REPORT

to

THE PRESIDENT

by

EMERGENCY BOARD

NO. 239

SUBMITTED PURSUANT TO EXECUTIVE ORDER DATED JULY 3, 2006
ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE
BETWEEN SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY AND ITS LOCOMOTIVE ENGINEERS REPRESENTED BY THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
AND SECTION 9a OF
THE RAILWAY LABOR ACT, AS AMENDED

(National Mediation Board Case No. A-13363)

WASHINGTON, D.C.
SEPTEMBER 15, 2006

Washington, D.C.
September 15, 2006

The President
The White House
Washington, DC 20500

Dear Mr. President:

On July 3, 2006, pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order, you established an Emergency Board to investigate a dispute between the Southeastern Pennsylvania Transportation Authority and certain of its employees represented by the Brotherhood of Locomotive Engineers and Trainmen.

The Board now has the honor to submit its Report to you concerning resolution of the dispute between the above-named parties.

The Board acknowledges with thanks the assistance of Susanna C. Fisher and Eileen M. Hennessey, staff attorneys of the National Mediation Board, who rendered invaluable aid to the Board throughout the proceedings.

Respectfully submitted,

Kirk K. Van Tine, Chairman

Robert E. Peterson, Member

Peter W. Tredick, Member

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I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 239 ("PEB" or "Board") was established by the President pursuant to Section 9a of the Railway Labor Act ("RLA"), as amended, 45 U.S.C. § 151 *et seq.* including § 159a, and by Executive Order dated July 3, 2006, effective July 8, 2006. The Board was created to investigate and report its findings and recommendations regarding a dispute between the Southeastern Pennsylvania Transportation Authority ("SEPTA" or "Carrier") and certain of its employees represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET" or "Organization"). A copy of the Executive Order is attached as Appendix A.

The President appointed Kirk K. Van Tine, of McLean, Virginia, as Chairman of the Board, and Robert E. Peterson, of Briarcliff Manor, New York, and Peter W. Tredick, of Santa Barbara, California, as Members. The National Mediation Board ("NMB") appointed Susanna C. Fisher, Esq. and Eileen M. Hennessey, Esq., as Special Counsel to the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

SEPTA is a regional transportation authority. It was created by the Pennsylvania legislature in 1964 to provide mass transit service within the City of Philadelphia and the surrounding counties. SEPTA thereafter absorbed the assets of numerous private companies operating bus and rail services in the Southeastern Pennsylvania area. Today, SEPTA is the fifth largest passenger transit system in the United States, providing approximately 300 million passenger trips a year. SEPTA serves the City of Philadelphia; the four surrounding Pennsylvania counties of Bucks, Chester, Delaware and Montgomery; the cities of Newark, Wilmington and Claymont in Delaware; and the cities of Trenton and West Trenton in New Jersey. SEPTA's operations and services are overseen by a General Manager and fifteen-member Board of Directors. Board Members are appointed by the Governor of Pennsylvania (1), the Pennsylvania Senate and House of Representatives (4), the City of Philadelphia (2), and Bucks, Chester, Delaware and Montgomery Counties (2 each).

SEPTA provides transportation services in various modes, including bus, trackless trolley, subway/elevated, light rail, paratransit, shared-rides and commuter rail. In total, SEPTA operates and maintains 2,303 revenue vehicles on 195 routes covering approximately 1,918 route miles. SEPTA also operates and maintains 280 active stations and over 450 miles of track and related facilities. SEPTA employs a total of approximately 8,900 employees. Approximately 7,000 of its employees are represented by labor unions. Of SEPTA's unionized employees, approximately 5,700 (or 81 percent) are transit employees who are not covered by the RLA.

SEPTA's transit and rail operations are organized in a number of different divisions. The largest SEPTA division is the City Transit Division, which SEPTA has operated since 1968.

The dispute before this Board involves SEPTA's Regional Rail Division ("RRD"). The RRD was created in 1983, when the commuter rail services provided by Conrail were transferred to SEPTA pursuant to the Northeast Rail Service Act of 1981, 45 U.S.C. § 586. The commuter rail services provided by the RRD were formerly provided by the commuter rail divisions of the Penn Central and Reading Railroads, and were operated by Conrail from 1976 through 1982. SEPTA acquired Conrail's commuter operations in 1983. The RRD includes 13 separate train routes, and has approximately 1,763 employees, of whom approximately 1,300 are unionized. The RRD provided 28.1 million passenger trips in FY 2005.

B. The Organization

The BLET is a Division of the Rail Conference of the International Brotherhood of Teamsters ("IBT"). Its predecessor union, the Brotherhood of Locomotive Engineers ("BLE"), was the senior national labor organization in the United States and also North America's oldest rail labor union. The BLE merged with the IBT and became the BLET on January 1, 2004.

The dispute before this Board involves approximately 198 locomotive engineers who are represented for collective bargaining purposes under the RLA by the BLET.

III. HISTORY OF THE DISPUTE

On August 30, 2004, the BLET, pursuant to Section 6 of the RLA, served on SEPTA a notice to amend their collective bargaining agreement with the Carrier pertaining to changes in rates of pay, rules, and working conditions. SEPTA served its Section 6 notice on September 4, 2004. The main issues in dispute had to do with the extent and timing of general wage increases, the term or length of time the agreement would cover, and employee contributions to the cost of health care insurance. The parties were not able to resolve these and other issues in direct negotiations. Therefore, on March 23, 2005, the BLET filed a mediation application with the National Mediation Board ("NMB"). The NMB docketed the mediation case on March 25, 2005.

Both sides thereafter worked with an NMB mediator in an effort to reach agreement. SEPTA subsequently made a formal written proposal to the BLET on November 15, 2005 and the BLET responded with its counter-proposal several days later. Neither proposal was recognized as a basis for mutual settlement of their continuing dispute.

On May 15, 2006, after more than a year of intense mediation sessions, the NMB, in accordance with Section 5, First, of the RLA, urged SEPTA and the BLET to enter into an agreement to submit its collective bargaining dispute to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). The BLET accepted the proffer. SEPTA declined the proffer of arbitration on May 22, 2006.

On June 7, 2006, the NMB served notice on the parties that its services were terminated under the provisions of Section 5, First, of the RLA. Accordingly, "self-help" became available for each party at 12:01 a.m. ET on Saturday, July 8, 2006. The BLET thereafter announced that at this time it would withdraw its locomotive engineer membership from work on SEPTA.

On June 20, 2006, in accordance with Section 9a of the RLA, SEPTA requested that the President establish a PEB to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA provides that any party to the dispute, or the Governor of any State through which the service that is the subject of the dispute is operated, may request the President to establish an Emergency Board. Section 9a(c)(1) further prescribes that upon such request, the President shall create an Emergency Board. Therefore, on July 3, 2006, the President created this Emergency Board, effective July 8, 2006.

IV. ACTIVITIES OF THE EMERGENCY BOARD

Both parties were requested to and did provide the Board with pre-hearing submissions on July 14, 2006. A hearing on the stated issues in dispute was held July 19 and July 20, 2006, in Washington, DC. Both parties were represented by counsel, and had a full and fair opportunity to present oral and documentary evidence and argument.

The Board met in executive session separately, and jointly, with the parties on July 21, 2006 in Washington to encourage their voluntary settlement of the dispute. During these discussions the parties expressed their belief that their dispute could be amicably resolved and, therefore, asked for additional time for negotiations. It was understood, however, that the post-hearing briefing schedule would be maintained, and both parties provided the Board with post-hearing briefs on July 25, 2006.

On July 26, 2006, the parties advised that they had entered into a Tentative Agreement in settlement of the dispute, and provided a copy to the Emergency Board. A copy of this Tentative Agreement as negotiated by the chief negotiators for the parties is attached to the Report as Appendix "B". They required, however, additional time for ratification by the BLET membership and approval by the SEPTA Board. Accordingly, the PEB requested a 60-day extension of time to file its Report, which the President approved on August 3, 2006. On August 22, 2006, the BLET advised that its membership had ratified the Tentative Agreement. On September 14, 2006, SEPTA advised that its Board of Directors had also ratified the Agreement.

V. REPORT

The Chair and Members of the Emergency Board are pleased to report that following hearings and discussions with the Board, the parties have entered into voluntary agreement resolving the dispute that led to the creation of this Emergency Board.

Respectfully submitted,

Kirk K. Van Tine, Chairman

Robert E. Peterson, Member

Peter W. Tredick, Member

Federal Register
Vol. 71, No. 130
Friday, July 7, 2006

Presidential Documents

Title 3—

The President

Executive Order 13409 of July 3, 2006

Establishing an Emergency Board To Investigate a Dispute Between Southeastern Pennsylvania Transportation Authority and Its Locomotive Engineers Represented by the Brotherhood of Locomotive Engineers and Trainmen

A dispute exists between Southeastern Pennsylvania Transportation Authority (SEPTA) and its employees represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET).

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

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

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

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

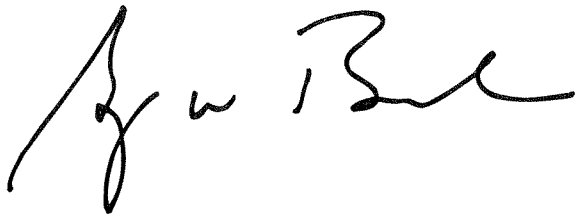
Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on July 8, 2006, a Board of three members to be appointed by the President to investigate and report on this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

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

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

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

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



THE WHITE HOUSE,
July 3, 2006.

[FR Doc. 06–6101
Filed 7–6–06; 8:45 am]
Billing code 3195–01–P

MEMORANDUM OF AGREEMENT

between

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

and

BROTHERHOOD OF LOCOMOTIVE ENGINEER AND TRAINMEN (BLET)

The parties have reached the following tentative agreement, pending ratification by the parties, for a bargaining agreement to succeed the bargaining agreement that expired on July 14, 2005, at 12:00 midnight:

1. **Term of Agreement**: (Section 1101) Five years commencing on July 15, 2005 and ending on July 14, 2010 at 12:00 midnight.

2. **Rates of Pay**: (Section 501) Section 501 will be amended to reflect the following wage increases:

   In lieu of an across-the-board wage increase, the Authority will pay to each employee on the active payroll as of August 2006, a lump sum bonus payment of $1,000. Said payment shall not be included in the base rate.

   Increase the top hourly rate by 3% effective July 1, 2007
   Increase the top hourly rate by 3% effective July 6, 2008
   Increase the top hourly rate by 3% effective July 5, 2009
   Increase the top hourly rate by 3% effective July 4, 2010

   Amend 501(g) to read: Effective beginning the first pay period following ratification of the parties, the daily certification allowance shall be $.50 per pay hour. The certification pay shall be subject to general wage increases.

   Effective upon ratification, the provisions addressing longevity shall be deleted from the Agreement and the Wage Rate Manual shall be modified as shown in Attachment 1.

   No current employee shall have his/her hourly rate reduced as a result of the wage rate progression reflected in the new Wage Rate Manual. Those employees who are paid at a greater hourly rate at ratification than is reflected in the new Wage Rate Manual shall be paid in accordance with the Wage Rate Manual in effect on July 26, 2006 until they reach the 61st month of the new Wage Rate Manual.

3. **Medical Benefits and Employee Contributions**: (Article 8) Article 8 will be amended as follows:

   (a) Effective upon ratification (or as soon thereafter as administratively feasible), Article 8 will be amended to reflect that the PPO Plan shall be the 10/20/70/ Plan with the following modifications: Emergency room co-payment of $100, waived if admitted; removal of all $75 in-hospital co-payments: physical, speech and occupational therapist service, $20 co-payment for visits 1-30, $30

co-payments for visits 31-60 (per calendar year); and chiropractic visits limited to 20 (per calendar year). The HMO Plan shall be Keystone 5.

(b) Effective upon ratification of the Agreement, Section 801 of the Agreement shall be amended to reflect that new hires will be eligible for participation in the HMO Plan for five (5) years from date of hire.

(c) Article 8 also will be amended to reflect the following employee contributions for medical benefits as follows:

(i) The contribution rate will be one percent (1%) of forty (40) hours at the employee's hourly wage rate as set forth in the Wage Rate manual on a weekly basis by payroll deduction, effective August 1, 2008. Until August 1, 2008, the existing 20/30% contractual contribution rate will continue. For employees paying the 20/30% contractual contribution rate on August 1, 2008, the contribution rate will revert to the one percent (1%) rate.

(ii) Employees on leaves of absence without pay shall be required to make their normal contribution of 1% of forty (40) hours at the employee's hourly wage rate as set forth in the Wage Rate manual on a weekly basis. If such contributions are not made, the Authority shall cancel their medical coverage.

(d) A one time cash payment of $1,000.00 will be offered to employees currently enrolled in the Personal Choice or Traditional Blue Cross Plans who switch to the Keystone HMO by October 1, 2006. Employees who switch to this plan will not be able to move back to the Personal Choice or Traditional Plans during the life of the Labor Agreement.

4. **Prescription Benefits**: (Section 804) of the Agreement will be amended to provide that:

Effective upon ratification (or as soon thereafter as administratively feasible), a three-tier formulary program for prescription benefits will be implemented with retail co-payments of: $5 Generic/$10 Preferred Brand/ $20 Non-Preferred Brand. Mail order prescriptions will have the same co-payments as retail. A specialty pharmacy benefit program will be implemented through the pharmacy benefits manager (Biocare Solutions or a comparable program).

Effective upon ratification, Sections 802, 804 and 805 shall be amended to reflect that employees shall not be eligible for prescription, dental or vision benefits until after they have completed fifteen months of service.

For an employee retiring on or after the ratification, the employee and his or her spouse will be eligible for retiree prescription coverage for a maximum period of three years or age 65, whichever occurs first except that the co-pay shall be the same as active employees.

Retired employees shall have the option to extend their rights under COBRA. (For the purchase of prescriptions benefits only) by an additional twenty-four months or until their 65th birthday, whichever comes first.

5. **Life Insurance**: (Section 806) Effective upon ratification of this Agreement, the life insurance benefit shall be increased from $34,000 to $40,000.

6. **Line of Duty Death Benefit**: Add new Section 808. (Section 808) Effective upon ratification of this Agreement, a death benefit payment in the amount of Two Hundred and Fifty Thousand Dollars ($250,000.00) will be provided to the estate of an employee in the event of the employee's death from injury as a result of assault or robbery in the course of one's employment.

7. **Section 602. Death in Family**:

   Effective upon ratification, amend to include three days for grandchild.

8. **Section 606. Parking**:

   Effective upon ratification, parking allowance for Wilmington and Trenton will increase from $5.00 per day to $5.50 per day.

9. **Section 401(g)(2)**: Add after second sentence:

   Any written reports or evidence relating to the discipline shall be available for the union to pick up after the discipline is issued.

10. **Other Terms and Conditions**: All other terms and conditions set forth in the Agreement are unchanged. All other proposals and offers of the parties during the negotiations are withdrawn without precedent or prejudice to the rights of either party.

And Now, this Wednesday, of July 26, 2006.

FOR SEPTA

Patrick J. Battel
Chief Labor Relations Officer

Susan Sanderson
Manager, Labor Relations

Frances C. Keating
Manager of Labor Advocacy

Howard Patton, Director
Personnel Assignment Office

Deleven Williams, Manager
Personnel Assignment Office

FOR BLET

Richard Dixon
General Chairman

Donald Hill
Vice General Chairman

Paul Osciak
Vice General Chairman

Steven J. Bruno
Local President

Thomas J. Dorricott
Legislative Director

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY

WAGE RATE MANUAL

BROTHERHOOD OF LOCOMOTIVE ENGINEERS (BLE)

REGIONAL RAIL DIVISION

PROGRESSION RATES

Job #	JOB TITLE	0 to 12 Months 73.81%	13 to 24 Months 78.45%	25 to 36 Months 83.07%	37 to 60 Months 84.91%	61 to 120 Months 92.30%	121 to 180 Months 96.15%	Thereafter 100.00%
WAGES EFFECTIVE UPON RATIFICATION 2006								
2534	Engineer	$19.7402	$20.9811	$22.2167	$22.7088	$24.6853	$25.7149	$26.7446
3% GENERAL WAGE INCREASE EFFECTIVE JULY 1, 2007								
2534	Engineer	$20.3324	$21.6106	$22.8832	$23.3901	$25.4258	$26.4864	$27.5469
3% GENERAL WAGE INCREASE EFFECTIVE JULY 6, 2008								
2534	Engineer	$20.9424	$22.2589	$23.5697	$24.0918	$26.1886	$27.2810	$28.3733
3% GENERAL WAGE INCREASE EFFECTIVE JULY 5, 2009								
2534	Engineer	$21.5706	$22.9267	$24.2768	$24.8146	$26.9743	$28.0994	$29.2245
3% GENERAL WAGE INCREASE EFFECTIVE JULY 4, 2010								
2534	Engineer	$22.2178	$23.6145	$25.0051	$25.5590	$27.7835	$28.9424	$30.1013

1234 Market Street
Philadelphia, PA 19107-3780

Southeastern Pennsylvania Transportation Authority
Safety • Service • Continuous Improvement

July 26, 2006

Mr. Richard Dixon
General Chairman
Brotherhood of Locomotive Engineers & Trainmen
38 Lanfair Road
Philadelphia, PA 19012

Dear Mr. Dixon:

This is to verify my commitment that SEPTA will modify our procedures for day off volunteers to extend the 60/40 provision to 7 days a week.

As always, SEPTA retains the right to modify these procedures consistent with the requirements of the operation.

Very truly yours,

Patrick J. Battel
Chief Labor Relations Officer

1234 Market Street
Philadelphia, PA 19107-3780

Southeastern Pennsylvania Transportation Authority
Safety • Service • Continuous Improvement

July 26, 2006

Mr. Richard Dixon
General Chairman
Brotherhood of Locomotive Engineers & Trainmen
38 Lanfair Road
Philadelphia, PA 19012

Dear Mr. Dixon:

This letter shall confirm the understanding we reached covering the transfer of SEPTA employees into positions cover under Brotherhood of Locomotive Engineers and Trainmen. Employees who transfer from another bargaining unit (either railroad or non-railroad or management) shall carry SEPTA seniority with them for the purpose of obtaining insurance benefits and calculating vacation eligibility.

If you concur, please sign below.

Very truly yours,

Patrick J. Battel
Chief Labor Relations Officer

Richard Dixon 7/26/06
Richard Dixon Date

PJB\dk