

# **REPORT**

**to**

**THE PRESIDENT**

**by**

**EMERGENCY BOARD**

**NO. 241**

SUBMITTED PURSUANT TO EXECUTIVE ORDER EFFECTIVE APRIL 6, 2007  
AND SECTION 9a OF  
THE RAILWAY LABOR ACT, AS AMENDED

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Investigation of dispute between Metro-North Railroad and the International Brotherhood of Teamsters

(National Mediation Board Case No. A-13347)

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**WASHINGTON, D.C.**  
**MAY 15, 2007**

Washington, D.C.  
May 15, 2007

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 9a of the Railway Labor Act, as amended, and by Executive Order effective April 6, 2007, you established an Emergency Board to investigate a dispute between the Metro-North Railroad and the maintenance of way employees represented by the International Brotherhood of Teamsters.

Following its investigation of the issues in dispute, including both informal hearings and meetings with the parties, the Board now has the honor to submit its Report and selection of final offer for settlement of the dispute.

The Board acknowledges with thanks the assistance of Susanna F. Parker, Esq. and Norman L. Graber, Esq. of the National Mediation Board, who rendered invaluable counsel and aid to the Board throughout the proceedings.

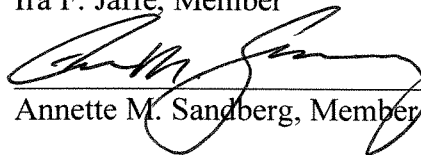
Respectfully submitted,



Peter W. Tredick, Chairman



Ira F. Jaffe, Member



Annette M. Sandberg, Member

## TABLE OF CONTENTS

I.	CREATION OF THE EMERGENCY BOARD .....	4
II.	PARTIES TO THE DISPUTE .....	4
	A. Metro-North.....	4
	B. The IBT.....	4
III.	HISTORY OF THE DISPUTE.....	5
IV.	ACTIVITIES OF THE EMERGENCY BOARD .....	6
V.	THE FINAL OFFERS .....	7
	A. Final Offer submitted by Metro-North .....	7
	B. Final Offer submitted by the IBT .....	19
VI.	DISCUSSION.....	20
VII.	CONCLUSION .....	23
	APPENDIX A – EXECUTIVE ORDER.....	24

## I. CREATION OF THE EMERGENCY BOARD

Presidential Emergency Board No. 241 (“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 effective April 6, 2007. The Board was created to investigate and report its findings and recommendations regarding a dispute between the Metro-North Railroad (“Metro-North” or “Carrier”) and its maintenance of way employees represented by the International Brotherhood of Teamsters (“IBT”). A copy of the Executive Order is attached as Appendix A.

The President appointed Peter W. Tredick, of Santa Barbara, California, as Chairman of the Board, and Ira F. Jaffe, of Potomac, Maryland, and, Annette M. Sandberg, of Alexandria, Virginia, as Members. The National Mediation Board (“NMB”) appointed Susanna F. Parker, Esq. and Norman L. Graber, Esq., as Special Counsel to the Board.

## II. PARTIES TO THE DISPUTE

### A. Metro-North

Metro-North was created in 1982 by the Metropolitan Transportation Authority (“MTA”) as a public benefit corporation to operate rail commuter lines between New York City and its northern suburbs in New York and Connecticut that were being operated by the Consolidated Rail Corporation (“Conrail”). Metro-North took responsibility for this rail commuter service on January 1, 1983, and operates rail service in Connecticut through an agreement with the Connecticut Department of Transportation.

Each weekday, Metro-North operates 620 trains transporting over 250,000 passengers over its 775 miles of track. Approximately 58% of its operating revenue comes from passenger fares. Federal, state, and local subsidies provide the balance of its operating revenue, as well as funding for capital improvements.

Metro-North has a total of 5,840 employees, with 4,880 of those employees represented by various labor organizations.

Other transportation subsidiaries in addition to Metro-North that are a part of the MTA include the Long Island Rail Road (“LIRR”); the New York City Transit Authority (“NYCTA”); the Triborough Bridge and Tunnel Authority; the Staten Island Rapid Transit Operating Authority; and several bus lines.

### B. The IBT

The IBT represents approximately 601 maintenance of way employees employed by Metro-North.

### III. HISTORY OF THE DISPUTE

In December 2002, pursuant to Section 6 of the RLA, the IBT served on Metro-North formal notice for changes in current rates of pay, rules, and working conditions. During the same month, seven other unions, representing 11 other crafts or classes of employees, also served on Metro-North their own individual formal Section 6 notices for changes in current rates of pay, rules, and working conditions.

Although each of the separate bargaining units commenced negotiations with Metro-North on an individual basis, they subsequently joined together as an informal Coalition and thereafter entered into mutual agreement as a formal Coalition. Members of the Coalition entered into agreement on January 13, 2005 to form the "Metro-North Labor Bargaining Coalition, AFL-CIO" ("The Coalition"). As described in the agreement, the Coalition's purpose was to "bargain with Metro-North during this round over rates of pay, pension and health and welfare." The agreement further states: "The Coalition shall represent its affiliates in all proceedings before Presidential Emergency Boards, arbitration panels, or any other forum where disposition of the Section 6 notices is placed at issue."

The Coalition represented about 3,500 Metro-North employees in 12 crafts or classes of work. The Coalition consisted of the following unions: the Transportation Communications International Union; Transport Workers Union of America; Sheet Metal Workers' International Association; International Association of Machinists & Aerospace Workers; International Brotherhood of Electrical Workers; Service Employees International Union – National Conference of Firemen & Oilers; International Brotherhood of Teamsters; and Transportation Communications International Union – American Railway & Airways Supervisors Association ("TCIU-ARASA") (TCIU-ARASA did not join the Coalition until July 2005).

Metro-North and the Coalition were unable to resolve the issues in dispute in direct negotiations, and applications were filed with the NMB by the separate bargaining units in October and November 2004 by all but TCIU-ARASA. The latter filed its application for mediation in July 2005.

Representatives of all the unions and Metro-North thereafter worked with an NMB mediator and with Board Members of the NMB in an effort to reach agreement.

On November 1, 2006, the NMB, in accordance with Section 5, First, of the RLA, urged Metro-North and the Coalition to enter into an agreement to submit its collective bargaining dispute to arbitration as provided in Section 8 of the RLA ("proffer of arbitration"). Under dates of November 2 and 3, 2006, the Coalition bargaining units, individually, declined the NMB proffer of arbitration. Metro-North advised under date of November 6, 2006 that it would accept the proffer of arbitration. As the RLA provides that both parties must agree to a proffer of arbitration to establish an arbitration board, no board was established.

On November 6, 2006, the NMB served notice that its services were terminated under the provisions of Section 5, First, of the RLA.

On November 30, 2006, in accordance with Section 9a of the RLA, Metro-North requested that the President establish an Emergency Board to investigate and issue a report and recommendations regarding the dispute. Section 9a(c)(1) of the RLA, in setting forth special procedures for commuter service, provides that any party to a dispute that is not adjusted under the other procedures of the RLA, or Governor of the State through which the service that is subject to dispute is operated, may request the President establish an Emergency Board. Thereafter, on December 6, 2006, the President created Emergency Board No. 240, effective December 7, 2006.

On January 19, 2007, PEB 240 issued its Report and Recommendations to the President. When the recommendations of PEB 240 did not result in a prompt resolution of the disputes, NMB Board Member Harry Hoglander conducted a public hearing on January 30, 2007, at which hearing the parties discussed their reasons for not accepting the recommendations of PEB 240.

Subsequently, the IBT withdrew from the Coalition. On March 30, 2007, the remaining Coalition members reached a Tentative Agreement (“TA”) with Metro-North. As of the date of this Report, all but one of the Coalition unions have ratified the TA.

On March 29, 2007, Metro-North requested that the President create a second Emergency Board pursuant to Section 9(a)e of the RLA regarding its dispute with the IBT. The President created this Board, effective April 6, 2007, to make final offer selections in accordance with the RLA.

#### **IV. ACTIVITIES OF THE EMERGENCY BOARD**

The Board held an organizational meeting by conference call on April 11, 2007. Following consultation with the parties, the Board issued an organizational letter on April 16, 2007, in which the ground rules for the Board’s procedures were set forth. This letter also confirmed the parties’ agreement to incorporate the record before PEB 240 into the record in this matter. The ground rules also set deadlines for the submission of additional evidence by the parties. Pursuant to the schedule set in the organizational letter, the Board met informally with the parties, both jointly and individually, on April 24 and 25, 2007, in Washington, D.C.

As directed by the Board, the parties filed final offers for settlement on May 2, 2007. On May 7, 2007, the Board met informally with the parties, both jointly and individually, in an attempt to facilitate a settlement of the dispute in New York, N.Y. On May 8, 2007, the Board again met informally with the parties, both jointly and individually. Per agreement by the parties, a formal hearing was waived and the parties were allowed an opportunity to submit amended final offers. Metro-North submitted an amended final offer and the IBT declined to do so. The parties were given a full and fair opportunity to present statements and evidence in support of final offers, and with the

Board's approval submitted additional letters to the Board on May 11, 2007. The Board met in a number of executive sessions and finalized its Report on May 15, 2007.

## **V. THE FINAL OFFERS**

### **A. Final Offer Submitted by Metro-North**

The Final Offer was noted to be subject to ratification by the membership of the International Brotherhood of Teamsters, and final approval by the Metropolitan Transportation Authority Board of Directors.

## **ARTICLE I – GENERAL WAGE INCREASES**

### **SECTION 1 – LUMP SUM PAYMENT FOR 2003**

Following membership and MTA Board ratification, Metro-North will pay a one-time non-recurring lump sum payment of \$1,000 to each employee who meets the eligibility requirements specified below in Section 8.

### **SECTION 2 – 2004 GENERAL WAGE INCREASE**

Effective January 1, 2004, all rates of pay irrespective of the method of payment (hourly, daily, etc.) in effect on December 31, 2003 shall be increased by three percent (3%).

### **SECTION 3 – 2005 GENERAL WAGE INCREASE**

Effective January 1, 2005, all rates of pay irrespective of the method of payment (hourly, daily, etc.) in effect on December 31, 2004 shall be increased by three percent (3%).

### **SECTION 4 – 2006 GENERAL WAGE INCREASE**

Effective January 1, 2006, all rates of pay irrespective of the method of payment (hourly, daily, etc.) in effect on December 31, 2005 shall be increased by three percent (3%).

### **SECTION 5 - 2007 GENERAL WAGE INCREASE**

Effective January 1, 2007, all rates of pay irrespective of the method of payment (hourly, daily, etc) in effect on December 31, 2006 shall be increased by four percent (4%).

### **SECTION 6 - 2008 GENERAL WAGE INCREASE**

Effective January 1, 2008, all rates of pay irrespective of the method of payment (hourly, daily, etc) in effect on December 31, 2007 shall be increased by three and one-half percent (3.5%).

## **SECTION 7 – 2009 GENERAL WAGE INCREASE**

Effective January 1, 2009, all rates of pay irrespective of the method of payment (hourly, daily, etc) in effect on December 31, 2008 shall be increased by three percent (3%).

## **SECTION 8 – ELIGIBILITY FOR WAGE INCREASES**

In order to be eligible to receive the above referenced lump sum payment, the employee must have been on the payroll between January 1, 2003 and December 31, 2003. Employees who were on the payroll during 2003 for less than twelve (12) months (retirees, new hires or otherwise off pay status) for one (1) month or more shall have their lump sum prorated based on the number of months on the payroll over a denominator of twelve (12). Fifteen (15) days or more on the payroll in a month shall constitute a month of service.

Example: An employee retired on September 1, 2003. Such employee had eight (8) months on the payroll and shall receive 8/12ths of the lump sum amount.

Employees who were terminated and not subsequently reinstated or who voluntarily resigned shall not be entitled to any pro rata share of the lump sum payment.

The retroactive payments commencing on January 1, 2004 shall only be granted to current employees for service performed in 2004, 2005, 2006 and 2007 on a pro-rated basis for employees who since January 1, 2004 have 1) retired, 2) died or 3) were dismissed and subsequently reinstated with full seniority restored.

## **ARTICLE II – DEFINED BENEFIT PENSION PLAN**

Effective with full and final ratification of this Agreement, the Metro-North Defined Contribution Pension Plan for Agreement Employees (also known as the “Vanguard Plan” or “Plan”) will be closed and all current employees previously enrolled in the Vanguard Plan, except those employees who exercise the irrevocable option described in paragraph 6 below (“opt-out employees), will be enrolled in Article 12 of the MTA Defined Benefit Pension Plan (“New Program”). Current employees will cease making employee contributions to the Vanguard Plan and Metro-North shall also cease making contributions to the Vanguard Plan. For the purposes of this Article, current employees shall mean employees hired before the date of full and final ratification of the agreement and participants in the New Program shall mean all current employees who do not opt out of the New Program.

All employer contributions attributable to participants in the New Program, including interest, shall be segregated in a Vanguard fund that is specially designated for that purpose, until such time that these assets are transferred into the MTA Defined Benefit Pension Plan.



All participants in the New Program shall have the same terms and conditions as those applicable to non-represented employees of Metro-North in the MTA Defined Benefit Pension Plan except as follows:

1. All participants in the New Program shall receive service credit for service rendered on or after January 1, 1983, based on their date of hire at Metro-North and all employer contributions and the earnings attributable to such contributions credited to such employees in the Vanguard Plan for such service shall be transferred to the MTA Defined Benefit Pension Plan.
2. All participants in the New Program will be able to elect to transfer their employee contributions, and the earnings from these contributions, made to the Vanguard Plan to the employee's account in the MTA Deferred Compensation Program (401(k) Plan).
3. All participants in the New Program shall make three percent (3%) member contributions to the New Program and shall make such contributions effective October 1, 2005, or on their date of hire, whichever is later.
4. All participants in the New Program shall make three percent (3%) member contributions until January 1, 2017, or until they have contributed for ten (10) years from the date of participation in the New Program, whichever is later.
5. Retirement Incentive – All participants in the New Program who attain age sixty (60) prior to or on June 15, 2010, and who are otherwise eligible to retire, shall be eligible to retire under the New Program at such age without the early retirement reductions.
6. Metro-North will provide a one (1) time irrevocable option for all current employees to opt-out of participation in the New Program. This election must be made within forty-five (45) days of final ratification and must be made on a form filed with Metro-North's Human Resources Department. Opt-out employees shall become participants of the MTA 401(k) Plan and Metro-North shall continue to contribute at the current rates to the 401(k) Plan. Opt-out employees will not be required to contribute 3% towards the New Program.

Opt-out employees will retain the company paid Life Insurance benefit of \$100,000.

For opt-out employees, the Vanguard Plan will implement a non-tax transfer of such opt-out employees' employer and employee account balances into the 401(k) Plan. This transfer will take place as soon as practicable after the time of the transfer of the applicable Vanguard Plan assets to the MTA Defined Benefit Pension Plan. The employee and employer contributions shall vest in

the MTA 401(k) Plan under the same terms and conditions as under the Vanguard Plan.

7. All employees hired after full and final ratification of this agreement shall become members in the MTA Defined Benefit Pension Plan under a program the same as Article 12 of the MTA Defined Benefit Pension Plan as applicable to other Metro-North employees without any provisions for early retirement prior to age 62, including the retirement incentive referred to in paragraph 5 above; and with provision that overtime earnings in excess of 20% of regular wages shall not be included in the calculation of any retirement benefit, including but not limited to death benefits.

### **ARTICLE III – BENEFITS**

#### **Vision Benefits**

As soon as practical after full and final ratification, all active employees will be covered by the MTA Management Vision Care Plan subject to future amendment by the MTA. The level of these benefits will not be substantially changed without Union concurrence. The current Vision Care Plan for Agreement Employees will be eliminated.

#### **Life Insurance**

Effective upon the full and final ratification of this Agreement, the existing Company paid Life Insurance benefit of \$100,000 will be eliminated for all employees who become participants of the New Program and all employees hired on or after full and final ratification of this agreement. These employees shall be covered by the MTA Defined Benefit Pension Plan's death benefit provisions.

However, for a period of thirty six (36) months after the full and final ratification of this agreement, all participants in the New Program shall receive as a death benefit from the New Program either \$100,000 or the Death Benefit as computed under the current death benefit provision of the New Program, whichever is greater.

### **ARTICLE IV – WORK RULE CHANGES**

#### **Personal Leave**

Effective January 1, 2007, the extra Personal Day for employees with thirty (30) or more years of continuous service is eliminated.

#### **Paid Holidays**

Effective 2008, the existing holiday provision will be amended, allowing for Good Friday to be replaced with a Choice Holiday. The Choice Holiday will be subject to use,

consistent with Metro-North's needs of service and in accordance with the notice procedures for requesting Personal Days.

**Scope Rule – Section 2**

Metro-North may contract, at its discretion, and not subject to Section 2 of the Scope Rule, with vendors to perform all work on the upcoming projects at Yankee Stadium and Harmon Shop and Yard.

Rule 2 will not apply to work on the Port Jervis Line. Metro-North may contract out all work on this line without notification to the Union and the Union shall have no right to progress claims in connection with contracting out such work.

**Seasonal Furlough**

There will be no seasonal furlough for the winter seasons of 2007 to 2008, 2008 to 2009 and 2009 to 2010.

**ARTICLE V – MORATORIUM**

(1) The Agreement shall be effective January 1, 2003 and shall remain in effect through June 15, 2010 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

(2) The parties to this Agreement shall not serve or progress prior to January 1, 2010 (not to become effective before June 16, 2010) any notice or proposal for the purpose of changing agreements.

This Memorandum of Understanding is subject to ratification by the membership of the IBT and final approval by the Metropolitan Transportation Authority Board of Directors.

**FOR INTERNATIONAL BROTHERHOOD  
TEAMSTERS**

**METRO-NORTH**

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Glenn Conklin  
President, Local #808 - IBT

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Raymond Burney  
Director - Labor Relations

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Chris Silvera  
Secretary-Treasurer

May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Re: **Pay for Union Business**

Dear Mr. Silvera:

This will confirm that Metro-North will examine the legal and practical implications of establishing a procedure wherein active, full time Metro-North employees who are bonafide Union Officials will receive pay from Metro-North while on Union Business and the Union will reimburse Metro-North for all of the payroll costs incurred by Metro-North. This arrangement will not change the current rules or practices that determine when an active employee who is a Union Official is entitled to receive compensation from Metro-North.

Very truly yours,

Raymond Burney  
Director – Labor Relations

May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Dear Mr. Silvera:

This letter will confirm our discussions during the recently completed negotiations for a new collective bargaining agreement regarding the MTA's proposed corporate restructuring. We agree that the proposed restructuring provides potential opportunities for the MTA to operate more efficiently. We also agree that the best way to maximize those efficiencies is through cooperative efforts and good faith discussions which acknowledge the legitimate concerns of the workforce regarding seniority, earnings, job security and the like. We commit to using our best efforts to ensure that these discussions take place in a harmonious atmosphere and reach a timely and mutually acceptable conclusion.

Very truly yours,

Raymond Burney  
Director – Labor Relations

I Concur:

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Chris Silvera

May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Re: **Pension Plan Formula Amendments**

Dear Mr. Silvera:

This letter will confirm our discussions during the recently completed negotiations for a new collective bargaining agreement regarding Chapter 12 of the MTA Defined Benefit Pension Plan ("New Program"). We agree that the MTA will not change, amend or alter the benefit formulas contained in the proposed May 3, 2005 Draft of the New Program, as modified by Article II of the March 30, 2007 Memorandum of Understanding, without the Union's concurrence.

Very truly yours,

Raymond Burney  
Director – Labor Relations

May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Re: **Early Retirement Health Benefits**

Dear Mr. Silvera:

This letter shall memorialize the parties understanding with regard to the provision of health benefits to certain retirees. Members of the International Brotherhood of Teamsters who are participants in the Defined Benefit Retirement Program for Represented Employees of the Commuter Rails (hereinafter the "MTA DB Plan") who satisfy the minimum age and years of service requirements of the MTA DB Plan for an early retirement benefit (55/10), who receive said benefit from the MTA DB Plan upon retirement, and who have been participants in the New York State Health Insurance Plan for at least six months prior to their retirement date shall be entitled to retiree health benefits until they obtain 65 years of age.

Metro-North Commuter Railroad will provide said health benefits to eligible retirees represented by the IBT. Dependents shall continue to receive health benefits in accordance with the eligibility criteria established under the "Roosevelt Agreement". Nothing contained in this letter agreement shall be construed to change, alter or amend any other aspect of the "Roosevelt Agreement."

Additionally, retirees who qualify for and receive a disability pension as provided for in the MTA DB Plan will be eligible for health benefits until they reach age 65. If the retiree dies before reaching age 65, the retiree's spouse and dependents will continue to receive health benefits until the retiree would have reached age 65.

Very truly yours,

Raymond Burney  
Director - Labor Relations

May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Re: **Retirement Incentive**

Dear Mr. Silvera:

This letter will confirm our discussions during the recently completed negotiations for a new collective bargaining agreement regarding the Retirement Incentive for all participants in the New Program referenced in Paragraph 5, Article II of the March 30, 2007 Memorandum of Understanding (“Retirement Incentive”).

It is understood by and between the parties that in order to fund a portion of the Retirement Incentive, IBT’s Collective Bargaining Agreement has been extended for two and one-half months beginning in 2010. At Metro-North’s option, this two and one-half month extension shall terminate on the then existing contract’s anniversary date which occurs after June 15, 2014, unless Metro-North determines to continue the Retirement Incentive. In such event, the reversion of the extension shall not occur and Metro-North’s option to discontinue the retirement incentive shall expire.

Very truly yours,

Raymond Burney  
Director - Labor Relations



May 8, 2007

Mr. Chris Silvera  
Secretary-Treasurer  
2243 Jackson Avenue  
Long Island City, New York 11101

Re: **Workforce Scheduling**

Dear Mr. Silvera:

Conditioned upon your concurrence to this process, Metro-North is agreeable to the following:

1. Effective upon ratification, Metro-North shall have the ability to schedule up to 10% of the entire workforce Monday through Friday on second and third shift. These employees shall receive a shift differential of \$2.50 for each hour worked between 6:00 pm to 6:00 am.
2. Effective upon ratification, Metro-North shall have the ability to schedule up to 20 employees Wednesday through Saturday on a four day 10 hour per day work week. Employees on these positions shall receive a \$30.00 shift differential for Saturday shifts.
3. Effective January 1, 2010, Metro-North shall have the ability to schedule up to 10% of the workforce on Tuesday through Saturday day shift. These employees shall receive a \$30.00 shift differential for Saturday shifts.

Any net savings generated by these schedule changes will be placed in an equity pool to be distributed to the IBT Members. This distribution will be determined by the

Mr. Chris Silvera  
**Workforce Scheduling**  
May 8, 2007  
Page 2

Teamsters subject to concurrence by Metro-North. Should Metro-North and the Teamsters be unable to agree as to the value of the net savings, that issue will be presented to an arbitrator for binding resolution.

Very truly yours,

Raymond Burney  
Director – Labor Relations

I Concur:

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Chris Silvera, Secretary-Treasurer, IBT

## **B. Final Offer Submitted by the IBT**

### Wage Equity

- Effective December 31, 2006, MNCR Maintenance of Way Employees shall receive general wage increases sufficient to bring them to 93% of the equivalent classification wage rates on the LIRR
- Effective January 1, 2010, MNCR Maintenance of Way Employees shall receive general wage increases sufficient to bring them to 95% of the equivalent classification wage rates on the LIRR

### Scheduling Rules

- Effective upon ratification of the Agreement, the MNCR shall have the ability to:
  1. Schedule up to ten percent (10%) of workforce at each headquarters, Monday through Friday, on second and third shifts; employees on those shifts shall receive a ten percent (10%) differential.
  2. Schedule up to twenty (20) employees, Wednesday through Saturday, 8 a.m. to 6 p.m.; employees shall work a ten (10) hour shift and receive a five percent (5%) differential.
- Effective January 1, 2010, the MNCR shall have the ability to:
  1. Schedule ten percent (10%) of the workforce at each headquarters, Tuesday through Saturday, 8 a.m. to 4 p.m.; employees shall work an eight (8) hour shift and earn a five percent (5%) differential.
  2. Adhere to scheduling rules that become effective upon ratification.
- Employees working on Sundays shall earn overtime at the time and a half rate.

### Furloughs

- Effective upon ratification of the Agreement, Maintenance of Way employees shall not suffer seasonal furloughs

## Coalition Agreement

- The Agreement between Local 808 and the MNCR will otherwise include the same terms as the agreement between MNCR and the Metro-North Coalition regarding:
  1. General Wage Increases
  2. Pension
  3. Health Care Contributions
  4. “Pop Up” benefit
  5. Vision care
  6. Life Insurance
  7. Holidays
  8. Early retirement (55-10 side letter)
  9. Early retirement penalty
  10. Other applicable side letters
  11. Moratorium

## **VI. DISCUSSION**

The Board’s responsibility in this case is to “submit a report to the President setting forth its selection of the most reasonable offer.” In this process, we may not modify the offers or recommend terms that vary from those contained in the final offers of the parties. After careful consideration of the record and presentations of the parties, the Board is persuaded that the final offer of Metro-North is the “most reasonable offer.” A summary of the principal reasons for this conclusion follows.

The areas separating the final offers of the Carrier and the IBT, while limited in number, are significant.

Initially, it should be noted what is not in dispute. Both final offers include, as part of their terms, the TA reached between Metro-North and the Coalition in its entirety. The final offers are identical with respect to wages, including retroactivity; benefits, including the conversion to the MTA Defined Benefit Pension Plan and opt-out provisions; health, vision, and life insurance benefits; elimination of the extra Personal Day for employees with thirty (30) or more years of continuous service; replacement of Good Friday with a Choice holiday; moratorium (term); and a variety of side letters (addressing Pay for Union Business, proposed restructuring, pension benefit formulas, retiree health benefits, and retirement incentives).

The IBT seeks herein two additional provisions above and beyond the terms negotiated between Metro-North and the Coalition and contained in the TA – first, the IBT seeks a substantial move toward “wage parity” with the rates paid to employees of the LIRR in similar job titles and, second, the IBT seeks a prohibition on seasonal winter furloughs.

The subject of wage parity of Metro-North and LIRR employees has been a matter of longstanding issue between Metro-North and the labor organizations that represent its employees. Requests by the organizations to take steps to equalize the wages paid to Metro-North employees and LIRR employees in the same craft or class were discussed at some length by PEB 226 in its Report of April 21, 1995 to President Clinton and by PEB 240 in its Report of January 19, 2007 to President Bush.

The Reports of the Boards in PEB 226 and PEB 240:

1) recognized the unions' perceptions of inequity and unfairness in employees receiving different rates of pay for performing similar work in the same craft or class on two commuter railroads, providing similar services, and owned and operated by the same parent in the same metropolitan area;

2) concluded that, as a matter of consistent prior bargaining history since 1983 when Metro-North was created, the parties had not treated the LIRR wage rates as the appropriate benchmarks for setting wage rates at Metro-North. These Boards further noted that wage rates at Conrail, Amtrak, SEPTA, and the New York City Transit Authority were all considerably lower than wage rates at Metro-North;

3) rejected the argument that the possible future integration of the operations of Metro-North and the LIRR provided a sufficient present basis for treating the LIRR wage rates as appropriate benchmarks for Metro-North. These Boards further determined that any adjustments warranted by such integration should wait until the precise form and nature and extent of any organizational and/or operational combination is known; and

4) emphasized the history of pattern bargaining at Metro-North and the importance of maintaining internal wage parity among the various Metro-North employees instead of pursuing external wage parity between Metro-North employees and employees of the LIRR or any other railroad.

We agree with the continued soundness and application of these findings in this case.

Measured as a percentage of wage rates, the amount of any disparity between the wages paid at Metro-North and the wages paid for similar classifications at the LIRR is not uniform and is significantly higher for some maintenance of way titles than others. The present disparities in the wage rates paid to some Metro-North maintenance of way employees, when compared with the wage rates paid to similar titles at the LIRR, are greater than the disparities which exist for Metro-North employees in other crafts or classes. As recognized by PEB 226, PEB 240, and this Board those wage disparities are of long-standing duration.

The final offers of the IBT and the Carrier attempt to address this situation in different ways. The IBT's final offer would bridge those gaps to 93% (effective December 31, 2006) and 95% (effective January 1, 2010), and relax to a limited extent

the present work rule limitations on scheduling, thereby returning some portion of the cost of those wage improvements to the Carrier by way of reductions in overtime and increased efficiency in the performance of certain scheduled non-overtime work. The Carrier's final offer does not provide for any explicit increase in wages over and above those provided for in the Coalition TA, but provides a mechanism whereby the IBT may choose to agree to greater relaxations of the present work rule limitations on scheduling and, in return, receive all net savings generated by those changes in an equity pool that can be distributed as determined by the IBT, subject to the Carrier's concurrence. Disputes over the value of those net savings would be subject to arbitration.

The Board concludes that the approach set forth in the Carrier's final offer is the more reasonable approach. First, and foremost, the equalization of wage rates between Metro-North and the LIRR for maintenance of way classifications is not a matter of entitlement, but rather a matter for traditional collective bargaining. The Carrier's final offer has the advantage of affording the IBT a means by which the wage rates of those titles with the greatest disparity relative to LIRR wages may narrow that gap, without disrupting the internal equity within Metro-North and the pattern bargaining that has already taken place and resulted in ratified agreements for the vast majority of represented Metro-North employees.

We further conclude that the Carrier's final offer does a better job of accomplishing traditional collective bargaining goals. Specifically, given the pattern settlement and well-established considerations of internal pay equity, we cannot recommend that the Carrier be required to provide the IBT the full benefits of the TA and then, on top of those gains, also grant additional significant wage increases to the 93% to 95% of the LIRR rate range sought by the IBT without obtaining, in return, work rule or other concessions as a quid pro quo for wages above the pattern settlement.


Both final offers also contain new provisions that would eliminate seasonal furloughs. The IBT's final offer contains a ban upon seasonal furloughs, effective upon ratification, with no quid pro quo. The Carrier's final offer contains a ban on seasonal furloughs through the winter season of 2009-10, and also contains language without time limitation that recognizes the Carrier's right to perform all work on the upcoming projects at Yankee Stadium and Harmon Shop and Yard, and to continue to contract out work on the Port Jervis Line to New Jersey Transit. Although one might expect both sides of the quid pro quo to have the same temporal scope, the IBT proposal contains no quid pro quo, and the Board finds that the linked commitment not to furlough and not to challenge the project work in the Carrier's final offer is more reasonable than the IBT's final offer in this regard.

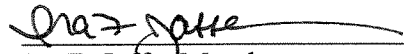
For the reasons set forth above, the Board selects the final offer of Metro-North as the "most reasonable" final offer and recommends its adoption in its entirety.

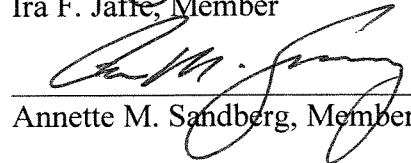
## VII. CONCLUSION

In closing, the Board gratefully acknowledges the counsel and professional assistance rendered by Susanna F. Parker, Esq., and Norman L. Graber, Esq. of the National Mediation Board throughout this process.

Respectfully submitted,

  
Peter W. Tredick, Chairman

  
Ira F. Jaffe, Member

  
Annette M. Sandberg, Member

## APPENDIX A

### **Executive Order: Establishing An Emergency Board to Investigate a Dispute Between Metro-North Railroad and Its Maintenance of Way Employees Represented by the International Brotherhood of Teamsters**

A dispute exists between Metro-North Railroad and its maintenance of way employees represented by the International Brotherhood of Teamsters.

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

A first emergency board to investigate and report on this dispute and disputes of other employees represented by other labor organizations was established on December 7, 2006, by Executive Order 13417 of December 6, 2006. The emergency board terminated upon issuance of its report. Subsequently, its recommendations were not accepted by the parties.

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

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second 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 Act, it is hereby ordered as follows:

Section 1. Establishment of Emergency Board (Board). There is established, effective April 6, 2007, 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. Within 30 days after the creation of the Board, the parties to the dispute shall submit to the Board final offers for settlement of the dispute. Within 30 days after the submission of final offers for settlement of the dispute, the Board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. Maintaining Conditions. As provided by section 9A(h) of the Act, from the time a request to establish a second emergency board is made until 60 days after the Board submits its report to the President, the parties to the controversy shall make no change in the conditions out of which the dispute arose 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.

GEORGE W. BUSH

THE WHITE HOUSE,

April 4, 2007.