ARBITRATION

PURSUANT TO SECTION 11 OF THE RECOMMENDATIONS OF PRESIDENTIAL EMERGENCY BOARD NO. 219 AS IMPOSED BY PUBLIC LAW 102-29

In the Matter of the Arbitration Between	-	
BURLINGTON NORTHERN RAILROAD	-	OPINION
	-	AND
AND	-	AWARD
	-	(1994 Regional and
BROTHERHOOD OF MAINTENANCE WAY EMPLOYEES	-	System-Wide Gangs)

The hearings in the above matter, upon due notice, were held on November 22 and 23, 1993, at the offices of the National Mediation Board in Washington, D.C. before Irwin M. Lieberman, serving as sole Impartial Arbitrator by selection of the parties in accordance with Article VI-J, Section 11, of the Presidential Emergency Board No. 219 (as imposed by Public Law Board 102-29).

The case for Burlington Northern Railroad, hereinafter referred to as the "BN" was presented by John M. Starkovich, Assistant Vice President, Labor Relations. The case for Brotherhood of Maintenance of Way Employees, hereinafter referred to as the "BMWE" was presented by Steven V. Powers, Assistant to the President. At the hearing the parties were afforded full opportunity to offer argument and documentary material with respect to their positions. No oral evidence was permitted under the rules, nor was there a transcript of the proceedings. Subsequent to the hearing, the parties agreed to grant the Arbitrator an extension to January 14, 1994, for issuance of the Award.

THE ISSUE

At the hearing the BN indicated the following Statement of Issues to be resolved by this Arbitration Proceeding:

1. What gangs identified in the notice dated August 19, 1993 will BN operate on a regional basis, i.e., may cross seniority district boundaries, in 1994?

2. What "terms and conditions" will apply to the operation of these gangs?

From the standpoint of the BMWE, the issues were stated at the hearing as follows:

1. What is the definition of the term "Production Gang" as used by PEB, No. 219, throughout its recommendations in general and in Section 11, in particular, and are the gangs proposed by BN for the 1994 work season Production Gangs?

2. What terms and conditions shall apply to the establishment and operation of Regional Production Gangs on the BN for the 1994 work season?

From the standpoint of the Arbitrator, the Statement of Issues are in harmony, although not identical. It is clear that to determine which production gang may operate on a Regional or System-Wide basis during 1994, is dependent upon the implementation of a definition of what does indeed constitute a Production Gang. With respect to the terms and conditions, there is no significant difference in the two proposed statements.

BACKGROUND

In the course of this proceeding, the parties have supplied the Arbitrator with a huge amount of material dealing with the history of this dispute, including presentations before the PEB No. 219, as well as supporting material from that time

forward. It is concluded that there would be no useful purpose served to revisit this vast library of information. However, it appears to be appropriate to at least outline what this Arbitrator perceives to be the most relevant antecedents to this particular dispute.

PEB 219 in Section VI J, Section II, held as follows:

> The Carriers have indicated that greater operational efficiencies can be obtained if Production Gangs can continue working together for longer period of times. 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 that Carrier proposes to apply. . . .

PEB 219, in addition to other findings, also provided for the establishment of a separate body, known as the Contract Interpretation Committee (under Section 12 of Part VI J). This Committee was established specifically to resolve disputes over the application or interpretation of the Agreement between the various Carriers and the BMWE. The Contract Interpretation Committee, on November 6, 1991, issued its response to a number of questions, including Issue #2, which provided as follows:

> Issue No. 2
>
> What is the definition of "Production Gang" for purposes of facilitating implementation of the applicable provisions of PEB 219?

Answer to Issue No. 2

The term "Production Gang" or "Production Crew" is a common term used by the parties, and it is a term that has been in use by the railroad industry for decades. The definition of the term is not found in any specific document, either a Collective Bargaining Agreement or a glossary of railroad terms, presented to PEB 219, in evidence or to its committee. The BMWE and the Carriers used the term throughout the course of their detailed presentations to PEB 219, without, apparently, finding it necessary to define that term for the Board. It is true, as the Organization points out, that the Carrier's primary witness who testified regarding the industries need to establish Production Gangs, Regional Gangs, and System-Wide Gangs, consistently used illustrative examples of such gangs, which characterized them as "heavily mechanized" and "mobile" and he described such gangs as continuously performing specific programmed major repair and replacement work utilizing a substantial number of employees. However, while this general description would, apparently, meet the definition of "Production Gang" in many circumstances, the neutral member of the committee cannot reliably at this time, fashion a hypothetical definition in the absence of specific facts which raise the issue whether a particular grouping of Maintenance of Way Employees meets the definition of a "Production Gang."

On February 28, 1992, the Contract Interpretation Committee issued, inter alia, its response to Issue No. 7 as follows:

ISSUE NO. 7

Are each of the gangs specified by the Burlington Northern Railroad in its notification letter of October 11, 1991 to the Brotherhood of Maintenance of Way Employees (BMWE) of its intent to establish the Regional Gangs, considered Production Gangs, when in terms of Section 11, Page 100-101 of the Report of Presidential Emergency Board 219 (PEB 219)?

ANSWER TO ISSUE NO.7

In the answer to Issue No. 2 the neutral member of this Committee, outlined, in very general terms, certain characteristics of "Production Gangs" or "Production Crews" and observed that the Committee could not, reliably at this time, provide a more specific definition in the absence of operative facts. Although the submissions of the parties insofar as Issue No.7 is concerned, provides some additional detail regarding the gang specified in the

> Burlington Northern's notice of October 11, 1991, it is the opinion of the Neutral Member of this Committee, that specific factual disputes are more properly resolved, at this time, by the parties, or by a Section 11 Arbitrator, if the parties are unable to reach full agreement, regarding the institution and establishment of Regional and System Gangs.

BN attempted to establish Production Gangs for the 1992 season, but to no avail without recourse to Arbitration under Section 11. The Section 11 Arbitrator, dealing with this matter, Mr. Sickles, issued his award on the merits of the dispute on June 15, 1992. In that Award, he stated, among other things:

> Based upon the evidence before me come, I conclude that Board 219 attended the definition within the framework of the CIC answer to Issue No.2, which incorporated Carrier's testimony. Thus, I determined that a Production Gang is: heavily mechanized and mobile continuously performing specific programmed major repair and replacement work utilizing substantial number of employees.

He further refined that definition as follows:

As a result, certain of the terms included within the definition, must be further refined.

> Work that is considered to be specifically programmed is the work identified as such in a Carrier's Article XIII (a) notification to the representative of the employees. In this regard, the intention of the parties is invited to CIC Answers to Issue Nos. 11 and 13 as it requires "... identifying data regarding the nature and operation of the gangs sought to be established..." as well as the discussion on Pages 13 through 18 of the Decision on Procedural Issues.
>
> The question of what constitutes a substantial number of employees has indeed caused the parties and the undersigned considerable unrest since the term "substantial" may be the topic of extended debate even absent an arena of advocacy. It is with great reluctance that I approach the topic with a view toward establishing a mathematical number of employees since such a solution may not, in the long run, be beneficial to the parties. But, in order to resolve this particular dispute I find no alternative. Consistent with the testimony presented to PEB 219 and related presentations, I find that a production gang shall consist of no fewer than 20 employees.

A refinement of the "heavily mechanized" and "mobile" concept as well as "major repair" and "replacement" work must also be considered in light of the parties assertions here, and to other forums.

> major repair and replacement work should be easily understood by these parties. It is work which is not day to day, routine, regular maintenance which is easily performed locally without reference to a pre-planned program encompassing a larger geographic area.
>
> The terms Heavily Mechanized and Mobile, on the other and, may be a cause of greater consternation. It is intended by the undersigned to encompass the type of machinery reasonably anticipated and required for use in performing reprogrammed major repair and replacement work on a normal basis by a crew of the size contemplated. Mobility is generally self-defining within the other components of the definition.

It is also intended that crews which have an actual and continuing reasonably related working interrelationship with the main production crew, throughout the term of the programmed work, and for the duration of the program, are also considered to fall within the definition as long as they are programmed for that purpose, and do perform that pre-programmed work rather than strictly "local" work.

Two other Arbitration Awards have a bearing on this matter. In the first, Arbitrator Fletcher, in a closely related dispute involving the Norfolk & Western Railway Company, issued an Award on June 12, 1992. In that Award, Arbitrator Fletcher stated, among other things, some general concepts about Production Gangs:

> First, Production Gangs must be relatively large and relatively highly mechanized to the extent that a significant hardship would result if N&W were required to rebulletin the gangs as they crossed Seniority District lines.
>
> Second, the work of Production Gangs must be specifically programmed in advance of the Production Season.

Arbitrator Fletcher continued to state that that meant that a Production Gang would be assigned to replace jointed rail with welded rail over a defined territory, as an example. He stated further:

> It is does not include, for instance, a gang which is established to operate over the system or a region to replace defective switch ties wherever they may find them.

Arbitrator Fletcher continued:

> N&W has the burden of proving the gangs that are proposed are Production Gangs, as such, were envisioned by PEB 219. Except for Rail Gangs, and Timber and Servicing Gangs, the N&W has not met this burden. The proof is available on Rail Gangs and Timber and Surfacing Gangs, positively manifest that they are relatively large, and highly mechanized, as well as being specifically programmed in advance of the Production Season. The proof is available on the remainder of the Gangs as contained in N&W's notice, do not satisfy these two tests. It should be noted that the Arbitrator is not concluding that the remainder of the gangs are not Production Gangs, or that their work functions could not be included as a component of a Production Gang, only that the Arbitrator finds that there is insufficient information to reach a conclusion that they satisfy the two tests necessary to meet the definition of a Production Gang, envisioned by PEB 219.

In accordance with this reasoning, Arbitrator Fletcher found only that Rail Gangs and Timber and Surfacing Gangs were Production Gangs. Rail Gangs had 86 assigned employees and 47 machines, and Timber and Surfacing Gangs had 37 assigned employees and 25 machines on the N&W. The many other gangs proposed by N&W, Fletcher found not to be appropriate Production Gangs.

On December 4, 1992, another Arbitration Award which was rendered by Arbitrator Meyers involving the same Organization and the N&W in a closely related area. The sole issue in that dispute was whether certain gangs were Production Gangs, as contemplated by PEB 219. Arbitrator Meyers indicated that his definition was as follows:

> However, this Arbitrator must give significant weight to the oral testimony presented by the Carriers to the PEB concerning regional and system Production Gangs. The Carriers were seeking the rule changes relative to production gangs and presented, as their witness, the Union Pacific Railroad's Vice President of Engineering, Stan McLaughlin, as their chief spokesman on Production Gangs.

Arbitrator Meyers continued:

McLaughlin, in defining Production Gangs, testified as follows:

> When we talk about system gangs, we are talking about our large mechanized gangs. These are gangs that have employees in number varying from 20 to 25 up to as many as 150 employees, with a large amount of highly sophisticated equipment. This work is typically planned and scheduled far in advance, and works over large areas of our railroad.
>
> Some examples of our system gangs would be like our rail and curve gangs, our wood and concrete tie gangs, surfacing and lining gangs, bridge construction gangs, and signal construction gangs.

The Union correctly lists the primary factors, based on Arbitrator Fletcher's adoption of general concepts that apply to Production Gangs, that must be considered in determining whether any or all of the proposed gangs qualify as Production Gangs: number of employees assigned to the gang; number and sophistication of machinery used by the gang to perform its work; the nature and type of work to be performed by the gang; and the extent of the operational impact, or hardship, if the Carrier is required to rebulletin the gang when and if it crosses seniority lines. These factors together incorporate a number of secondary factors, such as the amount of training necessary to qualify to operate the machinery used by the gang, whether already-qualified machine operators

> are present in some or all of the Seniority Districts in which the gang will operate, and the number of times the gang will cross seniority lines. All of these factors go toward establishing whether proposed gangs meet Arbitrator Fletcher's general concepts relating to significant operational hardships and specific advance programming of gangs.
>
> As Arbitrator Fletcher noted in his decision, the Carriers considered size and degree of mechanization to be the major factors supporting their argument before PEB 219. As explained above, however, these numbers alone are not enough to determine whether the proposed gangs qualify as production gangs, but they are significant factors, particularly in light of the PEB testimony of the Carriers' witness.

In view of the reasoning indicated, Arbitrator Meyers found that the five types of gangs recommended by the N&W as Production Gangs, were not indeed Production Gangs, under his definition and analysis. The gangs in question included Tie Patch with eight employees and five machines, Rail Transposing with eight employees and six machines, Gauging with seven employees and four machines, Bush Hog with six employees and three machines, and Surfacing with eight employees and six machines.

On August 18, 1993, the BN issued its notification with respect to Production Gangs for the 1994 season. In this Regional Gang Notice for 1994, the BN has included the following types of Production Gangs, with the following numbers of employees:

Production Rail Gangs	15 Gangs	34 Employees
Production Tie Gangs	7 Gangs	45 Employees
	4 Gangs	29 Employees
	14 Gangs	14 Employees
	2 Gangs	10 Employees
Production Gopher Undercutting Gangs	6 Gangs	5 Employees
Production Surfacing Gangs	26 Gangs	4 Employees
Production Bridge Gangs	7 Gangs	6 Employees
Production Turnout Relay Gangs	4 Gangs	11 Employees
Production Rail Recovery Gangs	5 Gangs	8 Employees

This material was accompanied by substantial information with respect to the method by which these gangs would function, that is their programs for the season, as well as detailed information on the work as now planned, location of the projects to be handled, time schedule, approximate manpower requirements, and Seniority Districts involved. The Carrier qualified its notice indicating that the detailed plans could be effected by changes in the level of business, changes in train schedules, weather conditions, equipment failure or other production problems, emergencies, acts of God or other unexpected occurrences. The BN suggested an initial conference to discuss this notice on August 27, 1993. The record indicates that it was the lack of agreement with respect to this notice, which triggered the differences which are the subject of arbitration here.

CONTENTIONS

A. BMWE

BMWE argues that there are some jurisdictional issues in this case. The Organization insists that the Arbitrator has jurisdiction over the terms and conditions, by virtue of Section 11, as interpreted, and further has jurisdiction to interpret and apply the term Production Gang by virtue of the CIC jurisdiction in Section 12. As a second point, with respect to jurisdiction, BMWE indicates that the Carrier is precluded by the doctrine of estoppel and res judicata from challenging the necessity and jurisdiction for the Arbitrator to decide the Production Gang definition. As a final point, BMWE indicates that BN is precluded from presenting, and the Arbitrator lacks jurisdiction to consider any BN proposals to change the definition of Production Gangs, as part of some quid pro quo balance of interests because, according to BMWE, the Arbitrator does not have Interest Arbitration Jurisdiction over that definition.

In addition to the jurisdictional question, BMWE argues that there are two separate sets of arbitral standards, which are applicable to this dispute. According to the Organization, the arbitration of terms and conditions pursuant to Section 11, is properly termed "Interest Arbitration." On the other side, the interpretation of the term "Production Gang" involves interpretation of an existing Agreement, which constitutes a classic rights arbitration, according to BMWE. The Organization maintains that the standards, which apply in this particular case are (1) a proof that the Sickles definition of "Production Gang" is palpably erroneous and (2) the doctrine of res judicata, and finally the doctrine of stare decisis are the controlling standards.

The BMWE has presented extensive arguments dealing with the problem of the definition of "Production Gang." It has used, as the basis for these arguments, nine separate elements:

1. Definition of Production Gangs which the Carrier has presented to PEB 219.
2. Examples of actual gangs which the Carriers identified as Production Gangs in the Carriers' testimony before the PEB.
3. Statements of the PEB or the Special Board indicating the intent of PEB 219.
4. Decisions of the Contract Interpretation Committee.
5. The Sickles Award.
6. The June 12, 1992 Award rendered by Arbitrator Fletcher.
7. The December 4, 1992 Award rendered by Arbitrator Meyers.
8. Admissions by a major Carrier in a prior arbitration case before Arbitrator Sidenberg.
9. Trade Journal Article distinguishing Production Gangs.

No attempt will be made to repeat and generally describe the various elements indicated above, but it suffices to say, that the arguments were extensive and in their own behalf extremely well presented.

In substance, BMWE maintains that the concessions made in PEB 219 will cause tremendous hardships for employees who are members of the Organization and their families. Further, the Organization argues that the broader the definition of Production Gangs is the more widespread those hardships will be. However, the Organization indicates that PEB 219 struck what it believed to be a balance between the workers' concerns for lives and Carriers' productivity needs. There were limited relaxations of work rules for large highly mechanized gangs, according to BMWE, which perform major repair and replacement work in those cases where the productivity increases will be the greatest. Nevertheless, according to the Organization, PEB left the work rules involved in Section 3, 4, 5, 7 and 11, relatively unchanged, for all but these highly Mechanized Gangs. The Organization does not believe that PEB 219 struck a fair balance. However, the Carrier, according to the Organization, is still not satisfied with what it characterized as a wind fall, because it is attempting to secure still more concessions through its "absurd" interpretation of the term "Production Gang".

BMWE argues that the Carrier has the burden of proving that the gangs, as proposed are Production Gangs, but it has failed to meet that burden. Furthermore, if there was any kind of ambiguity concerning the meaning of the term "Production Gang", that ambiguity would be resolved against the BN, since it was the proponent of the term "Production Gangs" and presented supporting

testimony before PEB 219. In addition, BMWE maintains that both the CIC and the three separate Arbitrators, specified supra, have reviewed the issue, and each of them, after reviewing the record, issued definitions which exclude many of the types of gangs involved in this case. The Organization insists that the need for national consistency demands that the precedent set by Arbitrator Sickles on this property be applied in future decisions. Indeed the definition rendered by the CIC must be considered as a framework within which all future decisions must fit. In short, according to the Organization, there has been a concept that the Carrier must establish that the gang meets certain criteria including type, size, and mechanization levels, before it may be considered as being a Production Gang. A failure to establish any one of the necessary criteria, would invalidate a claim that the gang is indeed a Production Gang.

In the light of its arguments, the BMWE has maintained that of the ninety gangs proposed by BN in its August 19, 1993 letter, the first 36 gangs are indeed Production Gangs. According to the Organization, however, the remaining 64 gangs are not Production Gangs in its view. BMWE has supplied the principles upon which it believes its conclusions are properly based. In essence, those include criteria dealing with the nature of the gangs in question. Specifically, the ones which are believed to be improperly classified as Production Gangs are relatively small in terms of number of employees, and also in terms of the number of machines. Furthermore, the Organization notes that due to the small size of most of these gangs, abolishing them and re-establishing them on a district basis, is relatively an insignificant administrative matter. Furthermore, in many instances, it would not even be necessary to abolish or re-establish the gangs, since they generally operate on almost every Seniority District all year long. Finally, there is no learning problem, with respect to most of these small gangs, since there are many, many qualified employees on each Seniority District to operate the

relatively few machines on these gangs. The only major other rationale supplied by BMWE with respect to the gangs in question, is that dealing with the Bridge gangs. On this property, the Bridge Gangs are small, generally five to seven employees with one or two machines, and perform routine maintenance work. The most significant reason why the Bridge Gangs are not considered to be Production Gangs by the Organization is that Chairman Harris of PEB 219 and the Special Board, clearly indicated his understanding that the Bridge Gangs are not Production Gangs in the testimony and transcript of PEB 219.

Both parties have made proposals with respect to the terms and conditions, which will be applicable to the operation of Production Gangs for the 1994 Work Season. The first area which BMWE deals with is that concerning the bulletining of the new positions for the Production Gang. The positions of the two parties differ on only two points, with respect to Section 1(a). The differences occur when all the positions on a gang are not filled by employees from the Seniority Districts where the gang is programmed to work. The Sickles Award provided a process by which a second bulletin could be issued to neighboring Seniority Districts, which have a surplus of manpower. According to BMWE, this language caused a problem during the last work season, because the Carrier had trouble in determining which Seniority Districts were "neighboring" and which had "a surplus of manpower". Therefore, it often failed to bulletin gangs to all of the proper Seniority Districts. The Organization's proposal eliminates the problem of defining neighboring Seniority Districts by permitting the second bulletin to go to all seniority districts system-wide. This would eliminate the problem of defining neighboring Seniority Districts. According to the Organization, its proposal differs from that of the BN in that the BN also indicates that system-wide bulletins will be issued concurrently with the initial bulletins to the appropriate Seniority Districts. BMWE believes that the Carrier has not shown any good reason for this deviation from the Sickles

Award. In fact, BMWE believes that its position, which is consistent with the Sickles Award, permits a real benefit to the employees that cost the Carrier little or nothing, eliminates the problem of defining the neighboring Seniority Districts, and at the same it retains the second step bulletining process, which was initially recommended.

With respect to Section lB, according to BMWE, the parties proposals are identical with the exception of the last sentence in the BN proposal. That section provides for a 30-day bulletin cycle, which would also apply to these gangs. BMWE believes that the BN's proposal should be rejected, because it is speculative and unnecessary, and would only serve to complicate future negotiations over a 30-day bulletin cycle.

With respect to Sections l(c) and l(d), the parties proposals are identical with the exception of a footnote which has been added to the BMWE proposal. The footnote specifies that Arbitrator Sickles interpretation be carried over to the 1994 work season. The BN argues that as a general principal, if the parties readopt the rule, they readopt the existing interpretations, which should be done in this instance.

Section 2 of the proposals concerns assignment to the various positions bulletined for operation of Production Gangs. The Organization notes that its proposal and the BN's proposal, are identical to the existing Section 2(a) in the Sickles Award, with the exception that the BN's proposal adds a last sentence which reads: "positions remaining unassigned will be filled with applicants from other Seniority Districts in a like manner."

According to the Organization, this sentence was apparently added to accommodate the concurrent bulletining process suggested by the Carrier in Section l(a). It is clear, according to the Organization, that if the Carrier's concurrent bulletining procedure is not adopted, the additional sentence is unnecessary.

Section 2(b) and 2 (c) deal with proposals concerning recalling employees to fill positions on Production Gangs if there are insufficient applicants through the bidding process. The Organization's proposals are identical to that in the Sickles Award, while the BN's proposal differs in two respects. First, in the first sentence the Carrier has added the following clause: "Or in the event of temporary vacancy, such as vacancies pending bulletin or assignment." The Organization believes that this proposal is inappropriate in that it is an attempt to expand the forced recall procedure through rather ambiguous language, suggested by the Carrier. There is no evidence to support the deviation from the Sickles Award in this instance, according to the Organization.

The second change, recommended by the Carrier, is at the end of its Section 2(b) proposal and provides as follows:

> Furloughed employees recalled to a Regional Gang shall be released from the gang when it leaves the employee's Seniority District, provided that a qualified replacement is available. The vacancy thereby created need not be bulletined but may be filled indirectly from the furlough list or by a new hire. A mechanism by which furloughed employees may request recall to Regional Gangs will be provided. Recalls will be made first to employees requesting to be recalled or to Regional Gangs prior to other furloughed employees and such employees waive the privilege of leaving the gang when it departs their Seniority District.

The BMWE accepts this proposal with a condition. The condition is that any mechanism referred to by Carrier, must be mutually established and agreed to by both parties. With this proviso, the Organization accepts the Carrier's second proposed change in Section 2(b). There is no difference in the Carrier and BMWE's proposals, with respect to 2(c).

Section 3(a) is used with what the parties have called the "no-bid-no-bump" provisions, which limit an employees customary seniority rights to bid or bump off positions in order to obtain a better position. The Organization notes that the Sickles Award adopted verbatim the proposal made by Carrier with respect to this aspect of the bidding process. BMWE proposes that the no-bid-no-bump provisions of Section 3(a) have no merit and should be eliminated. Specifically, the Organization provides the following basic reasons:

1. Arbitrator Sickles imposition of "no-bid-no-bump" did not conform to customary interest arbitration standards concerning prevailing practice of fundamental tests of reasonableness.

2. There has been no evidence presented to support the need for a "no-bid-no-bump". All evidence is to the contrary.

3. "No-bid-no-bump" has had and will continue to have devastating psychological effects on employees and their families. It plainly undermines family values.

4. "No-bid-no-bump" imposed significant and unreasonable wage, expense and seniority losses on the employees.

Section 3(b) in both the Carriers and BMWE's proposals are identical, and have been inducted verbatim from the Sickles' Award.

With respect to Section 3(c), the parties have reached agreement on expenses away from home and travel expenses, and thus the Organizations Section 3(c) proposal is moot. Furthermore, if the Organization's proposal, with respect to Section 3(a), to modify the "no-bid-no-bump" proposal is adopted, the Carrier's Section 3(c) proposal becomes moot as well.

Section 3(d) in the Carrier's proposal, seeks to change PEB 219's recommendations concerning the length of time, the terms and conditions that evolve from the Arbitration Award remain in effect. In this instance, according to the Organization, the Carrier seeks a permanent agreement, whereas the Organization has no related proposals, since the term is clearly controlled by provisions of PEB 219. The Organization believes that the Carrier is estopped from validly making a proposal in this instance for a permanent Agreement in terms of its previous position in the Section 11 forum. Furthermore, Arbitrator Sickles rejected precisely the same issue previously. BMWE believes that Arbitrator Sickles conclusion and findings should be controlling with respect to this issue.

The parties do not agree with the question of work programming, which was dealt with in the Sickles' Award. In that Award, Arbitrator Sickles proposed that in addition to requiring the work of a Regional Production Gang be programmed, he would permit occasional good faith deviations from the specifically programmed work schedule. Since this stipulation was utilized by Carrier, according to the Organization, it sought an interpretation from Arbitrator Sickles. In his interpretation, Arbitrator Sickles indicated that the deviations permitted by his decision, contemplated alterations of rigid scheduling, but did not contemplate working in Seniority Districts which were not programmed. According to the Organization, Arbitrator Sickles interpretation stopped the Carrier from working gangs in Seniority Districts where they were not programmed or bulletined.

However, according to BMWE, Carrier specifically deviated on a substantial basis from the programs for many gangs, and this became the rule rather than the exception. The Organization believes that the advance programming of Regional Production Gang work is critical for a variety of important reasons. Because of the experiences gained in the 1993 work season, the Organization set forth its proposal on work programming in its letter of October 7, 1993. This is a clarification, in fact, according to the Organization, which will reinforce the true intent of the original Sickles Award.

B. THE BN

The BN believes that the principal problem, which this arbitration is confronted with, is the definition of the Production Gang, in which the Carrier believes that Arbitrator Sickles made a serious error. The BN believes that the Carriers made absolutely clear what was being requested of PEB 219 by describing Production Gangs as follows:

> Production Gangs, as distinguished from gangs that do routine day-to-day maintenance, perform the major maintenance and repair projects that railroad's uniquely program well in advance . . . .
>
> MOW Production Gangs typically surface, track, install ties, lay rail, do bridge and building work, joint welding, ditching, ballast cleaning, throg and switch replacement and the like.

The BN believes that the BMWE mislead Arbitrator Sickles to the following definition:

> Heavily mechanized and mobile continuously performing specific programmed, major repair and replacement work, utilizing a substantial number of employees. . . A Production Gang consists of no fewer than 20 employees.

According to the Carrier, Arbitrator Sickles erroneously set a numerical test for such gangs, which is fatal to the proper operation of Production Gangs by this Carrier. The Carrier believes that this arbitration must abandon a numerical approach, which has inappropriately restricted the Carrier's use of reasonable Gangs to achieve the efficiency which PEB 219 obviously intended.

The Carrier notes that Production Gangs are distinguished primarily by their programs or method of work. Thus, Production Gang work is not related to size or even the number of machines used by the gang. Primarily, such production work is organized on a planned or pre-programmed basis with respect, not only to scheduling, but to the way in which the work will be performed. They are discreet tasks, which are coordinated, and repetitive tasks assigned to employees using specialized equipment. The result of this ties together all this work to produce high quantities of output to achieve greater productivity whether the gangs are large or small. Furthermore, PEB 219 provided for such gangs to stay together longer to accomplish such efficiency. For this reason, the numerical restrictions which were imposed by Arbitrator Sickles for the 1992 and 1993 seasons must not be put on the Carrier for future seasons, since they are inconsistent with PEB 219 and everything that went before it in terms of intent. In the same context, the BN argues that this arbitration should only concern the Production Gangs, which the BN desires to operate on a multi-district basis in 1994. Thus, the decision of the Contract Interpretation Committee in declining to provide a hypothetical decision, should be followed. More importantly, the CIC decided to refrain from fashioning any restricted definition as sought by the Organization, and suggested that the Arbitrator only needs to decide on a case-by-case basis what that definition should be.

Carrier makes a multitude of arguments indicating that the Arbitrator need not continue the mistaken Sickles concept of a limitation of 20 men on a Production Gang. According to the Carrier, Arbitrator Sickles based his decision on erroneous assumptions, and in addition the same test, which Arbitrator Sickles used was rejected by Arbitrator Fletcher and also by Arbitrator Meyers in their Awards on this subject.

The BN also notes that the reliance on the testimony of the Vice President of Engineering for the Union Pacific in the course of the PEB 219 hearings, was misplaced on the part of BMWE. That witness, Mr. McLaughlin, in his testimony repeated the use of the term "our" referring to gangs on the Union Pacific and not Production Gangs generally, according to the Carrier. It was his statement that "these are gangs that have employees and numbers varying from 20 to 25 to as many as 150 . . . ." which was relied on in a large part by Arbitrator Sickles and others in their determination, with respect to the size of the gangs as part of the definition of Production Gang. Carrier insists that more gangs are smaller than are larger in fact in the programs which are the subject of this dispute. For example, more Surfacing Gangs in the industry are less than 10 men, than are more than 30. In fact, PEB 219 took into account a good deal of the evidence which had been dealt with in prior Boards concerning the nature of Production Gangs. As part of this argument, Carrier notes that the conclusions reached by PEB 209, as well as that involving Conrail by PEB 221.

Recognizing, as the Carrier does, that Arbitrator Sickles' imposition of a 20-man test for Regional Production Gangs is a denial of PEB 219's intent, Carrier argues that the specific types of gangs proposed by it for the coming production season, qualify no matter which standard is applied. Furthermore, according to the BN, the gangs identified as those for the next season are Regional Production Gangs

which would not be inconsistent with the general holdings in the decisions of Arbitrators Sickles, Fletcher and Meyers. In this connection, the Carrier argues that Sickles reluctantly established a 20 employee minimum for the 1992 Regional Gangs, while both Fletcher and Meyers rejected any strict numerical tests. However, the three arbitrators did focus on the mechanization of the gangs and all three also recognized that the work must be programmed in advance for the gang which is to perform the work for it to be considered a Production Gang. While Sickles proposed what Carrier characterizes as a discredited numerical test for the Regional Production Gangs, Fletcher and Meyers both related the size of the gang and the degree of mechanization to the problems for the Carrier which would occur if it was required to lay off the gang at the Seniority District line and start with new employees on the other side of the line. Both Fletcher and Meyers assumed, in the absence of evidence to the contrary, that smaller gangs would be less of a problem to break up than larger gangs.

Carrier maintains that the parties know what Production Gangs are and what they do. The gangs identified in the notice of last summer are clearly identified, but many other types of gangs not in that notice, possess the characteristics of and are indeed Production Gangs. However, Carrier insists that each must be examined on a case-by-case basis, as specified by the CIC. In short, according to the BN, the mechanical and artificial tests, which the BMWE advances, based on the size of the crew and the degree of mechanization, is simply inappropriate and is in serious error. In short, from the Carrier's prospective, the BMWE's definition would create a restrictive work rule, which is exactly what the PEB eliminated by providing for the Regional or System-Wide Gangs. Thus, in terms of the overall history, to adopt the restrictive definition advocated by the BMWE, and erroneously imposed by Arbitrator Sickles, would be the antithesis of the quid pro quo relief for the wage increases which were part of the overall PEB Award, and

the Board should not ignore that fundamental fact by adopting the inappropriate definition advocated by BMWE.

The Carrier describes the activities of the various gangs listed in its August 19th notice. All of those gangs, according to Carrier, meet the qualification of being Production Gangs by any reasonable and rational standards, and are performing the major maintenance and repair projects that usually are programmed in advance. This is distinguished from the work of Section Gangs, which are involved in day-to-day maintenance. The BN argues vehemently that the PEB intended to allow the Carrier substantial flexibility and deliberately removed the rigid structure, which had been placed as a restriction on performance of Maintenance of Way work. The BN argues that to place these restraints again on Carriers through this process of imposing the arbitrary limits specified by BMWE would again put the Carriers in the position they occupied prior to the entire PEB 219 proceeding.

With respect to the terms and conditions, the BN has indicated that in an effort to compromise and obtain elimination of the 20 person gang requirement, it has modified its position and proposed that employees assigned to Regional Gangs be allowed to exercise their seniority to bulletin positions after they have been assigned to the Production Gang for 90 calendar days. On the other hand, according to Carrier, the BMWE has not only refused to discuss the gangs, but has rejected compromise totally. In fact, the Carrier characterizes BMWE's proposal as one in which employees may bid to other positions from a position on a Regional Gang whenever they please, which is directly contrary to the whole concept of a regional gang. In fact, the desire to have employees remain on the Regional Gangs for the entire production season is vital and is consistent with PEB 219's recommendations. The BN indicates that its willingness to reduce this

to bidding rights for a 90-day period represents its attempt to compromise with the BMWE on the issues. The Carrier notes that employees have become vocal in proclaiming their dissatisfaction with the restrictions on the bidding rights imposed by Arbitrator Sickles for two basic reasons. First, it was maintained that if they were not restricted, they could bid on positions closer to home, and secondly, they could also bid on positions which might enhance their seniority opportunities. In spite of the fact that these concerns might have been overstated, the Company indicated it was willing to moderate and compromise to the extent of reducing the hold on employees to a 90-day period, as part of the elimination of the 20 person limitation on gangs.

Carrier notes that Arbitrator Sickles accepted the Company's position and argument concerning the bidding for positions on Regional Gangs for the duration of the work season. The BN has taken the position that a Senior Employee has the initial opportunity to obtain positions on the Regional Production Gangs by bidding for those positions, and should not then be permitted to come along and take another man's job who had been working on that gang for the entire season. The Carrier does not propose any change in this particular term and condition for the next work season. The Company believes that the BMWE's proposals have the net effect of allowing displacement any time a senior employee feels like it, which is improper under all of the circumstances. Carrier notes, however, that it has offered to compromise on this position to a 90-day hold on bidding rights, if the employees so desire. There are some conditions with respect to this, which the Carrier notes, such as the fact that a junior employee would be giving up a very valuable right being in a position where he cannot be displaced by senior employees by this change. Carrier believes that gang stabilization is a benefit to many employees and there have been little, if any, objections to that process during the past season.

The Carrier notes that while it is willing to reduce and modify its position with respect to the bidding, it is dependent on the lifting of the 20-man restriction for Regional Gangs. The Carrier believes that it is important to retain the inducement for employees to stay on the gang, which is provided by the no-displacement rule and the terms and conditions, which have currently been imposed by Arbitrator Sickles. The BN indicates that it has been able to have more programmed work to mix and match with other program work in the last season, and thus in general to provide more geographical and compact gang territories, while still offering a full season of work for employees on that gang. In sum, the Carrier believes that in reducing the period when an employee is not able to bid off a Regional Gang from the whole production season to 90 days and providing more compact and more diversified Regional Production Gang opportunities, should be adequate to meet employee problems and expressed concerns in the 1993 season.

Carrier notes that in the Sickles Award, with respect to bidding, the provisions were as follows:

> All new positions and vacancies on each gang shall be bulletined to all of the Seniority Districts upon which that gang is scheduled to be worked. Bulletins may be issued as far in advance as is consistent with the objectives of full and timely manning of all gangs and to assure the employees of as much choice as is practicable.

In 1993 there were a number of problems with respect to the bulletins and assignments. In fact, based on the terms and conditions of the Sickles' Award, 747 positions were filled by voluntary bidders and 230 positions went unassigned. In terms of the secondary bulletining process, a significant effort was undertaken,

and as a result of the secondary bulletin cycle, only 35 positions were filled. The gangs in substance were filled in the following order with the days required for each step:

1. By bid from persons within the Production District (15 days).
2. By bid from persons outside the Production Districts (15 Days).
3. By recall of furloughed employees on the Seniority Districts where the gang is scheduled to work on an involuntary basis (10 days to report after recall that is delivered).
4. By recall of furloughed employees on the Seniority Districts where the gang is not scheduled to work on a voluntary basis (20 days).
5. By new hires (30 days).

It is apparent, according to the Carrier, that all the time incurred in exhausting each of the categories, delayed Carrier's ability to have a full gang at start-up time. Carrier notes that a good deal of the disruption and uncertainties, which the rather cumbersome process employed in 1993 involved, would have been solved by the establishment of a separate Regional Gang Seniority Roster, but the Organization refused to consider such an alternative.

Carrier notes that the Organization wants initial posting to be limited to the specific Seniority Districts where the gang in question is programmed to work, and then rebulletining any remaining vacancies to the entire railroad. Carrier believes that this does not advance employee interests, and would be most cumbersome and improper. The Carrier maintains that bulletining the information to less than all of the employees, represented by the Organization, is not useful, since it produces exactly the kind of uncertainty and instability which PEB 219 sought to avoid.

In contrast, the BN states that by communicating throughout the system in terms of the availability of work, there will be an increase in the chance that many reasonable Production Gang slots as possible would be filled by willing volunteers. This is further enhanced, as Carrier views it, by the fact that all of the furloughed employees would be allowed to bid during the same process. Carrier does not dispute the fact, that no matter how bulletins are posted and bid, employees in the Seniority Districts in which the gangs are to work, should have at least the co-equal choice of the work opportunities based on seniority, relative to their peers in those Seniority Districts. Thus, the significant issue is whether the bulletin posting should be done in one or two cycles.

With respect to vacancies occurring during the production season, the BN argues that they should not be subject to system-wide bulletins and bid. Specifically, any such permanent vacancies should be limited to bidding in the specific districts in which the gang is working and not system-wide. The purpose of this would be to allow employees with a direct interest to bid on a position of interest without the system-wide repercussions. Further, if no bid from these districts is submitted, the BN should be permitted to go directly to recall from furlough and new hiring, without soliciting interest from other Seniority Districts. In this context, the Carrier notes that the employees from outside the Seniority Districts, where the work is occurring, already had a chance to bid, during the initial bid process for the season.

With respect to temporary vacancies, of less than 30 days, these are extremely difficult for the Carrier to cover on the Production Gangs. There is no solution under the contract, and actually no solutions from the standpoint of new hires, which take approximately 4 weeks or more to locate and activate. The only meaningful reservoir of potential labor, as Carrier views it, is any employee in the

district who is on furlough. Thus, Carrier should be permitted to require them to take recall to even temporary positions on Regional Gangs. There should not be a general obligation to place all temporary vacancies up for bulletin, since there would be no practical way this could be implemented.

With respect to the annual handling of Regional or System-Wide Gangs, the Carrier believes that an annual arbitration of those issues is both unnecessary and wasteful. In fact, the Company believes that Arbitrator Fletcher's approach to the problem in his Award dealing with the Norfolk & Southern was appropriate, in which he indicated that the terms and conditions should be subject to change only through the usual Section 6 procedure for making changes. The Company believes that a similar holding would be appropriate here with respect to the terms and conditions. In short, the BN urges the Board to adopt the approach taken by Fletcher, and provide for permanent terms and conditions leaving only the types of gangs, fine tuning by Agreement, and work season specific problems to be addressed at the parties annual discussions.

DISCUSSION AND FINDINGS

The central issue which confronts this Arbitrator in the resolution of the dispute herein, is which gangs of those proposed by Carrier's notice dated August 19, 1993, will be permitted to operate on a regional basis in 1994. The critical factor, which will be determinative of that dispute, is that of the operative definition of a Production Gang. Arbitrator Sickles defined Production Gang as "heavily mechanized and mobile continuously performing specific program, major repair and replacement work, utilizing a substantial number of employees." As indicated heretofore, he refined this concept which incorporated the definitions of both the PEB, as well as the CIC response to Question No. 2. It also must be noted that Arbitrator Sickles, in his refinement of that definition, relied at least in part on

Carrier's principal spokesman, who testified before PEB 219, in this regard, who discussed these gangs as "these are gangs that have employees in number varying from 20 to 25, up to as many as 150 employees, with a large amount of highly sophisticated equipment. . . ." Thus, Arbitrator Sickles' ultimate definition which specified that these Gangs shall consist of no fewer than 20 employees is the controversial centerpiece of the differences between the parties.

After careful analysis and evaluation, this Arbitrator concludes that it would be inappropriate to tamper with the definition of Production Gang set forth in the Sickles Award. It is apparent that the BN believes that Arbitrator Sickles made a serious error with respect to his limitation in the number of employees who can be assigned (to more than 20). This Arbitrator might not indeed have ruled in the same fashion as Arbitrator Sickles with respect to the numerical limitation. Nevertheless, there is a rational basis for the conclusion reached in the earlier Award, and it is not palpably erroneous.

There are important factual background areas which are involved in this determination. Mr. Sickles was well aware, apparently, of the flexibility needs of the Carrier, with respect to the types of work to be performed by the various gangs. An additional facet of the determination is that it would be inappropriate in terms of the integrity of the Arbitration process and the finality of Awards to overturn the Sickles' Award given the conclusion above. Since he did not make the type of error, which should be and could be reversed, it would serve no useful purpose (except to be destructive) to revisit the arguments which he carefully considered in his decision. It would be a disservice to both parties to play ping pong with issues as important as these in terms of the future; the parties cannot relitigate issues which are significantly identical year after year in an effort to reverse the prior final findings. The conclusion reached is that with the respect

to the definition of Production Gangs the principle of res judicata is applicable. A further comment on the subject needs to be made relative to arguments presented by the BN. Both Arbitrator Fletcher and Arbitrator Meyers in their Awards, while their language was substantially identical to that of Mr. Sickles, as well as PEB 219 and the CIC, they in their definitions did not accept Sickles' numerical limitations. However, it is important to note that neither Fletcher nor Meyers agreed that the Carriers could indeed establish Production Gangs of less than 20 employees.

An additional comment is in order. In this October 11, 1991 notification, BN expressed the fact that there could indeed be many changes in gang activities because of reasons which would be unforeseen at the outset of the season. Those covered matters ranging from changes in the levels of business, acts of God, equipment failure, or other production problems, and similar matters. Based on these potential events, Carrier indicated that deviations and additions to the basic plan of activity for the Production Gangs would be inevitable. This was supported by Arbitrator Sickles who indicated that he did not find those types of deviations fatal to the creation of the gangs as long as there was a reasonable basis for the deviation. It should be made absolutely clear that this Arbitrator concurs, with respect to the coming Production season, that similar types of changes are in order, and as long as they are reasonable, they may not be foreclosed by virtue of the original proposals for the season, or because of this Arbitration Award.

Both parties have suggested certain changes with respect to the terms and conditions relating to the implementation of the annual program. With respect to bulletining, the parties were somewhat dissatisfied with the process. With respect to bulletins and assignments, after careful consideration, it is concluded that the

Sickles' Award language will be retained in large part. In those areas, in which the BN and BMWE disagreed, the Arbitrator will select the appropriate language.

For Section 1 and Section 2, the following terms will be used in addition to those agreed upon by the parties:

Section 1

a. All new positions and vacancies on each gang shall be bulletined to all of the seniority districts upon which that gang is scheduled to be worked. Bulletins may be issued as far in advance as is consistent with the objectives of full and timely manning of all gangs and to assure the employees of as much choice as is practicable. In order to maximize the manning of these gangs with volunteers and to minimize involuntary assignments, new positions and vacancies for which there are no applicants after the first bulletin may be rebulletined to neighboring (not necessarily adjoining) seniority districts upon which the Gang is not scheduled to work, but which have a surplus of manpower. The General Chairman may timely notify the carrier of any seniority districts to which any particular gang shall not be bulletined due to the short time which the gang is scheduled to work on the territory of that seniority district.

Section 2

a. Positions bulletined as above provided, will be assigned to the senior qualified applicants eligible to bid on that particular position from the seniority districts to which bulletined, as if the applicants were all form the same seniority roster. Ties between applicants with identical seniority dates from different seniority districts will be resolved on the basis of chronological age.

Section 2

b. In the event of insufficient numbers of applicants form the bulletin procedures, or in the event of temporary vacancies, such as vacancies pending bulletin or assignment, furloughed employees may be recalled in seniority order in the following sequence:

(1) from the seniority district where the gang is to commence work, or where the gang is working if the season has already started, and

(2) from the other seniority districts on which the gang is scheduled to work, in the sequence of that work schedule.

The so-called NO-BID-NO-BUMP provisions are in particular the subject of controversy between the parties. After the extensive arguments of both parties has been analyzed, the following language is adopted.

Section 3

a. Employees assigned to regional or system-wide production gangs, including recalled furloughed employees and new hires, may exercise seniority to bulletined positions outside their gang after they have been assigned to the gang for 90 calendar days (from the day that they reported to the gang is the first day of assignment). Employees working on a regional or system gang off their home seniority district who encounter a compelling personal problem, and who do not desire to apply for a leave of absence, and who request to be released from a gang and to make a special exercise of seniority on their home seniority district, will be allowed to do so upon consideration and mutual agreement of the appropriate representatives of the parties. Employees assigned to regional or system-wide production gangs, including recalled furloughed employees and new hires, will not be subject to displacement during the work season by senior employees outside of their own gang, unless the employe seeking to exercise displacement rights would otherwise be forced into a status of collecting supplemental unemployment benefits under the Work Force Stabilization provisions of the Recommendations of PEB 219. Employees accepting assignment to gangs will not be removed from any seniority roster based upon the existence of another position outside of the gang to which they might otherwise be obligated to exercise their seniority.

Section 3

b. Employees on Regional or System-Wide Production Gangs shall be subject to the BN General Schedule Rules, except as modified by PEB 219 concerning the creation and operation of such gangs, and as modified herein.

Section 3

c. When Regional Gangs are reduced or abolished, employees on the gangs may exercise their seniority to any position held by a junior employee which was bulletined during the period they were assigned to the gang as provided in Rule 21 (f).

Section 3(d) deals with the duration of the rules set forth in this Arbitration Award. The Arbitrator believes and rules that the terms and conditions are to continue in effect until changed in accordance with the provisions of Section 6 of the Railway Labor Act. Also, as Arbitrator Sickles indicated in his Award, this does not attempt to preclude any of the rights of the parties to future arbitration as authorized by Article XIII - Regional and System-wide Gangs.

As indicated heretofore for purposes of consistency and recognizing the importance of these observations, the following BN statement must be reiterated with approval:

> In light of the fact that these plans for regional and system-wide gangs for the 1994 work seasons cover work that will actually be performed from 6 months to more than a year in the future, the attached detailed plans may be affected by changes in levels of business, changes in train schedules to meet customer needs, weather conditions, equipment failure or other production problems, emergencies, acts of God, as well as other unexpected factors. Therefore, prior to the actual start of the work season and throughout the work season the anticipated time schedules of the work may need to be shortened or lengthened, certain planned work locations may have to be deleted and others substituted or added, the amount of work planned at certain locations may be changed, and the indicated sequence of the work may be altered.

> It should also be noted that the manpower requirements indicated on the attached gang charts are for a typical gang of the type involved, but that such requirements may vary depending upon the nature of the individual work projects, the types of equipment available for the gang and other factors not predictable at this time.

In turning again to the August 1993 notice, it is observed that the following gangs will be considered Regional Production Gangs subject to the appropriate rules:

> Sixteen Production Rail Gangs, with 34 employees each, seven Production Tie Gangs with 45 employees each, and 4 Production Tie Gangs with 29 employees each.

The remaining gangs are not considered to be Production Gangs, subject to the relief granted by PEB 219. It must be observed that the gangs included as Production Gangs, employe 941 people and those gangs which are not considered Production Gangs subject to the relief granted by PEB 219 employ 480 employees.

In the course of this arbitration, it was observed that there is an overriding hostility and suspicion pervading the parties' relationship. It is apparent that this has created a barrier to the resolution of many issues. The parties would be well advised, in their own self-interest, to sheath their swords in an attempt to bridge this problem. There is no doubt but that in the long run a constructive and trusting bargaining relationship is a requisite to solving many of the important problems alluded to in the course of this arbitration dispute.

Either party to this dispute may request an interpretation of any of the provisions contained in this Award by giving notice of that request to the Arbitrator (with

appropriate copies to the opposing party) no later than 30 days after receipt of this Award. In the event of such request, the opposing party shall be offered an opportunity to present its position and contentions on the matters to be interpreted. The Arbitrator may issue his interpretation based upon the material submitted, or he may request additional material or documentation. In addition, hearings will be held either if both parties request same, or the Arbitrator believes that it is required. The Arbitrator will render his interpretation at the earliest possible date.

AWARD

I. a. A production gang is heavily mechanized and mobile, continuously performing specific program, major repair and replacement work, utilizing a substantial number of employees. (The definition is further defined in the Arbitration Award dated June 15, 1992).

b. The following gangs will operate on a regional basis in 1994:

15 Production Rail Gangs with 34 employees each, 7 Production Tie Gangs with 45 employees each, and 4 Production Tie Gangs with 29 employees each.

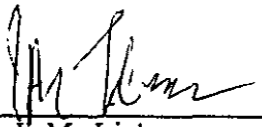
II. TERMS AND CONDITIONS

1(a). The terms and conditions applicable to the operation of Production Gangs for the 1994 season shall be those set forth in the June 15, 1992 Award, and as modified by Agreement of the parties, with the following exceptions set forth in the body of this Award:

A. 1. Section 1a; Section 2a; Section 2b; Section 3a; Section 3b; Section 3c and Section 3d

III. This Award and these terms and conditions shall be effective for Regional Gangs established for 1994. They shall thereafter continue in effect until change by mutual agreement of the parties, or in accordance with the provisions of Section 6, of the Railway Labor Act, as amended. This term does not attempt to preclude the rights of the parties to future arbitration as authorized by Article XIII - Regional and System-Wide Gangs.

IV. Either party may request an interpretation of this Award by giving notice to the Arbitrator, no later than 30 days following the receipt of this Award, as indicated above.



I. M. Lieberman, Arbitrator

Stamford, Connecticut
January 14, 1994