of wages that has obtained. The recent improvements in tools and all facilities have made the labor of the worker easier rather than harder. The skills required have not been shown to be greater than those in other industries.

Railway employees shared the ill effects of the depression in less degree than employees generally. Regularity of employment is higher on the railroads than in industries generally. Railroads must operate continuously. Many of the outside industries that are now having a mushroom growth will inevitably when the emergency is over either close down or reduce the number of their employees much more than will the railroads.

With respect to the demand for a minimum wage, the carriers claimed that there is no justification for establishing such a rate for common labor in excess of the rate fixed by the Federal Administrator. An increase in the minimum rate will necessarily have the effect of increasing unemployment.

With regard to the cost of living, it is contended that, neither at the time the wage requests were made nor at the present time, has there been any such increase in the cost of living as would support or justify a disturbance in the basic rates of pay agreed to in 1937. In recognition of the possibility of future increases in prices the carriers proposed an arrangement for temporary increases in pay on