In the Matter of the Arbitration between BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES and CSX TRANSPORTATION, INC.	}	Pursuant to Section 11 of the Recommendations concerning Maintenance of Way employees by Presidential Emergency Board No. 219, as clarified and and modified by the Special Board established by Public Law 102-29

HEARING HELD AT CHARLOTTE, NORTH CAROLINA, DECEMBER 20, 1991

A P P E A R A N C E S

For the Organization:

William A. Bon, Esq.

For the Carrier:

James B. Allred, Director
Employee Relations

In Attendance at Hearing

Richard A. Lau, Vice President
Southeast Region

Rick Hiel, Senior Manager
Employee Relations

Kenneth R. Mason, Vice President
Northeast Region

Neil J. Marquar, General Chairman

J. W. Pugh, General Chairman

J. R. Cook, General Chairman

N. V. Nihoul, General Chairman

J. S. McCormick, General Chairman

F. N. Simpson, Vice Chairman

E. R. Brassell, Second Vice Chairman

Samuel J. Alexander, Activated Local Chairman

INTRODUCTION

This dispute concerns the announced intention by CSX Transportation, Inc. (the "Carrier" or "CSXT") to establish system-wide production gangs pursuant to Section 11 of the recommendations pertaining to Maintenance of Way employees made by Presidential Emergency Board No. 219 ("PEB 219"). Section 11 reads in pertinent part as follows:

> 11. Regional and System-wide Gangs
>
> The Carriers have indicated that greater operational efficiencies can be attained if production gangs can continue working together for longer periods of time. The BMWE has been concerned with maintaining job opportunities for its members. The Board recommends the following changes in present practices:
>
> > (a) A carrier should give at least ninety (90) days' written notice to the appropriate employee representative of its intention to establish regional or system-wide gangs for the purpose of working over specified territory of the carrier or throughout its territory (including all carriers under common control). These gangs will perform work that is programmed during any work season for more than one seniority district. The notice should specify the terms and conditions the carrier proposes to apply.
> >
> > (b) If the parties are unable to reach agreement concerning the changes proposed by the carrier within thirty (30) calendar days from the serving of the original notice, either party may submit the matters set forth above to final and binding arbitration, in accordance with the following procedures: . . . .

(5) The jurisdiction of the arbitrator is to be confined to a determination of how the seniority rights of affected employees will be established on the combined or realigned seniority rosters.

By letter dated August 5, 1991, CSXT advised the Brotherhood of Maintenance of Way Employes ("BMWE" or the "Organization") of its proposal to establish system-wide gangs to perform work throughout its territory, including all carriers under common control of CSXT.

The parties, without prejudice to their respective positions, agreed to meet to discuss the Carrier's notice on August 22, 1991. Prior to this meeting, the Organization submitted letters questioning the Carrier's authority to move on the proposed initiative and submitted several questions related thereto, including questions regarding the authority of an arbitrator in cases involving regional and system-wide gang proposals.

The parties met, as agreed, on August 22, 1991 at Nashville, TN. At the end of the August 22, 1991 session the parties, again without prejudice to their respective positions, agreed to meet again on September 10, 1991 in Charlotte, NC. The Carrier also agreed to respond in writing to the questions raised by the Organization and to amend its proposal to take into consideration the concerns raised by the various BMWE representatives attending the meeting.

Under date of September 5, 1991, the Carrier forwarded each BMWE representative a copy of its answers to the questions raised and a copy of its revised proposal.

The parties met, as agreed, on September 10, 1991. After a preliminary discussion the parties agreed that each side would select a smaller negotiating committee in an effort to compose the issues in dispute and to proceed toward reaching accord. The smaller negotiating committees continued discussions in September and October 1991. A draft agreement was reached between the representatives of BMWE and the Carrier on October 18, 1991, with the understanding that the draft agreement would be subject to approval by the respective BMWE General Chairmen after review as required by their respective by-laws.

Meanwhile, the Contract Interpretation Committee established by PEB 219 initiated its functions. On November 6, 1991, the Contract Interpretation Committee decided the scope of a Section 11 arbitrator's authority includes "all subject matters contained in a carrier's proposal" as well as all "BMWE counterproposals".

On November 15, 1991, the Carrier was advised that not all BMWE General Chairmen would execute the draft agreement. In view of this, the Carrier submitted the dispute to final and binding arbitration in accordance with the procedures stipulated in Section 11 of the PEB recommendations as clarified and modified by the Special Board established by Public Law 102-29 and as interpreted by the Contract Interpretation Committee. The Carrier notified the Organization of its intentions by letter dated November 15, 1991.

Under date of November 22, 1991, BMWE President Mac A. Fleming responded and submitted a proposal in an attempt "to achieve a negotiated settlement prior to submitting the issue to

arbitration". President Fleming also suggested that if the Carrier was unable to accept the Organization's proposal it would nevertheless be agreeable to proceeding with arbitration.

By letter dated November 26, 1991, the Carrier rejected the proposal submitted by President Fleming and proposed that the parties proceed to arbitration. Within such letter, the Carrier also proposed that the parties limit the scope of the impending arbitration to those matters on which the parties were not in agreement.

Under date of December 2, 1991, the Organization responded to the Carrier's suggestion and concurred therewith, offering certain procedural guidelines. The Carrier responded on December 4, 1991 and confirmed its concurrence with the Organization's suggested procedural guidelines. These guidelines stated as follows:

> 1. Where the parties' respective proposals concerning a specific matter are substantively in agreement, the arbitrator will not fashion language inconsistent with such mutual agreement.
>
> 2. Where the parties' respective proposals concerning a specific matter are not substantively in agreement, the arbitrator may accept either parties' proposal, or, in the alternative, may fashion language based on the evidence presented to him.

By joint letter dated December 5, 1991, the parties confirmed to the Arbitrator his selection in this matter. The parties provided the Arbitrator with pre-hearing submissions, specifically including the text of the Carrier's proposed agreement (identical to the draft agreement referenced above) and the Organization's

proposed agreement as submitted to the Carrier on November 22, 1991.

F I N D I N G S

Consistent with the parties' agreement to arbitrate this matter, the Arbitrator has reviewed fully the parties' respective proposals. For the most part, the parties' proposals are in substantive accord, and the resulting Agreement is consistent therewith. In light of the broad scope of arbitration contemplated by Section 11(a) and (b) of PEB 219, as decided by the Contract Interpretation Committee, the parties are to be commended for narrowing the number of issues separating the parties.

In areas where the parties' respective proposals are not in substantive accord, the Agreement either accepts one of the parties' proposals, or in the alternative, language has been fashioned on the basis of the evidence presented.

Due to the time restraints imposed by PEB 219 and the parties' mutual desire to expedite this matter, the Arbitrator will necessarily be brief in explaining his rationale for his decisions in the areas in dispute. This brevity, however, should not be perceived as a slight to either parties' positions on these important matters.

Initially, the Carrier's notice of August 5, 1991, contemplated its desire to establish system-wide production gangs, and the negotiations leading to this arbitration never deviated from this theme. As the Carrier has pointed out in its submission, had it been its desire to establish regional gangs it could have

just as easily pursued this option under the PEB 219 recommendations. In view of these facts, the Carrier's proposal to establish system-wide gangs is accepted and is incorporated in the attached Agreement. The Organization, however, has raised certain concerns regarding the Carrier unilaterally working these system-wide gangs indiscriminately off of the programmed work areas. The Arbitrator has incorporated the language of the Carrier's proposal and has elected not to incorporate the proposal of the Organization with respect to restricting these gangs only to work that is specified in the program to be attached to the bulletins advertising these positions. The Arbitrator perceives that, if the Carrier abuses the latitude granted herein (as feared by the Organization), it will certainly suffer the consequences for its actions in future handling concerning this matter. The Arbitrator is satisfied that the Oversight Committee concept which was arrived at during the course of the negotiations, along with the moratorium terms specified below, will provide the Carrier an opportunity to live up to the commitments it made during the negotiations and before the Arbitrator, and if not, the Organization will have an effective means to address its expressed concerns.

Likewise, the Arbitrator has considered the parties' divergent positions on the subjects of notice to affected employees, work weeks, meal periods, and meal allowances, travel allowance, travel advances, starting times, and overtime issues. The Arbitrator is satisfied that an effective balance was struck on these issues

during the negotiations leading to the draft agreement and that no further revision is required.

On the other hand, the Organization has persuaded the Arbitrator that in the areas of omitted classifications, work site reporting, Oversight Committee, labor protection, and the moratorium or "the effect of this agreement" provisions, the Carrier's proposal should not be accepted. By the same token, however, the Arbitrator does not feel that the Organization's proposals concerning work site reporting and the duration of the Agreement should be specifically incorporated, but that a compromise in these areas must be adopted, for the following reasons.

While the Carrier's proposal on work site reporting is overly broad, the Organization's proposal might well effectively negate any productivity gains attained by the Carrier in this area from PEB 219. The Arbitrator concludes that the parties should be given a level playing field and has fashioned language which incorporates the recommendations of PEB 219 on work site reporting for these gangs. If the parties find the work site reporting provisions of PEB 219 either unworkable or patently unfair, they have the opportunity to fine-tune their agreement through the Oversight Committee or subsequent negotiations.

Similarly, with respect to the duration of the Agreement, the Carrier has advanced a proposal that would memorialize its system-wide gang concept and could only be modified pursuant to the potentially long and drawn out procedures of the Railway Labor Act.

While it has proffered the avenue of the Oversight Committee as the answer to Organization concerns, its expressed commitment "to make the concept work" must be tempered, especially in view of the novelty of the concept. The Organization's proposal, on the other hand, does not allow a sufficient opportunity for the concept to be fairly evaluated or to provide the Carrier with a level of stability to justify the additional expense and investment it is making in pursuing the system-wide gang concept; e.g., higher wages, additional expense, work force stabilization liabilities, as well as the potential hazards of not electing to retain its existing regional and system-wide gang agreements. Accordingly, the Agreement provides the Carrier two uninterrupted work years to prove the merits of the system-wide gangs as authorized in the Agreement. If either party desires to formally propose changes to the Agreement, it will have an opportunity during the month of August 1993, and each August thereafter, to initiate those proposed changes. The Agreement also assures that, if the parties are unable to reach accord, sufficient time is provided to meet the Carrier's ongoing operational needs through final and binding arbitration.

As far as the Organization's concern regarding omitted classifications, the Arbitrator has fashioned language in Section 1 (D) of the Agreement to address its concern.

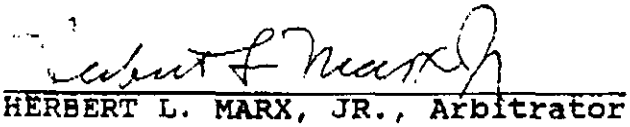
With respect to the areas of labor protection and the Oversight Committee, the Organization's proposals are incorporated in the Agreement for the following reasons. The Organization's

proposal on labor protection simply incorporates the clarifications to PEB 219 which now have the status of an agreement between the parties. On the subject of the Oversight Committee, the Organization proposal adds the simple mechanism of requiring the Oversight Committee to meet upon the request of either side and comports with how an Oversight Committee should function.

In conclusion, the Arbitrator commends the parties for their collective and overall concern for improving the quality of work life of the employees involved in railroad production work. While neither party has fully prevailed in this forum, both the Carrier and the Organization did fashion most of the terms in their bilateral bargaining. They may take justifiable pride in the results. With a continuation of this cooperative spirit, the Agreement can be the instrument for further improvements in the parties' continuing relationship.

A W A R D

Based on the Findings, the Arbitrated Agreement shall be as provided hereunder and shall take effect on the date therein specified.



HERBERT L. MARX, JR., Arbitrator

NEW YORK, NY

DATED: January 6, 1992