

September 26, 2008

To: General Chairmen & System Officers

From: F. N. Simpson

RE: Long Island R.R. Disability Issues

On Sunday, September 21, 2008, the *New York Times* published a Page One story alleging abuses of the Railroad Retirement Occupational Disability benefits by labor and management employees of the Long Island Railroad (LIRR). (Note: the BMWED does not represent any employees on the LIRR.) The *Times* reported that since 2000, between 93 and 97 per cent of all employees retiring from the LIRR applied for and received Occupational Disability Annuities from the Railroad Retirement Board. Since Sunday, New York Governor David A. Patterson (D) has directed the New York State Attorney General, Andrew Cuomo to investigate the issue; the U.S. Railroad Retirement Board has instructed its Inspector General to investigate; several members of Congress have requested public hearings about the Railroad Retirement Act Occupational Disability annuity, and, Tuesday, federal agents raided the Railroad Retirement Board field office on Long Island, New York. Additionally, the Metropolitan Transportation Authority (MTA), which owns the LIRR, is seeking to have federal legislation remove it from the jurisdiction of the Railway Labor Act and Railroad Retirement Act. In this case, the developments are generating far more heat than light, so I believe it is prudent to give you a brief background on this dispute.

Railroad Retirement Occupational Disability

- An employee must have 240 credited service months to be eligible to apply for a disability annuity.
- An employee is eligible for an occupational disability annuity if he/she cannot physically perform his/her railroad job. This standard is not as strict as the Social Security disability standard.
- The Occupational Disability annuity has been part of Federal Law since 1946.
- The Occupational Disability standards were last adjusted in 1997 through negotiations between Rail Management and Rail Labor assisted by medical experts retained by both sides.
- The Inspector General of the Railroad Retirement Board conducted an audit of the administration of the Disability Standards in 2000 and the Board moved to correct any shortcomings in administration since then. One of the new provisions permits the railroads to submit information concerning the applicant's job duties in disability application cases; however, the railroads do so in only 5% of the cases.
- An employee who is certified as Occupationally Disabled is subject to continuing review of his/her disability status until the employee applies for a Retirement Annuity.
- Occupational Disability annuity payments are financed solely through taxes paid by railroad carriers and employees. The general taxpaying public does not contribute to this system. The \$3.6 billion allegedly provided to the Retirement Board from the Social Security Administration simply was a transfer of funds from Social Security to the Retirement Board for "social security equivalent" benefits the Retirement Board paid.
- The average Occupational Disability annuity is \$26,000 per year
- Over 70% of railroad employees who receive an Occupational Disability annuity also are classified as Permanently Disabled under the more stringent Social Security disability standards.

Long Island Railroad

- The LIRR is a commuter railroad operating in New York State.
- The LIRR is subject to the Railway Labor Act and Railroad Retirement Act.
- LIRR employees hired prior to 1987 are eligible to retire on a collectively bargained full pension before age 60 if they have sufficient years of service. Those employees also receive health insurance at no cost until they are Medicare eligible.
- The annuity under the LIRR pension is based on an employee's earnings before retirement. Some employees received substantial annual salaries as a result of penalty payments under freely negotiated work rules.
- LIRR employees are alleged to have retired from the railroad and then applied for an occupational disability annuity from the Retirement Board.
- The dispute does not concern the lawfulness of the applications for Occupational Disability; instead it concerns the very high rate of successful applications. The dispute concerns the allegation that 93% - 97% of this group of employees apply for and are granted Occupational Disability annuities.
- The majority of the cost borne by the LIRR stems from its pension obligations and health insurance obligations that were freely negotiated with the unions representing its employees and not from Railroad Retirement Occupational Disability payments which are funded out of the payroll taxes paid by all railroad employees and rail carriers.

If you receive any calls from the news media regarding this matter, please refer them to Don Griffin at 703-548-1262. I will update you as events in this investigation unfold.