INTERSTATE COMMERCE COMMISSION

FILE NO. IR 8-76-406 T

and

FEDERAL ELECTION COMMISSION

FILE NO. MUR 312 (76)

SUBMISSION OF

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY

[NAME OF COUNSEL ON SIGNATURE PAGE]

I

INTRODUCTION

This submission is being made jointly to the Federal Election Commission and to the Enforcement Bureau of the Interstate Commerce Commission. As such, it is directed to the suggestion made in the ICC Memorandum of Fact and Law [1/], dated 27 September 1976, that the Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Milwaukee Road") has violated 49 USC 20(7)b and 2 USC 441 b and that those violations continue to the present.

As we understand it, these suggestions are based upon the assumption that the Milwaukee Road is paying $25 per month to some 12 participants in the Milwaukee Road Officers Trust Fund ("Trust") in order to reimburse them for their participation, and, therefore, the Milwaukee Road's records do not accurately reflect the actual salary expenses for these individuals. The assumption is fallacious.

We submit that there is no basis for asserting that a current violation of 2 USC 441 b or 49 USC 20(7)b exists. Further, there is no reasonable cause to believe that the Milwaukee Road violated 49 USC 20(7)b, 2 USC 441 b, or its predecessor, 18 USC 610, and certainly not after 1969.

1/ Referred to as "Memorandum" below.

The Memorandum is misleading . ıuse it makes an incomplete presentation of the facts, it contains selectively edited testimony, and it withholds readily available documentary evidence. While purporting to be an objective analysis of the facts and law upon which a prosecutor is to rely in deciding whether to take further action, the Memorandum is nothing more than biased argumentation in support of a preconceived conclusion. An analysis of the Memorandum in this regard is set forth in section VI of this submission.

II

BACKGROUND

The Memorandum is based upon testimony taken, and documents provided to, the Securities and Exchange Commission during its private investigation (H. O. 827) of the Milwaukee Road from June 1975 to June 1976. That investigation resulted in the entry of a consent decree naming the Milwaukee Road, among others, on 29 June 1976.

The private investigation began following an article which appeared in Forbes magazine dated 15 June 1975. A second article ("Forbes II") appeared in the 1 July 1975 issue. Forbes II had alleged the existence of a "political slush fund" to which employees of the Milwaukee Road were pressured to make contributions. In pursuing its investigation, the SEC staff focused on several areas including the

circumstances surrounding the formation of the Trust in late 1964 and early 1965.

It appears that Leo Crowley, then the chairman of the Milwaukee Road, conceived of the idea of the Trust in late 1964. A trust agreement [1] was drafted and implemented in January 1965. A document [2] found among the payroll records of the Milwaukee Road and voluntarily provided to the SEC staff, purports to compute the pay status of such 35 executive and administrative personnel for the year 1965. A notation contained on that document indicates that 25 of the 35 were to receive $25 per month in additional salary which was somehow related to the Trust. As the investigation proceeded, testimony from four individuals indicated that the $25 increase was given in an effort to encourage the 25 individuals to contribute $15 to the Trust. In spite of an implication to the contrary [3], the implementation of the compensation incentive appears to have been the sole responsibility of Crowley. No present member of the Milwaukee Road management was involved in that aspect of the formation of the Trust.

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[1] Appendix, pp. 1 to 4.

[2] Appendix, p. 10.

[3] Memorandum, p. 3.

The Memorandum argues that there was a violation of 18 USC 610 and 49 USC 20(7)b in 1965 and, because no pay reductions had been made in the intervening 12 years, that those violations continue.

It is fundamental that criminal charges based upon a statutory language requiring knowing and willful violations must be based upon more than theoretical extrapolation [1], and citations to Gertrude Stein. [2] The prosecution must prove its alleged case beyond a reasonable doubt. What is required is an analysis of the changing factual situation in view of the statutory language. Such an analysis shows that the unlawful effects, if any, of the 1965 occurrences were completely dissipated no later than 1969.

III

NO UNLAWFUL ACTS WITH RESPECT TO TRUST

A fundamental question presented by the Memorandum, but ignored in its presentation, is whether or not the $25 was properly characterized as officers' salary expense in 1965. The Memorandum assumes, without analysis, that this sum was not compensation. We submit that an analysis of what happened in 1965 and thereafter shows that, in fact, the $25

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[1] Memorandum, p. 9.

[2] Memorandum, p. 18.

was compensation because the recipients were free to use the money as they saw fit.

This right is set forth in the text of the withholding authorization used in 1965:

Commission's #137
9-30-75
PB

WITHHOLDING AUTHORIZATION

The undersigned, being an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby authorizes and directs that there be withheld each month from his salary the sum of $ 1.[illegible], which sum is hereby signified to be a voluntary donation for deposit in Milwaukee Road Officers Trust Account.

The undersigned certifies his understanding to be that:

1. Milwaukee Road Officers Trust Account exists pursuant to, and is administered under the terms and conditions of, a Declaration of Trust, dated as of October 15, 1964, and executed by Edwin O. Schiewe and James P. Reedy, as Trustees. Such Declaration of Trust is on file in the office of the Trustees, 516 West Jackson Boulevard, Chicago, Illinois, where it is available for inspection at any time by the undersigned during regular office hours.

2. The making of this donation is not a condition of his continued employment by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, nor does it enter into or affect in any way the determination by the Company from time to time of the terms and conditions of that employment, including promotion, salary level, transfer or work assignment. This authorization may be revoked at any time, in whole or in part, by written notice to the Company.

3. Withdrawals from Milwaukee Road Officers Trust Account may be made at any time by the Trustees thereof for any purpose which, in the sole discretion of the Trustees, will secure and advance the interest and well-being of the undersigned as an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the railroad

industry of which it is a part.

4. The donation hereby made is not deductible for either Federal or state income tax purposes, and reimbursement is not to be sought from Company funds, either directly or indirectly.

C. J. Atell

Dated 1/12/65

(Emphasis added)

This form was used, in substantially the same form, in all subsequent years. SEC Exhibits 5(c) and 138 [1]. There was no pressure on any of the participants to join or remain a Trust participant. The authorizations gave each employee the sole and absolute right to revoke his authorization, in whole or in part, at any time. This unrestricted contractual right, of which each participant was aware, gave the employee complete dominion over the $25. Whatever the purpose of its grant or the hopes which may have motivated its granting, it is unequivocally clear that, once granted, the participant could retain, spend, or contribute the $25 as he saw fit. We submit that such power in the participants meant that the $25 was officer salary expense at the

[1] Appendix, pp. 11 and 12.

time of its granting. Thus, there was no violation of 49 USC 20(7)b or, for that matter, of 18 USC 610.

IV

EVENTS AFTER 1965

The theory for the recommended prosecution is:

> Logic supports the argument that this additional salary -- since it never was taken away -- still continues.
>
> Memorandum, p. 9.

For its validity, the theory advanced by the Memorandum requires an unbroken causal chain from 1965 to 1976. No such chain can be forged.

When the individual employment histories of Trust participants after 1965 are examined, it is obvious that there are intervening events which break the chain. The great majority of those individuals listed in SEC Exhibit 14 experienced changes in job and pay status which, because of a longstanding railroad policy, completely changed the basis for computing their salaries. In the case of promotions, the policy was to begin the promoted individual at the lowest pay level possible consistent with his new position. Such a policy reflects the view that the individual should be rewarded upon his promotion but that his relative inexperience in the position required him to be compensated at a level substantially lower than that of his predecessor. The

following table [1] shows the promotion dates of the individuals listed on SEC Exhibit 14 who changed job status prior to 1969. Additionally, R. K. Merrill was promoted to Vice-President for Law in November 1970, and D. O. Burke was promoted to General Manager in February 1973.

L. V. Anderson	1-1-69
S. W. Armour	3-1-66
E. W. Chesterman	3-1-66
C. E. Crippen	10-12-66
P. L. Cullen	3-1-66
R. K. Kratochwill	10-12-66
G. H. Kronberg	3-1-66
F. G. McGinn	5-11-65
W. E. Ross	10-12-66
C. L. Schiffer	5-14-68
E. J. Stoll	3-1-66
W. D. Sunter	3-1-66

Thus, even if one assumes that there were improprieties in January 1965 such as those calculated at pages 33-34 of the Memorandum, there is no basis for similar allegations once the underlying pay status has undergone fundamental transformation as a result of a promotion. The individual's salary after promotion was computed on the basis of his new position rather than by the application of a percentage increase. There was no relationship between the old salary and the new level so that the reported computation for each such individual was accurate.

The chain is further weakened by the practice of

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[1] Appendix, pp. 73 to 98.

selective increases for executives. The following table 1/ lists those individuals who received selective increases prior to 1969 and the date of the first such increase. Such increases were recommended by the individual's immediate supervisor because of some changed circumstance, such as additional responsibilities, which required individual re-evaluation and adjustment of the salary level of the affected employee:

L. V. Anderson	8-1-66
D. O. Burke	8-1-66
E. W. Chesterman	9-1-65
P. L. Crowling	1-1-68
C. E. Crippen	5-11-65
P. J. Cullen	9-1-65
V. E. Glosup	1-1-65
A. W. Hallenberg	8-1-66
R. F. Kratochwill	9-1-66
W. W. Kremer	5-11-65
F. G. McGinn	5-11-65
R. K. Merrill	5-11-65
W. E. Ross	8-1-66
C. L. Schiffer	10-1-67
W. D. Sunter	9-1-65
J. T. Taussig	11-1-65
F. A. Upton	8-1-66

A comparison of this table with the 12 names marked by an asterisk on page 2 of Exhibit A to the Memorandum shows that all but two were subjected to this individualized salary review. Of the four examples proposed for use in prosecution, all received one or more such increases prior

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1/ Appendix, pp. 73 to 98.

to 1969. These selective increases were granted without regard to the individual's participation in the Trust. One's original compensation was only a starting point from which the selective increase was determined. Accordingly, the salary paid Messrs. Merrill, Kratochwill, Burke and Hallenberg was accurately recorded after June 1965, September 1966, August 1966 and August 1966, respectively, because their salaries had undergone a separate review process and increases had been granted solely upon management's evaluation of their job performance and their individual value to the company.

Further evidence that the $25 was properly attributable to officers' salary expense is the fact that the pension rights of those participants who retired were computed upon the assumption that the $25 was part of their compensation. [1] The following tables list those participants who retired prior to 1970:

S. W. Armour	10-1-68
N. E. Glosup	1-1-67
H. C. Johnson	6-1-65
W. W. Kremer	6-1-67
C. T. Lannon	6-1-68
W. D. Sunter	10-1-69

The chain is broken by another major event which occurred when the pay system of Milwaukee Road was completely

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[1] Appendix, p. 99.

revised. In July 1971, the Board of Directors of Milwaukee Road ordered the discontinuance of the practice of horizontal pay increases for executive personnel. The executive salary system was completely overhauled. The new system, designed by outside consultants, was not dependent upon prior salary levels but rather used objective criteria to evaluate each position and to then administer the salary and program strictly on the merit system. Mr. Crippen described this system in his testimony:

> MR. HAYES: Mr. Crippen,
>
> * * *
>
> Did you, in 1971, or thereabouts, and while you were President of the Railroad, take any action with respect to any changes in policy of the railroad as to salaries for its personnel?
>
> THE WITNESS (Crippen): Yes.
>
> MR. HAYES: What did you do?
>
> THE WITNESS: We put in a salary

administration program under which we undertook to get job descriptions of the officers and supervisory employees and develop their responsibilities on both as to staff and nature of the work and dollars for which they were responsible and then developed relative positions with respect to each of the positions as to responsibility and then our railroad, compared with several other railroads, and I remember there were eight or nine other railroads, and then spotted each individual on a curve to determine whether on the basis of our evaluation job descriptions and so forth the salaries were too high or too low with respect to the responsibilities and as it related to the railroad industry and as it related to the history, generally, and I undertook a program to bring salaries in line with the value of the job and administered salary increases on the basis of this program.

If we found that a fellow on a salary was too great, the responsibilities that were assigned to his position, then we either held his salary static or gave him a very modest increase.

If on the other hand we found that his salary was too low with respect to the other industry -- other railroads and industry generally, and the responsibilities that were assigned to that job, then he was given a salary increase that would tend to ultimately get him up to a salary appropriate for the job he had, so that in some instances, if there were a 5 percent general increase authorized, some people might get 7 or 8 percent and other people may get 1, 2, 3 to 8 percent, so this was an administration of salaries based on responsibility and the importance of the job.

Crippen pp. 214-216 [1].

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[1] Appendix, pp. 13-16.

The program established salary ranges for each position based upon its importance to the Milwaukee Road and the salaries paid for comparable jobs in other railroads and in other industries. Individual salaries within a range were determined by comparing the employee's level of performance to the objectives outlined in the job description which had been prepared for each position. Such a program did not carry into it the salary policies of the past and thus, for this reason alone, the chain was broken as to all participants with the advent of the salary administration program authorized in 1971.

The assumption that the "device" continued as company policy is unsupportable. The SEC record is replete with examples of individuals joining the Trust after 1965 who received no "extra compensation." Fritz H. Miller decided to participate in the Trust in 1970 and was not compensated in any manner. Miller pp. 11, 18-19. 1/. Warren Ploeger began to contribute in 1968 and was not reimbursed in any way. Ploeger pp. 16-18, 28-29 2/. Charles Morris began contributing $10 per month in 1972 and was not reimbursed in any way. Morris pp. 12, 28-29 3/. Alvin Nance contributed

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1/ Appendix, pp. 17-20.

2/ Appendix, pp. 21-26.

3/ Appendix, pp. 27-30.

$10 a month beginning in 1972 and was not compensated in any manner. Nance, pp. 10-18 [1]. Mr. Crippen catagorically denied that the "device" continued after 1965 at pages 78 and 216 of his testimony.

> BY MR. BUTLER:
>
> Q Do you recall if there was any conversation at this later time [1972] with reference to the giving of additional salary increases for the purpose of joining the fund or conbributing to the fund?
>
> A Specifically there was not. I had no knowledge of any other discussion on salary increases for additional employees' participation.
>
> Crippen, p. 78. [2]

* * *

> MR. HAYES: This morning questions were asked of you concerning what knowledge you may have had concerning whether or not any persons received a $25 a month salary amount from the railroad, reimbursement for contributions to the Officers' Trust Fund.
>
> After 1965, do you recall any discussion with any person on that topic?
>
> THE WITNESS: Absolutely none.
>
> Crippen, p. 216. [3]

Again, an examination of page 2 of Exhibit A to the Memorandum is illustrative. Of the 23 persons listed, 11 joined

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[1] Appendix, pp. 31-40.

[2] Appendix, p. 41.

[3] Appendix, p. 16.

the Trust after 1965 and were not reimbursed in any manner by reason of their participation.

If the membership of the Trust as a whole is examined, the noncontinuance of the "device" as company policy is more vividly shown. In May 1976, the Trust consisted of the 23 individuals listed on page 2 of Exhibit A to the Memorandum plus 58 other individuals all but one of whom [1] had joined the Trust in 1970 or later. There is no evidence that any of these 57 individuals received any compensation by reason of their participation.

As shown above, even the assumption that the device continued as to the initial 25 individuals is unsupportable. Kratochwill testified that no individual received a pay cut by reason of his leaving the Trust:

> MR. HAYES: Mr. Kratochwill, in the event that a person who had been a contributor to the Trust Fund later withdrew from the Fund for any reason, would there be any downward adjustment in his pay status?
>
> THE WITNESS: No.
>
> Kratochwill, p. 38. [2]

Whatever the reason for granting the extra $25 was in 1965, it appears that both the employees and the company

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[1] Crippen retired in 1973 but continued to contribute to the Trust until December 1976.

[2] Appendix, p. 44.

regarded it as the employees' money which they could use as they saw fit.

The 12 original contributors referred to on page 2 of Exhibit A to the Memorandum are no longer participants in the Trust. They withdrew in June 1976 [1]. Thus, there is no basis for asserting that a current violation of either 2 USC or 441 b or 49 USC 20(7)b exists.

V

HISTORY OF TRUST
1965 TO 1976

The Trust began in January 1965. It was a voluntary program for officers, executive and administrative personnel of the Milwaukee Road. For the purposes of this submission, we will assume that 25 participants received $25 per month from which they contributed $15 per month to the Trust. As of 1 June 1976, 12 of the original 25 participants remained employees and members of the Trust. As of 1 July 1976, no one was a member of the Trust [2].

The total amount donated by this group over the 11.5 years since January 1965 was $42,600. The 12 participants who remained members as of June 1976 contributed a total of

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[1] Appendix, p. 100.

[2] Crippen who retired in 1973 continued to be a contributor until December 1976.

$205 per month, or $2,460 per year. Total membership in the Trust was 68 as of June 1976. Thus, the remaining 12 original participants constitute less than 20% of the Trust's membership. Their yearly contributions likewise constituted approximately 20% of the total contributions to the Trust which had remained relatively static at approximately $12,000 per year since the Trust was reconstituted in September 1972.

Trust records were reviewed in preparing this submission. The Trust made no contributions to federal candidates during the period March 1972 to September 1973. Contributions to federal candidates of $1,500 were made during the last quarter of 1973. During 1974, federal contributions totalled approximately $3,700 while state and local contributions approached $10,600. For the year 1975, federal contributions approximated $5,700 while state and local contributions reached $4,000. During 1976, federal contributions were $6,700 while state and local contributions were slightly more than $5,500. Thus, in each year, there were more than enough funds in the Trust from participants other than the initial 25 to account for all the federal contributions made. For this reason along, any violation of the Federal Election Act during those years could not have been one of substance.

The Memorandum points to contributions to certain federal candidates made by the Trust during the period 1 October to 31 December 1975. [1] On the assumption that the effects of events which occurred in 1965 are still being felt, the Memorandum suggests a violation of 2 USC 441 b.

The circumstances surrounding the formation of the Trust have been described above. We submit that the combined effect of promotions, selective increases, and company pension policy over the intervening 12 years, plus the restructured salary administration system authorized in 1971, completely dissipated any unlawful effect that may have arisen in 1965. The facts supporting this position are set forth in section IV of this submission.

Any violation of the federal election laws which might have occurred was purely a technical one. The Trust was apparently established to make contributions to candidates for public office. In many states, including Illinois, corporate contributions are permissible. Accordingly, the mere presence of corporate funds within the Trust would not have been unlawful. There is no basis for presuming that the questioned funds were used to make federal contributions. The Memorandum does not present any evidence to support such

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[1] Memorandum, pp. 9-10.

a presumption.

Two other happenings in administration of the Trust are relevant.

In 1970, a new recruiting effort was made on behalf of the Trust. Former participants in the Trust were again solicited and advised that their further participation was strictly voluntary. No reimbursement device of any sort was offered to any participant. Those who were then members of the Trust were asked to increase their contributions. Apparently, some did so; they received no compensation for their decision.

In September 1972, the Trust was reorganized. There was another solicitation drive. Again, the participants were advised of the voluntary nature of the program. Some elected to continue to contribute, some increased their contributions, and some made reductions. In any event, the Trust underwent fundamental changes which were intended and designed to place it in compliance with the requirements of the Federal Election Act as then in effect.

VI

FAIRNESS OF ICC MEMORANDUM

A. Unfairness to Principal Officers.

We believe that the Memorandum is seriously deficient in its analysis of the facts relating to the individuals who

it recommends should be subjected to a grand jury investigation.

A particularly blatant example of these shortcomings is found in the effort by the Memorandum to implicate Mr. William J. Quinn [1] in the origination of the "device."

At page 3, the Memorandum asserts that the formation of the Trust was discussed with Mr. Quinn. The implication is that the "device" was also discussed with him. As Mr. Crippen testified, he did not ever discuss with Mr. Quinn, between 1965 and the time of his testimony, the idea of giving a salary increase to employees of the Railroad for the purpose, either in whole or in part, of making a contribution to the Trust Fund. Crippen, p. 30 [2]. Further, he had no specific or general recollection of discussing that matter with Mr. Quinn prior to 1965. Crippen, p. 31 [3]. Mr. Crippen's testimony on this follows the material quoted on pages 3 and 4 of the Memorandum by one page. See, Crippen, p. 28 [4].

The Memorandum has unfairly edited testimony and suppressed readily available documentary evidence. Two letters

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[1] Memorandum, pp. 3, 24-26.

[2] Appendix, p. 47.

[3] Appendix, p. 48.

[4] Appendix, p. 46.

between Mr. Quinn and Mr. Crippen are discussed. Both letters were part of SEC Exhibit 14 [1]. One was attached to the Memorandum as Exhibit B. It had been page 2 of SEC Exhibit 14 [2]. The second letter had been page 1 of SEC Exhibit 14 [3] and is the document upon which the Memorandum bases its argument that Mr. Quinn was involved in the creation of the "device." The Memorandum quotes the letter's first paragraph:

> In connection with the 7% increase to be applied January 1, 1965, to the supervisory employees, there are certain other adjustments that have to be made, as I explained to the Board at the meeting on Thursday. (Emphasis supplied by ICC.)

The letter is not attached to the Memorandum as an exhibit even though it was available.

The full text of the letter undermines the argument that the "certain other adjustments" relate to the Trust. The full letter is set forth here:

1744 1744

Chicago - December 21, 1964

Personal

Mr. C. E. Crippen:

In connection with the 7% increase to be applied January 1, 1965 to the supervisory employees, there are cer-

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[1] Appendix, pp. 5 to 10.

[2] Appendix, p. 6.

[3] Appendix, p. 5.

tain other adjustments that have to be made, as I explained to the Board at the meeting on Thursday.

Insofar as the Operating Department is concerned, I have discussed the matter with Mr. McGinn, and he has made the following recommendations, which I approve, effective January 1, 1965:

	Present Rate	Rate With 7% Increase	Proposed Rate
J. V. Anderson General Manager	$ 24,000	$25,680	$ 26,500 2208.33
F. A. Upton Chief Mechanical Officer	21,840	23,368	24,500 2041.67
B. J. Ornburn Asst. Chief Engineer-Structures	17,584	18,815	20,000
S. J. Worley Engineer Maintenance of Way-Track	17,160	18,361	19,000 1583.33
W. E. Fuhr Asst. Chief Engineer-Signals & Comm.	14,565	15,585	16,000 1333.33
G. M. Hill Assistant Engineer-Signals	10,368	11,094	11,500
Q. W. Torpin Superintendent of Transportation	13,528	14,445	15,500 1291.67
R. P. Huntsman, Acting Supt. of Transportation to Supt. of Transportation-Western Region	9,000	9,630	10,000
J. J. Nentl, Acting Superintendent to Superintendent (Aberdeen Division)	13,500	14,445	15,811

William J. Quinn

cc: Mr. F. G. McGinn

Also part of SEC Exhibit 14 as page 6 was Crippen's response to Quinn's reference to the "certain other adjustments." This letter is set forth here:

1749% | 1-69%

OK 12/21/64. Noted 1/21/65

Chicago - December 21, 1964

PERSONAL

Mr. William J. Quinn:-

In connection with the general adjustment of compensation to supervisory and exempt employees effective January 1, 1965, there are certain individuals who have been performing outstanding service whose rates do not adequately recognize their responsibilities and value to the company. I would like to adjust these inequities concurrently with the general increase effective January 1, 1965.

The following is a summary of the adjustments proposed:

Individual	Monthly Rate Present	+ 7% Incr.	Proposed
W. E. Ross Assistant Comptroller	$1,400.	$1,498.	$1,550.
R. N. Edman Chief Statistician	1,378.	1,475.	1,525.
G. W. Corbett Director of Internal Audit	850.	910.	950.
A. L. Nance Auditor	750.	813.	850.

May I have authority to make these adjustments?

G. E. Crippen

The Memorandum asserts that the "certain other adjustments" referred to in this Quinn-Crippen correspondence

"represents carrier monies funnelled into a political trust." [1]

However, the precise matter under discussion between Mr. Quinn and Mr. Crippen is defined in the Minutes of the Board of Directors for 17 December 1964:

> Authority to make certain adjustments, in addition to the horizontal increase to officers and supervisors, was also approved. This is for the purpose of maintaining relationship and eliminating inequalities.
>
> SEC Exhibit 21 [2].

The adjustments were authorized and made in order to eliminate inequalities -- in order to compensate individuals for meritorious performance. They had nothing to do with the Trust.

Indeed, an examination of SEC Exhibit 14 [3] shows a separate notation defined as "Rate with 7% increase, with certain other adjustments, approved by Mr. W. J. Quinn." The adjustments indicated by that notation -- the letter "d" -- correspond precisely to the adjustments set forth in the letters between Quinn and Crippen reproduced above.

Having woven its alleged case against Mr. Quinn from such fabric, the Memorandum appears to recommend a grand

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[1] Memorandum, p. 25.

[2] Appendix, pp. 101 to 102.

[3] Appendix, p. 10.

jury investigation into the matters disclosed in the SEC testimony of a man who is totally innocent of any wrongdoing and who is one of the outstanding railroad executives in the United States. One would hope that in these circumstances, a more searching investigation, employing more precise analysis and judgment, would have been made before the suggestion of personal involvement by a railroad official of the stature of Mr. Quinn.

Even more distressing, under the circumstances, is the suggestion of personal involvement by Worthington L. Smith, the president and chief operating officer of the Milwaukee Road. Not a glimmer of justification for this suggestion can be found in the Memorandum. Smith's name appears for the first time at page 36, the last page, of the Memorandum. Nowhere in the preceding 35 pages is there as much as an allusion to Smith. Yet a grand jury proceeding respecting matters disclosed in his SEC testimony is recommended.

Smith joined the Milwaukee Road in July 1972; he could not have been involved with the formation of the Trust. He never was a participant in the Trust. He did not know of its existence until June 1975. He was not involved in any manner in the administration of the Trust. Smith's non-involvement is crystal clear and spread across the record. Yet the Memorandum makes no references to this evidence:

BY MR. BUTLER:

Q On the record.

Now, Mr. Smith, at this time, I would like to direct your attention to another area and ask you if you're familiar with the Milwaukee Road Officers Trust Fund?

A I am familiar with the words, but I am not familiar with the fund, I am not involved in it.

Q Have you ever contributed to that fund?

A No.

Q Have you ever been solicited to contribute to the fund?

A No.

Q Has anybody ever described to you the purpose of that fund?

A No.

Q Have you ever asked anyone about that fund aside from the questions you may have directed to counsel?

A No.

Q Do you recall when the first time you heard about that fund was?

A Well, it's in recent months. I think I first became aware of it June of this year or heard discussion of it.

Q And what contention were those discussions?

A Well in the context of your investigation.

Q So, prior to June of 1975, you had

not had discussions with anyone of the Milwaukee Road Officers Trust Fund?

A I don't think so.

Smith, pp. 38 to 39. [1]

There is no documentary or oral evidence which contradicts this testimony.

One looks in vain for any reasonable basis for the recommendation that Smith be subjected to a grand jury investigation. Merely holding office has never been enough to support criminal charges under a statute requiring knowing and willful violation. United States v. A & P Trucking Co., 358 U.S. 121, 79 S.Ct. 203, 207 (1958).

As to Mr. Crippen, even if in 1965 he had knowledge of what is now alleged to be illegal corporate purposes and recordkeeping, the record before the SEC confirmed over and over again that Mr. Crowley's plan, insignificant in dollar amount as it was, ~~and~~ had by 1969 become fully justified and proper under the laws of the ICC and 18 USC 610.

B. Unfair Presentation of Record.

Apart from unfairness to the principal executives of the Milwaukee Road, the Memorandum does violence to the record by selective editing of the testimony.

The Memorandum cavalierly implies that Arthur W.

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[1] Appendix, pp. 49 to 51.

Hallenberg had the impression he was receiving extra compensation which he was to use to contribute to the Trust. The Memorandum achieves this result by linking the Hallenberg's testimony with that of Delbert O. Burke.

In fact, Hallenberg testified that he had no idea that he was receiving any extra compensation. He testified that he was never told this fact, that he did not ever calculate what his various pay changes were, and that he would have no reason to do so because he had never handled his pay check. Hallenberg pp. 13-14, 16. [1] The Hallenberg testimony quoted by the Memorandum at pages 10 to 13 records the mathematical computations employed by the SEC staff to demonstrate to Hallenberg that he had received more than a straight 7% raise in 1965. Interestingly, the Memorandum stops quoting Hallenberg's testimony at the point at which he begins to explain why he was unaware of his pay status in 1965. A full page of testimony, some 25 lines, is missing from the Memorandum. Indeed, the missing material is necessary to complete the answer which is presented on page 13 of the Memorandum as if it were complete. See Hallenberg pp. 19-20. [2]

The characterization of Hallenberg's testimony is

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[1] Appendix, pp. 52 to 55.

[2] Appendix, pp. 56 to 57.

important because the overwhelming majority of the Trust participants, who gave testimony on the points did not know that they had received the $25 until the time of their testimony during the SEC investigation. See, Anderson, p. 25; Melzer, pp. 31-32; Upton, pp. 29-30; Stoll, pp. 25, 34; Schiffer, p. 29; Merrill, p. 42.[1/] Only three participants testified that they were aware of the extra compensation in 1965. Crippen, p. 65; Taussig, pp. 18-21 and Kratochwill, p. 12.[2/] Of these, only two were aware of the connection between the $25 and the Trust. The other assumed a relationship because of the coincidence of timing. One other participant testified to a vague and unsubstantiated impression, gained he knew not where, that he was being compensated by reason of his participation in the Trust. Such was the knowledge of the participants in 1965. Hardly the sweeping general knowledge the Memorandum implies.

The Memorandum makes extensive use of the quotation from the testimony of Richard Kratochwill, who was comptroller in 1965. Again, the quotations, as presented in the Memorandum, have elipses which are not indicated or the extent of which is not indicated. For example, between the first answer quoted on page 21 of the Memorandum and the next line quoted, there actually occurred some 7 pages of testimony.[3/] Between the last line on page 21 of the Memo-

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1/ Appendix, pp. 58 to 72.

2/ Appendix, pp. 101 to 108.

3/ Appendix, pp. 109 to 116.

randum and the first line quoted on page 22, there is actually 13 pages of testimony. The importance of these elipses is apparent when the missing pages are examined [1]. The documents to which the witness had reference at page 20 of the Memorandum are not the same as those to which he is referring at page 22. Further, while the Memorandum uses this edited testimony to assert that Kratochwill admits that adjustments in salary rates occurred, when his testimony is reviewed and considered as a whole, it is clear that Kratochwill was attempting to explain to the SEC staff what conclusions he drew from the document (SEC Exhibit 14) which he personally saw for the first time in June 1975.[2]

VII

The Statutes of Limitation Bar any Prosecution Suggested by the Memorandum

A. Prosecution for Federal Election Violation That May Have Occurred Prior to 1973 Are Barred.

The Memorandum deals candidly with the Statute of Limitations defense to any charge under 2 USC 441 b or 18 USC 610. There can be no prosecution for any violations which may have occurred prior to 1973. 2 USC 455, Memorandum p. 29. The factual analysis of the events occurring after 1965 fully supports, we submit, the conclusion that any violations of the election laws which may have occurred in

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[1] Appendix, pp. 116 to 125.

[2] Appendix, p. 125.

1965 had ended long before 1973. Section IV above.

B. The Statute of Limitations Also Bars Prosecution of Any Violations of Section 20(7)(b) of the Interstate Commerce Act.

1. Prosecution for Alleged False Entries Made Prior to 1972 are Barred by the Statute of Limitations.

The Memorandum is less candid in dealing with the statute of limitations with respect to possible violations of 49 USC 20(7)(b). This is understandable when the various elements of statutory offense are considered. The statute arguably reaches persons who "knowingly and willfully made, caused to be made, or participated in the making of any false entry in any ... records or memoranda kept by a carrier."

The statute, according to the Memorandum and some case law dealing with similar statutes [1/], makes each false entry a separate and complete offense. Accordingly, each entry requires proof of additional facts establishing the essential elements of each offense, even though the entries involved may be contained in the same document or report. United States v. Berg, 176 F.2d 122, 125-126 (9th Cir. 1949).

According to well established case law, the statute of

[1/] Memorandum, p. 27, Bower v. United States, 296 Fed. 694 (9th Cir. 1924), United States v. Berg, 79 F. Supp. 1021 2 D.Cal. (1948); affirmed, 176 F.2d 122 (9th Cir. 1949).

limitations begins to run when the offense is complete; in this case, when each alleged false entry was made. Assuming the five-year statute of limitations set forth in 18 USC §3282 applies, prosecution for any alleged false entries made prior to 1972 is absolutely barred.

2. No Subsequent Knowing and Willful Violation of The Statute has Occurred Within the Period of Limitations

Assuming a five-year limitations period, any prosecution for alleged violations of 49 USC 20(7)(b) must be founded upon false entries made within the limitations period. In any such prosecution, the government would be required to prove by separate facts the requisite elements of each separate offense -- i.e., each false entry. This requirement presents an insurmountable obstacle to any prosecution in light of the facts that pertain to this matter.

One absolutely essential element of the Section 20 (7)(b) false entry offense is the element of willfulness. Case law has uniformly required evidentiary proof beyond a reasonable doubt that the making of the false entry was "...done with a bad purpose without justifiable excuse" and with an "evil motive." For example, in Dearing v. U.S., 167 F.2d 310 (10th Cir. 1948) (cited in Walters' Memorandum) a §20(7) action against a railway conductor, the court stated:

> Subparagraph (7)(b) makes willfullness a constituent element of the offense. Where the word 'willfullness' is used in a penal statute, more is required than the mere doing of the act proscribed. It generally means an act done with a bad purpose without justifiable excuse. 167 F.2d at 312. (Emphasis added.)

In Screws v. U.S., 325 U.S. 91, 65 S. Ct. 1031 (1944), cited by the court in Dearing, the Court had these comments on the word "willful" as applied to criminal statutes:

> We recently pointed out that 'willful' is a word 'of many meanings, its construction often being influenced by its context' . . . At times, as the Court held in United States v. Murdock, 290 U.S. 389, 394 54 S. Ct. 223, 225, 78 L. Ed. 381, the word denotes an act which is intention rather than accidental . . . But 'when used in a criminal statute, it generally means an act done with a bad purpose.' . . . in that event something more is required than the doing of the act proscribed by the statute . . . An evil motive to accomplish that which the statute condemns becomes a constituent element of the crime . . . 65 S. Ct. at 1035. (Emphasis added).

In United States v. Atlanta, B & C R.R. Co., 282 U.S. 522, 51 S. Ct. 237 (1931), after pointing out that the Commission had the authority to prescribe a carrier's system of accounts, the court stated:

> Disobedience of an order made to this end touching the accounts would be punishable under Section 20, Subsection 7 [49 U.S.C.A. §20(7)], of the act as a wilful failure to make a correct entry and the keeping of a record other than that approved by the Commission. 28 F.2d 885,

887. The basis for such a liability should be certain." 51 S. Ct. at 239. (Emphasis added.)

In U.S. v. Spingola, 464 F.2d 909 (7th Cir. 1972), the treasurer of a union was convicted of knowingly and willfully failing to file a required annual report with the Secretary of Labor. The trial court excluded evidence that the treasurer was unable to prepare the annual report until completion of certain underlying accounts with which he had no direct involvement. In reversing the conviction, the court held, inter alia, that excluded evidence directly related to the element of willfulness. As applied to the present matter, Spingola requires that a individual's actual involvement in the preparation of necessary reports be considered with regard to the willfulness element involved in the making of an allegedly false entry.

If, as the Memorandum suggests, each separate pay period reflects a separate violation, then it is elemental that a knowing and willful violation must be shown for each such period. Such was the requirement in an analogous income tax situation. In United States v. Goldberg, 206 F. Supp. 394 (E.D. Pa., 1962), aff'd 330 F.2d 30, cert. denied 337 U.S. 953, 84 S.Ct. 1630 (1964), Goldberg was charged with conspiracy and attempted evasion of income taxes for the years 1955 and 1956. In discussing the showing of

criminal intent necessary to sustain a finding of the substantive offense of attempted tax evasion, the Court concluded that "a single conspiracy embracing two separate taxable years is impossible." 206 F.Supp. at 396, 397. This reasoning was also extended to the conspiracy charge, the Court declaring at 206 F.Supp. 397:

> Since income taxes become due and payable on an annual basis, it seems manifest that persons cannot at one and the same time conspire to evade more than one year's taxes.
>
> A willful attempt to evade the tax for one year is a separate offense from a like attempt to evade for another year. United States v. Sullivan, 98 F.2d 79, 80 (2d Cir. 1938). We think the same holds true as respects a conspiracy to commit the substantive offense. (p. 397).

As the facts set forth at Section IV demonstrate, there has been no willful or deliberate violation of the Statute within the period of limitations.

In addition to willfulness, it is necessary in establishing a violation of Section 20(7)(b) to prove that the falsification involved a <u>material</u> fact. Any inadvertent mistake does not subject the carrier or the individual involved to liability. <u>Oregon-Washington Railroad Nav. Co. v. U.S.</u>, 222 Fed. 887, 898 (9th Cir. 1915). Moreover, to require absolute accuracy when dealing with a penal statute like §20(7), absent a requirement of materiality, could subject a carrier to enormous penalties for minuscule

mistakes. Elgin J. E. Ry. Co. v. U.S., 227 FEd. 411, 413 (7th Cir. 1915).

The logic for requiring "materiality" as an essential element of a false reporting offense under another statute was lucidly recited in the well reasoned opinion of Judge Bazelon in Freidus v. U.S., 223 F.2d 598 (D.C. Cir. 1955):

> We think, however, that this highly penal statute must be construed as requiring a material falsification. The legislative purpose strongly implies that only material false statements were contemplated, i.e., statements that could affect or influence the exercise of a governmental function. That purpose, as expressed by the Supreme Court in United States v. Gilliland, was 'to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described.' No perversion of a governmental function could possibly result from a false statement that was incapable of affecting or influencing such function."

223 F.2d at 601-602. (Emphasis and bracketed material added.) Here, the governmental function in receiving accurate reports of carrier expenses relates to insuring that rates will not be inflated due to overstated costs. Based on the amounts involved in employee contributions to the Trust Fund, no effect whatsoever could have been had on the carrier rates during this period.

It is obvious that the sums involved here are infinitesimal when compared to the revenues and operating ex-

penses of the Milwaukee Road. The $4,500 questioned in 1965, or the lesser amounts questioned in later years, approximate 0.0002 percent of current operating expenses. As such, they cannot be said to have had even a statistical impact upon Milwaukee Road's shippers. Literary allusions to Gertrude Stein do not substitute for common sense judgments by prosecutors in evaluating a case for prosecution. One element must be the materiality of the items involved. Given the sums involved here, common sense requires a long look before a rush to prosecution is recommended.

3. The Doctrine of Continuing Violations Has No Application To This Matter.

Only the original participants in the Trust Fund contribution program received salary adjustments. In each case, the adjustment was limited to a single instance, a $300.00 annual increase in 1965. As noted earlier, any current prosecution based on those events and any allegedly false entries relating thereto is barred by the statute of limitations.

Any current prosecution can be based only upon an allegedly false entry of a material dimension willfully and deliberately made within the limitation period. Assuming, as the Memorandum does, and as the case law indicates, that each false entry constitutes a separate, complete offense, the doctrine or notion that there has been a "continuing violation" since 1965 cannot and does not have any application to this matter.

A case in point in this regard is Toussie v. U.S., 397 U.S. 112, 90 S.Ct. 858 (1970). This case involved a prosecution for failure to register for the draft. Under the provisions of the Universal Military Training and Service Act, defendant was required to register between June 23 and June 28, 1959. He failed to do so and on May 3, 1967, was indicted. In asserting the continuing violation doctrine, the Government relied on a regulation promulgated under the Act which provided that the duty to register was continuing through the 26th birthday of the draftee. Under this theory, a violator could be charged at any time before his 31st birthday under the applicable five-year statute of limitations. Since registration was required within five days of a person's 18th birthday, this interpretation had the effect of establishing a 13-year period of limitation.

In rejecting the Government's theory, the Court observed that while Congress has often explicitly stated that certain offenses will be deemed continuing, no such unequivocal intention was expressed in the statute involved there. In this regard, the Court stated:

> There is also nothing inherent in the act of registration itself which makes failure to do so a continuing crime. Failing to register is not like a conspiracy which the Court has held continues as long as the conspirators engage in overt acts in

> furtherance of their plot . . . . It is in the nature of a conspiracy that each day's acts bring a renewed threat of the substantive evil Congress sought to prevent.
>
> 90 S.Ct. at 864. (Emphasis added.)

Precisely the same analysis applies to Section 20(7), particularly if, as asserted in the Memorandum, each false entry is a separate, complete offense.

In Toussie, supra, the Court clearly articulated the principle that "... criminal limitations statutes are 'to be liberally interpreted in favor of repose.' ..." 90 S.Ct. at 860.

In doing so, the Court noted:

> The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts and legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past.
>
> 90 S.Ct. at 860. (Emphasis added.)

All of the policy considerations expressed in Toussie compel rejection of the continuing violation doctrine to this factual situation. Even assuming that employee contributions to the Trust Fund in 1965 were actually those of the Railroad, and a deliberate, intentional overstatement in

wage expenses in company accounts and annual reports to the ICC occurred, the statute of limitations has obviously run on each such violation that occurred prior to 1971. Any current charges would have to be based on false entries made within the limitations period, not on some vague notion of a "continuing violation." The evidence shows that there were no incidents similar to those events surrounding the formation of the Trust after 1965. New contributors to the Trust did not receive any form of additional compensation because of their participation. As old participants left the program, they were not penalized by the withdrawal of a salary increase that they received in 1965.

As of the first instance in which an employee was neither benefited nor penalized for his participation in or withdrawal from the contribution program, any willful, intentional conduct that may have existed was terminated. Furthermore, a reevaluation of management compensation occurred in the early 1970's. It resulted in salary levels that were based on a combination of the compensation provided for similar work in other industries and the individual's particular level of ability. Consequently, any residual benefit from increased compensation due to 1965 participation in the Trust Fund contribution program was erased.

CONCLUSION

As is well known, the Milwaukee Road is a marginal carrier. Nevertheless, it serves an important function in the National Transportation System. Its survival is vital to the shipping public, to its employees, and to the United States. It has already undergone an extensive and, for its officers and employees, traumatic investigation by the SEC. As a result of that investigation, a sweeping consent decree was entered against the company and certain of its officers and directors. We do not believe that there is any public good to be achieved by further investigations into matters that occurred 12 years ago.

The ancient maxim comes to mind: The job of the prosecutor is not to correct but to see that justice is done. Here, we submit, justice requires that both the Federal Election Commission and the Interstate Commerce Commission conclude that the matters and theories asserted in the Memorandum do not, in light of all the circumstances, mandate or suggest the necessity for further action by either Commission. Certainly, criminal sanctions are not required.

DATED: 23 December 1976

Respectfully submitted,
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and
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Chicago, Milwaukee, St. Paul & Pacific Railroad Company

P. F. Sonney
6-26-75

DECLARATION OF TRUST

EDWIN O. SCHIEWE and JAMES P. REEDY do hereby declare that they hold in trust, for the uses and purposes and upon the terms and conditions hereinafter set forth, all sums of money which may hereafter be donated for deposit in the Milwaukee Road Officers Trust Account in Mercantile National Bank of Chicago.

1. Purposes. The funds at any time and from time to time held in Milwaukee Road Officers Trust Account shall be available for expenditures for any purpose which, in the sole discretion of the Trustees, will secure and advance the interest and well-being of the donors as officers of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the railroad industry of which it is a part.

2. Withdrawals. Withdrawals of funds from the Milwaukee Road Officers Trust Account may be made, at any time and without limitation as to amount, upon checks, or other appropriate written orders or directions covering solely the amount and manner of withdrawal, signed by both of the Trustees; and Mercantile National Bank of Chicago shall be both required and privileged to honor and to effectuate such withdrawals without either responsibility or liability on its part to inquire into or to review the purpose of any such withdrawal or the object to which it is being devoted.

3. Accountability of Trustees. The Trustees serving at any time hereunder shall have complete and plenary authority to determine what withdrawals or disbursements may be made from the Milwaukee Road Officers Trust Account in the light of the purposes hereinabove stated

in Paragraph 1; and neither shall be accountable to anyone upon the claim that any withdrawal or disbursement is outside the scope of such purposes, provided always that no expenditure may be made for the purely personal profit or benefit of the Trustees or either of them. The Trustees shall in no case make withdrawals or disbursements which exceed the funds actually on deposit.

4. Termination of Amendment of Trust. This trust may be terminated at any time by a declaration in writing to that effect signed by both Trustees. Any balance then existing in such account shall be paid by the Trustees to the American Cancer Society. Absent any such termination, this trust shall continue indefinitely, although its terms may be amended or supplemented at any time and from time to time by a declaration in writing signed by both Trustees.

5. Succession of Trustees. In case of the resignation, death, or inability or refusal to act of any Trustee, his successor shall be named in writing by the President of Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The capacity of a Trustee to serve hereunder at any point in time shall be subject to review and determination by the President of said Railroad Company, in his sole discretion, and his written certification of incapacity shall conclusively terminate the service of any Trustee.

6. Expenses. The Trustees, and each of them, shall not be entitled to any fees or other compensation of any kind for their services hereunder. Reasonable costs and expenses incident to the maintenance of the Milwaukee Road Officers Trust Account, including any regular or special audits which the Trustees may have made for their own use of

the receipts and disbursements in respect thereof, legal, banking and other service fees, and similar administrative fees or disbursements, may be paid by withdrawals from such account.

7. Records. The Trustees shall maintain, or have maintained under their direction and supervision, full and complete records in writing which shall reflect the sources and amounts of all sums deposited in the Milwaukee Road Officers Trust Account, and all withdrawals therefrom, including in the latter case the amounts and dispositions of such withdrawals. The records herein provided for shall be solely for the information and administrative convenience of the Trustees in the performance of their functions hereunder.

8. Title. Full legal title to all sums deposited in the Milwaukee Road Officers Trust Account shall vest in the Trustees forthwith upon the making of such deposit. None of such funds shall inure to the personal benefit of the Trustees, and they shall be held and expended solely for the purposes set forth in Paragraph 1 hereinabove. The fact of deposit shall signify the donor's voluntary consent to the holding and application by the Trustees of the deposited sum for such purposes.

9. Restrictions Upon Interest and Investment. No interest shall accrue upon the balance from time to time in the Milwaukee Road Officers Trust Account; and the Trustees shall have no power or authority to convert the cash balances in said account, either in whole or in part, into any form of investment, either permanent or temporary.

10. Action by Single Trustee. Any action required hereunabove to be taken by both Trustees may be taken by one if, at the time, the

other Trustee is not serving as such by reason of any of the contingencies contemplated in Paragraph 5 and no successor has as yet been named as provided therein.

IN WITNESS WHEREOF, the undersigned Trustees have hereunto set their hands as of the 4th day of January, 1965.

Edwin O. Schiewe

James P. Reedy

FROM X 14

Chicago - December 21, 1964

Personal

Mr. C. E. Crippen:

In connection with the 7% increase to be applied January 1, 1965 to the supervisory employees, there are certain other adjustments that have to be made, as I explained to the Board at the meeting on Thursday.

Insofar as the Operating Department is concerned, I have discussed the matter with Mr. McGinn, and he has made the following recommendations, which I approve, effective January 1, 1965:

	Present Rate	Rate With 7% Increase	Proposed Rate
L. V. Anderson General Manager	$ 24,000	$25,680	$ 26,500
F. A. Upton Chief Mechanical Officer	21,840	23,368	24,500
B. J. Ornburn Asst. Chief Engineer-Structures	17,584	18,815	20,000
B. J. Worley Engineer Maintenance of Way-Track	17,160	18,361	19,000
W. E. Fuhr Asst. Chief Engineer-Signals & Comm.	14,565	15,585	16,000
G. M. Hill Assistant Engineer-Signals	10,368	11,094	11,500
Q. W. Torpin Superintendent of Transportation	13,528	14,445	15,500
R. P. Huntsman, Acting Supt. of Transportation to Supt. of Transportation-Western Region	9,000	9,630	10,000
J. J. Nentl, Acting Superintendent to Superintendent (Aberdeen Division)	13,500	14,445	15,811

William J. Quinn

cc: Mr. F. G. McGinn

Chicago - December 21, 1964

PERSONAL

Mr. F. G. McGinn
Mr. W. W. Kremer
Mr. C. E. Crippen
Mr. E. O. Schiowe
Mr. L. H. Lugan
Mr. H. H. Melzer
Mr. E. J. Stoll

Effective January 1, 1965, you are authorized to increase the salaries of all supervisory and exempt employees, who are not covered by the scope of wage agreements and where the monthly rates cover all services performed, in the following manner:

> Increase monthly rates seven per cent (7%) with a minimum of $44.00 per month. Any increases producing other than full dollar figures will be rounded off at the next highest full dollar figure.

It should be understood that these increases will not be applied to custodians, station attendants or students, nor to those special situations which have previously been covered by my letter of December 11, 1964.

It should also be understood that these increases do not apply to the occupants of 1(b) positions as referred to in the Clerks Schedule. The occupants of these positions have received increases in accordance with previous instructions.

William J. Lemm

cc - Mr. G. H. Kronberg
Mr. W. B. Brahany
Mr. J. J. Roche
Mr. S. W. Amour

Chicago - December 21, 1964

PERSONAL

Mr. H. C. Johnson:-

Attached is a copy of Mr. Quinn's letter of December 21, 1964, authorizing increases in salaries of supervisory and exempt employees who are not covered by wage agreements and where monthly rates cover all services performed.

The increases are effective January 1, 1965. You are authorized to make changes in the rates of compensation in accordance with Mr. Quinn's letter.

There will be some minor variations applicable to a few individuals about which I will write you.

CEC/bs

C. E. C.

cc - Mr. F. H. Miller

Chicago, December 22, 1964

File S-1033

P E R S O N A L

Messrs.

L. V. Anderson	R. L. Hicks	A. W. Shea
S. W. Amour	W. R. Jones	J. D. Shea
F. A. Carten	F. J. Kuklinski	K. R. Schwartz
G. J. Barry	R. J. Kemp	M. T. Sevedge
M. L. Benzer	T. B. Kirk	R. T. Shields
R. R. Brown	C. Miller	F. A. Upton
J. J. Dembrowski	N. H. McKegney	D. P. Valentine
W. M. Freund	A. C. Novak	L. H. Walleen
M. Garelick	J. J. Nentl	
V. E. Glosup	F. H. Ryan	

I quote below Mr. Quinn's letter of December 21, which is self-explanatory:

"Effective January 1, 1965, you are authorized to increase the salaries of all supervisory and exempt employees, who are not covered by the scope of wage agreements and where the monthly rates cover all services performed, in the following manner:

"Increase monthly rates seven per cent (7%) with a minimum of $44.00 per month. Any increases producing other than full dollar figures will be rounded off at the next highest full dollar figure.

"It should be understood that these increases will not be applied to custodians, station attendants or students, nor to those special situations which have previously been covered by my letter of December 11, 1964.

"It should also be understood that these increases do not apply to the occupants of 1(b) positions as referred to in the Clerks Schedule. The occupants of these positions have received increases in accordance with previous instructions."

Please be governed accordingly.

F. G. McGinn

cc: Messr.

G. W. Berg	J. A. Jakubec
R. E. Beck	L. E. Martin
C. E. Crippen	W. R. Manion
F. L. Freeman	R. G. Scott
J. T. Hayes	W. E. Swingle

Chicago - December 21, 1964

PERSONAL

Mr. William J. Quinn:-

In connection with the general adjustment of compensation to supervisory and exempt employees effective January 1, 1965, there are certain individuals who have been performing outstanding service where rates do not adequately recognize their responsibilities and value to the company. I would like to adjust these inequities concurrently with the general increase effective January 1, 1965.

The following is a summary of the adjustments proposed:

Individual	Monthly Rate Present	+ 7% Incr.	Proposed
W. E. Ross Assistant Comptroller	$1,400.	$1,498.	$1,550.
R. N. Edman Chief Statistician	1,378.	1,475.	1,525.
G. W. Corbett Director of Internal Audit	850.	910.	950.
A. L. Nance Auditor	750.	813.	850.

May I have authority to make these adjustments?

Chicago Milwaukee St Paul and Pacific Railroad

Officers Salary - Monthly and Annual Effective 1-1-1965

	Monthly Rate 12-31-65 (1)	Increase 7% of Monthly Rate (2)	Mo. Rate with 7% Inc (Col 1+2) (3)	Monthly Rate (Col 3 extended to full dollars) (4)	Annual Rate (Col 4 x 12) 5
L J Crowley	150000	None	150000	150000	1800000
W J Quinn	676667	47267	724034	724100	8629200
L H Dugan	271667	19017	290684	(a) 2500 290700	(a) 30000 348840
J L Canning	58333 (b)	4400	62733	(a) 2500 62800	(a) 30000 753600
J J Janning as of 1-1-65	137500	None	137500	(a) 2500 137500	(a) 30000 (a) 1650000
J E Pallinger as of 1-1-65	66667	None	66667	(a) 2500 66667	(a) 800000
C J Lennon	150500	10535	161035	(a) 2500 161100	(a) 30000 1933200
C L Schiffler	90000	6300	96300	(a) 2500 96300	(a) 30000 1155600
D J Manley	79400	5558	84958	(a) 2500 85000	(a) 30000 1020000
E J Stolz	157917	11054	168971	(a) 2500 169000	(a) 30000 2028000
L H Kronberg	162500	11375	173875	(a) 2500 173900	(a) 30000 2086800
C E Chappers	322500	22575	345075	(a) 2500 345100	(a) 30000 4141200
R J Kratochwill	208333	14583	222916	(a) 2500 223000	(a) 30000 2676000
E Rose	140000	9800	149800	(a) 2500 150000	(a) 30000 1860000
F C Johnson	155167	10860	166027	(a) 2500 166100	(a) 30000 1993200
E O Schewe	297500	20825	318325	(a) 2500 318400	(a) 30000 3820800
R K Merrill	208333	14583	222916	(a) 2500 223000	(a) 30000 2676000
J P Reedy	202500	14175	216675	(a) 2500 216700	(a) 30000 2600400
R W Spangenberg	211767	14824	226591	(a) 2500 226600	(a) 30000 2719200
J E McGuire	363333	25433	388766	(a) 2500 388800	(a) 30000 4665600
H E Quigley	143000	10010	153010	(a) 2500 153100	(a) 30000 1837200
L Y Anderson	200000	14000	214000	(a) 2500 221500	(a) 30000 2650000
J O Burke	158333	11083	169416	(a) 2500 169500	(a) 30000 2034000
J H Connors	212500	14875	227375	(a) 2500 227400	(a) 30000 2728800
J Gulstad	182000	12740	194740	(a) 2500 204167	(a) 30000 2450000
A H Nellenbery	138733	9711	148444	(a) 2500 148500	(a) 30000 1732000
G L Wood	120333	8433	128770	(a) 2500 129000	(a) 30000 1568200
V E Bleemp	216733	15171	231904	(a) 2500 232000	(a) 30000 2784000
H H Meiger	166667	11667	178334	(a) 2500 178400	(a) 30000 2470800
W H Kenney	363333	25433	388766	(a) 2500 388800	(a) 30000 4665600
C D Dentes	210000	14700	224700	(a) 2500 224700	(a) 30000 2696400
H J McKenna	182000	12950	194950	(a) 2500 195000	(a) 30000 2376000
E H Oesterman	180000	12600	192600	(a) 2500 192600	(a) 30000 2311200
P J Sullivan	180000	12600	192600	(a) 2500 192600	(a) 30000 2311200
Total	6767416	449243	7216659	7301867	87622400
B E Luttermann (transferred from payroll Col)			205 00	205 00	24612
			7421759	7506967	90083600

(a) Milwaukee Road Officers Trust Account

(b) Maximum increase

(c) Excluded by section [illegible] Annual increase [illegible] effective 1-1-65. [illegible] for [illegible]

(d) Rate with 7% increase with certain other adjustment approved by Mr W J Quinn

Commission's #138
9-30-75 PB

WITHHOLDING AUTHORIZATION

The undersigned, being an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby authorizes and directs that there be withheld each month from his salary the sum of $ 25.00, which sum is hereby signified to be a voluntary donation for deposit in Milwaukee Road Officers Trust Account.

The undersigned certifies his understanding to be that:

1. Milwaukee Road Officers Trust Account exists pursuant to, and is administered under the terms and conditions of, a Declaration of Trust, dated as of October 15, 1966, and executed by Edwin O. Schlome and James P. Grady, as Trustees. Such Declaration of Trust is on file in the office of the Trustees, 516 West Jackson Boulevard, Chicago, Illinois, where it is available for inspection at any time by the undersigned during regular office hours.

2. The making of this donation is not a condition of his continued employment by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, nor does it enter into or affect in any way the determination by the Company from time to time of the terms and conditions of that employment, including promotion, salary level, transfer or work assignment. This authorization may be revoked at any time, in whole or in part, by written notice to the Company.

3. Withdrawals from Milwaukee Road Officers Trust Account may be made at any time by the Trustees thereof for any purpose which, in the sole discretion of the Trustees, will secure and advance the interest and well-being of the undersigned as an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the railroad industry of which it is a part.

4. The donation hereby made is not deductible for either Federal or state income tax purposes, and reimbursement is not to be sought from Company funds, either directly or indirectly.

E. J. Stoll
(E. J. Stoll)

Dated 9-30-75

9/70

Com. Ex 5(c)
7/1/75 Cap

WITHHOLDING AUTHORIZATION

The undersigned, being an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereby authorizes and directs that there be withheld each month from his salary the sum of $ 5.00, which sum is hereby signified to be a voluntary donation for deposit in Milwaukee Road Officers Trust Account.

The undersigned certifies his understanding to be that:

1. Milwaukee Road Officers Trust Account exists pursuant to, and is administered under the terms and conditions of, a Declaration of Trust, dated as of October 15, 1964, and executed by Edwin O. Schieve and James P. Reedy, as Trustees, as amended August 1, 197[illegible]. Such Declaration of Trust is on file in the office of the Trustees, 516 West Jackson Boulevard, Chicago, Illinois, where it is available for inspection at any time by the undersigned during regular office hours.

2. The making of this donation is not a condition of his continued employment by Chicago, Milwaukee, St. Paul and Pacific Railroad Company, nor does it enter into or affect in any way the determination by the Company from time to time of the terms and conditions of that employment, including promotion, salary level, transfer or work assignment. This authorization may be revoked at any time, in whole or in part, by written notice to the Company.

3. Withdrawals from Milwaukee Road Officers Trust Account may be made at any time by the Trustees thereof for any purpose which, in the sole discretion of the Trustees, will secure and advance the interest and well-being of the undersigned as an officer of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the railroad industry of which it is a part.

4. The donation hereby made may be deductible for either Federal or state income tax purposes within the limitations of the provisions of the Revenue Act of 1971, and reimbursement is not to be sought from Company funds, either directly or indirectly.

[illegible]

S.S. 717-14-9511

Dated Oct 25/1972

EXCERPT OF

TESTIMONY OF

CRIPPEN

PP. 214-216

12pm7

1 you were President, about breaking down that line item
2 to distinguish gain from the sale of timber as opposed
3 to gain from the sale of timber land or lands?
4 A No.
5 By Mr. Butler:
6 Q Well, that is all the questions we have at
7 this time, Mr. Crippen, and I would like to thank you very
8 much on behalf of the Staff for your time and patience
9 today and give you this opportunity to make any statement
10 which you wish to make for the record.
11 If you wish to confer with Mr. Hayes, please feel
12 free to do so.
13 MR HEGAN: Off the record.
14 (Whereupon, the witness and
15 counsel had a discussion
16 outside the room.)
17 MR. HAYES: A couple of brief questions.
18 MR. HEGAN: Back on the record.
19 MR. HAYES: Mr. Crippen, this morning, Counsel
20 asked you some questions about salaries for persons employed
21 by the railroad at a time, I think, around 1965, or
22 shortly thereafterwards.
23 Did you, in 1971, or thereabouts, and while you
24 were President of the Railroad take any action with respect
25 to any changes in policy of the railroad as to salaries for

its personnel?

THE WITNESS: Yes.

MR. HAYES: What did you do?

THE WITNESS: We put in a salary administration program under which we undertook to get job descriptions of the officers and supervisory employees and develop their responsibilities on both as to staff and nature of the work and dollars for which they were responsible and then developed relative positions with respect to each of the positions as to responsibility and then our railroad, compared with several other railroads, and I remember there were eight or nine other railroads, and then spotted each individual on a curve to determine whether on the basis of our evaluation job descriptions and so forth the salaries were too high or too low with respect to the responsibilities and as it related to the railroad industry and as it related to the history, generally, and I undertook a program to bring salaries in line with the value of the job and administered salary increases on the basis of this program.

If we found that a fellow on a salary was too great, the responsibilities that were assigned to his position, then we either held his salary static or gave him a very modest increase.

If on the other hand we found that his salary

12pm9

1 was too low with respect to the other industry -- other
2 railroads and industry, generally, and the responsibilities
3 that were assigned to that job, then he was given a
4 salary increase that would tend to ultimately get him
5 up to a salary appropriate for the job he had, so that
6 in some instances if there were a 5 percent general increase
7 authorized, some people might get 7 or 8 percent and
8 other people may get 1, 2, 3 to 8 percent, so this was
9 an administration of salaries based on responsibility and
10 the importance of the job.
11 MR. HAYES: This morning questions were asked
12 of you concerning what knowledge you may have had concerning
13 whether or not any persons received a $25 a month salary
14 amount from the railroad, reimbursement for contributions
15 to the Officers' Trust Fund.
16 After 1965, do you recall any discussion with
17 any person on that topic?
18 THE WITNESS: Absolutely none.
19 MR. HAYES: No further questions at this time.
20 MR. HEGAN: All right, at this point, then,
21 Mr. Crippen, we will close the record and express our
22 thanks to you for coming in and spending your whole day
23 with us.
24 If it becomes necessary to ask you any additional
25 questions, then, we will try to arrange a convenient time

EXCERPT OF

TESTIMONY OF

MILLER

PP. 11, 18-19

Q Do you know who does?

A The treasurer.

Q Who is that?

A Mr. Schiffer.

Q I want to return to that subject in a moment, Mr. Miller, but right now I'd like to ask you if you're familiar with the Milwaukee Road Officer's Trust Fund or Trust Account.

A To a certain extent, yes.

Q Exactly what is your knowledge of the Milwaukee Road Officer's Trust Fund?

A I know that it exists. I know I'm a contributor to the fund.

Q Do you know how long it's existed?

A No, I don't.

Q You mentioned you're a contributor to the fund.

A Yes.

Q How much do you contribute?

A I believe it's $15 a month.

Q Do you recall when you made your first contribution?

A I think I signed up for it in December of 1970.

Q Do you recall how you first heard about the Milwaukee Road Officer's Trust Fund?

A Not really.

Q Do you recall if it was prior to December of 1970?

1 Q So you were only solicited formally once and
2 that was in December of 1970, is that your testimony?
3 A Yes.
4 Q Mr. Miller, do you recall if you received a pay
5 increase in December of 1970?
6 A No.
7 Q You don't recall?
8 A I did not.
9 Q You did not receive an increase.
10 Did you receive a pay increase in 1971?
11 A I can't recall. I believe that there was a general
12 increase in January of '71, but I can't be sure of it.
13 Q Do you have any records or documents which
14 would reflect such a pay increase?
15 A I suppose I have check stubs, I don't know.
16 Q These are your personal check stubs?
17 A Yes.
18 Q I would like at this time, Mr. Hayes, to
19 request copies of the check stubs or pay vouchers whichever,
20 whatever records Mr. Miller has relating to the pay increase
21 for the period early 1971.
22 MR. HAYES: Well, you can ask him about his
23 personal records. They are not here. We can get them.
24 MR. BUTLER: That's the reason for my request
25 on the record.

BY MR. BUTLER:

Q So, Mr. Miller, do you recall receiving a pay increase at all in 1970?

A No, I can't.

Q Let me ask you this: Has anyone ever told you you would be compensated by the railroad in any way for making your contribution to the Milwaukee Road Officer's Trust Fund?

A No.

Q Did you ever ask anyone whether you had been compensated?

A No.

Q Do you know of your own knowledge whether anyone in fact has been compensated for contributing to the Milwaukee Road Officer's Trust Fund?

A Not of my own knowledge.

Q Do you have any knowledge of that, such as that occurring?

A I think we have records that show that the early contributors were compensated for it at one time.

Q Are you familiar with those records, Mr. Miller?

A Yes.

Q Did you prepare such records?

A No, sir.

Q Do you know who did?

EXCERPT OF

TESTIMONY OF

PLOEGER

PP. 16-18, 28-29

1 Q. Are you suggesting that you were not eager to speak
2 with Mr. Lutterman the day you took over in that you had your
3 own notions in how you wanted to run the divisions?
4 A. No, I don't, in fact, run anything. I supervise
5 people who do and they are there to tell me what I need to
6 know just as they did him so there was continuity.
7 Q. People such as Mr. Sackerson?
8 A. Yes.
9 Q. Mr. Nance?
10 A. Right.
11 Q. Mr. Quinn?
12 A. Anybody.
13 Q. Mr. Smith?
14 A. Anybody that I wanted to talk to.
15 By Mr. Butler:
16 Q. Now, Mr. Ploeger, I would like to ask you a couple
17 of questions right now about your knowledge of a campaign
18 fund maintained by certain employees of the Milwaukee Railroad.
19 Are you familiar with a campaign fund maintained by them?
20 A. I know about it, yes, sir.
21 Q. Do you know the name of the fund?
22 A. Milwaukee Road Officer's Trust Fund, I believe.
23 Q. Are you a contributor to that fund, Mr. Ploeger?
24 A. No, not now.
25 Q. Were you at one time a contributor?

1 A. Yes.

2 Q. When was that?

3 A. Well, for all the time I was western counsel. I

4 don't know or recall how far back.

5 Q. You became western counsel, as I recall, in 1968?

6 A. Yes.

7 Q. So, in 1968 you began contributing to the fund?

8 A. I don't know whether I began then or earlier or

9 later. It's been a long time.

10 Q. Do you recall when you terminated your contributions

11 to the fund?

12 A. Yes.

13 Q. When was that?

14 A. The day I became vice-president.

15 Q. That was in 1974?

16 A. Yes, sir.

17 Q. Do you recall, Mr. Ploeger, how you were introduced

18 to the Milwaukee Road Officer's Trust Fund?

19 A. Yes.

20 Q. And how was that?

21 A. It had always been a problem and we were always

22 individually asked to make contributions for campaign funds

23 and so the only solution seemed to me was the one that was

24 recommended and I was advised at that time, in the 60's, I

25 spent an awful lot of time in Chicago going back and forth on

1 legal matters, and I think it was explained to me on one of
2 those trips to Chicago what it was. It was explained to me
3 that it was a perfectly lawful fund that had been researched
4 and so I felt it was a worthwhile project and I voluntarily
5 contributed my check every month.
6 Q. Mr. Ploeger, I would like to go back to your initial
7 comments about the fund. You said it had always been a proble
8 What had always been a problem?
9 A. You have requests from various politicians for con-
10 tributions to their campaign.
11 Q. Did these requests come to you personally?
12 A. Yes, they do. They did no matter what status I
13 was, whether I was on the bar list or whatever kind of list.
14 I was on everybody's list for campaign solicitation.
15 Q. Let me make sure I understand. They came to you as
16 an attorney and not as an employee of the railroad?
17 A. They came to me because I was an attorney for the
18 railroad.
19 Q. Did they come to your office here in Seattle?
20 A. Usually by mail or letter request.
21 Q. So, these were from prospective--
22 A. (Interrupting) From candidates.
23 Q. On all levels?
24 A. All levels and all parties.
25 Q. What did you do with those requests, if anything,

1 contributions by yourself?

2 A. I don't really think they cared where they came from

3 or how you got it.

4 Q. So, in other words, it was your understanding that

5 they were soliciting the railroad as well as you when they

6 approached you?

7 A. It was my understanding that I was a representative

8 of the railroad company and that was the capacity in which I

9 was in business and that was always my expectation of what

10 they had in mind.

11 Q. Now, prior to your joining the Officer's Trust Fund,

12 whenever that date is, did you ever recommend to railroad

13 officials that the corporation contribute funds to political

14 campaigns?

15 A. I never made a recommendation that the corporation

16 contribute 10 cents to anybody.

17 Q. Did you ever discuss it with anyone?

18 A. No, because I knew it was against the law.

19 Q. Well, how did you handle these particular requests

20 that were coming to you?

21 A. We had to take it out of our own pocket and that is

22 the problem.

23 Mr. Monahan: I would suggest that we could have

24 arrived at that point some 20 minutes ago.

25 Mr. Landy: Well, we are here, Mr. Monahan. Let's

see if we can pursue it.

By Mr. Landy:

Q. Did the railroad ever compensate you for contributions that came out of your pocket?

A. No.

Q. No?

A. No.

Q. Did you ever ask for compensation?

A. I couldn't do that.

Q. Why not?

A. Because that would be the same thing as if they made the contribution direct. Why would I do that?

Q. I don't know.

A. Well, I certainly wouldn't recommend. I wouldn't even consider asking the company to reimburse me.

Q. Did the officials in Chicago with the railroad company know the problem you were facing in regard to political contributions?

A. To what extent, I don't know but I am sure they had the same problem.

Q. Did you ever discuss it with anyone?

A. It was a common problem and is a common problem. It's common to every business man. It's not peculiar to the railroads, I will have you know that.

Q. Did you ever have knowledge, either direct or in-

EXCERPT OF

TESTIMONY OF

MORRIS

PP. 12, 28-29

1 and ask you if you have ever seen that exhibit before, which
2 appears to contain copies, photostatic copies, of withholding
3 authorizations?
4 A Yes, I have seen it, forms like this.
5 Q Did you sign a form such as the ones contained in
6 Commission's Gross Exhibit 15?
7 A Yes.
8 Q And do you recall when you signed that?
9 A I would say sometime in 1977. As to the exact
10 date I'm not an authority on it.
11 Q From whom did you receive this form?
12 A I think it came from our Legal Department.
13 Q Did you receive it in connection with any other
14 documents? For example, was there a cover letter with it?
15 A There could have been a covering letter, I don't
16 recall.
17 Q Did you decide to contribute?
18 A Yes, I did.
19 Q How much did you contribute?
20 A I think it was in the neighborhood of $10 a month.
21 Q How was that, in cash?
22 A No, sir. Payroll deduction.
23 Q Exactly how does the payroll deduction work,
24 Mr. Morris?
25 A Well, there is the authorization. In my particular

1 A No, sir.

2 Q Prior to the time that you decided to contribute

3 or at the time you decided to contribute to the Fund, were

4 you given an increase in pay?

5 A No.

6 Q After you decided to contribute --

7 A You are asking a question here that is misleading.

8 I could have been given a raise in pay immediately after that

9 but not because of that.

10 Q My question was, were you given a raise in pay?

11 A I don't know. I can't tell you right now honestly

12 because I don't remember. I have gotten raises since I

13 signed that authorization, but not because of that; because

14 of the general procedure in the corporate structure.

15 Q How long after you signed an authorization to

16 become a donor did you receive your first payment?

17 A I would have to go back to my office and look it up.

18 It's on file there.

19 Q I understand. You have no idea how long thereafter

20 it was?

21 A I don't recall just exactly what the action was

22 in 1973 with respect to the exempt employees, supervisory.

23 I am not going to make a statement on it because I don't

24 remember exactly.

25 Q Do you know how many increases in salary you re-

1 ceived since --

2 MR. HAYES: You asked the same question about four

3 times. He has answered to the best of his ability.

4 THE WITNESS: I have usually gotten one once a year.

5 BY MR. BUTLER:

6 Q Since 1973?

7 A Yes.

8 Q How many did you receive prior there to?

9 A Prior to that, also.

10 Q To your knowledge has anyone else -- has anyone

11 ever received reimbursement for contributing to the Officers'

12 Milwaukee Trust Fund?

13 A Not that I know of.

14 Q At any time?

15 A Not that I know of.

16 MR. BUTLER: Those are all the questions I have,

17 Mr. Morris. Would you care to make a statement for the

18 record now? Please feel free to do so after conferring with

19 Counsel.

20 Let the record reflect that Witness is confer-

21 ring with Counsel.

22 MR. MONAHAN: Mr. Morris, do you still contribute

23 to the Fund?

24 THE WITNESS: No.

25 MR. MONAHAN: When did you -- did you withdraw?

EXCERPT OF

TESTIMONY OF

NANCE

PP. 10-18

1 Q. Commission Exhibit 93 bears a date of 9/8/72. Do
2 you recall if you signed Commission Exhibit 93 on or about
3 that date?
4 A. I assume that I did. From the copy it indicates
5 9/8/72.
6 Q. Now, Mr. Nance, did you ever enter into or execute
7 any other withholding authorization?
8 A. Not that I recall. Not for this trust account.
9 Q. Did you sign Commission Exhibit 93 at the time you
10 began to participate in the campaign fund?
11 A. Yes.
12 Q. And from whom did you receive a copy of Commission
13 Exhibit 93, do you recall?
14 A. You mean originally?
15 Q. Yes.
16 A. As I recall, a letter directed my attention. As I
17 recall, it came from Mr. Reedy who is, I believe, general
18 counsel for the railroad.
19 Q. You received a letter from Mr. Reedy, as you re-
20 call?
21 A. As I recall, yes. As I recall, it was a mimeo-
22 graphed letter or a circular-type letter. I know that others
23 in Seattle received the same letter.
24 Q. And did this letter request that you make a contri-
25 bution or exactly what did it say, if anything?

A. I don't recall the exact reading of the letter. I'm sure it asked me to participate and it was voluntary.

Q. I'd like to show you what has been previously marked and identified as Exhibit 12, Mr. Nance, and ask you if that is a copy of the letter you received from Mr. Reedy.

A. I don't recall it. Did I assume this is the letter I received?

Q. Do you recall when you received a letter from Mr. Reedy?

A. Well, at this time I can only assume that it was on or shortly before the time I signed the withholding authorization.

Q. Well, let me ask you this. Prior to the time you executed Commission Exhibit 93 or received a letter, had you received any other communications from Mr. Reedy requesting that you make a contribution?

A. No, sir.

Q. This was the very first communication you received from Mr. Reedy?

A. Yes, sir.

Q. Had you received communication from anyone else requesting or soliciting that you join the organization?

A. No, sir, I had not.

Q. Did you discuss the organization with anyone prior to the time you received the letter from Mr. Reedy?

A. No, I had not. I was vaguely aware there was such an organization.

Q. I'm trying to find out exactly how you were aware of that, Mr. Nance.

A. Through hearsay.

Q. Did you discuss this with other employees of the Milwaukee Land Company or the Milwaukee Railroad?

A. After receiving the letter.

Q. Prior to the time you received the letter.

A. I don't recall ever discussing it with anybody.

Q. After the time you received the letter, did you discuss it with anybody?

A. Well, these letters came to several people in Seattle and I recall that it was mentioned like maybe at a coffee break or a situation like this, that certain ones had received the same letter.

Q. Well, do you know why you received a letter, Mr. Nance?

A. I presume I received it because they were soliciting membership, members for the trust account.

Q. Who else received this letter, do you recall?

A. I believe that all the department heads in Seattle received it. I'm not aware. I know of one or two that received it because it was discussed.

Q. Who were those individuals, Mr. Nance?

1 A. One was Mr. Edward Notske, who is the head of the
2 Seattle office or the property tax department. I recall that
3 he and I briefly mentioned this to each other, that we had
4 received the letter.
5 Q. Do you recall anyone else who received it?
6 A. Not specifically.
7 Q. What exactly did you discuss with Mr. Notske, do
8 you recall that?
9 A. I don't recall.
10 Q. Did you receive any other solicitations after 1972
11 from Mr. Reedy or from anyone else relating to contributions
12 to the fund?
13 A. I don't recall receiving anything further.
14 Q. Did you have any discussions thereafter, after 1972,
15 with anyone about the Milwaukee Road Officers Trust Fund,
16 excluding any conversations you may have had with counsel?
17 A. I'm not aware of any at this time.
18 Q. Mr. Nance, you mentioned you contributed $10 a month
19 to the fund, is that correct?
20 A. That's correct.
21 Q. And has your contribution remained the same?
22 A. Yes, sir.
23 Q. Why did you decide to contribute $10 a month?
24 A. I believe that was the suggested contribution in my
25 salary range.

Q. Are you referring to the suggested schedule in the Commission Exhibit 12?

A. Yes, sir.

Q. And prior to the time you decided to make the contribution, did anyone ever tell you your salary would be increased in order to allow you to contribute an extra $10 a month?

A. No, sir, absolutely not.

Q. Well, did you receive a salary increase in 1972, Mr. Nance?

A. I would not know without checking my records at this time.

Q. How often have you received salary increases?

A. I have received salary increases generally when everybody else did.

Q. Once a year?

A. Sometimes it is once a year. Sometimes it has been oftener; sometimes it has been longer.

Q. Now, did you ever ask anyone if you would receive any compensation for making a contribution to the Milwaukee Road Officers Fund?

A. No, sir.

Q. Did you ever discuss with anyone whether contribution would be reimbursed by the railroad or by the Land Company?

A. No, sir.

Q. Mr. Reedy, no one else ever mentioned that subject to you besides him?

A. No.

Q. Mr. Nance, what is your understanding of the purpose of the Milwaukee Road Officers Trust Fund?

A. Well, it is generally my understanding that it would be used to or for contributions to organizations or legislators who are favorable to the railroad industry.

Q. And how did you gain this understanding?

A. It is common knowledge that this is done by most industries.

Q. Well, let me ask you this, Mr. Nance, did you attend any sessions or meetings in which the Milwaukee Road Officers Trust Fund, the purpose of that fund was discussed?

A. No, I didn't.

Q. You never attended any meetings?

A. No, sir.

Q. Informal or formal meetings?

A. I don't recall one.

Q. Have you ever discussed the subject with Mr. Kratochwill?

A. No.

Q. Mr. Nance, exactly how is your contribution made, that is, the mecahnics of the contribution?

A. The $10 is deducted each month from my pay check.

Q. You never write a check for that?

A. No, sir.

Q. Have you ever seen the declaration of the trust, the Milwaukee Road Officers Trust Fund operation?

A. No.

Q. Have you ever seen any of the records of the trust fund?

A. No, sir.

Q. Have you ever requested to see any of the records?

A. I have not.

Q. You have never seen an annual report or any audited or unaudited report of the status of the fund?

A. No, I have not.

Q. Do you know what the fund does with the money that you contribute?

A. No, I don't have that knowledge.

Q. Have you ever asked anyone what the fund does with the money you contribute?

A. No, I have not.

Q. Mr. Nance, earlier you testified that as far as your understanding this contribution was voluntary, is that correct?

A. I consider it voluntary, yes, sir.

Q. Why did you consider it voluntary?

A. Because I signed the withholding deduction of my

own free will.

Q. Did anyone ever tell you that they felt pressured to join the Milwaukee Road Officers Trust Fund?

A. None.

Q. Did you ever feel pressured to join?

A. No, I didn't.

Q. Do you know if anyone ever withdrew from the trust fund?

A. I have no idea.

Q. No one has ever told you that they have withdrawn from it?

A. No.

Q. Do you know who the trustees are of the Milwaukee Road Officers Trust Fund?

A. Well, I assume that Mr. Reedy is the trustee. Other than that, I don't know.

Q. Did you assume that because you received the letter that is Commission Exhibit 12 from Mr. Reedy, is that correct?

A. Yes.

Q. Just to make sure I understand, Mr. Nance, you have never been reimbursed, either directly or indirectly, for making your $10 contribution, is that your testimony?

A. That is my testimony. I have not been reimbursed any amount.

Q. By any of the business organizations which are part

of the Chicago-Milwaukee Corporation, by the railroad or by the land company?

A. No, sir, I have not.

Q. To your knowledge, have any of the funds of the Chicago-Milwaukee Corporation or the railroad or the land company or any other subsidiary to your knowledge, been used or contributed to the Milwaukee Road Officers Trust Fund?

A. Not to my knowledge.

Q. To your knowledge, Mr. Nance, has the Chicago-Milwaukee Corporation, or any of its subsidiaries, ever made a political contribution to any candidate for policital office?

A. Not to my knowledge.

Q. Do you know if the Chicago-Milwaukee Corporation, or any of its subsidiaries, have ever loaned money to a candidate or to the Milwaukee Road Officers Trust Fund?

A. I don't know.

Q. You have no personal knowledge?

A. No, sir.

Q. No one has ever discussed that subject with you?

A. No, sir.

Q. Do you know if any property or assets of the Chicago-Milwaukee Corporation or the railroad or the land company or any other subsidiary have ever been by any political candidate? Let me explain exactly what I mean by that.

For example, if a candidate's been given access to

EXCERPT OF

TESTIMONY OF

CRIPPEN

P. 78

1 mentioned, that is Lutterman and Swingle, those are the
2 only ones that I have any knowledge or recollection of.
3 Q You say after the year 1965, do you ever recall
4 discussing with anyone in connection with the Railroad
5 about soliciting more employees to join the fund?
6 A Yes, I think there was a conversation to that
7 effect at the time of the reorganization that I pre-
8 viously mentioned.
9 I don't remember when that was and I don't re-
10 call that there were any additional employees solicited,
11 but I recall that there was some conversation.
12 Q Do you recall if there was any conversation at
13 this later time with reference to the giving of addi-
14 tional salary increases for the purpose of joining the
15 fund or contributing to the fund?
16 A Specifically there was not. I had no knowledge
17 of any other discussion on salary increases for additional
18 employees' participation.
19 Q Am I correct, then, that to your recollection
20 after those initial conversations with Mr. Crowley and
21 Mr. Schiewe that you had, that the subject of reimbursement
22 or extra salary increases for the purpose of the fund did
23 not come up?
24 A That is correct.
25 Q You have testified, Mr. Crippen, that you were

EXCERPT OF

TESTIMONY OF

KRATOCHWILL

P. 38

1 Mr. Kratochwill, there might come a later time
2 when we might want to ask you some more questions.
3 Does Counsel wish to ask the witness any
4 clarifying questions?
5 MR. HAYES: Mr. Kratochwill, in the event that a
6 person who had been a contributor to the Trust Fund later
7 withdrew from the Fund for any reason, would there be any
8 downward adjustment in his pay status?
9 THE WITNESS: No.
10 MR. HAYES: No further questions at this time.
11 MR. HEGAN: I take it you are answering there has
12 been no such demotion in pay status for anyone who dropped
13 out of the Trust Fund?
14 THE WITNESS: Right.
15 MR. HEGAN: We thank you, Mr. Kratochwill, for
16 coming by.
17 While we are still on the record, I know we
18 have a stipulation to photocopying and substituting the
19 photocopies for what has been marked as Exhibit 13. Could
20 we have a similar stipulation about photocopying certain
21 portions of Exhibit 14 and substituting them for the
22 record?
23 MR. HAYES: Yes.
24 MR. HEGAN: At this point we will close the record.
25 (Whereupon, at 4:00 o'clock p.m., this investigation
was closed.)

EXCERPT OF

TESTIMONY OF

CRIPPEN

PP. 28, 30, 31

1 Do I understand, either from something Mr. Crowley
2 had said at that meeting or earlier meetings, what he meant
3 by, "We would be able to make salary adjustments for partici-
4 pants in the program"?
5 A May I have the question again, please?
6 Q Do you know what Mr. Crowley meant by that
7 statement, "We would be able to makesalary adjustments
8 for participants in the program"?
9 A Yes.
10 Q What did he mean?
11 A He meant to adjust the salaries upward to offset
12 the contributions to the fund.
13 Q On a dollar for dollar adjustment?
14 A Yes.
15 Q So that if an employee elected to give $25 to
16 the fund, he would get an extra $25 a month; if he elected
17 to give $25 a month to the fund, he would get an extra
18 $25 a month salary increase?
19 A That is right.
20 Q Let me just finish up, just for a second, now.
21 You testified, Mr. Crippen, that this discussion
22 you had was with Mr. Crowley between the two of you?
23 A That is my recollection, yes.
24 Q Did you ever discuss the subject of reimbursement
25 or salary adjustment with Mr. Quinn at any time between

1 MR. HAYES: Mr. Crippen, his question is, I think,
2 is aimed at any discussions you might have had, if you had
3 any, with Mr. Quinn about campaign contributions, not about
4 salary increases in general, if I understand the question.
5 By Mr. Hegan:
6 Q Mr. Crippen, my question, did you ever discuss
7 with Mr. Quinn, between 1965 and the present time, the
8 idea of giving a salary increase to an employee of the
9 Railroad for the purpose, either in whole or in part, of
10 making a contribution to the trust fund or the political
11 fund or reimburse him for such a contribution?
12 A No.
13 Q Not salary increases in general, I am not talk-
14 ing of that just with the idea of giving an increase to
15 an employee for the fund purposes.
16 A Well, only at the time of the initial formation
17 of the fund and at the time Mr. Crowley had commented on
18 adjusting salaries subsequent, immediately subsequent to
19 that and in connection with carrying out the project, there
20 had to be some conversation between Mr. Quinn and me on
21 this subject, but that is the only time.
22 Q That is what I am trying to identify, if you did
23 have such a conversation or conversations with Mr. Quinn
24 about the subject of salary adjustments for purposes of
25 contributing to the fund?

1 A I have no specific recollection of what you have,
2 there must have been some conversations in carrying out
3 the mechanics of adjusting salaries for this purpose.
4 Q For the purpose of the fund?
5 MR. HAYES: I am going to move to strike the answer
6 insofar of what must have been speculation of the witness.
7 It is not in evidence, it's hearsay. I move the answer
8 be stricken.
9 MR. HEGAN: Well, counsel's motion is noted for the
10 record.
11 Let me ask you this question, Mr. Crippen, and
12 is this your best recollection that you did discuss this
13 subject with Mr. Quinn?
14 MR. HAYES: Objection. He already answered prior
15 questions, he had no specific recollection and that answer
16 stands and please go on to another subject.
17 MR. HEGAN: I will ask the question.
18 MR. HAYES: I suggest you not answer the same question
19 a second time, unless your answer is, for any reason,
20 changed, but you had a prior question and you answered it.
21 THE WITNESS: I have no specific recollection of
22 discussing the subject with Mr. Quinn.
23 MR. HEGAN: Do you have a general recollection of
24 discussing the subject with Mr. Quinn?
25 MR. HAYES: If you are asking if he recalls for
what must have happened, do not answer it, if you have a

EXCERPT OF

TESTIMONY OF

SMITH

PP. 38-39

of the available past reports that were in the Burlington Northern's office normal file of reports that are exchanged routinely between companies.

Q Are these published financial reports?

A Yes.

Q Nothing something internal?

A Nothing internal.

Q An annual report, you said you reviewed, is that something Mr. Quinn left with you?

A Yes, he left an annual report and he may have left the two quarterly -- well, there would be only one quarterly report available at that time for the first quarter of 1972.

Q Apart from what you just testified, did you do any other reviews or anything to look into the condition of the railroad prior to accepting employment?

A No.

MR. HOGAN: Why don't we take a short break.

(Brief recess.)

BY MR. BUTLER:

Q On the record.

Now, Mr. Smith, at this time I would like to direct your attention to another area and ask you if you're familiar with the Milwaukee Road Officers Trust Fund?

A I am familiar with the words, but I am not

1 familiar with the fund, I am not involved in it.

2 Q Have you ever contributed to that fund?

3 A No.

4 Q Have you ever been solicited to contribute to

5 the fund?

6 A No.

7 Q Has anybody ever described to you the purpose

8 of that fund?

9 A No.

10 Q Have you ever asked anyone about that fund

11 aside from the questions you may have directed to counsel?

12 A No.

13 Q Do you recall when the first time you heard about

14 that fund was?

15 A Well, it's in recent months. I think I first

16 became aware of it June of this year or heard discussion

17 of it.

18 Q And what contention were those discussions?

19 A Well, in the cont~~ention~~ext of your investigation.

20 Q So, prior to June of 1975, you had not had

21 discussions with anyone of the Milwaukee Road Officers

22 Trust Fund?

23 A I don't think so.

24 Q Do you know anyone who has contributed to the

25 Milwaukee Road Officers Trust Fund?

EXCERPT OF

TESTIMONY OF

HALLENBERG

PP. 13-14, 16, 19-20

A At this meeting.

Q Did Mr. Reedy explain why a separate fund was being set up instead of using Railroad funds to employ a lobbyist to go to Washington?

A Not that I recall. It was my understanding that this money was going to be given to the lobbying group, as needed.

Q But he didn't explain why a separate fund was being set up for this purpose?

A Not that I recall, no.

Q Do you recall Mr. Reedy saying anything else about this meeting, about this subject?

A I beg your pardon?

Q Do you recall Mr. Reedy saying anything else about this meeting, about the subject of this fund?

A No. In essence, what I told you is all I can recall of it.

Q Do you recall whether or not he suggested a contribution sum?

A The contribution was suggested and the amount of $15 was, as I recall, was suggested.

Q By Mr. Reedy?

A I beg your pardon?

Q By Mr. Reedy?

A Yes. As far as I am concerned I am happy to

1 contribute if this is going to help this Railroad.
2 I am happy to contribute to it. I have gained my livelihood
3 from this Railroad, my father had his livelihood on this
4 Railroad, my grandfather had his and I have two brothers that
5 have died that both served on this Railroad and as far as I
6 am concerned, I never questioned the $15. If it is going to
7 help the Railroad, I would want more, but that was all that
8 was mentioned, was $15.
9 Q Did Mr. Reedy explain why the sum of $15 was being
10 asked?
11 A No, I don't. As I remember, $15 was suggested as
12 being what everybody would put in and it would help the
13 lobbying group and help the Railroad.
14 Q To the best of your understanding from what Mr.
15 Reedy said, $15 was the amount being solicited from every-
16 body to contribute?
17 A That is right.
18 Q Did Mr. Reedy say, at this meeting, who was going
19 to administer the money that was raised?
20 A No, it wasn't even discussed.
21 Q Did you, to learn later who was administering the
22 money that was raised?
23 A I never questioned it.
24 Q After Mr. Reedy suggested the sum of $15, did you
25 then make a contribution?

to contribute to it?

A No, sir.

Q Did you know how the money has been spent by that trust account?

A No, sir.

Q Have you ever been told how the money was going to be spent?

A No, sir.

Q Have you ever asked how the money was going to be spent?

A No, sir.

Q Have you ever asked for any reports about the activities of the trust?

A No, sir.

Q To your knowledge, have you, in any way, been reimbursed either directly or indirectly by the Railroad or any other corporation associated with the Railroad for your contribution?

A No, sir.

Q Do you recall what your salary was, Mr. Hallenberg, at the end of 1964, per month?

A I don't recall it. I could tell you what it is.

Q Why don't you take a few moments and take a look at the document you brought with you and see if you can refresh your recollection.

being told that.

Q When you say you don't recall being told that, Mr. Hallenberg, are you meaning to suggest that is possible, you may have been told such a thing or you were ever told such a thing?

A I cannot recall ever being told that, but I may have been. I wouldn't rule out the possibility, but I cannot recall it.

Q Well, how were you informed of this salary increase in January of 1965?

A Of this seven per cent?

Q Yes, sir.

A I would have received a letter like this (indicating).

Q You mean similar to certain letters you produced here?

A Similar to these, but I couldn't find it. In fact, these three are the only ones that I could find.

Normally I don't, my wife handles my checks, I bring it home and we have done this ever since we have been married, I bring my check home, I turn it over to her in the morning that she is going to the bank, she puts it on the breakfast table, I sign it, she handled all the money, I don't. She does a better job of this than I do, actually, but that is why I don't, that is why I am stupid

about it, because I don't watch it.

Q Do you recall ever noticing back in 1965 that the salary increase you received in January was, in fact, somewhat higher than seven per cent?

A No. If I get an increase, I am just happy to get it, I don't question it or, in fact, I never, when I receive notice that I am going to get a certain percentage increase, I never go back and figure it again and on these promotions that I have got, I have never even asked when I got a promotion, what is the salary.

Not that I am not interested, it's just that I'm not inclined in that direction. As long as I get paid, well, I am satisfied.

Q Has your salary ever been reduced by any amount since 1965?

A I don't think so.

Q Were you ever, in any way pressured to make a contribution to the Trust Fund?

A No, sir, I was happy to make it.

Q Did you, in any way, feel pressured to make such contributions?

A No, sir.

Q Did you ever hear of anybody complaining that they felt pressured to make a contribution?

A No, sir.

EXCERPT OF

TESTIMONY OF

ANDERSON

P. 25

BY MR. BUTLER:

Q Now, Mr. Anderson, were you ever reimbursed by the railroad, in any way, for making contributions to the Milwaukee Road Officers' Trust Fund?

A No, sir.

Q That is directly or indirectly?

A No, sir.

Q Did anyone ever tell, you would be reimbursed directly or indirectly?

A No, sir.

Q For making ocntributions?

A No, sir, no one has ever told me.

Q Anyone ever suggested to you that salary increases you may have received in the past to compensate you for contributions you made to the Milwaukee Road Officers' Trust Fund?

A No, sir.

MR. MONAHAN: Wait a minute. I would like to speak with Mr. Anderson.

Would you read that question back, please?

(Record read.)

(Brief recess.)

MR. MONAHAN: I think Mr. Anderson would like to add something to that last answer.

Go ahead.

EXCERPT OF

TESTIMONY OF

MELZER

PP. 31-32

A You don't want me to speculate?

Q Were you subsequently told after your first solicitation in October?

A I don't recall if I was told with anyone of this.

Q At the present time, you don't know why you were solicited to increase your contribution?

A No, I don't know why.

Q Did anybody ever tell you why up until the present time?

A I can't recall that they ever told me.

BY MR. BUTLER:

Q Mr. Melzer, I ask you if you have ever been reimbursed, in any way, by the Railroad for making the contribution of $15 a month and later $20 a month to the Milwaukee Road Officers Trust Fund?

A No, I was never reimbursed.

Q Did you ever receive a pay increase with the understanding that you were -- it was given to you to enable you to contribute to the Milwaukee Road Officers Trust Fund?

A No, sir.

Q Did anybody ever tell you you were going to be, has anyone ever told you you were going to be reimbursed for making a contribution to the Milwaukee Road Officers

1 Trust Fund?

2 A No, sir.

3 Q Did anyone ever tell you you would receive a salary

4 increase for making it?

5 A I didn't hear the question.

6 Q Did anyone else tell you you were going to get a

7 salary increase for making contributions to the fund?

8 A No, sir.

9 Q I would like to go through, now, Mr. Melzer, what

10 your salary was in 1962, '63 and '64. This may take a few

11 minutes, but I just want to make sure I understand what it

12 was.

13 A Oh, golly.

14 MR. BUTLER: Let's start with '64.

15 MR. MONAHAN: I think that kind of a question

16 requires referral to the records.

17 MR. BUTLER: If the witness wishes to refresh his

18 recollection.

19 THE WITNESS: I can give it as close as I can.

20 BY MR. BUTLER:

21 Q I would rather have it exactly, if you could do so

22 by referring to any documents.

23 A Is it in here?

24 Q If it is, help yourself. Please take a moment and

25 review.

EXCERPT OF

TESTIMONY OF

UPTON

PP. 29-30

1 Trust Fund?

2 A No, I have not.

3 Q Have you ever received a pay increase in order to

4 allow you to contribute to the Milwaukee Road Officers' Trust

5 Fund?

6 A Not that I am aware of.

7 Q Has anyone ever told you that your salary was in-

8 creased in order to allow you to contribute to the Milwaukee

9 Road Officers' Trust Fund?

10 MR. MONAHAN: Before you answer that, Mr. Upton -

11 under the "conversations" -

12 BY MR. BUTLER:

13 Q Excluding any conversations you may have had with

14 counsel, Mr. Upton?

15 A Would you restate the question? I have lost it

16 there some place.

17 Q Has anyone ever told you that your salary was in-

18 creased at any time in order to allow you to contribute to

19 the Milwaukee Road Officers' Trust Fund?

20 A No.

21 Q Mr. Upton, did you declare a tax deduction for

22 making this contribution?

23 A No, I have not.

24 Q Have you ever asked anyone about taking a tax

25 deduction?

A No, I have not.

Q Has anyone ever suggested to you that you should take a tax deduction?

A My wife did - yesterday. Excuse me, perhaps that should be off the record, it was a little facetious.

MR. MONAHAN: Did she actually do that?

THE WITNESS: She has made the statement, yes.

BY MR. BUTLER:

Q Now, Mr. Upton, have you ever calculated what your pay increase was in 1965?

A No, I did not.

Q When you get the checks, what do you do with your pay checks?

A Normally they are taken home and handed to my wife without even opening the envelope.

Q Did you do that in 1964 and 1965?

A I have, yes.

Q If I told you that you received a pay increase of $25 per month in 1965, to allow you to contribute to the Milwaukee Road Officers' Trust Fund, what would you say?

MR. MONAHAN: First, I would object to that, but go ahead and answer the question over the objection, if you have an answer.

Q Well, in the first place, I am not aware of receiving that money for that purpose so I have no answer

EXCERPT OF

TESTIMONY OF

STOLL

PP. 25, 34

1 A It's marked here September 26, of this year.

2 Q Now, that is pursuant to the request you have

3 made of them?

4 A Yes.

5 MR. MONAHAN: I might state, for the record, Mr.

6 Butler, that, in anticipation of this line of inquiry,

7 I asked Mr. Stoll if he had any payroll records in his

8 possession and was admitted, by Mr. Stoll, that he had

9 none.

10 MR. BUTLER: I see.

11 MR. MONAHAN: For the period you are interested in.

12 By Mr. Butler

13 Q Mr. Stoll, just to make sure I understand, at

14 the time you received your pay increase in early January

15 of 1965, you did, in fact, recall receiving a pay increase

16 then?

17 A (Nodding head.)

18 MR. MONAHAN: Just a minute. I want you to

19 listen carefully, Mr. Stoll. You were asked whether or

20 not you now recall having received that pay increase in

21 1965.

22 By Mr. Butler:

23 Q Do you recall what, if any, was the rate of

24 increase that you received at that time?

25 A No, I do not.

A They did not.

Q Do you know of anyone who has withdrawn from the Milwaukee Road Officers Trust Fund?

A No, I do not. I do not know who is a member of it.

Q I asked you earlier whether you had any knowledge, yourself, whether you have been reimbursed for making a contribution?

A No.

Q You testified you had no -- do you know whether anyone who has contributed to the Milwaukee Road Officers Trust Fund has been reimbursed, directly or indirectly?

A No, I do not.

Q You have no such knowledge?

A I have no such knowledge.

Q No one has ever told you they have been reimbursed?

A No.

Q No one has ever asked you if you have been reimbursed?

A They have not.

Q You stated earlier you had discussed the subject with no one and you only recall the subject of your contributions to the Milwaukee Road Officers Trust Fund with Mr. Reedy?

A That is right.

EXCERPT OF

TESTIMONY OF

SCHIFFER

PP. 29

1 Road Officer's Trust Fund?

2 A No.

3 Q Do you have any knowledge of such transfers of

4 funds being made by the Chicago Milwaukee Corporation?

5 A No.

6 Q I believe I asked you this, sir, but you're not

7 an officer of the Chicagl Milwaukee Corporation.

8 A No, I'm not.

9 Q You don't hold any positions with them?

10 A None.

11 Q Who is the treasurer of the Chicago Milwaukee

12 Corporation?

13 A Mr. R. F. Kratochwill.

14 Q Let me ask you this, Mr. Schiffer, has anyone

15 ever told you that your contribution to the Milwaukee Road

16 Officer's Trust Fund would ever be reimbursed in anyway

17 by the railroad?

18 A No.

19 Q Not now or at any time in the past?

20 A No.

21 Q Now, I want to represent to you now, Mr. Schiffer,

22 that the staff of the Commission has come into possession

23 of documents from the files of the railroad which has

24 been previously marked and identified as Commission's

25 Exhibit 14 which indicates that in --

EXCERPT OF

TESTIMONY OF

MERRILL

P. 42

A No.

Q All this year; all last year?

A No, he didn't indicate to me what time frame they were.

Q So you don't know the reason for the withdrawals, is that correct?

A No. I have no idea what the reason would be.

Q He never mentioned a reason to you?

A No.

Q Mr. Merrill, were you ever reimbursed directly or indirectly by Chicago Milwaukee Corporation, by the Railroad, or by any of the subsidiaries of either one of those for any contribution you made to the Fund?

A Reimbursed for making the contribution?

Q Yes.

A I don't know that I have been reimbursed for ever making a contribution. My contribution is made without regard to my salary or reimbursement or anything of that kind.

Q To make sure I understand your answer, is it your present testimony that you have never been reimbursed either directly or indirectly for contributing to the Fund?

A To my knowledge my contribution is made out of my own earnings, my own salary. I do not get reimbursed by any means I am aware of.

Q By anyone?

SALARY RECORD

S. W. Amour

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$2,299.00	
1-1-66	$ 69.00	2,368.00	3% general increase
3-1-66	215.33	2,583.33	Promoted to Vice President-Labor Relations
1-1-67	130.00	2,713.33	5% general increase
1-1-68	82.00	2,795.33	3% general increase
10-1-68		-o-	Retired

SALARY RECORD

L. V. Anderson

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$2,233.33	
1- 1-66	$ 67.00	2,300.33	3% general increase
8- 1-66	166.67	2,467.00	Selective increase
1- 1-67	124.00	2,591.00	5% general increase
1- 1-68	78.00	2,669.00	3% general increase
7- 1-68	81.00	2,750.00	3% general increase
1- 1-69	375.00	3,125.00	Appointment to Asst. Vice President-Operation and General Manager
1- 1-70	188.00	3,313.00	6% general increase
1- 1-71	265.08	3,578.08	8% general increase to non-elected annual salaries of $18,000 or more
7- 1-72	215.00	3,793.08	Selective increase
2- 1-73	40.25	3,833.33	SAP increase
8- 1-73	58.00	3,891.33	SAP increase
7- 1-74	116.67	4,008.00	SAP increase
1- 1-75	84.00	4,092.00	5% general increase on first $20,000, maximum $84.00 per month
11- 1-75	300.00	4,392.00	SAP increase
5-11-76	349.67	4,741.67	Selective increase

SALARY RECORD

D. O. Burke

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$1,720.00	
1-1-66	$ 52.00	1,772.00	3% general increase
8-1-66	166.67	1,938.67	Selective increase
1-1-67	97.00	2,035.67	5% general increase
1-1-68	62.00	2,097.67	3% general increase
7-1-68	63.00	2,160.67	3% general increase
1-1-69	172.66	2,333.33	Selective increase
1-1-70	140.00	2,473.33	6% general increase
1-1-71	197.92	2,671.25	8% general increase to non-elected annual salaries of $18,000 or more
7-1-72	187.00	2,858.25	SAP increase
2-1-73	100.08	2,958.33	SAP increase
9-1-73	65.00	3,023.33	SAP increase
7-1-74	91.67	3,115.00	SAP increase
1-1-75	84.00	3,199.00	5% of first $20,000 of annual salary
11-1-75	250.00	3,449.00	SAP increase
6-1-76	342.67	3,791.67	SAP increase

SALARY RECORD
E. W. Chesterman

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,951.00	
9- 1-65	$132.33	2,083.33	Selective increase-added work
1- 1-66	63.00	2,146.33	3% general increase
3- 1-66	145.34	2,291.67	Promotion to Assistant Vice President-Rates and Divisions
1- 1-67	115.00	2,406.67	5% general increase
1- 1-68	73.00	2,479.67	3% general increase
7- 1-68	75.00	2,554.67	3% general increase
1- 1-69	64.00	2,618.67	2½% general increase
6- 1-69	166.66	2,785.33	Selective increase
1- 1-70	168.00	2,953.33	6% general increase
1- 1-71	236.34	3,189.67	8% general increase on non-elected annual salaries of $18,000 or more
7- 1-72	191.00	3,380.67	Selective increase
9- 1-72		-o-	Retired

SALARY RECORD

P. L. Cowling

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$ 653.00	
1- 1-66	$ 22.00	675.00	3% general increase, $22.00 minimum
1- 1-67	33.75	708.75	5% general increase
1- 1-68	64.25	773.00	Selective increase of $41.25 plus 3% general increase
7- 1-68	24.00	797.00	3% general increase
1- 1-69	20.00	817.00	2½% general increase
8-11-69		-o-	Resigned
1- 1-71		2,000.00	New position-Executive Assistant, Office of President
1- 1-71	160.00	2,160.00	8% general increase on non-elected annual salaries of $18,000 or more
7- 1-72	64.75	2,224.75	SAP increase
2- 1-73	50.00	2,274.75	SAP increase
1-17-74	121.08	2,395.83	New position-Vice President, Executive Department
5-14-74	20.84	2,416.67	Selective increase, elected positions
11- 1-75		-o-	Transferred to MMTC payroll

SALARY RECORD

C. E. Crippen

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$3,476.00	
5-11-65	$ 274.00	3,750.00	Selective increase to elected officer
1- 1-66	113.00	3,863.00	3% general increase
5-10-66	220.33	4,083.33	Selective increase to elected officer
10-12-66	2,166.67	6,250.00	Promotion to President of the Company
1- 1-67	313.00	6,563.00	5% general increase
1- 1-68	197.00	6,760.00	3% general increase
7- 1-68	203.00	6,963.00	3% general increase
1- 1-69	175.00	7,138.00	2½% general increase
1- 1-70	429.00	7,567.00	6% general increase
2-25-70	1,599.67	9,166.67	Selective increase to elected officer
1- 1-73		-o-	Retired

SALARY RECORD
P. J. Cullen

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,951.00	
9- 1-65	$132.33	2,083.33	Selective increase-Merger Committee work
1- 1-66	63.00	2,146.33	3% general increase
3- 1-66	145.34	2,291.67	Promotion to Asst. Vice President-Special Duties
1- 1-67	115.00	2,406.67	5% general increase
1- 1-68	73.00	2,479.67	3% general increase
7- 1-68	75.00	2,554.67	3% general increase
1- 1-69	64.00	2,618.67	2½% general increase
6- 1-69	166.66	2,785.33	Selective increase
1- 1-70	168.00	2,953.33	6% general increase
1- 1-71	236.34	3,189.67	8% general increase on non-elected annual salaries of $18,000 or more
7- 1-72	191.00	3,380.67	Selective increase
1- 1-73	101.00	3,481.67	SAP increase
8- 1-73	79.00	3,560.67	Promotion to Vice President-Special Traffic Studies
6- 1-74		-o-	Retired

SALARY RECORD

L. H. Dugan

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$2,932.00	
1-1-66	$ 88.00	3,020.00	3% general increase
1-1-67	151.00	3,171.00	5% general increase
1-1-68	96.00	3,267.00	3% general increase
7-9-68		-o-	Deceased

SALARY RECORD
V. E. Glosup

Date	Amount Increase	Amount Monthly Rate	Remarks
1 - 1-65		$2,345.00	
1- 1-66	$488.00	2,833.00	Selective increase of $405.00 per month plus 3% general increase
1- 1-67		-o-	Retired

SALARY RECORD

A. W. Hallenberg

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$1,510.00	
1-1-66	$ 46.00	1,556.00	3% general increase
8-1-66	110.67	1,666.67	Selective increase
1-1-67	84.00	1,750.67	5% general increase
1-1-68	53.00	1,803.67	3% general increase
7-1-68	55.00	1,858.67	3% general increase
1-1-69	47.00	1,905.67	2½% general increase
1-1-70	115.00	2,020.67	6% general increase
1-1-71	161.66	2,182.33	8% general increase to non-elected annual salaries of $18,000 or more
8-1-71	175.00	2,357.33	8% general increase to non-elected annual salaries under $30,000
7-1-72	118.00	2,475.33	SAP increase
1-1-73	74.25	2,549.58	SAP increase
8-1-73	57.00	2,606.58	SAP increase
6-1-74	79.00	2,685.58	SAP increase
1-1-75	84.00	2,769.58	5% of first $20,000 of annual salary
11-1-75	200.42	2,970.00	SAP increase
6-1-76	213.33	3,183.33	SAP increase

SALARY RECORD

H. C. Johnson

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$1,686.00	
6-1-65		-o-	Retired

SALARY RECORD

R. F. Kratochwill

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$2,255.00	
1- 1-66	$ 68.00	2,323.00	3% general increase
9- 1-66	127.00	2,450.00	Selective increase
10-12-66	500.00	2,950.00	Promotion to Vice President - Finance and Accounting
1- 1-67	148.00	3,098.00	5% general increase
1- 1-68	93.00	3,191.00	3% general increase
7- 1-68	96.00	3,287.00	3% general increase
1- 1-69	83.00	3,370.00	2½% general increase
5-13-69	171.67	3,541.67	Selective increase
1- 1-70	213.00	3,754.67	6% general increase
7- 1-72	187.75	3,942.42	Selective increase
2- 1-73	75.00	4,017.42	SAP increase
10- 1-73	136.75	4,154.17	SAP increase
5-14-74	220.83	4,375.00	Selective increase
1- 1-75	333.33	4,708.33	Selective increase
5-11-76	375.00	5,083.33	Selective increase

SALARY RECORD
W. W. Kremer

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$3,913.00	
5-11-65	$ 87.00	4,000.00	Selective increase
1- 1-66	120.00	4,120.00	3% general increase
1- 1-67	206.00	4,326.00	5% general increase
6- 1-67		-o-	Retired

SALARY RECORD

G. H. Kronberg

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,764.00	
1- 1-66	$ 53.00	1,817.00	3% general increase
3- 1-66	933.00	2,750.00	Promotion to Vice President-Sales and Service
1- 1-67	138.00	2,888.00	5% general increase
1- 1-68	153.67	3,041.67	Selective increase to elected officer
1- 1-68	92.00	3,133.67	3% general increase
7- 1-68	95.00	3,228.67	3% general increase
1- 1-69	81.00	3,309.67	2½% general increase
5-13-69	173.66	3,483.33	Appointment to Vice President-Traffic
1- 1-70	209.00	3,692.33	6% general increase
7- 1-72	184.59	3,876.92	Selective increase to elected officer
2- 1-73	75.00	3,951.92	SAP increase
8- 1-73	214.75	4,166.67	SAP increase
5-14-74	250.00	4,416.67	Selective increase to elected officer
11- 1-75	333.33	4,750.00	Selective increase to elected officer
5-11-76	375.00	5,125.00	Selective increase to elected officer

SALARY RECORD

C. T. Lannon

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$1,636.00	
1-1-66	$50.00	1,686.00	3% general increase
1-1-67	85.00	1,771.00	5% general increase
1-1-68	54.00	1,825.00	3% general increase
6-1-68		-o-	Retired

SALARY RECORD

F. G. McGinn

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$3,913.00	
5-11-65	$ 87.00	4,000.00	Selective increase
1- 1-66	120.00	4,120.00	3% general increase
5-10-66	213.33	4,333.33	Selective increase
10-12-66	416.67	4,750.00	Selective increase
1- 1-67	238.00	4,988.00	5% general increase
1- 1-68	150.00	5,138.00	3% general increase
7- 1-68	155.00	5,293.00	3% general increase
1- 1-69	133.00	5,426.00	2½% general increase
1- 1-70	326.00	5,752.00	6% general increase
7- 1-72	172.58	5,924.58	Selective increase
2- 1-73	75.00	5,999.58	SAP increase
5- 8-73	83.75	6,083.33	Selective increase
5-14-74	250.00	6,333.33	Selective increase
11- 1-75	333.34	6,666.67	Selective increase
5- 1-76		-o-	Retired

SALARY RECORD

H. H. Melzer

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$1,809.00	
1-1-66	$ 55.00	1,864.00	3% general increase
1-1-67	94.00	1,958.00	5% general increase
1-1-68	59.00	2,017.00	3% general increase
7-1-68	61.00	2,078.00	3% general increase
1-1-69	52.00	2,130.00	2½% general increase
1-1-70	128.00	2,258.00	6% general increase
1-1-71	180.67	2,438.67	8% general increase on non-elected annual salaries of $18,000 or more
8-1-71	196.00	2,634.67	8% general increase on non-elected annual salaries under $30,000
7-1-72	79.00	2,713.67	Selective increase
2-1-73	50.00	2,763.67	SAP increase
8-1-73	28.00	2,791.67	SAP increase
6-1-74	116.66	2,908.33	SAP increase
1-1-75	84.00	2,992.33	5% general increase on first $20,000, maximum $84.00 per month
11-1-75	149.34	3,141.67	Selective increase
6-1-76	191.66	3,333.33	Selective increase

SALARY RECORD

R. K. Merrill

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$2,255.00	
5-11-65	$120.00	2,375.00	Selective increase
1- 1-66	72.00	2,447.00	3% general increase
5-10-66	386.33	2,833.33	Selective increase
10-12-66	416.67	3,250.00	Selective increase
1- 1-67	163.00	3,413.00	5% general increase
1- 1-68	103.00	3,516.00	3% general increase
7- 1-68	106.00	3,622.00	3% general increase
1- 1-69	91.00	3,713.00	2½% general increase
1- 1-70	223.00	3,936.00	6% general increase
11- 1-70	397.33	4,333.33	Promotion to Vice President-Law
7- 1-72	169.00	4,502.33	Selective increase
2- 1-73	75.00	4,577.33	SAP increase
8- 1-73	89.34	4,666.67	SAP increase
5-14-74	250.00	4,916.67	Selective increase
11- 1-75	375.00	5,291.67	Selective increase
5-11-76	416.66	5,708.33	Selective increase

SALARY RECORD

W. E. Ross

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,575.00	Includes selective increase to adjust inequities, effective this date
1- 1-66	$ 48.00	1,623.00	3% general increase
8- 1-66	77.00	1,700.00	Selective increase
10-12-66	416.67	2,116.67	Promotion to Comptroller
1- 1-67	106.00	2,222.67	5% general increase
1- 1-68	67.00	2,289.67	3% general increase
7- 1-68	69.00	2,358.67	3% general increase
11- 1-68	150.33	2,509.00	Selective increase
1- 1-69	63.00	2,572.00	2½% general increase
1- 1-70	155.00	2,727.00	6% general increase
6- 1-71		-o-	Retired

SALARY RECORD

C. L. Schiffer

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$ 988.00	
1- 1-66	$ 30.00	1,018.00	3% general increase
1- 1-67	51.00	1,069.00	5% general increase
10- 1-67	97.67	1,166.67	Selective increase to elected officer
1- 1-68	35.00	1,201.67	3% general increase
5-14-68	465.00	1,666.67	New position: Treasurer
7- 1-68	50.00	1,716.67	3% general increase
1- 1-69	43.00	1,759.67	2½% general increase
1- 1-70	106.00	1,865.67	6% general increase
1- 1-71	149.33	2,015.00	Selective increase to elected officer
7- 1-72	100.00	2,115.00	Selective increase to elected officer
1- 1-73	55.00	2,170.00	SAP increase
7- 1-73	55.00	2,225.00	SAP increase
5-14-74	116.67	2,341.67	Selective increase to elected officer
11- 1-75	183.33	2,525.00	Selective increase to elected officer
5-11-76	200.00	2,725.00	Selective increase to elected officer

SALARY RECORD

E. J. Stoll

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,715.00	
1- 1-66	$ 52.00	1,767.00	3% general increase
3- 1-66	316.33	2,083.33	Promotion to Vice President-Real Estate and Industrial Department
1- 1-67	105.00	2,188.33	5% general increase
1- 1-68	66.00	2,254.33	3% general increase
7- 1-68	68.00	2,322.33	3% general increase
1- 1-69	59.00	2,381.33	2½% general increase
5-13-69	168.67	2,550.00	Selective increase to elected officer
1- 1-70	153.00	2,703.00	6% general increase
5-11-71	213.67	2,916.67	Selective increase to elected officer
7- 1-72	145.83	3,062.50	Selective increase to elected officer
2- 1-73	75.00	3,137.50	SAP increase
7- 1-73	79.17	3,216.67	SAP increase
5-14-74	179.16	3,395.83	Selective increase to elected officer
11- 1-75	295.84	3,691.67	Selective increase to elected officer
5-11-76	291.66	3,983.33	Selective increase to elected officer

SALARY RECORD
W. D. Sunter

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$2,272.00	
9- 1-65	$ 83.33	2,355.33	Selective increase
1- 1-66	71.00	2,426.33	3% general increase
3- 1-66	323.67	2,750.00	Promotion to Vice President-Rates and Divisions
1- 1-67	138.00	2,888.00	5% general increase
1- 1-68	245.67	3,133.67	Selective increase plus 3% general increase
7- 1-68	95.00	3,228.67	3% general increase
1- 1-69	81.00	3,309.67	2½% general increase
10- 1-69		-o-	Retired

SALARY RECORD

J. T. Taussig

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,400.00	New position, Secretary of the Company, effective this date
11- 1-65	$100.00	1,500.00	Selective increase
1- 1-66	45.00	1,545.00	3% general increase
1- 1-67	121.67	1,666.67	Selective increase in lieu of 5% general increase
1- 1-68	50.00	1,716.67	3% general increase
7- 1-68	52.00	1,768.67	3% general increase
1- 1-69	45.00	1,813.67	2½% general increase
1- 1-70	109.00	1,922.67	6% general increase
1- 1-71	153.83	2,076.50	Selective increase to elected officer
5-11-71	6.83	2,083.33	Selective increase to elected officer
7- 1-72	62.50	2,145.83	Selective increase to elected officer
2- 1-73	30.00	2,175.83	SAP increase
8- 1-73	24.17	2,200.00	SAP increase
5-14-74	91.67	2,291.67	Selective increase to elected officer
11- 1-75	183.33	2,475.00	Selective increase to elected officer
5-11-76	191.67	2,666.67	Selective increase to elected officer

SALARY RECORD

F. A. Upton

Date	Amount Increase	Amount Monthly Rate	Remarks
1-1-65		$2,066.67	
1-1-66	$ 62.00	2,128.67	3% general increase
8-1-66	167.50	2,296.17	Selective increase
1-1-67	115.00	2,411.17	5% general increase
1-1-68	73.00	2,484.17	3% general increase
7-1-68	75.00	2,559.17	3% general increase
1-1-69	190.83	2,750.00	Selective increase
1-1-70	165.00	2,915.00	6% general increase
1-1-71	233.25	3,148.25	8% general increase to non-elected annual salaries of $18,000 or more
9-1-71	(416.67)	2,731.58	Selective decrease
7-1-72	163.00	2,894.58	Selective increase
1-1-73	86.83	2,981.41	SAP increase
7-1-73	560.26	3,541.67	Promotion to Asst. Vice President-Mechanical
7-1-74	177.33	3,719.00	SAP increase
1-1-75	84.00	3,803.00	5% general increase on first $20,000, maximum $84.00 per month
11-1-75	300.00	4,103.00	Selective increase
6-1-76	305.33	4,408.33	Selective increase

SALARY RECORD
G. L. Wood

Date	Amount Increase	Amount Monthly Rate	Remarks
1- 1-65		$1,315.00	
1- 1-66	$ 40.00	1,355.00	3% general increase
1- 1-67	68.00	1,423.00	5% general increase
1- 1-68	43.00	1,466.00	3% general increase
7- 1-68	44.00	1,510.00	3% general increase
1- 1-69	38.00	1,548.00	2½% general increase
1- 1-70	93.00	1,641.00	6% general increase
1- 1-71	131.33	1,772.33	8% general increase on non-elected annual salaries of $18,000 or more
8- 1-71	142.00	1,914.33	8% general increase on non-elected annual salaries under $30,000
7- 1-72	96.00	2,010.33	Selective increase
1- 1-73	60.33	2,070.66	SAP increase
8- 1-73	43.01	2,113.67	SAP increase
6- 1-74	107.00	2,220.67	SAP increase
1- 1-75	84.00	2,304.67	5% general increase on first $20,000, maximum $84.00 per month
3- 1-76	116.33	2,421.00	SAP increase
6- 1-76	79.00	2,500.00	Selective increase

MILWAUKEE ROAD OFFICERS TRUST ACCOUNT

Monthly Payroll Deductions January 1, 1965 to Date

R. K. Merrill	$15.00 (1/65 thru 1/71)
"	25.00 (2/71 thru 5/76)
R. F. Kratochwill	15.00 (1/65 thru 5/76)
D. O. Burke	15.00 (1/65 thru 5/76)
A. W. Hallenberg	15.00 (1/65 thru 5/76)
L. H. Dugan	15.00 (1/65 thru 6/68)
P. L. Cowling	15.00 (1/65 thru 7/69)
J. T. Taussig	15.00 (1/65 thru 9/70)
"	20.00 (10/70 thru 8/74)
"	15.00 (9/74 thru 5/76)
C. T. Lannon	15.00 (1/65 thru 5/68)
C. L. Schiffer	15.00 (1/65 thru 9/70)
"	20.00 (10/70 thru 2/74)
"	10.00 (3/74 thru 5/76)
E. J. Stoll	15.00 (1/65 thru 9/70)
"	25.00 (10/70 thru 5/76)
G. H. Kronberg	15.00 (1/65 thru 9/70)
"	25.00 (10/70 thru 5/76)
C. E. Crippen	15.00 (1/65 thru 1/71)
"	25.00 (2/71 to date)
W. E. Ross	15.00 (1/65 thru 5/71)
H. C. Johnson	15.00 (1/65 thru 5/65)
F. G. McGinn	15.00 (1/65 thru 9/70)
"	25.00 (10/70 thru 1/76)
L. V. Anderson	15.00 (1/65 thru 9/70)
"	20.00 (10/70 thru 5/76)
S. W. Amour	15.00 (1/65 thru 9/68)
F. A. Upton	15.00 (1/65 thru 5/76)
G. L. Wood	15.00 (1/65 thru 5/76)
V. E. Glosup	15.00 (1/65 thru 12/66)
H. H. Melzer	15.00 (1/65 thru 9/70)
"	20.00 (10/70 thru 5/76)
W. W. Kremer	25.00 (1/65 thru 5/67)
W. D. Sunter	25.00 (1/65 thru 9/69)
E. W. Chesterman	25.00 (1/65 thru 8/72)
P. J. Cullen	15.00 (1/65 thru 9/70)
"	20.00 (10/70 thru 5/74)

SECRETARY'S CERTIFICATE

I, J. T. Taussig do hereby certify that I am the elected Secretary of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (the "Company") and do further certify that I have been the Secretary of the said Company since January 1, 1965.

I further certify that:

1. I was assigned the responsibility of computing supplemental pensions payable under the Pension Plan of the Company in effect during the period January 1, 1965 through December 31, 1975, for the following officers of the Company:

   H. C. Johnson
   V. E. Glosup
   W. W. Kremer
   C. T. Lannon
   L. H. Dugan
   S. W. Amour
   W. D. Sunter
   W. E. Ross
   E. W. Chesterman
   P. J. Cullen

2. The Plan provided that the pension allowances be computed on the basis of the average monthly compensation received during the 60 months of compensated service immediately preceding retirement.

3. In determining the amount of compensation of each of the foregoing officers, as well as all other officers retiring under said Plan, I included in their monthly compensation all earnings without making payroll deductions for any purpose, including contributions, if any, to the Milwaukee Road Officers Trust Fund.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, at my office in the City of Chicago, County of Cook and State of Illinois, this 22nd day of December, A. D., 1976.

J. T. Taussig
Secretary
CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY

Subscribed and Sworn to
before me this 22nd day
of December, 1976.

Jane E. Kot
NOTARY PUBLIC

A. D. 200 Rev.

General Officers Division

Deduction on Officers Department Pay Roll No. 800

Month of June 19 76 Second Half

In Favor of Milwaukee Road Officers Trust Account ( ) (State Reason for Deduction)

Ven. Code 114

Address Chicago, Illinois

Deduction Order Number	Period	Deducted from Salary of NAME	Employes S. S. A. Number or Working Number			Amount of Deduction	
		C. D. Rogers, Jr.	258	20	8661	$ 10	00
		D. A. Keller	347	09	5500	15	00
		W. J. Quinn	701	16	[illegible]	25	00
		F. H. Miller	472	12	7310	15	00
		D. C. Young	355	30	3677	10	00
		G. A. Kellow	707	10	7088	25	00
		L. W. Harrington	397	18	5980	22	00
		J. J. Drinka	710	05	6856	15	00
		G. W. Torpin	504	12	5453	20	00
		R. E. Beck	504	01	1436	10	00
					Total $	167	00

Approved:

Comptroller

Title

Correct

Payroll Maker or Deduction Clerk

EXCERPT OF

TESTIMONY OF

CRIPPEN

p. 65

1 a dollar sum, an equalizing adjustment.

2 What I am trying to understand is in December of

3 1964, was the $25 a month extra, certain employees who

4 were going to receive, covered in that equalizing adjust-

5 ment, if you know?

6 A I don't know, I don't know.

7 Q Well, to your knowledge, did Mr. Crowley on his

8 own authority or on his own implement the $25 additional

9 salary increase to certain employees for the purpose of

10 the fund?

11 A Well, frankly I don't recall, I don't recall see-

12 ing anything on it, and I don't recall just how it was

13 handled.

14 Q Well, did you, Mr. Crippen, receive any salary

15 increase effective January of 1965 from the Railroad?

16 A No.

17 Q Well, let me ask you this, sir, did you parti-

18 cipate in the trust fund yourself?

19 A Yes.

20 Q And what was your contribution?

21 A $25 a month.

22 Q Didyou receive, personally, an extra $25 a month

23 for this purpose from the Railroad?

24 A Well, I don't recall specifically, but I assume

25 I did.

EXCERPT OF

TESTIMONY OF

TAUSSIG

pp. 18, 19, and 20

1 Exhibit 61 authorization?

2 THE WITNESS: Yes. My memory is refreshed to that

3 extent and shall I volunteer the information?

4 MR. MONAHAN: Why don't you let Mr. Butler prod

5 this for awhile.

6 BY MR. BUTLER:

7 Q Do you recall when that meeting was?

8 A The first meeting?

9 Q The second meeting.

10 A The second meeting, probably within a week, within

11 the week after January 12, 1965.

12 Q Which is the date on which --

13 A -- on 61, yes.

14 Q Signed withholding?

15 A Uh-huh.

16 Q And do you recall where that meeting took place?

17 A In his office.

18 Q Was anybody else present besides yourself?

19 A No, sir.

20 Q You and Mr. Schieive?

21 A We two.

22 Q And did he call you into his office?

23 A No.

24 Q How did the meeting come about?

25 A This may be a slight discrepancy, but in the first

1 instance after I received and signed the original in dupli-
2 cate of Item 61, then I sent it back, took the copy back.
3 I did not mail it in this instance back or send it through
4 the company mail, I took it back and gave it to him.
5 Unlike the one, the second one which I believe I
6 sent back to Reedy, the duplicate copy, but on this one, I
7 believe, I took it back and gave it to him after I filled it
8 out and inserted the amount thereof, $15.
9 Q At the time you had the second meeting, is that
10 when you delivered the withholding back to Mr. Schieive?
11 A Yes.
12 Q So it was approximately a week later?
13 A A week or so later.
14 Q And do you recall what you discussed with Mr.
15 Schieive at the time?
16 A He volunteered that though I had donated $15,
17 that there would be a salary increase that might, in this
18 particular instance, with this amount of money might be $25
19 a month. Is that correct, Counsel?
20 MR. MONAHAN: That is what you recall, Mr. Taussig?
21 THE WITNESS: Uh-huh. Now, it would appear,
22 perhaps, that the donation, then, might be compensated and
23 any income tax after that would probably be covered in the
24 total donation of $25.
25 MR. HEGAN: Total donation or total salary?

1 THE WITNESS: Total salary donation of only $15.

2 BY MR. BUTLER:

3 Q The difference of $10 in to cover the tax?

4 A Yes.

5 BY MR. HEGAN:

6 Q Is that what Mr. Schieive told you?

7 A Yes. My first understanding was the $15, which

8 was just a straight donation, and I couldn't really know

9 until after the second time around that there would be

10 this pay increase.

11 Q In other words, if I understand you correctly,

12 sir, you had already agreed to give $15 a month voluntarily

13 without any compensation to be given to you for it?

14 A Completely, because, as you recall in my earlier

15 testimony, I was eager enough and wanted to be on the list

16 and $15 didn't seem to bother me too much, then.

17 Q And later Mr. Schieive told you you would be

18 getting this $25 a month?

19 A Yes.

20 Q With the understanding for the statement by him

21 that this was to cover that donation?

22 A I don't remember whether he said it was to cover

23 that donation, but I suppose, looking back, I must have

24 heard that or I wouldn't have taken just a straight $25

25 without having an explanation of what it was for.

EXCERPT OF

TESTIMONY OF

KRATOCHWILL

pp. 12, 16 - 32

1 Q To your knowledge in 1965, was there any correla-
2 tion between the fact that you had made a contribution and
3 the adjustment?
4 A I understood that there was a relationship, yes.
5 Q And from whom did you have this understanding?
6 A I drew this conclusion more or less on my own.
7 I didn't have any other basis for it.
8 Q What prompted you to draw this conclusion?
9 A The fact that the two things occurred at the same
10 time.
11 Q You mean the fact that you were receiving $25 a
12 month over and above the seven percent pay raise coming at
13 about the same time you were contributing to the fund?
14 A Yes.
15 Q It is your testimony then this was just an assump-
16 tion on your part, nobody told you this?
17 A That is correct, to the best of my recollecation
18 at this point.
19 Q Has your salary ever at any time since 1965 de-
20 creased by the -
21 A No.
22 MR. HEGAN: I think Mr. Butler has some questions
23 about the dividend.
24 BY MR. BUTLER:
25 Q Mr. Kratochwill, are you a Director of the

1 Q In Commission's Exhibit 3 is numbered similar
2 payrolls, the exhibit just identified as the payroll. At
3 this time I would like to show you what has been marked as
4 3(m) and ask you if you can identify that part of Commission's
5 Group Exhibit 3, please?
6 A These appear to be listings of payroll deductions
7 to the Officers' Trust Account from Payrolls 1 and 2, which
8 are the officer portions of the open rolls, as I described
9 earlier, for various periods in 1973, 1974, and 1975.
10 Q Do they reflect Commission's Exhibit 3(m) is a
11 series ofcomputer printouts, is that correct?
12 A Yes.
13 Q And are you familiar with the codes on the top
14 of Commission's Exhibit 3(m)?
15 A I recognize the Vendor Code 114 as being one that
16 identifies this particular deduction category.
17 Q 114 denotes the deduction for campaign contribu-
18 tions?
19 A The deduction for the Milwaukee Road Officers'
20 Trust Account.
21 Q This particular Fund, is that correct?
22 A Yes.
23 Q Do you know also the totals appearing at the
24 bottom of the individual computer printout sheets are totals
25 or exactly what is the significance of the last bottom-line

Memorandum
nds quote
here.

numbers?

A I have no idea.

Q Are these, that is, Commission's Exhibit 3(m), typical kinds of records maintained in your office?

A In my department.

Q In your department?

A Yes, sir.

Q Is that the same case for Commission's Exhibit 3(a) which you previously identified as an office payroll?

A What is it again?

Q Is that also typical of the records you maintain in your department?

MR. HAYES: You have to be more specific about the point in time.

BY MR. BUTLER:

Q At the present?

A Well, this is a record. I don't know what you mean by "typical".

Q Are the officers' deductions which Commission's Exhibit 3(a) indicates for a certain group of officers, is that Commission exhibit typical of the records themselves? Are they of that form?

MR. HAYES: For this time period?

MR. BUTLER: Yes, for this time period. Is that an example of the records you have presently relating to,

first, Payroll 800?

THE WITNESS: Well, again this is one kind of record that we have, yes.

BY MR. HEGAN:

Q What we are trying to get at here, Mr. Kratochwill, you have testified you have a file of papers in your office relating to the Trust Fund. We are just trying to establish generally what that file consists of. That was the purpose of Mr. Butler's question. Here is a document. Is that typical of some of the files you maintain, 3(a)?

Off the record.

(Discussion off the record.)

MR. HEGAN: Back on the record.

MR. HAYES: There is a file here with a brown cover on it, and for the sake of the record, and in the light of the Order of Investigation, which as we understand it, has to do with a period commencing in 1968, we make formal objection to the tendar or the propriety of any interrogation as to records prior to 1968.

MR. HEGAN: Well, I will state for the record, of course, as we stated earlier in the proceedings, this is strictly voluntary. There has been no subpoena served upon Mr. Kratochwill for his appearance here, or for the production of any records, so you certainly are free to withhold production of any document we requested. That leaves us, of course,

1 with the option of issueing a supboena for these
2 documents.
3 MR. HAYES: I didn't wish to put that on the ground
4 of subpoena or not. I am solely on the ground of the issue
5 of the scope of the Order, and I think that having stated our
6 position, I would suggest that this witness in fact tender the
7 file.
8 MR. HEGAN: Let me make sure I understand.
9 MR. MONAHAN: Tender the whole file or the file
10 for the period covered by the Order?
11 MR. HAYES: Just give us two minutes.
12 MR. HEGAN: Off the record.
13 (Discussion off the record.)
14 MR. HEGAN: Back on the record.
15 MR. HAYES: I will restate the prior objection, but
16 suggest that the witness tender the file.
17 THE WITNESS: This is the file which I referred to
18 in my earlier response.
19 MR. HEGAN: Let the record show that Mr. Kratochwill
20 has tenderedto us a file of approximately a half-inch thick,
21 bound with two brown covers, one in front and one in back.
22 The document consists of 39 pages.
23 MR. MONAHAN: As I was counting, exclusive of the
24 covers.
25 MR. HEGAN: Exclusive of the covers. I accept the

amendment.

Off the record.

(Discussion off the record.)

(Commission's Exhibit No. 13 was marked for identification.)

BY MR. HEGAN:

Q Mr. Kratochwill, I direct your attention to what the reporter has marked as Commission's Exhibit No. 13, and could you just generally identify this for the record?

A This is a file of withholding authorizations for payroll deductions to the Officers' Trust Account from Payroll 800, along with certain related correspondence and other papers.

Q Do the payroll deduction forms represent current deductions, or is this document historical as well, containing authorizations from prior employees who no longer may be contributing to the Fund?

A These are the current --

MR. HAYES: Just a minute, Mr. Witness. I think I will object to the question and ask you to ask a specific question about different persons. I don't know at the moment what time frame you are involved in with the authorizations.

MR. HEGAN: I can take every one of them. I was trying to save a little time. I was just trying to find out if some of them may have dropped out or died. Is the question

clear?

MR. HAYES: Is the question clear, Mr. Witness?

THE WITNESS: Yes, it is. It seems from reviewing the files it has some authorizations in for persons who are no longer on the rolls, and it also has current authorizations in it. I don't make any representations as to its completeness in either respect.

BY MR. HEGAN:

Q So it is possible that there are additional withholding forms that were executed by contributors to the Trust that would not be contained in this Exhibit 13?

A It is possible.

MR. BUTLER: Off the record.

(Discussion off the record.)

MR. HEGAN: On the record.

Does Counsel wish to make a statement?

MR. HAYES: Yes. I suggest the Examiners consider Exhibit 13 in conjunction with a blue book which is on the table.

MR. HEGAN: I will be happy to consider something if I knew what we were talking about. There is in front of Mr. Hayes, for the record, a blue, three-ring notebook which we have not been tendered yet. Is Counsel tendering it at this time?

MR. HAYES: I am tendering it.

(Discussion off the record.)

MR. HEGAN: On the record.

You want to mark the book?

MR. HAYES: It is up to you.

MR. HEGAN: And substitute a copy of it?

MR. HAYES: The entire book?

MR. HEGAN: Well,let me ask -- let's put a mark on it.

Will the reporter please mark this as Commission's Exhibit 14 for identification?

(Commission's Exhibit No. 14 was marked for identification.)

BY MR. HEGAN:

Q Mr. Kratochwill, I have had the reporter mark as Commission's Exhibit 14 the three-ring blue-covered binder tendered a moment ago by Mr. Hayes. Can you identify, sir, what this exhibit is?

MR. HAYES: Let me make an objection for the record. There seem to be several hundred pages in that exhibit. It may be hard to characterize the whole thing. You mean generally characterize, right?

MR. HEGAN: Yes.

THE WITNESS: This is one of several similar volumes kept in my office containing papers, letters, and similar documents supporting the salary rates for a Payroll 800.

Memorandum begins here

BY MR. HEGAN:

Q In other words, does the document contain among other things appointments, and notifications or promotions of employees and their changing salaries, and so forth?

A Yes.

Q How does this relate to what has been marked as Exhibit 13?

A This particular book?

Q Exhibit 14.

A Exhibit 14 contains the documents relating to the period in which the Officers' Trust Fund had its inception.

Q I haven't had occasion to completely examine Exhibit 14, but I did note in a quick runthrough, Mr, Kratochwill, there seems to be increases of salaries of various employees on various occasions. To your knowledge, were any of these increases in salary again to employees for the purpose of allowing them to make contributions to the Employees' Turst Fund?

Memorandum ends quote here.

A It appears that in this one instance at the inception of the Officer Trust Account that certain salary adjustments were made in respect of contributions to the Officers' Trust Account.

Q You want to be a little plainer with that?

MR. HAYES: Would you read the answer back, please?

(Answer read.)

BY MR. HEGAN:

Q It is the "in respect" part of your answer I don't understand, Mr. Kratochwill. I will be plainer with my question.

Were employees at the time of the formation of the Milwaukee Road Trust Fund given salary raises for the purpose of allowing them to contribute to the Trust Fund?

A I don't know.

MR. HAYES: I think I would like to, I guess, object to the question, perhaps too late, and move to strike the answer on the ground the question calls for a conclusion. I would suggest a question that would ask the witness as to which papers, if any, in that blue book bear on the topic. Let the paper speak for itself.

MR. HEGAN: Off the record.

(Discussion off the record.)

MR. HEGAN: Back on the record.

MR. MONAHAN: For thepurpose of this book, they are organized with documents relating to the same subject matter numbered in the upper right-hand corner. And the document to which Mr. Kratochwill had reference are numbered 1749, 1749 and a-half in the upper right-hand corner.

MR. HEGAN: Of Exhibit 14?

MR. MONAHAN: Of Exhibit 14.

MR. HEGAN: Off the record.

(Discussion off the record.)

MR. HEGAN: Back on the record.

I thank Counsel for pointing out the appropriate pages which we have been looking at here.

BY MR. HEGAN:

Q In that connection, Mr. Kratochwill, I would direct your attention to Page 1749 and a-half, which is contained in Commission's Exhibit 14, and ask you first of all, sir --

MR. MONAHAN: Excuse me. I think you are going to find there are several pages with that number on it in a series, so maybe a little more description just for the record?

BY MR. HEGAN:

Q The one page I was referring to is the first bearing that designation -- I am sorry -- 1749 and a-half, and it is a green sheet of accounting paper approximately 13 inches long, captioned "Chicago, Milwaukee, St. Paul & Pacific Railroad." First of all, Mr. Kratochwill, can you identify the handwriting contained on that accounting work sheet?

A Yes.

Q Whose handwriting is it?

A This was done by an accountant in my office who was in my office at that time, who has since retired. His name is H.W. Wolf, W-o-l-f.

Q Did Mr. Wolf prepare this work sheet under your

1 supervision and direction?

2 A No.

3 Q Did he prepare it at your request?

4 A No.

5 Q When was the first time you have seen that sheet of

6 paper?

7 A Sometime last week. I can't remember the exact

8 day.

9 Q Have you discussed that sheet of paper with anyone

10 apart from your attorneys since you have seen it?

11 A Only persons in my own office.

12 MR. HAYES: I think the record should show that we

13 discussed it with Mr. Quinn yesterday. This was discovered

14 after his testimony on the same point, and it came to our

15 knowledge yesterday, and we did discuss it with him.

16 THE WITNESS: I did not participate in a discuss-

17 ion. My reference was to the discussions I have had about

18 it, and these have been with attorneys and my own Comptroller.

19 BY MR. HEGAN:

20 Q I am not talking about your discussions with your

21 attorneys, but your Comptroller. What discussions did you

22 have with your Comptroller about this sheet?

23 A Simply a conversation as to the content of the

24 sheet.

25 Q Who is the Comptroller you discussed it with?

1 A F. H. Miller.

2 Q Is that Mr. Fritz Miller?

3 A Yes.

4 Q What did Mr. Miller say to you about this sheet?

5 A Simply presented it to me.

6 Q Without comment?

7 A And explained to me or told me that this was a

8 sheet relating to the salary changes that occurred at the --

9 at or about the time of inception of the Officers' Trust

10 Account.

11 Q Did Mr. Miller say anything more about these salary

12 changes?

13 A I don't recall that he did.

14 Q Did he, for example, point out to you that it

15 appears that salary changes occurred to enable contributions

16 to be made to the Employees' Trust Fund?

17 MR. HAYES: Objection. The question is improper

18 as far as hearsay. It calls for a conclusion. I think you

19 can ask him what Mr. Miller said to him, but as to character-

20 izing or putting words in Mr. Miller's mouth when he is not

21 here is, it seems to me, improper.

22 MR. HEGAN: I was trying to refresh his recollection.

23 BY MR. HEGAN:

24 Q Do you have any other recollection, Mr. Kratochwill,

25 as to what Mr. Miller said to you when he gave you this sheet

1 of paper?

2 A Very little. As I say, he simply presented the

3 sheet to me and the information on the sheet is pretty

4 self-evident, I feel.

5 Q Why was he presenting this sheet to you?

6 A Because it relates to this present inquiry.

7 Q Had you asked Mr. Miller to search the files for

8 anything relating to the inquiry?

9 A No.

10 Q Why did he come to you with the sheet?

11 A I don't know.

12 Q Is Exhibit 14 kept in your office?

13 A Yes, it is.

14 MR. HAYES: I think the record should note that

15 Mr. Kratochwill's department is a rather large department

16 with many people, with an enormous floor space.

17 MR. HEGAN: I meant the office. He already testi-

18 fied before certain records were kept in his office as opposed

19 to his department. I used the word office.

20 MR. HAYES: Ask him what he means by office in this

21 case.

22 BY MR. HEGAN:

23 Q When you say something is kept in your office,

24 Mr. Kratochwill, what do you mean?

25 A I use the expression "my immediate office". That

is to say, the office area immediately surrounding where I have my desk and where I work.

Q As distinguished from the entire department?

A As distinguished from the entire department, which is scattered around the building in various places.

Q Going back to Exhibit 14, with that clarification --

A In my immediate office.

Q Under whose direction is this kept?

A Presently it is kept by Mr. Wolf's successor. His name is Mr. Hanratty. Initials D.G. Hanratty, H-a-n-r-a-t-t-y.

MR. HAYES: I think the record should show that the exhibit which Counsel has made reference to, 1749 and a-half, has to do with a circumstance apparently some ten years ago.

MR. HEGAN: Why don't we go off the record.

(Discussion off the record.)

MR. HEGAN: Back on the record, please.

BY MR. HEGAN:

Q Mr. Kratochwill, have you ever been told by anyone-- I am talking about from 1965 to the present-- that any salary increases were granted to employees of Milwaukee Railroad for the purpose of allowing them to make contributions to the Trust Fund we have been discussing?

A Not to my knowledge.

Q Have you ever been told that?

A Yes.

Q Are you a contributor to the Fund?

A Yes.

Q How long have you been a contributor?

A Since 1965.

Q Prior to your becoming a contributor did you receive an increase in salary?

A Prior to?

Q Just prior. Not two years before that, but, say, within six months prior to the formation of the Trust Fund did you receive an increase in salary?

MR. HAYES: May I ask to go off the record, please?

MR. HEGAN: Off the record.

(Discussion off the record.)

MR. HEGAN: Back on the record.

Would you please read back the last question before the objection? I believe there was an answer.

(Record read.)

MR. HEGAN: Strike the question and start over again.

BY MR. HEGAN:

Q Mr. Kratochwill, were you a contributor to the Trust Fund from its inception?

A To the best of my knowledge, yes.

Q Were you, to your knowledge, given any kind of

salary increase to enable you to contribute to the Fund?

MR. MONAHAN: Could you break the question down and ask him his knowledge at the time and perhaps a second question as to later periods?

MR. HEGAN: I understand what you are saying.

BY MR. HEGAN:

Q I am talking about your knowledge at the time, and I will be even more explicit. For example, did someone come to you and say, "Mr. Kratochwill, we are going to give you a raise, but we expect you to contribute X dollars to the Trust Fund"?

A I don't recall that anyone made such a statement to me.

Q What was your initial contribution on a monthly basis to the Fund?

A $15.00.

Q And how was this arrived at? Was this your idea or someone else's idea?

A I don't remember, to tell you the truth.

Q Has it always remained $15.00?

A Yes.

Q Are you still contributing?

A Yes.

Q I am not talking about what you may know now, in the last few days, but prior to this last few days' period

Memorandum begins quote here

of time, to your knowledge was any employee given any kind of salary increase or direct or indirect reimbursement for contributing to the Fund?

A Well, my knowledge in this area derives from this work sheet that we have been discussing here.

Q Which you saw in the last few days?

A Yes.

Q I am talking about your knowledge that existed prior to this work sheet coming to your attention.

A Well, at the time I was aware that there was some adjustment in the rating having a relationship to the contribution pledge.

MR. HEGAN: Could you read that back to me?

(Answer read.)

BY MR. HEGAN:

Q What do you mean, Mr. Kratochwill, there was some adjustment to the rating having a relationship to the contribution?

A I don't know how to explain it any more than that.

Q Well -- go ahead.

A I simply know that I signed the deduction authorization at that point, and at the same time, as evidenced by this work sheet, it appears that a $25.00 a month adjustment to the salary rate occurred.

Q You are talking about in 1965?

Interstate Commerce Commission
Washington, D.C. 20423

BUREAU OF INVESTIGATIONS AND ENFORCEMENT

March 3, 1978

William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: Violations of the Federal Election Campaign Act by the Chicago, Milwaukee, St. Paul and Pacific Railroad

Dear Mr. Oldaker:

Thank you for your February 16, 1978 letter to Director Shannon informing us that the Federal Election Commission has decided not to pursue its inquiry into violations of the Federal Election Campaign Act by the Milwaukee Road.

Very truly yours,

John H Moseman

John H. Moseman, Acting Chief
Section of Litigation

Interstate Commerce Commission
Washington, D.C. 20423

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William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

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FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

February 16, 1978

Peter M. Shannon, Jr., Esquire
Director, Bureau of Investigations
and Enforcement
Interstate Commerce Commission
Washington, D.C. 20423

Re: Your ER 3-76-403-T

Dear Mr. Shannon:

This matter, which involved alleged violations of the Federal Election Campaign Act by the Chicago, Milwaukee, Saint Paul and Pacific Railroad, was referred to the Commission by the Acting Director of the Bureau of Enforcement in a letter dated October 15, 1976. This will serve to report on the Commission's action with regard to those allegations.

Our investigation established that, beginning in January 1973, the Milwaukee Road violated the then-existing 18 U.S.C. § 610 by reimbursing twenty-five employees the expenses they incurred as a result of their participation in a political action committee. These payments were made to appear as part of the salaries of the affected employees. We concluded, however, that the pattern of illegal reimbursement ceased when, on February 1, 1973, the salaries of the last of the twenty-five employees still employed by the railroad were restructured pursuant to the Railroad's Salary Administration Policy of August 1, 1972.

On February 8, 1978, the Commission found no reason to take action against the respondent Railroad and voted to terminate its inquiry into the matter.

A copy of the Certification of the Commission's vote is enclosed.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 13, 1978

Lawrence J. Hayes, Esquire
Maun, Hazel, Green, Hayes,
Simon and Aretz
332 Hamm Building
Saint Paul, Minnesota 55102

Re: MUR 312 (76)

Dear Mr. Hayes:

This is to advise you that on February 8, 1978, the Commission voted to terminate its inquiry in the matter referenced above.

The Commission is of the opinion that payments made by the Chicago, Milwaukee, Saint Paul and Pacific Railroad to twenty-five of its employees were made as reimbursement for the costs of their membership in the Milwaukee Road Officers Trust Account, and that these payments were illegal under the then - existing statute, 18 U.S.C. §610. The Commission has determined, however, that the illegal payments ceased when, on February 1, 1973, the salaries of the last of the twenty-five Trust members still on active duty were restructured pursuant to the Salary Administration Policy of August 1, 1972.

In view of the fact that the Milwaukee Road, by its own actions, eliminated the illegal reimbursements five years ago, the Commission will not pursue this matter further.

A copy of the certification of the Commission's vote is enclosed.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

Lawrence J. Hayes, Esquire
Maun, Hazel, Green, Hayes,
Simon and Aretz
332 Hamm Building
Saint Paul, Minnesota 55102

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In view of the fact that the Milwaukee Road, by its own actions, eliminated the illegal reimbursements five years ago, the Commission will not pursue this matter further.

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Sincerely yours,

William C. Oldaker
General Counsel

VJC 2/9/78

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 312 (76)
Chicago, Milwaukee St. Paul	)	
and Pacific Railroad	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on February 8, 1978, the Commission determined by a vote of 5-0 to adopt the General Counsel's recommendation in the above-captioned matter to find no reason to take action against the respondent, terminate the inquiry in this matter, and send the draft letter attached to General Counsel's report dated February 3, 1978.

Voting for this determination were Commissioners Aikens, Harris, Springer, Staebler, and Thomson. Commission Tiernan was not present at the time of the vote.

Accordingly, the file in this matter has been closed.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

February 6, 1978

MEMORANDUM TO: Marge Emmons

FROM: Elissa T. Garr

SUBJECT: MUR 312 Team #2 Convery

Please have the attached General Counsel's Report on MUR 312 distributed to the Commission and placed on the Compliance Agenda for the Commission meeting of February 8, 1978.

Thank you.

7 8 0 4 1 0 0 3 1 7

BEFORE THE FEDERAL ELECTION COMMISSION
February 3, 1978

In the Matter of Chicago, Milwaukee St. Paul and Pacific Railroad	)))	MUR 312 (76)

GENERAL COUNSEL'S REPORT

I. ALLEGATIONS AND PREVIOUS COMMISSION ACTION

This matter was referred to us on October 15, 1976 by the Interstate Commerce Commission. The ICC letter and accompanying Memorandum of Facts and Law, (the Memorandum), alleged that, beginning in January, 1965, the Chicago, Milwaukee, St. Paul and Pacific Railroad (The Milwaukee Road) had made illegal corporate contributions to a political action fund by purportedly granting to some of the original members of the fund a salary increase sufficient to compensate them for their "contributions." It also was alleged that the Milwaukee Road continued to make these contributions through September 27, 1976, (the date of the Memorandum), in that the salary increases to the "contributors" had never been rescinded.

On November 30, 1976, the Commission found reason to believe that the Milwaukee Road had violated 2 U.S.C. §441b, and on December 23, 1976, the respondent submitted a reply, (the Reply). The Reply required extensive analysis and left certain issues unanswered. We then requested additional information from respondent, and we received answers dated August 23, August 29, September 26 and November 1, 1977.

II. EARLIER INVESTIGATIONS

The ICC Memorandum was based exclusively on evidence developed in the course of a 1975-76 Securities and Exchange Commission in-

vestigation which dealt, for the most part, with matters unrelated to our inquiry. The SEC investigation did, however, result in the entry of consent agreements in the U.S. District Court for the District of Columbia on June 29, 1976. 1/

The ICC Memorandum concluded that, in addition to those violations dealt with in the SEC consent agreements, violations of the Interstate Commerce Act and of the Federal Election Campaign Act also had occurred. The Interstate Commerce Act allegations were referred to the U.S. Attorney for the Northern District of Illinois 2/ and the Campaign Act allegations were referred here.

III. EVIDENCE

The political action fund, or Milwaukee Road Officers Trust Account (the Trust), as it was called, was created on January 4, 1965. It's purpose was to "secure and advance the

---

1/ (76 C.A. 1204). Of interest here, though, is the fact that the complaint in that case did allege that 25 officers of the Milwaukee Road who contributed to a political action fund had received salary increases in an amount sufficient to offset both their contributions and the greater tax liability which resulted from the increase. The complaint charged that these salary increases, which were initiated in or about 1965, had never been rescinded.

Additionally, it was alleged that in light of their ultimate source, contributions made by the political action fund to various Federal, state and local candidates may have been illegal.

By entering into consent agreements, the defendants neither admitted nor denied the allegations of the complaint.

2/ The referral, by letter dated October 4, 1976, recommended criminal action against the Milwaukee Road and grand jury investigation of certain of its executives. To date, no action has been taken by the U.S. Attorney.

interest and well-being of the donors as officers of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the railroad industry of which it is a part." While the Trust had 69 members at its inception, this inquiry is concerned with 25 of them. These twenty five (the "original twenty five"), all high ranking officers of the Milwaukee Road who belonged to the Trust from its beginning, contributed to the Trust through payroll deduction. Three of them contributed $25 each per month; the remainder contributed $15 each per month. Immediately prior to the Trust's creation, in December 1964, the Milwaukee Road's Board of Directors authorized a 7% "across the board" salary increase to all supervisory and non-union exempt personnel, effective January 1, 1965. The original twenty-five received this "across the board" raise as well as an extra $25 per month.

Since 1965, the salary status of each of the original twenty five has been changed on occasion. These changes have resulted from selective increases to salary; promotions; retirements; and a Salary Administration Policy which took effect in 1972. (These were raised as a matter of defense and will be discussed more fully later). A chart which reflects the dates of these changes is attached.

A number of railroad employees gave testimony to the SEC regarding the Trust, and the clearest statement as to the existence of this arrangement came from former Milwaukee Road President

Curtis E. Crippen. Mr. Crippen testified that he had discussed the formation of the Trust with Leo Crowley, then the Milwaukee Road's Chairman. The discussions touched upon the granting of $25 increases to certain employees who chose to participate in the Trust. In effect, Mr. Crippen testified that Mr. Crowley had told him that these employees would be reimbursed for their contributions to the Trust. 3/

Two other railroad employees gave testimony to the SEC relative to the $25 increases, however neither was able to provide the same perspective as Mr. Crippen. Delbert O. Burke testified as to his "impression" of the $25 increase (that he received an extra pay increase which he was to contribute to the Fund); Richard F. Kratochwill, after consulting documents that had been presented to him during the examination, acknowledged that it "appeared that in this one instance" (the beginning of the Trust), "salary adjustments were made in respect of contributions to" the trust.

3/ Excerpt from the testimony of Mr. Crippen:

Q Do you know what Mr. Crowley meant by that statement, "We would be able to make salary adjustments for participants in the program?

A He meant to adjust the salaries upward to offset the contributions to the fund.

Q On a dollar for dollar adjustment?

A Yes.

Q So that if an employee elected to give $25 to the fund, he would get an extra $25; if he elected to give $25 a month to the fund, he would get an extra $25 a month salary increase?

A That is right. (Memorandum, p. 4).

During the SEC investigation several of the original twenty-five testified that they had, in January, 1965, received salary increases of $25 per month, or $300 per year, in addition to the 7% across the board increase granted at that time. They also testified that they had never been subjected to salary decreases in corresponding amounts.

As of the end of May, 1976, twelve of the original twenty-five were still on active duty with the railroad and continued to contribute to the Trust. (Curtis E. Crippen continued to contribute until December, 1976, although he had retired in 1973).

As of July 1, 1976, none of the original twenty-five (with the exception of Crippen noted above) belonged to the Trust.

On November 20, 1975, the Milwaukee Road, through counsel, submitted a written statement to the SEC which termed the making of the $25 payments to the original twenty five as a "reimbursement program" 4/.

4/ That statement, in pertinent part, is as follows:

"The reimbursement program was implemented in January 1965 and affected some 25 employees. Other than those 25 employees, no employees have ever been reimbursed in any manner for their contributions to the Trust ... The overwhelming majority of the original contributors were not even aware that they were being reimbursed. Indeed, it is clear from the testimony of the witnesses that the events surrounding the formation of the Trust and reimbursement were so insignificant as to be almost wholly forgotten until the inception of this investigation."

Statement Pursuant to Securities Act Release No. 5310 dated November 20, 1975

In the Spring of 1977, a Special Committee appointed by the board of Directors of the Chicago Milwaukee Corporation (CMC), presented the findings of its investigation into the matters raised in the SEC complaint. 5/ With respect to the Trust, the Special Committee found as follows:

> "... Twenty five railroad officers received an additional $25 a month and at the same time agreed to contribute to to Fund, generally at the rate of $15 per month. At least some, but not all, of the participants realized that they were being thus reimbursed for their participation ..." (Emphasis added). (The Special Committee, however, declined to enter a finding as to whether there was a violation of Federal law in this conduct).

IV. ISSUES AND DEFENSES RAISED:

The issues to be resolved here are 1) whether the payments of $25 per month to members of the Trust were improper, and if so, 2) whether the payments continued until such time as to carry them to within the current period of limitations.

The ICC Memorandum concluded that the payments constituted an illegal "device" by which corporate money was funnelled into the Trust, and that the device continued until the time of the Memorandum's preparation, since Trust members had never been subjected to a pay decrease of $25 per month.

5/ The June 29, 1976, consent agreement required that a committee, comprised of independent members of CMC's Board of Directors, investigate the factual matters set forth in the SEC's complaint and submit a written report to the directors of CMC and the Milwaukee Road setting forth its findings, its recommendations for new controls and procedures designed to present the recurrence of any matter set forth in the complaint, and its recommendations as to the appropriate action to be taken against any of the defendants. This report was submitted on March 23, 1977. A summarized version of the report was sent to the shareholders in both corporations on March 29, 1977.

The Reply offers the following alternative defenses: 1) the payments were legal from their inception, but if they were not, 2) the intervening events of promotions, selective salary increases and the Salary Administration Program of August, 1972, have broken any chain of illegality that may have existed.

In support of its contention that the $25 payments were legal, the Milwaukee Road attempts to demonstrate that the payments were considered as part of the salaries of the original twenty-five.

In this connection the respondent has attached to the Reply samples of the payroll withholding authorization forms used by Trust participants. (Reply p. 5; appendix pp. 11 and 12). Our attention has been drawn to that clause in each form which states that the authorization "may be revoked at any time." The railroad argues that this "unrestricted contractual right" gave the employee "complete dominion" over the $25.

In further support of its argument that the payments were, in fact, salary, the respondent notes that the pension rights of those participants who retired were computed upon the assumption that the $25 was part of their compensation. (Reply p. 10).

As to the continuation of the illegal payments the ICC Memorandum advances the following theory:

> Logic supports the argument that this additional salary - since it never was taken away - still continues.
>
> (Memorandum p. 9).

The Reply argues that such a theory requires an "unbroken causal chain" from 1965 to 1976, and contends that no such chain can be forged. (Reply p. 7).

In this regard, the respondent concedes, for the sake of argument only, that the payments to the original twenty-five were illegal, but then cites the happening of several intervening events which, it feels, "broke the chain" and thereby erased any illegalities which existed.

These intervening events, and the Respondent's explanation of each, are as follows:

1. Selective increases: These were increases in salary which were recommended by an employee's immediate supervisor because of changed circumstances which required individual re-evaluation and adjustment of salary. They were granted without regard to an individual's participation in the Trust. One's original compensation was only a starting point from which the selective increase was determined. Selective increases were granted solely upon management's evaluation of the job performance of the affected employee and a determination of the individual's value to the company. (Reply pp. 9, 10).

2. Promotions: Railroad policy with regard to promotions was to start the promoted individual at the lowest pay possible consistent with his new position. Such policy recognized that an individual should be rewarded upon his promotion but that his relative inexperience in the new position required that he be compensated at a level substantially below that of his predecessor.

The individual's salary after promotion was based upon his new position rather than by the application of a percentage increase. There was no relationship between the old salary and the new salary. (Reply pp. 7, 8).

3. Salary Administration Policy: In July, 1971, the Milwaukee Road's Board of Directors ordered the discontinuance of the practice of horizontal pay increases for executive personnel. The executive salary system was completely overhauled. The new system, designed by outside consultants, was not dependent upon prior salary levels but used objective criteria to evaluate each position and to administer the salary program strictly on the merit system. The program established a salary range for each position based upon its importance to the Milwaukee Road and to the salaries paid for comparable jobs in other railroads and in other industries. Such a program did not carry into it the salary policies of the past. The Salary Administration Policy took effect on August 1, 1972.

V. DISCUSSION:

By arguing simply that the payments to the original twenty-five were made as part of their salaries, the respondent has made, at best, a weak defense to the allegation that those payments were illegal.

In reaching this conclusion, we have considered the following factors:

1. The respondent offered nothing that would rebut or clarify the SEC testimony given by its own retired president, Curtis E. Crippen, to the effect that salaries were adjusted

upward to compensate for contributions to the Trust. In fact, the Reply totally ignored Mr. Crippen's testimony.

2. Shortly after it first made the assertion that the $25 payments were, in fact, compensation, (Reply pp. 4,5), the respondent retreated from that position when it stated:

> "Whatever the purpose of this grant or the hopes which may have motivated its granting, it is unequivocally clear that, once granted, the participant could retain, spend or contribute the $25 as he saw fit. Such power in the participant meant that the $25 was officer salary expense at the time of its granting." (Reply pp. 6,7) (Emphasis added).

(In this connection, we note that the respondent has provided no evidence that any recipient of the $25 payments ever retained the money for personal use or spent it in a manner unrelated to the Trust).

3. The respondent offered nothing that would rebut or clarify the statement it submitted to the SEC (see footnote 4) to the effect that the making of the payments to the original twenty-five was a "reimbursement program."

4. The Special Committee appointed by the Board of Directors of the Chicago Milwaukee Corporation found that the original twenty-five were reimbursed for their contributions to the Trust. (Granted, this finding was issued several months after the respondent filed its Reply. However, the respondent itself provided us with a copy of the Special Committee's report. In submitting the report, respondent neither contested nor sought to clarify the findings).

With regard to the continuation of the payments that had been made to the original twenty-five, we do not find merit in respondent's contention that any of the three "intervening events" broke the causal chain, but do agree that the happening of one of these events, the Salary Administration Policy, did have such an effect.

We reached this determination for the following reasons:

The respondent has not provided us with any evidence that would demonstrate that the amount involved in a selective increase was not based upon the employee's former salary. In other words, the 1965 salary, including the $25 payment, was used as the "base" which was used to determine the amount of the selective increase. It appears that, through selective increases, the improper payments were hidden, not terminated.

Promotions might well have broken the chain, but only under the following two conditions: a) the salary of the newly promoted individual must have had no relation to the salary he earned in his former position, and b) all of the original twenty-five must have been promoted. An examination of the salary histories provided by the respondent (and reflected in the attachment) indicates that, of the original twenty-five who still were on active duty as of May, 1976, three individuals who remained members of the Trust had never been promoted from the positions they held in January, 1965. (Reply, appendix, pp. 73-98). In theory, then, a portion of their May, 1976, salaries still would have been made up of the $25 payments. Under these circumstances the "chain," although diminished, still would have been intact.

In a letter dated August 16, 1977, we requested a copy of all revisions to the executive salary system enacted since 1965. Under a cover letter of August 29, 1977, from Raymond K. Merrill, the Milwaukee Road's Vice President for Law, we were provided with

(1) Salary Administration Policy and Procedure Manual, effective August 1, 1972, through December 31, 1973.

(2) Merit Salary Program, effective January 1, 1974, to the present.

The following discussion of the Salary Administration Policy (SAP) of August 1, 1972, is summarized from the Manual.

The SAP had as its objective the establishment and administration of an effective salary program which would produce internal equity, external competitiveness and incentive for personal growth.

The SAP provided for the preparation of new job descriptions for each affected position. Using a method developed by outside consultants, each job description then was evaluated to determine its equitable relationship to other jobs at the Milwaukee Road, so that each job's contribution toward the corporate goal was measured. Such position evaluation was based entirely on the position, independent of any consideration of the incumbent. Evaluations were to be made without regard to salaries or possible salaries that might emerge as a result of the evaluations.

Each year personnel administration would analyze salary practice, and would forward its analysis to the outside consultants so that the Milwaukee Road participated in a national survey of exempt salary practices.

A review of the salary policy was to be made annually so that the Milwaukee Road could be assured that its salary policy was internally realistic and was, at the same time, competitive with other employers who hired the same quality of personnel for comparable jobs in the labor market.

An analysis of the salary records provided in pages 73 through 97 of the appendix to the Reply indicates that, of the twenty-five original members of the Trust, fifteen were still on the payroll on the date the SAP came into effect. Of these fifteen, three received SAP increases on August 1, 1972; four received increases on January 1, 1973; and eight received increases on February 1, 1973.

VI. CONCLUSION:

Considering all the matters presented in the Reply, we do not believe that the Milwaukee Road has rebutted the allegation that it made contributions to a political action committee by reimbursing its officer personnel for contributions they were making to the Milwaukee Road Officers Trust Account.

However, we do believe that the respondent has demonstrated that the repayments to its officers ceased when, on February 1, 1973, the salaries of the last of the original Trust participants were restructured pursuant to the Salary Administration Policy which became effective on August 1, 1972.

The finding of reason to believe in this matter was predicated upon the assumption that the railroad continued to make the payments at least until the date of the I.C.C. Memorandum. The respondent has demonstrated that that assumption is not valid.

At the time the reimbursements occurred, they constituted violations of 18 U.S.C. §610, the criminal predecessor to the current civil statute 2 U.S.C. §441b.

The Supreme Court specifically addressed the criminal statute in Cort v. Ash, 422 U.S. 66 (1975), when it stated that:

> "In terms, §610 is only a criminal statute, providing a fine or imprisonment for its violation. At the time this suit was filed [September 28, 1972], there was no statutory provision for civil enforcement of §610, whether by private parties or by a Government agency. But the [1974] Amendments created a Federal Election Commission...[and] established an administrative procedure for processing complaints of alleged violations of §610 after January 1, 1975... ." 422 U.S. at 74, 75.

The court also noted that §610 "was nothing more than a bare criminal statute, with absolutely no indication that civil enforcement of any kind was available to anyone." 422 U.S. at 79, 80.

The question then becomes this: May the Commission, established and given civil enforcement authority as of January 1, 1975, reach back to correct and punish those violations which occurred before civil enforcement authority existed in anyone?

By the 1974 Amendments to the FECA, the Commission was given primary jurisdiction with respect to the civil enforcement of §610; the 1976 Amendments gave the Commission exclusive jurisdiction for the civil enforcement of the successor statute

2 U.S.C. §441b. Neither the Amendments nor the legislative history supporting them gives any indication that Congress intended for the Commission's civil enforcement authority to be limited to violations occurring after January 1, 1975.

As a practical matter, however, we believe that the circumstances of this case outlined above provide good argument for ending the matter now. Thus, in our view, the overall actions of the railroad eliminated the illegal reimbursements five years ago.

We see no purpose to be served in the use of Commission resources for a continued pursuit of this matter.

VII. RECOMMENDATION:

We recommend that the Commission find no reason to take action against respondent, that it terminate its inquiry in this matter, and that it authorize the sending of the attached letter.

DATE

WILLIAM C. OLDAKER
GENERAL COUNSEL

	Selective Increase	Promotion	Retirement	Salary Admin. Policy
S.W. Amour		3-1-66	10-8-68	
L.V. Anderson	8-1-66	1-1-69		2-1-73
D.O. Burke	8-1-66			7-1-72
E.W. Chesterman	9-1-65	3-1-66	9-1-72	
P.L. Cowling	1-1-68	1-1-71	11-1-75 (2)	7-1-72
C.E. Crippen	5-11-65	10-12-66	1-1-73 (3)	
P.J. Cullen	9-1-65	3-1-66	6-1-74	1-1-73
L.H. Dugan			7-9-68 (4)	
V.E. Glosup	1-1-66		1-1-67	
A.W. Hallenberg	8-1-66			7-1-72
H.C. Johnson			6-1-65	
R.F. Kratochwill	9-1-66	10-12-66		7-1-72
W.W. Kremer	5-11-65		6-1-67	
G.H. Kronberg	1-1-68	3-1-66		2-1-73
C.T. Lannon			6-1-68	
F.G. McGinn	5-11-65		5-1-76	2-1-73
H.H. Metzer	7-1-72			2-1-73
R.K. Merrill	5-11-65	11-1-70		2-1-73
W.E. Ross	8-1-66	10-12-66	6-1-71	
C.L. Schiffer	10-1-67	5-14-68		1-1-73
E.J. Stoll	5-13-69	3-1-66		2-1-73

W.D. Sunter	9-1-65	3-1-66	10-1-69	
J.T. Taussig	11-1-65	1-1-65		2-1-73
F.A. Upton	8-1-66	7-1-73		1-1-73
G.L. Wood	7-1-72			1-1-73

1. Date of first such increase following 1-1-65
2. Transferred to payroll of a subsidiary corporation
3. Continued to contribute until December, 1976
4. Deceased

Sulton

MUR 312

Interstate Commerce Commission

Washington, D.C. 20423

BUREAU OF ENFORCEMENT

October 15, 1976

ER 8-76-408-T

John G. Murphy, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

7602028

Dear Mr. Murphy:

Re: Chicago, Milwaukee, St. Paul and Pacific Railroad Company--Alleged Violation of the Federal Election Campaign Act of 1971 as amended 2 U.S.C. 437 et seq. (1976)

Under the authority granted to the Federal Election Commission (hereinafter the FEC) pursuant to 2 U.S.C. 437(c)(b)(1), there are referred for your consideration and appropriate action information which indicates that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company knowingly made false entries in its payroll records with respect to the compensation and deduction records of its top supervisory employees, from January 1965 to date, for the purpose of inaccurately casting corporate contributions to a political action fund in the guise of contributions from personal salary deductions. We believe the facts set out indicate violations of the Federal Election Laws. At the same time, these facts reflect violations of the Interstate Commerce Act, 49 United States Code, Section 20(7)(b).

On or about January 4, 1965, the Chicago, Milwaukee St. Paul and Pacific Railroad Company established a political trust, the Milwaukee Road Officers Trust Account, for the purpose of providing a method whereby its officers could ostensibly make personal contributions to a fund which would then disburse the monies for political purposes. The "contributors" to the fund were top management of the company. These "contributors" received salary increases in an amount sufficient to compensate for their "contributions" to this political fund. A similar fact pattern (involving an

executive bonus plan) resulted in Greyhound Corporation pleading guilty to an action under the Federal Election Laws and being fined $5,000 by the Special Prosecutor's Office on October 2, 1974. The Special Prosecutor's Office brought this action under 18 U.S.C. 610, as amended 2 U.S.C. 441(b)(1976).

On October 4, 1976 a letter of transmittal was sent to the United States Attorney in Chicago, wherein we recommended that criminal prosecution be brought against the carrier in (20) counts of action, each under section 20(7)(b) of the Interstate Commerce Act. It was further recommended that a grand jury investigation be instituted into the matters surrounding the falsification of the carrier's payroll records concerning the identity of those individuals who have participated in or aided, abetted or conspired to falsify said records. Because 49 U.S.C. 20(7)(b) prescribes fines up to $5,000, the potential exposure to the carrier is $100,000.

In reference to the above matters, enclosed herewith please find a copy of a Memorandum of Fact and Law prepared by Attorney Wayne R. Walters, our staff attorney who handled this matter in regard to violations of the Interstate Commerce Act. This memorandum summarizes the facts developed by our field investigation and the applicable statutes which we believe the carrier violated. We hope that the enclosed Memorandum of Fact and Law will be of use to you in carrying out your statutory obligations as set forth by the Congress.

Very truly yours,

Robert S. Turkington

ROBERT S. TURKINGTON
Acting Director

Enclosure

cc: Honorable Samuel K. Skinner
United States Attorney
Everett McKinley Dirksen Building
219 South Dearborn Street
Chicago, Illinois 60604

INTERSTATE COMMERCE COMMISSION

BUREAU OF ENFORCEMENT

WASHINGTON, D.C. 20423

IR 8-76-406 T

ALLEGED VIOLATIONS OF (49 U.S.C. 20 (7)(b)) OF THE INTERSTATE COMMERCE ACT THROUGH THE FALSIFICATION OF PAYROLL RECORDS BY THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY.

MEMORANDUM OF FACTS AND LAW

WAYNE R. WALTERS
Attorney

September 27, 1976

Introduction and Jurisdictional Basis

This analysis reviews facts and applicable statutory provisions indicating the misuse of corporate monies of the Chicago, Milwaukee, St. Paul and Pacific Railroad (hereinafter the Milwaukee Road). On or about January 4, 1965, the Milwaukee Road established the Milwaukee Road Officers Trust Account ("Trust Fund") for the purpose of providing a method whereby ostensibly its officers could make contributions to a fund which would then disburse the monies for political purposes. The apparent contributors to the "Trust Fund" were top management of the Milwaukee Road. Contributions to the "Trust Fund" were made from a payroll deduction plan. The twenty-five officers who contributed to the "Trust Fund" (which included among others, Curtiss E. Crippen, now retired president and Richard F. Kratochwill, Vice President of Finance and Accounting) received salary increases in an amount sufficient to compensate for their "contributions" to the "Trust Fund."

An article in the July 1, 1975 issue of Forbes Magazine alluded to possible corporate malfeasance at the Milwaukee Road. The Forbes article created a stir at the Securities and Exchange Commission and the Interstate Commerce Commission. In the fall of 1975, investigations by both agencies had begun. After gathering documentary evidence, the SEC investigators subpoenaed prospective witnesses and took direct

testimony from the witnesses at regional offices, under oath, before a court reporter. These depositions, taken before the SEC, will be used throughout this memorandum to illustrate that, in the case of certain corporate officers, carrier operating expenses were not reflective of actual salary expense, which occurred during the period of 1965 to the present. By inflating the operating expense (by casting corporate payments to a political action fund as salary payments) through the device of a payroll increase, the Milwaukee Road and members of its management have falsified carrier records in violation of (49 U.S.C. 20(7)(b)). Further, there appears to be transactions which have resulted in violation of the federal election laws.

The Interstate Commerce Act, (49 U.S.C.1 et seq.) applies to common carriers engaged in the transportation of passengers or property by rail. The Milwaukee Road is principally a common carrier of freight serving the Midwest and Northern tier of states to the Pacific Northwest. It extends east to the traditional railroad breakpoint of Chicago to reach connections to the East and Southeast. The carrier operates intercity passenger trains between Chicago, Milwaukee and the Twin Cities under contract with Amtrak. As such, the Milwaukee Road falls within the jurisdiction of the ICA, 49 U.S.C. 1 et seq.

Records of this carrier are required to be kept in accordance with forms prescribed by the Commission (49 U. S.C. 20(1), (5); 49CFR 1220 et seq., and the carrier files its annual report with the Interstate Commerce Commission.

Facts

In January 1965, the Milwaukee Road established the Milwaukee Road Officers Trust Account ("Trust Fund"). On October 1, 1975 the deposition of Curtis E. Crippen, former Vice Chairman of the Board and former President of the Milwaukee Road, was taken in Chicago by the SEC. Crippen had been an employee of the carrier continuously since 1930 and was president of the Milwaukee Road from October 12, 1966, until the middle of July 1972. In his testimony, Crippen admits being familiar with the formation of the "Trust Fund" in 1965. The formation of the "Trust Fund" was discussed between Crippen (then Vice-President); William J. Quinn, President, and Leo Crowley, Chairman of the Board. Crippen was asked if any of the discussions focused on the subject of reimbursing employees of the Milwaukee Road who might elect to contribute to the "Trust Fund." Crippen stated that salary adjustments were granted to participants in the contribution program. The following occured viz:

Q Do I understand, either from something Mr. Crowley had said at that meeting or earlier meetings, what he meant

by, "We would be able to make salary adjustments for participants in the program"?

A May I have the question again, please?

Q Do you know what Mr. Crowley meant by that statement, "We would be able to make salary adjustments for participants in the program"?

A Yes.

Q What did he mean?

A He meant to adjust the salaries upward to offset the contributions to the fund.

Q On a dollar for dollar adjustment?

A Yes.

Q So that if an employee elected to give $25 to the fund, he would get an extra $25; if he elected to give $25 a month to the fund, he would get an extra $25 a month salary increase?

A That is right.

Crippen was later asked if the $25.00 per month salary increase for certain employees was, in fact, implemented. His answer was, "Yes." Crippen further stated that he received a salary increase in 1965 and that said increase remained in effect and was not removed by the carrier:

Q Well, let me phrase that: Do you recall receiving a salary decrease up until the time you retired, particularly $25 a month, that sum in particular?

A Well, I recall receiving a salary decrease, but it was prior to the period in which I have an interest, I think.

Q We are talking about, say, the years 1965 to the present?

A I recall no salary decrease in that period.

Q So, if the records of the Railroad showed that commencing in January of 1965 you received a salary increase over and above the percentage increase of $25 a month, to your recollection, you never received a salary decrease at that time of $25 a month?

A Not a decrease, no.

Q Referring, Mr. Crippen, to Exhibit 140, your withholding for the contribution of $25 a month, $15 monthly fee, sir, are you still a contributor to the political fund?

A Yes.

Q How much do you presently contribute?

A $25 per month.

Q And when did you commence contributing $25 a month?

A I don't recall.

Q Well, at least in the beginning, apparently from Exhibit 140, you started contributing $15 a month?

A Apparently, yes.

Q Did you go from 15 to 25 or were there any steps in between, if you recall?

A I don't recall specifically, no.

Q Did you ever contribute between 1965 and the present anything less than $15 a month?

A No.

Q So it would have been $15 or better during that period of time?

A Yes.

Q Did you ever take a tax deduction, Mr. Crippen, on your contribution to the political fund?

A No.

Thus, under oath and advised of his constitutional rights under the 5th amendment, Crippen, a former President and Director of the Milwaukee Road admits that the fund existed, salaries were adjusted to compensate contributors, and that the device continues into the present. Attached hereto and marked exhibit "A" is a transmittal sheet of payroll deductions under date of January 1965 and a transmittal sheet under date of May 1976. Both sheets reflect the names of top carrier management and the amount of money funnelled into the Milwaukee Road Officers Trust Account under the respective names. A comparison of the sheets reveals that 12 of the original 25 contributors still were named as contributors as of May 1976.

In September of 1975, Herbert W. Wolf of Oaklawn, Illinois, former chief clerk of the Milwaukee Road, testified before the SEC in Chicago. Wolf's testimony is important to understanding

the mechanics of how the deduction - checkup system actually worked. Wolf is an accountant and he physically made the entries on the carrier's books vis-a-vis the salary increase effective January 1, 1965 at the Milwaukee Road. The following dialogue occurred:

Q Where did you learn of the concept of the Milwaukee Road Officers Trust Account?

A Then we were to deduct a certain amount from each employee that received the $25.00 increase.

Q As a contribution to this account?

A As a contribution to the Milwaukee Trust Fund Account.

Q Did you ever personally contribute to the trust account?

A No.

Q Were you ever solicited to contribute?

A Yes.

Q Do you recall when you were solicited?

A Oh, about a year before I retired.

Q That would be about in 1972?

A Yes.

Q Who solicited you?

A I can't say who solicited me. I was just given the blank form.

Q You mean like a withholding form to authorize--

A No. No.

Q Pledge form?

A Pledge form, yes.

Q But you were told or instructed that $15.00 a month was being contributed by those individuals to the account?

A Yes.

Q And that was being deducted from their salary, their regular salary?

A Right.

Q Their regular payroll deduction?

A Yes.

Q You testified earlier that $15.00 a month was deducted from the salary of certain of the individuals who are on that worksheet. Do you know what happened to the money after that deduction was made?

A No.

Q Who was in charge of that phase of it? Who would take care of the deduction and see that the funds are transmitted somewhere?

A Whoever received the funds.

Q You don't know who got the deduction after it was deducted?

A No.

Q That wasn't part of your work?

A No.

From Wolf's testimony it seems clear that the payroll deduction was a device wherein carrier monies (cast in the guise of salary increases) were placed into the "Trust Fund."

James T. Taussig, Corporate Secretary of the Milwaukee Road, admits that records of the carrier reflect that on January 1, 1965 he was receiving $1,375.00 per month; and that this salary included an increase because of his election to the position of secretary plus an extra $25.00 a month or $300.00 a year also beginning in January 1965. Taussig began receiving an extra $300.00 per year beginning in January 1965 and he has never had a corresponding $300.00 decrease in his salary. Logic supports the argument that this additional salary--since it never was taken away--still continues.

The contributors to the fund become vague as to its genesis, but the testimony of Arthur W. Hallenberg, Assistant Chief Mechanical Officer, indicates that James Reedy, Esquire, counsel for the Milwaukee Road was the catalyst in the fund's formation. This information corresponds to the information the Bureau of Enforcement received from the Federal Election Commission (FEC). On February 3, 1976 the Bureau of Enforcement wrote to the FEC requesting information about the Milwaukee Road's political action fund. The report that was filed with the FEC for October 1, 1975 to December 31, 1975 was sent under the cover letter of James P. Reedy. Reedy's letterhead lists

his address as 516 West Jackson Boulevard, Chicago, along with another Illinois address and a Pompano Beach, Florida address. Of course, the 516 West Jackson address is the same as that of the Milwaukee Road. Schedule D of the application filed by the Trust Fund shows contributions to Senator Robert Byrd, Senator Lloyd Bentsen, Senator Hartke and Representative Brock Adams. It is important that the aforementioned legislators are federal congressmen. If any actions are to be brought under the Federal Election laws; federal elections must be involved, as it is in this case.

Arthur W. Hallenberg's statements to the SEC reflect again the same pattern that other contributors seem to have followed, and which appear to continue to the present:

A $15 a month out of my paycheck, yes, sir.

Q And how, mechanically, was this handled?

A I don't recall exactly how it's handled. You see, I am on Payroll 800 and I can have deductions made, for example, my federal income tax deductions are not made. Before I got on this payroll, I had to take, declare so many dependents and have it taken off that way, but since I have been on this, in this position and on Payroll 800, I can call up Mr. Wolf who handles the paychecks and tell him, well, you are taking out too much or you have to take out so much because I need to have more deducted, so I can, just by talking to him, and whether it was done that way

with this or not, I can't recall. I have tried to remember, and I cannot recall ever signing any deduction slip on it. I might have, but if I did, I can't recall it.

Q Well, in any case, this is the way it was handled, it was a deduction from your salary?

A Right.

Q Do you know what happened to that deduction after it was made to your salary?

A I have no idea. I didn't question it.

Q Did you ever receive any reports, either oral or in writing about the activities of a trust since you started

(Off the record.)

THE WITNESS: My deduction slip for the second half of December is the gross earnings of $693.71 for the month.

BY MR. HAGEN:

Q That is for a half month?

A For a half month.

Q If my arithmetic is correct, you were making a gross salary at the end of December 1964 of $1,587.42?

A Yes, I believe that's right.

Q Now, did you receive any salary increases in early 1965?

A Yes, in January, the first half, I received $755 for the first half.

Q That would be approximately $1510, then, a month beginning in 1965?

A For the gross, yes.

Q And what was the nature of this salary increase? Were you promoted or was this an across-the-board increase?

A This is an across-the-board increase. My last promotion was in 1962.

Q Do you recall, was this a percentage increase across the board?

A Yes, sir.

Q Do you recall what that percentage figure was?

Q Would it refresh your recollection if I suggested to you, Mr. Hallenberg, it was a seven per cent increase beginning January of 1965?

A That sounds about right, yes.

Q If my mathematics are correct, a seven per cent increase based upon your salary as of the end of December, which was $1,387.42 a month, a seven per cent increase would be $97.11?

MR. MOHAHAN: You may assume he is right, Mr. Hallenberg.

THE WITNESS: I will assume you are right.

BY MR. HEGAN:

Q But, actually, your salary was increased by an additional $25 a month over and above the $97.

Do you know that as a fact?

A It's possible, if that is the way the figure comes out.

Q Do you know why you received an additional $25 a month over and above the seven per cent salary increase?

A No, unless it's -- I don't know.

Q Were you ever told that you would expect a salary increase either to enable you to contribute to this trust fund or a result of your contribution to this trust fund?

A Not to the best of my recollection I don't recall being told that.

Q When you say you don't recall being told that, Mr. Hallenberg, are you meaning to suggest that is possible, you may have been told such a thing or you were ever /sic/ told such a thing?

A I cannot recall ever being told that, but I may have been. I wouldn't rule out the possibility, but I cannot recall it.

Q Well, how were you informed of this salary increase in January of 1965?

A Of this seven per cent?

Q Yes, sir.

A I would have received a letter like this (indicating).

Q You mean similar to certain letters you produced here?

A Similar to these, but I couldn't find it. In fact, these three are the only ones that I could find.

Perhaps the most damaging testimony was elicited from Mr. Delbert O. Burke of Itasca, Illinois, General Manager of the Milwaukee Road, viz:

BY MR. BUTLER

Q Now, with respect to the salary increase in January of 1965, Mr. Burke, did you testify you received you had no communication about that pay increase with anyone except notification that you were getting the increase?

Q Mr. Burke, did anyone ever tell you you received a $5 a month raise in addition to the seven percent raise in January of 1965?

A No, sir.

Q Has anyone ever told you --

A No, sir.

Q --that you received a $300 a year raise in order to allow you to contribute to the Milwaukee Road Officers Trust Fund?

A No, sir.

Q Has your salary ever been decreased by $300?

A No, sir.

MR. MONAHAN: Mr. Butler, can we go off the record?

MR. BUTLER: Sure.

(Discussion off the record.)

MR. MONAHAN: Thank you, Mr. Butler.

BY MR. BUTLER

Q Now, Mr. Burke, do you recall when your first contribution to the Milwaukee Road Officers Trust Fund was?

A No, not without looking at payroll deductions.

Q Would you look to refresh your recollection, please, to see?

A The first payroll deduction appears on the statement of earning on federal deductions for the second half of January 1965, the amount of $15.

Q Have you ever received an increase in salary in order to allow you to contribute to the fund or to reimburse you for contributions you may have made to the fund?

A I have received several increases in pay, it was my understanding and I can't identify from where I got it or who or for what reason, it was my understanding that there was some raise in May to offset this $15 but where I got that understanding or whether it was in writing or just a recollection, I have --

Q Do you recall when the increase was given?

A There was an increase, I believe the payroll deduction slips will show between December of '64 and January of '65, which I considered that part of that might have been for this, but why I have that impression, I can't substantiate that.

Q We will look at the record in a minute, but at the the moment I want to understand what you are saying.

It is your understanding you have received an extra pay increase which you were to contribute or use to contribute to the fund, is that correct?

A <u>That is my impression, yes</u>. (Emphasis added)

As can be shown by the above answer, contributors to the "Trust Fund" were under the impression that their extra pay increase was a device whereby they could contribute to the fund. The Milwaukee Road never refuted these impressions nor did it reconstruct itself through redirect examination. In fact, the Milwaukee Road admits that the Milwaukee Road reimbursed, "certain employes who contributed to it through salary adjustments." This admission came through a document drawn up by outside counsel for the Milwaukee Road (the law firm of Maun, Hazel, Green, Hayes, Simon and Aretz, 332 Hamm Building, Saint Paul, Minn.).

This statement, prepared by the Maun law firm and submitted to the SEC pursuant to SEC internal procedures, tried to meet any allegations the SEC may have constructed from the depositions it had taken of Milwaukee Road personnel. It is obvious that counsel for the carrier filed this document in contemplation of actions by either the SEC or the FEC. The prepared statement never speaks to a 20(7)(b) falsification of records action under the Interstate Commerce Act. Portions

of counsel's answer are quoted here as they go to the heart of the allegations set forth in this memorandum. There is a caveat concerning this statement's use at trial viz: According to the SEC's office of General Counsel, such statements pursuant to Securities Act Release No. 5310 are admissions. However, Rule 408 of the Federal Rules of Evidence, Pub. L. No. 93-595, (Jan. 2, 1975) states inter alia:

> "...Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations..."

The case law is silent on how such a statement might be used at a subsequent trial, however, the statement is most helpful as it confirms and reaffirms the allegations this writer makes herein.

In any case, the statement reads in part:

> "The reimbursement program was implemented in January 1965 and affected some 25 employees. Other than those 25 employees, no employees have ever been reimbursed in any manner for their contributions to the Trust. Further, no employee, including the original 25, ever suffered a loss in pay as a result of withdrawing from the Trust or because of a decrease in his contribution. For that matter, no employee ever received an additional pay raise when he increased his contribution. The overwhelming majority of the original contributors were not even aware that they were being reimbursed. Indeed, it is clear from the testimony of the witnesses that the events surrounding the formation of the Trust and reimbursement were so insignificant as to be almost wholly forgotten until the inception of this investigation."

Statement Pursuant To
Securities Act Release No. 5310
dated November 20, 1975

Counsel for the Milwaukee Road would have us believe that the actions of the carrier and its corporate officers were de minimis. It is of no moment that "the overwhelming majority of the original contributors were not even aware that they were being reimbursed." The crime is falsification of records or a violation of the federal election laws. If by any means, records of a carrier do not reflect "all facts and transactions appertaining to the business of the carrier"...then a violation of (49 U.S.C. 20(7)(b)) occurs. To paraphrase Gertrude Stein, a crime is a crime, is a crime...Because the check-off funnelled corporate monies cast in the guise of salary into the "Trust Fund" an infraction of the ICA and the FECA has occurred and counsel's answer does not satisfy nor form a defense to any actions under these acts. The Maun law firm would have us believe that:

> "...There is sufficient authority, integrity, and willingness within the management of the corporations and their boards of directors to insure continued compliance with all laws relating to the Trust. In short, we can conceive of no useful public interest to be served by enforcement action with respect to events that have been dead for 10 years."

Counsel would like to have the SEC and ICC believe that time somehow has cleared the Milwaukee Road of its illegal acts, yet never is there one piece of documentation offered to support the contention that these illegal practices ceased. It is also rather evident that a false records action was not contemplated when counsel issued their prepared statement.

Richard Kratochwill, Vice President of Finance and Accounting since 1966 gives the best explanation of the payroll deduction plan and also admits that, "certain salary adjustments were made in respect of contributions to the Officer's Trust Account," viz:

Q And it is from those and the Payroll 800 that the contributions are deducted or withheld, is that the right word?

A Yes.

Q Are you a trustee of the Milwaukee Road--

A No.

Q Let me put it this way. In your capacity as an employee of the Railroad are you responsible for the supervision of the payroll deductions?

A In a general way, yes. The work is done by persons in my department. To that extent, I am responsible.

Q At this time I would like to show you what has been marked as Commission's Exhibit 3(a) of that group, and ask you if you can identify the second page of Commission's Exhibit 3(a).

MR. HAYES: Mr. Witness, please look at the entire exhibit.

MR. WITNESS: Do you want to repeat the question now?

BY MR. BUTLER:

Q Do you recognize Page 2 of the Commission's Exhibit 3(a)?

A I know what it is, yes.

Q Could you tell me what it is?

A It is a summary of the payroll deductions to the Officer's Trust Account for a particular period, in this case, the month of February, 1974.

Q Of the types of payrolls that you described, is this an 800 series payroll?

A Yes.

Q At this time I would like to show you what has been marked as 3(m) and ask you if you can identify that part of Commission's Group Exhibit 3, please?

A These appear to be listings of payroll deductions to the Officers' Trust Account from Payrolls 1 and 2, which are the officer portions of the open rolls, as I described earlier, for various periods in 1973, 1974, and 1975.

Q Do they reflect Commission's Exhibit 3(m) is a series of computer printouts, is that correct?

A Yes.

Q And are you familiar with the codes on the top of Commission's Exhibit 3(m)?

A I recognize the Vendor Code 114 as being one that identifies this particular deduction category.

Q 114 denotes the deduction for campaign contributions?

A The deduction for the Milwaukee Road Officers' Trust Account.

Q This particular Fund, is that correct?

A Yes.

BY MR. HEGAN:

Q In other words, does the document contain among other things appointments, and notifications or promotions of employees and their changing salaries, and so forth?

A Yes.

Q How does this relate to what has been marked as Exhibit 13?

A This particular book?

Q Exhibit 14.

A Exhibit 14 contains the documents relating to the period in which the Officers'Trust Fund had its inception.

Q I haven't had occasion to completely examine Exhibit 14, but I did note in a quick runthrough, Mr. Kratochwill, there seems to be increases of salaries of various employees on various occasions. To your knowledge, were any of these increases in salary again [sic] to employees for the purpose of allowing them to make contributions to the Employees' Trust Fund?

A It appears that in this one instance at the inception of the Officer Trust Account that certain salary adjustments were made in respect of contributions to the Officers' Trust Account...

... to your knowledge was any employee given any kind of salary increase or direct or indirect reimbursement for contributing to the Fund?

A Well, my knowledge in this area derives from this work sheet that we have been discussing here.

Q Which you saw in the last few days?

A Yes.

Q I am talking about your knowledge that existed prior to this work sheet coming to your attention.

A Well, at the time I was aware that there was some adjustment in the rating having a relationship to the contribution pledge.

MR. HEGAN: Could you read that back to me?

(Answer read.)

BY MR. HEGAN:

Q What do you mean, Mr. Kratochwill, there was some adjustment to the rating having a relationship to the contribution?

A I don't know how to explain it any more than that.

Q Well -- go ahead.

A I simply know that I signed the deduction authorization at that point, and at the same time, as evidenced by this work sheet, it appears that a $25.00 a month adjustment to the salary rate occurred.

Q You are talking about in 1965?

It is Mr. Kratochwill's office that handles the payroll deductions and even Kratochwill admits that adjustments to the salary rates occurred. Kratochwill has been employed by the Milwaukee Road since 1958 always holding a job as a comptroller or something similar by nature.

Falsification of the Carrier's Records -- An Illustrative Example

The Interstate Commerce Act provides, as pertinent, in Section 20(7)(b) that,

> Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any...report required...to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or...who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment. (49 U.S.C. 20(7)(b)).

Throughout this memorandum, the writer has noted that carrier records were falsified in that corporate payments

were made to a political action fund through the device of a payroll increase. The payroll records of the Milwaukee Road were falsified because the entries made into the records could cause a reasonable man to believe that the monies contributed to the political action trust were from salary, whereas in reality, these contributions were corporate monies funnelled into the trust through the device of a payroll increase. An example of this device is set forth:

On Thursday, December 17, 1964 the Board of Directors and Finance Committee of the Milwaukee Road voted "increases to officers and supervisory personnel not covered by wage agreements." Mr. William Quinn, President of the Milwaukee Road, recommended an increase of 7% to the officers and supervisory personnel effective January 1, 1965. The Board also granted:

> "Authority to make certain adjustments, in addition to the horizontal (the 7% increase) increase to officers and supervisors, was also approved. This is for the purpose of maintaining relationships and eliminating inequalities."
>
> Minutes of the Board of Directors and Finance Committee dated Thursday, December 17, 1964.

On December 21, 1964 President Quinn wrote two letters to C. E. Crippen, then comptroller of the Milwaukee Road. The first letter, attached hereto and marked Exhibit "B" authorizes the salary increase. In the second letter to

Mr. Crippen, Mr. Quinn states:

> "In connection with the 7% increase to be applied January 1, 1965 to the supervisory employees, there are certain other adjustments that have to be made, as I explained to the Board at the meeting on Thursday." (Emphasis supplied).

It is the "certain other adjustments" to which this memo speaks, because it is those adjustments that represent carrier monies funnelled into a political trust. As a specific example one can follow the payroll records of Richard Kratochwill (in 1965 an assistant comptroller, currently Vice President of Finance and Accounting).

As of 12-31-64 Kratochwill's monthly salary rate was $2,083.33. On January 1, 1965 Kratochwill received his increase of 7% which would be $145.83, giving him $2,229.16 per month. Rounded to the nearest dollar this figure becomes $2,230.00. This amount should be his salary as of 1/1/65, however, Kratochwill's pay change cards and the payroll record reflect his salary to be $2,255.00. The extra $25.00 dollars salary is not really salary but rather, "a certain other adjustment that was made" to hide the corporate monies being checked-off into the Milwaukee Road Officers Trust Account. Mr. Kratochwill's extra $25.00 "salary" increase became effective on January 1, 1965 and effective January 1, 1965 the political action trust began receiving $25.00 allegedly from Kratochwill. The carrier had created a device wherein corporate money could be channelled into a political

fund under the guise of a payroll check-off system. The carrier payroll records reflect in 1965 that as of January 1, 1965 Kratochwill was salaried at $2,255.00 per month; but $25 of that money was not salary, but rather money intended for the "Trust Fund." In fact, the carrier records show that $25.00 per month was checked-off from his "salary" bi-monthly beginning in 1965 and continuing at least until May of 1976. Payroll records reveal that Kratochwill never received a decrease in salary, hence the $25.00 per month of corporate money is still being funnelled into the trust through this device.

Applicable Statutes and Case Law

As pointed out in the case of Kratochwill's personal payroll records, each month since January 1, 1965 to date, the Milwaukee Road's payroll records were altered and falsified. The falsification took place when management cast corporate political contribution payments in the guise of bona fide carrier operating expenses, i.e., officer's salaries. As stated infra (49 USC 20(7)(b) makes it a crime (punishable by fines up to $5,000 and/or imprisonment) to "make, cause to be made, or participate in the making of any false entry in any...records or memoranda kept by a carrier...". The courts have recognized the legislative intent behind 20(7)(b) and recognize the purpose this section serves viz:

> "The statute evidently was framed to accomplish two distinct purposes: First, that all accounts, records and memoranda of the carrier, whether prescribed by the Commission or not, should be true and correct; second, to secure uniformity and prevent secret dealing..." Kennedy v. U.S., 275 F. 182, 183 (4 Cir. 1921).

As the Kennedy case points out, the statute was framed to insure that carrier records be "true and correct" and to "prevent secret dealing." Both of these intentions were thwarted in the case at bar. The payroll records of the supervisory employee of the Milwaukee Road did not (emphasis supplied) reflect operating expenses, but rather cast corporate political contributions in the guise of "personal" contributions. And also, the falsified records were a device whereby the Milwaukee Road secretly funnelled corporate monies into a political action trust. The intent of the statute to allay "secret dealing" vis a vis carriers' records has been subverted by the Milwaukee Road. The courts have also ruled that a defendant can be convicted and sentenced separately as to each separate entry made on the records of the carrier. Thus each monthly pay period of the Milwaukee Road's officers represents a separate violation of 20(7)(b). U.S. v. Berg, 79 F. Supp. 1021, cert. denied 70 S. Ct. 137. In the case at bar, each monthly payroll sheet is a violation of 49 USC 20(7)(b). The carrier can be prosecuted for the falsification of its records as well as individuals. As the Supreme Court has stated:

> "Section 20(7) of the Interstate Commerce Act is not limited to common carriers and their employees, but includes and punishes all persons and corporations who commit the acts therein declared to be unlawful." (Emphasis supplied) U.S. v. The Fruit Growers Express Company, 279 U.S. 363 (1929).

When the Milwaukee Road implemented its payroll deduction in 1965, 49 USC 20(7)(b) was violated; and said violation continued until the present. In this respect, the Milwaukee Road may have also violated the federal election laws viz:

18 USC 1610 prohibits a corporation from expending corporate monies in connection with any election to any federal political office. The election laws do provide, however, that corporations may establish and maintain separate segregated funds to be utilized for political purposes. Corporate resources may be used "without limitation in the administration of these segregated political funds." Buckley v. Valeo, 44 U.S.L.W. 4127 (U.S. Jan. 30, 1976) Pipefitters Local 562 v. United States, 407 U.S. 385 (1972), 18 USC 610. It must be stressed that Buckley supra did not strike down 18 USC 610--corporations may not contribute corporate monies to federal political campaigns. If it can be established that the Milwaukee Road expended corporate monies to a political fund, through the device of reimbursing its employees for their contributions, an 18 USC 610 action might be brought against the Milwaukee Road.

Greyhound Corporation was fined $5,000 following its entry to a plea of guilty on October 2, 1974, for having contributed a total of $16,040 to the 1972 Presidential Campaign. The payments were made by executives of the company to polit-cal campaigns, but the executives were reimbursed through a company bonus plan. Thus an 18 USC § 610 action was brought against Greyhound by the Watergate Special Prosecutor's Office, because it had contributed to political campaigns through the indirect device of reimbursing its employees with corporate monies.

Attached herewith is an excerpt from Report of Watergate Special Prosecution Force - October 1975 and a copy of the one count information (filed to Criminal No. 74-559 in the District Court for the District of Columbia by Leon Jaworski, Special Prosecutor) to which Greyhound entered a plea of guilty.

The statute of limitations, in respect to any realistic action under the FEC Act, runs only to fact situations arising since 1973. Congress amended the Federal Election law last year to shorten the statute of limitations to three years on campaign law violations 2 USC § 455. Any actions that might have been brought under 18 USC § 610 for events occuring in 1965 through 1972 are barred. This is not to say that from 1973 onward the election law was not broken by the Milwaukee Road.

Violations of the Interstate Commerce Act

As set forth in this memorandum, the payroll records of the Milwaukee Road were falsified in violation of (49 USC 20 (7)(b)) from 1965 through and including the present. It is well settled law that when an employee of a corporation performs an act, within the scope of his duties, which violates the law, his act becomes the act of the corporation. Grand Rapids & Indiana Ry. Co. v. U.S. 212 F. 577, cert. denied 234 U.S. 762; U.S. v. Erie R. Co., 222 F. 444. It is well established that a corporation can have a criminal intent as well as it can have a contractual intent. As Professor Stevens states, "...the acts and mind of an agent can be imputed to an incorporated group as readily as to an unincorporated group." Stevens, Corporations, 2d ed., Section 6. And the courts have set forth the test of corporate responsibility viz:

> "The test of corporate responsibility for the acts of its officers and agents, whether such acts be criminal or tortious, is whether the agent or officer in doing the thing complained of was engaged in 'employing the corporate powers actually authorized' for the benefit of the corporation 'while acting within the scope of his employment in the business of the principal.' If the act was so done it will be imputed to the corporation..." Egan v. United States, 137 F.2d 369, 379 (8th Cir. 1943).

When management of the Milwaukee Road established the "Trust Fund" it was for the benefit of the corporation and management used the corporate powers to achieve its end in setting up the fund. As the Court in Egan stated:

> "In their zeal to protect the company's property, to promote its business, to cultivate the friendly attitude of patrons and public officials, and to render legislators and taxing boards and commissions susceptible to friendly argument and persuasion, these and other officers who assisted them formed and carried out the plan to raise a secret fund belonging to the company to be used in part at least for contributions to candidates for office and to party committees. The plan so formed was consummated..." Egan v. United States, 137 F.2d 369, 380 (8th Cir. 1943).

The facts in Egan supra are almost on point with the case at bar, and as such, bear attention here: Louis H. Egan was convicted of conspiracy to violate section 12(h) of the Public Utility Holding Company Act of 1935, 15 U.S.C.A. § 79(L)(h), and the Union Electric Company of Missouri was convicted of conspiracy to violate section 12(h) of 15 U.S.C.A. § 79 (L)(h), and of substantive offenses in violation of that act. Management of the corporation created in 1926 a secret fund for use in making contributions to candidates for office by the means of rebates and false expense accounts. The fund continued from 1926 until about 1940. During the period of its operation, the fund obtained money by means of rebates and false expense accounts and expended monies through the executive vice-president's office for political purposes in the interest of and for the benefit of the corporation and its subsidaries. Charges that the defendant Union Electric was engaged in the practice of making political contributions appeared in a St. Louis newspaper in the Winter of 1938. After the newspaper article appeared, investigations were carried on by the Securities and Exchange Commission. The United States

brought a criminal action against the corporation and certain corporate officers and a grand jury investigated into the matter. Louis H. Egan, President of the corporation was found guilty on all counts of conspiracy and violations of the Public Utility Holding Company Act of 1935. The case at bar is quite similar, but for the fact that in the instant case, the statute violated is 49 U.S.C. 20(7)(b) rather than 15 U.S.C.A. § 79(1)(h).

Violations Selected For Prosecution

Selected for prosecution are the payroll records of four supervising employees of the Milwaukee Road. These employees are: R. F. Kratochwill, R. K. Merrill, D. O. Burke, and Arthur W. Hallenberg. Kratochwill, Burke and Hallenberg have given what are, in essence, admissions that their salary increases were related to their contributions to the "Trust Fund" infra. The payroll deduction plan for the "Trust Fund" began in 1965 and continues to the date hereof. These selected violations include the payroll records (CMC payroll Form 43-A) of these four selected individuals from January 1972 through and including April of 1976. Each entry represents a separate 20(7)(b) violation; however, for the sake of clarity, five years (January 1972 through January 1976) will represent one count per year or five counts multiplied by the four individuals' records. Thus, the Milwaukee Road should be charged with at least 20 individual counts of falsifying records.

For the purpose of clarity, the four individuals' pay increases of December 31, 1964 are set out below, illustrating

that in each instance $25.00 of corporate funds were cast in the guise of "certain adjustments" to salary:

R. K. MERRILL

Monthly salary rate 12/31/64	$2,083.33
Plus 7% increase effective 1/1/65	145.83
	2,229.16
Rounded to nearest $	2,230.00
Plus: certain adjustments per Quinn to Board of Directors on 12/17/64	25.00
	$2,255.00

See P/R record of payments marked Exhibit "C" attached hereto

R. F. KRATOCHWILL

Monthly salary rate 12/31/64	$2,083.33
Plus: 7% increase effective 1/1/65	145.83
	2,229.16
Rounded to nearest $	2,230.00
Plus: certain adjustments per Quinn to Board of Directors on 12/17/64	25.00
	$2,255.00

See P/R record of payments marked Exhibit "C" attached hereto

D. O. BURKE

Monthly salary rate 12/31/64	$1,583.33
Plus: 7% increase effective 1/1/65	110.83
	1,694.16
Rounded to nearest $	1,695.00
Plus: Certain adjustments per Quinn to Board of Directors on 12/17/64	25.00
	$1,720.00

See P/R record of payment
marked Exhibit "C" attached hereto

ARTHUR W. HALLENBERG

Monthly salary rate 12/31/64	$1,387.33
Plus: 7% increase effective 1/1/65	97.11
	1,484.44
Rounded to nearest $	1,485.00
Plus: certain adjustments per Quinn to Board of Directors on 12/17/64	25.00
	$1,510.00

See P/R record of payment
marked Exhibit "C" attached hereto

As set forth above, the four individuals received an extra $25.00 increase over and above the regular 7% increase of December 31, 1964. Because 49 U.S.C. 20(7)(b) provides for a fine of "not more than five thousand dollars," there is a possible exposure to the carrier of $5,000 (x) 20 counts or $100,000.00.

The writer has considered bringing even further counts contra the carrier, as the case law states that each entry is a violation of 20(7)(b). Thus, the Milwaukee Road's potential exposure is astronomical. In the interest of the National Transportation Policy it would seem that charging the carrier with the maximum violations under the statute would fly in the face of good judgment. Hence, at this point, the writer recommends only 20 counts be brought.

Conclusion and Recommendations

The facts presented herein establish that the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin Corporation, with its principal offices at 516 West Jackson Boulevard, Chicago, Illinois, willfully and intentionally falsified payroll records of its supervisory employees during the period 1965 to date. As such, prosecution of the above-named carrier for violation of 49 USC 20(7)(b) appears to be fully warranted. There are also violations of the Federal Election Statutes 18 USC 610 and the facts relating to these violations should be sent to the Federal Election Commission as provided by Congress under Title 2 § 441(b) (1976 amendment).

This writer has seriously considered the possibility of prosecuting top executives of the corporation. However, it was decided to forego this action, since the only evidence of individual wrong-doing is contained in the testimony before the Securities and Exchange Commission and of course, the falsified documents. In light of the testimony taken before the S.E.C., it is further concluded that at the time of referral of the proposed action against the corporation, that a simultaneous recommendation be made to the United States Attorney that a grand jury investigation be instituted into the matters disclosed in the SEC testimony of the following individuals and material discussed herein:

1) William J. QUINN, who resides in Winnetka, Illinois, has been chairman of the Board and President of CMC since in or

about June 1971, and Chairman of the Board and Chief Executive Officer of the RAILROAD since in or about March 1970. From in or about 1958 to in or about 1966, QUINN served as President and a Director of the RAILROAD.

2) Worthington L. SMITH, who resides in Winnetka, Illinois, has been a Director of CMC since in or about July 1972 and President and a Director of the RAILROAD since on or about July 15, 1972.

3) Curtiss E. CRIPPEN, who resides in Wilmette, Illinois, has been a Director of the RAILROAD at all times relevant herein. He was President and a Director of the RAILROAD from in or about October 1966 until in or about July 1972 when he became Vice Chairman of the RAILROAD'S Board of Directors, a position he held until in or about January 1973.

The depositions taken by the S.E.C. would seem to indicate that these above-named individuals conspired to falsify carrier records, but the evidence available is lacking to identify those individuals who have participated in or aided, abetted or conspired to falsify carrier records, hence warranting a grand jury investigation.

Respectfully submitted,

Wayne R. Walters

Wayne R. Walters
Attorney

8-53-11M

A. D. 200 Rev.

General Officers Division

Deduction on Officers Department Pay Roll No.

Month of January 19 65 Second Half

In Favor of Milwaukee Road Officers Trust Acct. ( ) Vou. Cat.
(State Reason for Deduction)

Address Chicago, Illinois

Deduction Order Number	Period	Deducted from Salary of NAME	Employee S. S. A. Number or Working Number			Amount of Deduction	
	X	L. H. Dugan	720	16	2216	$ 15	00
	X	F. L. Cowling	934	12	6287	15	00
	X	J. T. Teussig	339	24	0577	15	00
	X	C. T. Larmon	707	12	7357	15	00
	X	C. L. Schiffer	390	05	2073	15	00
	X	E. J. Stoll	394	03	7866	15	00
	X	G. H. Kronberg	373	09	3257	15	00
	X	C. E. Crippen	707	10	7130	15	00
	X	R. F. Kratochvill	398	01	5077	15	00
	X	W. E. Ross	708	10	0322	15	00
	X	H. C. Johnson	707	12	7482	15	00
	X	R. K. Merrill	334	05	5006	15	00
	X	F. C. McGinn	707	12	0972	15	00
	X	L. V. Anderson	483	14	9199	15	00
	X	D. O. Burke	707	12	1851	15	00
	X	D. W. Amour	707	14	8946	15	00
	X	F. A. Upton	485	03	5714	15	00
	X	A. W. Hallenberg	707	14	3145	15	00
	X	S. L. Wood	707	14	5070	15	00
	X	V. B. Closky	707	14	3639	15	00
	X	H. H. Molzer	707	12	0020	15	00
	X	W. W. Kramer	706	03	4318	25	00
	X	W. D. Sunter	707	12	7605	25	00
	X	E. W. Chesterman	707	12	7627	25	00
	X	P. J. Cullin	707	12	7618	15	00
					Total	$ 405	00

Approved: (Signed) W. E. ROSS

Assistant Controller
Title

Correct: [illegible]
Payroll Maker or Deduction Clerk

Exhibit "A"

A. D. 200 Rev.

General Officers Division

Deduction on Officers Department Pay Roll No. 800

Month of May 19 76 Second Half

In Favor of Milwaukee Road Officers Trust Account ( ) (State Reason for deduction)

Address Chicago, Illinois

Deduction Order Number	Period	Deducted from Salary of NAME	Employee S. S. A. Number or Working Number			Amount Ded.
						$
		C. D. Rogers, Jr.	258	20	8561	1
		D. A. Keller	347	09	5593	1
		W. J. Quinn	701	16	8606	2
		X J. T. Taussig	339	24	0677	1
		X C. L. Schiffer	390	05	2073	1
		X E. J. Stoll	384	03	7866	2
		X R. F. Kratochwill	398	01	5077	1
		F. H. Miller	472	12	7300	1
		D. C. Young	355	30	3677	1
		G. A. Kellow	707	10	7088	2
		X R. K. Merrill	334	05	5006	2
		X L. V. Anderson	483	14	9199	2
		X D. O. Burke	707	12	1851	1
		L. W. Harrington	397	18	5910	2
		X F. A. Upton	485	03	5714	1
		X A. W. Hallenberg	707	14	3145	1
		J. J. Drinka	710	05	6856	1
		X G. L. Wood	707	14	5070	1
		X H. H. Melzer	707	12	0020	2
		X G. H. Kronberg	373	09	3237	2
		Q. W. Torpin	504	12	5453	2
		R. E. Beck	504	01	1436	1
		R. J. Kemp	480	10	6203	1
					Total	$ 3

Approved:

Comptroller
Title

Correct:

Payroll Maker or Deduction Cl

PERSONAL

Mr. F. G. McGinn
Mr. W. W. Kremer
Mr. C. E. Crippen
Mr. E. O. Schlowe
Mr. L. H. Dugan
Mr. H. H. Melzer
Mr. E. J. Stoll

Effective January 1, 1965, you are authorized to increase the salaries of all supervisory and exempt employees, who are not covered by the scope of wage agreements and where the monthly rates cover all services performed, in the following manner:

> Increase monthly rates seven per cent (7%) with a minimum of $44.00 per month. Any increases producing other than full dollar figures will be rounded off at the next highest full dollar figure.

It should be understood that these increases will not be applied to custodians, station attendants or students, nor to those special situations which have previously been covered by my letter of December 11, 1964.

It should also be understood that these increases do not apply to the occupants of 1(b) positions as referred to in the Clerks Schedule. The occupants of those positions have received increases in accordance with previous instructions.

cc - Mr. G. H. Kronberg
Mr. W. B. Brahany
Mr. J. J. Roche
Mr. S. W. Armour

Exhibit "6"

other lines, to grant increases to officers and supervisory personnel not covered by wage agreements. He recommended an increase of 7%, effective January 1, 1965. The cost is estimated at $810,000 per annum. On motion, duly made and seconded, the recommended increase was unanimously approved.

Mr. Quinn also recommended an increase of $25.00 per month to some 225 members of the Milwaukee Road Foremen's Association, retroactive to March 1, 1964, with a further increase of $21.90, effective January 1, 1965, and another of $21.90, effective January 1, 1966. The estimated cost is $67,500 per annum, and the action is necessary in order to make adjustments somewhat comparable to the increases in the rates of pay recently made in agreements with other labor unions. On motion, duly made and seconded, the recommended increase was unanimously approved.

Authority to make certain adjustments, in addition to the horizontal increase to officers and supervisors, was also approved. This is for the purpose of maintaining relationships and eliminating inequalities.

Mr. Quinn stated that, on May 12, 1964, the Board approved the sale of 4 Super Dome Cars to the Canadian National, and that we have been requested to sell it two more of these cars. We originally had ten of the cars; and if we make this sale it will leave four for service on the Hiawathas between Chicago and the Twin Cities, which will be adequate.

As there is a very limited market for them, it is deemed desirable to sell the two cars to the Canadian National. It will not pay more than $150,000 each. The depreciated book value is $195,000 each. The cars are subject to an Equipment Trust and under the provisions thereof we would have

INTERSTATE COMMERCE COMMISSION
BUREAU OF ~~[illegible]~~ Accts

EXHIBIT SUMMARY

NAME: Chi St P & P RR

ICC EXHIBIT NUMBER: 16

LOCATION (City, State): Chicago Il

ICC EXHIBIT LETTER:

DESCRIPTION OF EXHIBIT, SOURCE AND CUSTODIAN

Pay change records of certain officers

L Hanratty
Chief Accounting

REMARKS

INVESTIGATOR: William G Anderson

DATE:

ICC FORM 19
(REV. 12/72)

Ref.	Date	Rate	Ref.	Date	Rate	Ref.	Date	Rate
1671	2-1-55	1,250.00	1762	10-12-61	2,325.00	1862	10-1-70	2,875.00
1682	11-1-58	1,325.00	1776	1-1-65	2,358.00	1867	5-14-72	2,875.00
1655	1-1-60	1,500.00	1776	1-1-65	2,371.00	1910	11-1-75	2,875.33
1693	10-1-60	1,875.00	1804	7-1-65	2,357.00	1923	5-11-72	2,875.33
1721	1-1-63	1,925.00	1821	1-1-69	2,372.00			
1737	5-12-64	2,053.33	1853	5-13-65	2,371.67			
1749½	1-1-65	2,355.00	1855	1-1-70	2,375.67			
1762	1-1-66	2,323.00	1871	7-1-73	2,940.42			
1765	8-1-66	2,425.00	1872	2-1-73	2,012.42			

Ref.	Date	Rate	Ref.	Date	Rate	Ref.	Date	Rate
1671	11-1-55	2,375.00	1862	1-1-70	2,875.00			
1682	2-1-56	2,375.00	1867	5-14-72	2,875.00			
1655	2-1-57	2,375.00	1910	11-1-75	2,875.33			
1693	1-1-61	2,375.00	1923	5-11-72	2,875.33			

Dunn, J. J. 710-05-6856

Ref.	Date	Rate	Ref.	Date	Rate
1765	11-1-61	1,685.00	1881	7-1-73	2,512.50
1776	1-1-65	1,719.00	1895	6-1-74	2,593.50
1804	7-1-65	1,792.00	1901	1-1-75	2,617.50
1821	1-1-69	1,807.00	1907	9-1-75	2,677.50
1853	1-1-70	1,945.00	1911	11-1-75	2,3[illegible].00
1855	1-1-71	2,101.92			
1859	5-1-71	2,272.92			
1866	7-1-72	2,356.92			
1872	1-1-73	2,455.50			

Burke, L. C. 707-12-1851

Ref.	Date	Rate	Ref.	Date	Rate
1722	4-1-63	1,375.00	1858	1-1-70	2,973.33
1732	1-1-64	1,583.33	1853	1-1-71	2,611.25
1749½	1-1-65	1,720.00	1866	7-1-72	2,855.25
1762	1-1-66	1,772.00	1872	1-1-73	2,958.33
1767	8-1-66	1,938.67	1887	9-1-73	3,0[illegible]3.33
1777	1-1-67	2,135.67	1899	7-1-74	3,115.00
1792	1-1-68	2,097.67	1901	1-1-75	3,199.00
18[illegible]	7-1-68	2,160.67	1911	11-1-75	3,449.00
1814	1-1-69	2,333.33			

Anderson, L. V. 453-14-9199

#01002

Ref.	Date	Rate	Ref.	Date	Rate	Ref.	Date
1665	10-1-59	1,271.67	1762	8-1-66	2,421.00	1856	5-1
1666	11-1-59	1,315.00	1777	1-1-67	2,591.00	1899	7-1
1713	5-10-58	1,583.33	1792	1-1-68	2,669.00	1901	1-1
1730	1-1-60	1,648.33	1804	1-1-68	2,750.00	1910	11-1
1682	2-1-59	1,833.33	1815	1-1-69	3,125.00	1913	1-1
1721	1-1-60	1,927.33	1858	1-1-70	3,313.00	1915	1-1

R. K. 334-05-5006 8-8-16

Ref	Date	Rate	Ref	Date	Rate	Ref	Date	Rate
62	1,916.67	1779	1-1-67	3,413.00	1897	5-14-74	4,916.67	
63	1,993.67	1796	1-1-68	3,516.00	1910	11-1-75	5,291.67	
64	2,053.33	1804	7-1-68	3,633.00	1922	5-11-76	5,105.33	
65	2,355.00	1821	1-1-69	3,713.00				
66	[illegible]75.00	1833	1-1-70	3,906.00				
67	[illegible]7.00	1847	11-1-70	4,333.33				
68	[illegible]	1866	7-1-72	4,562.33				
69	3,833.33	1872	2-1-73	4,577.33				
70	[illegible]50.00	1882	8-1-73	4,666.67				

Schiffer C. L. 370-05-3672 1-6-17

Ref	Date	Rate	Ref	Date	Rate
1742	10-1-64	900.00	1825	1-1-70	1,865.67
1749	1-1-65	958.00	1853	1-1-71	2,015.00
1762	1-1-66	1,018.00	1866	7-1-72	2,115.00
1779	1-1-67	1,069.00	1872	1-1-73	2,170.00
1784	10-1-67	1,166.67	1889	7-1-73	2,225.00
1796	1-1-68	1,201.67	1897	5-14-74	2,341.67
1800	5-14-68	1,666.67	1910	11-1-75	2,625.00
1804	7-1-68	1,716.67	1922	5-11-76	2,725.00
1821	1-1-69	1,759.67			

P. G. 373-09-2227 9-21-16

Ref	Date	Rate	Ref	Date	Rate	Ref	Date	Rate
1	[illegible]	1821	1-1-67	3,209.67				
2	1,473.67	1824	5-13-67	3,483.33				
3	1,625.00	1838	1-1-70	3,693.33				
5	1,764.00	1866	7-1-72	3,576.33				
6	1,817.00	1872	2-1-73	3,751.33				
7	2,255.00	1882	8-1-73	4,166.67				
8	2,568.00	1897	5-14-74	4,416.67				
9	3,041.67	1910	11-1-75	4,725.00				
10	3,233.67	1922	5-11-76	5,125.00				

Meiser H. M. 261-12-0030 2-1-14

Ref	Date	Rate	Ref	Date	Rate
1726	9-1-63	1,375.00	1853	1-1-71	2,428.67
1739	7-1-64	1,666.67	1859	9-1-71	2,644.67
1749	1-1-65	1,809.00	1866	7-1-72	2,713.67
1762	1-1-66	1,864.00	1872	2-1-73	2,763.67
1779	1-1-67	1,958.00	1886	8-1-73	2,791.67
1796	1-1-68	2,017.00	1898	6-1-74	2,908.33
1804	7-1-68	2,078.00	1901	1-1-75	2,992.33
1821	1-1-69	2,130.00	1910	11-1-75	3,141.67

McGINN, F. G. — 7-1-12-1972 — 4-25-11 / 9-16-30

1165 Ralsio- [illegible]

Glendale [illegible]

SENIOR V.P. - [illegible]

Ref.	Date	Rate	Ref.	Date	Rate	Ref.	Date	Rate
1661	1-1-57	1,991.67	1737	5-12-64	3,133.33	1804	7-1-68	5,293.00
1663	2-1-57	1,991.67	1749½	1-1-65	3,913.00	1821	1-1-69	5,426.00
1665	10-1-57	2,000.00	1752	5-11-65	4,000.00	1838	1-1-70	5,152.00
1666	11-1-57	2,125.00	1762	1-1-66	4,120.00	1866	7-1-72	5,924.58
1675	5-12-58	2,500.00				1872	2-1-73	5,999.58
1680	11-1-58	2,908.33	1766	5-10-66	4,313.33	1873	5-8-73	6,083.33

Wood, G. L. — 707-14-5016 — 11-16-[illegible]

[illegible] 1005 [illegible]

Ref.	Date	Rate	Ref.	Date	Rate	Ref.	Date	Rate
1669	1-16-58	1,063.33	1838	1-1-70	1,641.00	1915	3-1-76	[illegible]
1680	11-1-58	1,158.33	1853	1-1-71	1,772.33			
1721	1-1-63	1,205.33	1857	8-1-71	1,914.33			
1749½	1-1-65	1,315.00	1866	7-1-72	2,016.33			
1762	1-1-66	1,355.00	1872	1-1-73	2,070.66			
1779	1-1-67	1,423.00	1886	8-1-73	2,113.61			

Eugenio Martinez

Indicted on March 7, 1974, on one count of conspiracy to violate civil rights (18 USC Section 241). Pleaded not guilty March 14, 1974. Found guilty July 12, 1974. Received a suspended sentence and three years probation on July 31, 1974. Conviction under appeal.

Campaign Activities and Related Matters

The following individuals entered pleas of guilty to misdemeanor non-willful violations of 18 USC Section 610, the federal statute prohibiting corporate campaign contributions:

Raymond Abendroth Time Oil Corp.	October 23, 1974	$2,000 fine [1]
James Allen Northrop Corp.	May 1, 1974	$1,000 fine
Richard L. Allison Lehigh Valley Co-operative Farmers	May 17, 1974	$1,000 fine [2]
Orin E. Atkins Ashland Petroleum Gabon, Inc.	November 13, 1973	$1,000 fine [2]
Russell DeYoung Goodyear Tire and Rubber Co.	October 17, 1973	$1,000 fine
Ray Dubrowin Diamond International Corp.	March 7, 1974	$1,000 fine
Harry Heltzer Minnesota Mining and Manufacturing Co.	October 17, 1973	$500 fine
Charles N. Huseman HMS Electric Corp.	December 3, 1974	$1,000 fine
William W. Keeler Phillips Petroleum Co.	December 4, 1973	$1,000 fine
Harding L. Lawrence Braniff Airways	November 13, 1973	$1,000 fine
William Lyles, Sr. LBC & W, Inc.	September 17, 1974	$2,000 fine [1]
H. Everett Olson Carnation Co.	December 19, 1973	$1,000 fine
Claude C. Wild, Jr. Gulf Oil Corp.	November 13, 1973	$1,000 fine
Harry Ratrie Ratrie, Robbins and Schweitzer, Inc.	January 28, 1975	Suspended sentence
Augustus Robbins, III Ratrie, Robbins and Schweitzer, Inc.	January 28, 1975	Suspended sentence

[1] Charged with two counts.
[2] Fine suspended.
[3] Pleaded no contest to charges.

The following individuals entered pleas of guilty to an misdemeanor non-willful violations of 18 U.S.C. Sections 2 and 610, aiding and abetting an illegal campaign contributions:

Fred N. Carroll	May 28, 1974	Suspended sentence
Norman Sherman	August 12, 1974	$500 fine
John Valentine	August 12, 1974	$500 fine

The following corporations entered pleas of guilty to violations of 18 U.S.C. Section 610, illegal campaign contributions:

American Airlines	October 17, 1973	$5,000 fine
Ashland Oil, Inc	December 30, 1974	$25,000 fine [1]
Ashland Petroleum Gabon, Inc.	November 13, 1973	$5,000 fine
Braniff Airways	November 12, 1973	$5,000 fine
Carnation Company	December 19, 1973	$5,000 fine
Diamond International Corp	March 7, 1974	$5,000 fine
Goodyear Tire and Rubber Company.	October 17, 1973	$5,000 fine
Greyhound Corp	October 8, 1974	$5,000 fine
Gulf Oil Corp	November 13, 1973	$5,000 fine
Lehigh Valley Co-operative Farmers.	May 6, 1974	$5,000 fine
Minnesota Mining and Manufacturing Co.	October 17, 1973	$4,000 fine
National By-Products, Inc	June 24, 1974	$1,000 fine
Phillips Petroleum Co	December 4, 1973	$5,000 fine
Time Oil Corp	October 23, 1974	$5,000 fine [2]
Rapid, Robbins and Schweitzer, Inc.	January 28, 1975	$2,500 fine

The following corporations entered pleas of guilty to violations of 18 U.S.C. Section 611, illegal campaign contributions by government contractor:

LBC & W, Inc	September 17, 1974	$5,000 fine
Northrop Corporation	May 1, 1974	$5,000 fine

The following individual and corporation entered pleas of not guilty to an information filed October 19, 1973, charging four counts of misdemeanor non-willful violation of 18 U.S.C. Section 610, illegal campaign contribution. Both were acquitted on July 12, 1974, by a U.S. District Court judge in Minneapolis, Minnesota:

Dwayne O. Andreas
Chairman of the Board, First Interoceanic Corp.
First Interoceanic Corp.

---

[1] Charged with five counts.
[2] Charged with two counts.

EXCERPT FROM Report of Watergate Special Prosecution Force - October 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal No. 74-559
v.	)	(18 U.S.C. Section 610)
	)	INFORMATION
	)	
GREYHOUND CORPORATION,	)	
Defendant	)	

The Special Prosecutor charges:

COUNT ONE

1. At all times material to this Information the defendant, the GREYHOUND CORPORATION, was a corporation established under the laws of the State of Delaware .

2. On or about November 7, 1972, a general election was held pursuant to the Constitution and Laws of the United States at which Presidential and Vice Presidential electors were voted for.

3. From on or about October 10, 1972, to on or about February 28, 1973, in the District of Columbia and elsewhere, the defendant, the GREYHOUND CORPORATION, made payments totalling sixteen thousand forty dollars ($16,040) to various political committees organized to promote the candidacies of Richard M. Nixon and George McGovern in the aforesaid general election, to wit: by encouraging senior officials of the defendant, the GREYHOUND CORPORATION, to contribute personal funds to the Presidential candidate of their choice; and by thereafter awarding to each executive that made a contribution supplemental bonuses in an amount twice the amount of the previous contribution

All in violation of Section 610, Title 18, United States Code.

LEON JAWORSKI
Special Prosecutor
Watergate Special Prosecution Force

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

Lawrence J. Hayes, Esquire
Maun, Hazel, Green, Hayes,
Simon and Aretz
332 Hamm Building
Saint Paul, Minnesota 55102

Re: MUR 312 (76)

Dear Mr. Hayes:

This is to advise you that on February , 1978, the Commission voted to terminate its inquiry in the matter referenced above.

The Commission is of the opinion that payments made by the Chicago, Milwaukee, Saint Paul and Pacific Railroad to twenty-five of its employees were made as reimbursement for the costs of their membership in the Milwaukee Road Officers Trust Account, and that these payments were illegal under the then - existing statute, 18 U.S.C. §610. The Commission has determined, however, that the illegal payments ceased when, on February 1, 1973, the salaries of the last of the twenty-five Trust members still on active duty were restructured pursuant to the Salary Administration Policy of August 1, 1972.

In view of the fact that the Milwaukee Road, by its own actions, eliminated the illegal reimbursements five years ago, the Commission will not pursue this matter further.

A copy of the certification of the Commission's vote is enclosed.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosure

FEC 1978

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
ATTORNEYS AT LAW
532 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102
AREA CODE 612
221-1812

JOSEPH A. MAUN
MERLYN C. GREEN
LAWRENCE J. HAYES
JEROME B. SIMON
RICHARD E. ARETZ
JOHN A. MURRAY
JOHN C. JOHANNESON
JAMES W. BREHL
BRUCE G. ODLAND
ALBERT A. WOODWARD
RICHARD D. DONOHOO
GARRETT E. MULROONEY
ROBERT A. DWORSKY
WILLIAM J. HASSING
M. MICHAEL MONAHAN
JAMES A. GALLAGHER

CHARLES BANS
BARRY A. GERSICK
GEOFFREY P. JARPE
PHILIP A. PFAFFLY
RICHARD M. GAALSWYK
MARK E. JACOBSON
RICHARD L. GILL
LAWRENCE J. MAUN
JOHN T. HARTMANN

OF COUNSEL
RONALD S. HAZEL

77 NOV 4 AM 7:42

November 1, 1977

Lawrence J. Hayes
Dir Dial 221-1818

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

Re: MUR 312 (76)

Dear Mr. Convery:

By way of supplement to recent correspondence you should know that the Milwaukee Railroad and its holding company intend to create a new Milwaukee Road Political Action Committee this month. This will occur in accordance with articles of association, copy of which is enclosed. The present Milwaukee Road Officers Trust Account will be terminated and the funds contained therein will be turned over to the Milwaukee Road Political Action Committee.

Thank you.

Very truly yours,

Lawrence J. Hayes

Lawrence J. Hayes

LJH:bh
cc: Raymond K. Merrill, Esq.

ARTICLES OF ASSOCIATION

OF

MILWAUKEE ROAD POLITICAL ACTION COMMITTEE

ARTICLE I

NAME

The name of this voluntary association of persons is the Milwaukee Road Political Action Committee.

ARTICLE II

PURPOSE

The purpose of the Association shall be to support qualified individuals who are candidates for nomination or election to any elective public office in any primary, general, or special election by making contributions to such individuals and to committees, associations, or organizations which further the candidacy of such individuals and by making transfers to any state political action Committee established by directors, officers, professional, or supervisory employees of Chicago, Milwaukee, St. Paul and Pacific Railroad Company ("Milwaukee Road") for the purpose of that Committee making contributions and expenditures in support of qualified individuals who are candidates for nomination or election to any state or local elective office in any primary, general, or special election.

ARTICLE III

MEMBERSHIP

Membership in the Association shall be open to any directors, officer, professional or supervisory employee of the Milwaukee Road upon contribution or a pledge of contribution of not less than $100.00 a year to this Association

for the purpose of this Association making contributions to candidates for nomination or election to public office and other lawful political purposes, and defraying any lawful expense of the Association.

Each member shall be encouraged to suggest candidates and organizations whom he deems worthy of support by the Association, and each such suggestion shall receive full and careful consideration by the Executive Committee in determining to whom contributions shall be made by the Association.

No coercion, threat, reprisal, job discrimination, bonus, promotion or other illegal or improper method shall be employed, directly or indirectly, to solicit any person to become a member or make contributions to this Association, nor shall the Association use any money so contributed.

ARTICLE IV

OFFICERS

At each annual meeting of the members of this Association the following officers shall be elected from among the members to serve for one year, or until their successors are elected and qualified:

Chairman

Vice Chairman

Secretary

Treasurer

The appropriate officers of the Association shall keep all records and file all reports required by law. The Executive Committee by majority vote may elect such other officers, including one or more additional vice Chairmen, assistant

secretaries, assistant treasurers and other officers, as the Executive Committee shall from time to time elect from among the members.

ARTICLE V

COMMITTEES

A. Executive Committee.

The Executive Committee shall consist of seven (7) members, at least one of whom shall be a lawyer, to be constituted as follows: each of the four (4) elected officers whose office is specified in Article IV of these Articles of Association and three (3) other members of this Association to be elected by the members of this Association at their annual meeting to serve for the coming year or until their successors are elected and qualified.

The Executive Committee is charged with the administration of the affairs of the Association, and subject to the control of the Association, and within the limitation of power prescribed by the Articles of Association, can make such provisions, rules and regulations and take such action as shall by them be deemed necessary or proper for the conduct of the affairs and the disposition of the property of the Association. The Executive Committee shall adopt such rules and regulations for the conduct of its meetings and its business as it shall from time to time deem proper. The Executive Committee shall make appropriate arrangements for the place of holding annual or special meetings of the members of this Association, determine the depository where all the funds of the Association shall be deposited, and so advise the Treasurer, and shall have the right to inspect, examine and supervise all of the books and records of the Association.

The Executive Committee shall appoint all committees specified in the Articles of Association and such other committees as it deems necessary

from time to time to carry forward the purposes of the Association. In the event a vacancy should occur in the office of Chairman, Vice Chairman, Secretary or Treasurer or in the membership of the Executive Committee, the Executive Committee shall by majority vote appoint a member of the Association to fill such vacancy until the next annual election.

B. Nominating Committee.

The Executive Committee shall, at least six weeks prior to each annual election, appoint a committee of five (5) members, three (3) of whom shall not be officers or members of the Executive Committee, to be known as the Nominating Committee. The Nominating Committee shall nominate qualified members for each office and for the Executive Committee and give to the Secretary at least two weeks prior to the annual meeting, the names of such nominees. The Secretary shall thereupon, within five (5) days thereafter, notify all of the members of the Association of such nominations. In addition, any ten (10) or more members of the Association may nominate any qualified member, or members, for office or offices, or for the Executive Committee. The list of such nominations shall be given to the Secretary in writing and signed by such members prior to the beginning of the annual meeting.

C. Other Committees.

There shall be such other committees as may be from time to time appointed by the Executive Committee.

D. Chairman.

The Chairman shall be an ex-officio committee member of all committees.

ARTICLE VI

ELECTIONS

Voting for the election of officers and the Executive Committee of the Association shall be at the annual meeting of the members and shall be by a standing or voice vote unless, upon request of ten percent (10%) of the members present at the meeting, secret ballot shall be requested. The officers and members of the Executive Committee elected at the meeting of the members shall assume their offices and the terms shall continue until their successors are duly elected and qualified.

ARTICLE VII

TERMINATION OF MEMBERSHIP

Membership in this Association is a personal privilege and all rights therein shall terminate when the membership ceases. The Executive Committee shall have the right to suspend any member of the Association for conduct adverse to the interest of the Association or for violation of any of the provisions of these Articles of Association. At the next annual or special meeting of members after said suspension the members shall vote on whether the person involved should be expelled from membership and majority vote shall rule.

A member may terminate his membership at any time by written notice to the Secretary.

If a member has not contributed at least $100 during any twelve-month period after becoming a member of the Association, he shall be contacted by the Treasurer to determine his intent to remain active as a member. If the contacted member fails to respond or responds negatively, his membership shall be terminated.

ARTICLE VIII

CONTRIBUTIONS AND EXPENDITURES BY ASSOCIATION

Contributions or expenditures by the Association up to the maximum limits established by law shall be made upon a favorable majority vote of the Executive Committee, such vote being either at a formal meeting of said Committee at which a majority of the members of said Committee present at the meeting favor such contribution or expenditure, or by informal vote without meeting provided at least four (4) members favor such contribution or expenditure. The Chairman, or in his absence or disability, the Vice Chairman, of the Executive Committee shall direct the Treasurer to disburse the funds as said Committee's vote dictates

All contributions and expenditures by the Association shall be by check signed by the Treasurer and countersigned by the Chairman or Vice Chairman payable to the individual, committee, association, or organization receiving the contribution or payment.

ARTICLE IX

REPORTS

A report of funds received and disbursed shall be made not less than semi-annually to each member of the Association.

ARTICLE X

AUDIT

The accounts of the Association shall be audited at least annually by the accounting firm which audits the Milwaukee Road's corporate accounts and said firm is authorized, in the event it is not satisfied with the operations or accounting procedures of the Association, to report its findings and recommen-

dations to the Audit Committee of the Board of Directors of the Milwaukee Road.

ARTICLE XI

MEETINGS

Regular quarterly meetings of the Executive Committee shall be held on the second Mondays of the months of January, April, July, and October. If the second Monday falls on a holiday of such month, the meeting or meetings will be held on the next following business day. The annual meeting of the members of this Association shall be held immeidately prior to the regular meeting of the Executive Committee held in the month of January.

Special meetings of the members of the Association shall be called by the Secretary when requested by the Chairman, or a majority of the Executive Committee or when requested in writing signed by fifteen (15) members of the Association. Special meetings of the Executive Committee shall be called when requested by the Chairman or any three (3) members of the Executive Committee at such hour and place as may be designated by the Chairman.

Notice of each special meeting of the members shall be given to the members of the Association by the Secretary at least five (5) days prior to the holding of any such special meeting. Notice of each special meeting of the Executive Committee shall be given by the Secretary at least one (1) day prior to the holding of any such special meeting.

ARTICLE XII

OFFICERS AND COMMITTEES

Until their successors are qualified and elected, the officers of this Association shall be as follows:

Chairman _____

Vice Chairman _____

Secretary _____

Treasurer _____

Until their successors are qualified and elected, the three (3) other members of the Executive Committee shall be as follows:

_____

_____

_____

ARTICLE XIII

AMENDMENTS

The Association may, by a two-thirds vote of the members present at any annual or special meeting called for that purpose, alter or amend its Articles of Association; provided, however, that any proposed amendment to the Articles of Association shall be circulated to the members in writing at least two (2) weeks prior to the date of such meeting.

ARTICLE XIV

EFFECTIVE DATE

These Articles of Association shall be declared effective as of this day of , 19 7. The officers and members of the Executive Committee named herein shall hold office until the next annual meeting of the Association to be held as specified in the Articles of this Association.

_____

_____

_____

DCC # 1668

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
ATTORNEYS AT LAW
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RICHARD D. DONOHOO
GARRETT E. MULROONEY
WILLIAM J. HASSING
M. MICHAEL MONAHAN
JAMES A. GALLAGHER

CHARLES BANS
BARRY A. GERSICK
GEOFFREY P. JANKE
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RICHARD M. GAALSAA
MARK E. JACOBSON
RICHARD L. GILL
LAWRENCE J. MAUN
JOHN T. HARTMANN

OF COUNSEL
RONALD B. HAZEL
ROBERT A. DMOPSKY

September 26, 1977

Lawrence J. Hayes
Dir Dial 221-1818

702850

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

Re: MUR 312 (76)

Dear Mr. Convery:

Enclosed is the Affidavit of Mr. James T. Taussig, Secretary of Chicago Milwaukee Corporation and Chicago, Milwaukee, Saint Paul and Pacific Railroad Company concerning happenings at a meeting of the Boards of Directors of those Companies on September 19, 1977.

We are hopeful that this matter can be completed and closed shortly.

Thank you very much.

Sincerely,

Lawrence J. Hayes

Lawrence J. Hayes

LJH:bh
Enclosure

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

A F F I D A V I T

JAMES T. TAUSSIG, being first duly sworn on oath deposes and says:

That he is the Secretary of Chicago Milwaukee Corporation (CMC) and Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Railroad) and that as Secretary of CMC and the Railroad he attended the regular monthly meetings of the Boards of Directors of CMC and the Railroad held in Chicago, Illinois on September 19, 1977;

That at each of said meetings a written report was made by Mr. William J. Quinn, Chairman of the Board, President and Chief Executive Officer of CMC and Chairman of the Board and Chief Executive Officer of the Railroad, a true and correct copy of which report is attached hereto;

That at said meetings said William J. Quinn orally informed the Boards he intended to submit documents necessary to reconstitute the Railroad's Officers Trust Account referred to on pages 10 and 11 of said written report in accordance with the principles outlined therein at the next monthly meetings of said Boards on October 17, 1977, for their consideration and review and before any implementation thereof;

That said Boards accepted the written and oral reports without objection and that a copy of said written report will be attached to, and said oral report will be summarized in, the official minutes of the meetings of said Boards.

J. T. Taussig
James T. Taussig

Subscribed and Sworn to
before me this 21st day of
September, 1977.

Jane E. Kot
Notary Public

To Members of the Board of Directors of:

Chicago Milwaukee Corporation
and
Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Gentlemen:

By Judgments and Orders of Permanent Injunctions entered by the United States District Court for the District of Columbia on June 29, 1976, CMC and the Railroad and their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them, were permanently enjoined and restrained from:

1. A. Obtaining money or property by means of, or making, any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

   B. Employing any device, scheme, or artifice to defraud; and

   C. Engaging in any transaction, act, practice or course of business which operates as a fraud or deceit upon any person.

in connection with the offer, purchase or sale of the securities of CMC, Railroad, or any other issuer, by the use of the mails or any means of instrumentalities of transportation or communication in interstate commerce or of the facilities of any national securities exchange; and

2. Filing with the SEC annual reports of CMC, Railroad, or an

other issuer, pursuant to the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, which are materially false and misleading or otherwise omit to state material facts required to be stated therein.

CMC and the Railroad were also ordered to comply fully with the undertakings set forth in their respective Consents and Undertakings attached to the said Judgments and Orders of Permanent Injunction.

By its Consent and Undertaking, CMC undertakes:

1. That its Board of Directors has created and will maintain a Special Committee of its Board comprised only of independent, outside directors to investigate, using such experts as are deemed necessary and proper, and to report to the full Board of Directors on the factual matters contained in the SEC's complaint pursuant to which the aforesaid Judgments and Orders of Permanent Injunctions were entered and on any other matters it deems appropriate.

2. That the Special Committee shall prepare and submit a written report ("Report") to the full Boards of Directors of CMC and Railroad, to the SEC as an Exhibit to a Current Report on Form 8-K for the month in which the Report is submitted to the Board of CMC and Railroad, and shall submit either the full Report or a summary thereof to the shareholders of CMC and Railroad.

3. That the Report shall state the findings of the investigation conducted by the Special Committee and its opinions and recommendations regarding: (i) new controls and new procedures deemed advisable in light of the investigation of the Special Committee reasonably calculated to prevent the recurrence of the matters set forth in the SEC's complaint; and

(ii) such appropriate action to be taken including but not limited to the institution and prosecution of suits on behalf of CMC and Railroad.

Both CMC and Railroad, by their respective Consents and Undertakings, undertake:

1. That their respective Boards will each establish a New Committee of such members of each Board as found by the Special Committees not to be involved in the various transactions and activities set forth in the SEC's Complaint, which New Committees shall independently review the Report and Findings, opinions and recommendations contained therein. The Boards will authorize their respective New Committees to take such action as they deem necessary and proper in light of their review of the findings and recommendations contained in the Report.

2. That their respective Boards or the New Committees shall review for a period of three years on a continuing basis the Judgments and Orders of Permanent Injunctions and the Consents and Undertakings to assure that CMC and Railroad, respectively, have adopted appropriate procedures to comply with said Judgments and Orders of Permanent Injunctions and Consents and Undertakings.

On December 15, 1975, the Boards of Directors of CMC and Railroad appointed a Special Committee comprised of Robert C. Gunness, Charles D. Stauffacher, and Robert S. Stevenson, all independent, outside directors of CMC, to inquire into the circumstances surrounding the subjects of inquiry by SEC, to report its observations and conclusions to each Board, and to recommend any changes in policy and procedures deemed appropriate. The Special Committee retained special counsel to assist it in carrying out the Boards' directions.

The Special Committee determined that its obligations under the Consents and Undertakings of CMC and Railroad would be satisfied if it investigated only the five matters set forth in the SEC's complaint unless information regarding other matters of significance came to its attention. No such matters involving CMC, Railroad, or their officers and directors became apparent to the Special Committee.

The Special Committee prepared and submitted a written Report dated March 23, 1977, to the full Boards of Directors of CMC and the Railroad. A copy of the Report was submitted to the SEC as an exhibit to a Current Report on Form 8-K on March 29, 1977. On the same date a summary of the Report was mailed to shareholders of CMC and Railroad.

The Report stated the Special Committee's findings with respect to each of the five areas of the SEC's complaint and its opinions and recommendations regarding new controls and new procedures deemed advisable in light of its investigation reasonably calculated to prevent the recurrence of the matters set forth in the SEC's complaint. (Report 49-52)

The Special Committee concluded that no personal conduct disclosed in its investigation warrants, nor that the corporate interests would best be served by, dismissal of or other punitive or disciplinary action against anyone presently employed in the management of CMC or Railroad. It also concluded that there was no basis for the institution of litigation against any person or firm. (Report 48)

The Special Committee recommended that its three members and three additional directors who had no involvement in the matters referred to in the SEC's complaint, Jerry Finkelstein, William G. Karnes, and Emory Williams, serve on the New Committees of the Board of Directors of CMC and Railroad. (Report 52)

On April 18, 1977, the Boards of Directors of CMC and Railroad each by resolution directed the undersigned to develop and adopt procedures to implement the Report and to report to the Boards the procedures he plans to implement. The Boards also created New Committees comprised of the Directors named in the preceding paragraph and directed the New Committees to review independently the findings, opinions, and recommendations contained in the Report and to take such action as the New Committees deem necessary and proper in light of their review of the findings and recommendations contained in the Report.

The New Committees on June 20, 1977, each adopted and submitted to the Boards of Directors of CMC and Railroad, respectively, the following resolutions:

> RESOLVED, that it is the recommendation of the New Committee that the Board of Directors of the Company continue to review on a continuing basis until June 29, 1979, the Judgment and Order of Permanent Injunction entered June 29, 1976, in the civil action brought against the Company and other defendants by the SEC in the United States District Court for the District of Columbia to assure that the Company has adopted appropriate procedures to comply with said Judgment and Order of Permanent Injunction and with the Consent and Undertaking of the Company in said action; and
>
> RESOLVED, FURTHER, that no further action by the New Committee is deemed necessary and proper in light of its review and the findings and recommendations contained in the report of the Special Committee; and
>
> RESOLVED, FURTHER, that the Board of Directors of the Company be requested to accept these resolutions by the New Committee as its report to the Board of Directors; to find that the Committee has discharged its functions and responsibilities; and to order that the Committee be officially dissolved.

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The Boards of CMC and Railroad on June 20, 1977, accepted the resolutions as the Report of the New Committees to the Boards and found that the Committees had discharged their functions and responsibilities, and resolved that they be officially dissolved.

Thus, all of the obligations assumed by CMC and Railroad in the Consents and Undertakings have now been fully satisfied except that their Boards must review on a continuing basis until June 29, 1979, the Judgments and Orders of Permanent Injunctions and the Consents and Undertakings to assure that CMC and Railroad have adopted appropriate compliance procedures.

This Report is the first of a series to inform the Boards of CMC and Railroad of present and proposed implementation of the recommendations of the Special Committee and of other appropriate procedures to comply with the Judgments and Orders of Permanent Injunctions and the Consents and Undertakings of CMC and Railroad, as follows:

SPECIAL COMMITTEE RECOMMENDATION NO. 1 - TIMBERLANDS

> Specifically with regard to timberlands, that future annual reports to stockholders and to the SEC be made more informative by including (a) the number of acres of timberland sold, if material, and the income from such sales (segregated from income applicable to sales of timber and of land other than timberland); and (b) appropriate comments as to the relationship of timberland sales to current cash flow and the foreseeable impact, if material, on earnings.

Your attention is directed to the material underscored or outlined in blue in the following reports attached hereto as appendices:

(i) CMC's 1976 annual report to stockholders (App. 1, Pages 2, 6, 11, 12, 14, 15, 16, 17, and 21).

(ii) CMC's 1976 annual report on Form 10-K to the SEC (App. 2, Items 1, 2 and 3; Exhibit B; Supplementary Information;

and Notes to Financial Statements (2), (16), and (19)).

(iii) Railroad's 1976 annual report to stockholders (App. 3, Consolidated Statements of Operations; Notes to Financial Statements (2); Description of the Business; Information By Lines of Business; Financial Review and Analysis; and Review of Operations).

(iv) Railroad's annual report on Form 12-K to the SEC (App. 4, Attachment Form R-1, Page 15).

Reports (i), (ii), and (iii) disclose the amounts of timberland sold and the income from such sales segregated from and combined with income applicable to sales of timber and land other than timberland, and contain appropriate comments as to the relationship of timberland sales to, and their foreseeable impact on, cash flow, revenues, and earnings.

The aforesaid reports also contain information concerning land and timber pretax earnings and revenues, acres of timberland owned, timber and real estate operations, their cash generation potential, and the outlook for major sales of timber, timberland, and industrial sites.

In addition to the foregoing information contained in the 1976 annual reports of CMC and the Railroad to stockholders and SEC, the quarterly reports of CMC to stockholders and SEC, copies attached, (Apps. 5 and 6) disclose the current timberland sales, industrial land sales, timber-cutting sales, and land and timber earnings.

The Managements of CMC and Railroad propose to continue to report information similar to that described above in future annual and quarterly reports to stockholders and the SEC.

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SPECIAL COMMITTEE RECOMMENDATION NO. 2 - MAINTENANCE

> Specifically with regard to maintenance activities, while dollar quantification of "deferred maintenance" may be impractical unless uniform standards for all railroads are established, that future annual reports to stockholders and the SEC be made more informative by including: (a) appropriate comments as to maintenance expenditures, the relationship thereof to current cash flow, and the foreseeable impact, if material, on the Railroad's operations and earnings; and (b) pertinent statistical data (for current years as compared with prior years) bearing on maintenance activities, such as numbers of ties replaced, miles of track rebuilt, trackage subject to slow orders, derailment and accident experience, etc.

Attention is directed to the material underscored or outlined in red in the attached 1976 annual reports of CMC and the Railroad to stockholders and SEC as follows:

(i) CMC's 1976 annual report to stockholders (App. 1, Pages 6, 9, 10, 16, 21, 22, 26 and 27).

(ii) CMC's 1976 annual 10-K report to SEC (App. 2, Items 1 and 2; and Notes to Financial Statements (1), (2), (13) and (15), and (19)).

(iii) Railroad's 1976 annual report to stockholders (App. 3, Notes to Consolidated Financial Statements (1), (2), (13), and (18); Financial Review and Analysis; and Review of Operations).

(iv) Railroad's 1976 annual 12-K report to SEC (App. 4, Attachment Form R-1, Pages 14A, 15, 15B, 74-77, and 116-119).

Included in one or more of the foregoing reports are comments concerning maintenance expenditures, sources of cash for rehabilitation of lines, and the impact of such rehabilitation on reducing maintenance deferrals and improving transportation service.

Also included are pertinent statistical data for current and prior years bearing on maintenance activities, showing (1) sums spent on roadway

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maintenance by the Railroad with a breakdown for labor, ties, ballast, and rail, (2) number of crossties installed, and (3) miles of rail laid. (Additional details are contained in Form R-1 attached to the Railroad's annual 12-K report to SEC.) A comparison also is made of trackage operated under slow orders at year-end 1976 with a year earlier.

Particular stress is made in all four annual reports on the efforts of the Railroad to obtain federal financial assistance under the 4-R Act for rehabilitation of main line between Milwaukee and Minneapolis-St. Paul, purchase of track maintenance equipment, overhauling and upgrading of locomotives, and the repair of freight cars.

In the second quarter 1977 report to CMC stockholders (App. 5), they were advised that the Railroad had entered into a financing agreement whereby the federal government is providing financial assistance of $9.3 million for an initial rehabilitation program for the Milwaukee-Minneapolis-St. Paul line. The possible impact of such program and future programs on CMC's financial statements and on Railroad's Available Net Income is pointed out to the stockholders. Also disclosed by the report is the current study by CMC of a change in its accounting practice for railroad track structures from retirement/betterment to conventional depreciation accounting, and the effect it would have on the treatment of rehabilitation expenses in reports to stockholders. Further discussion of the differences between these methods of accounting are found in the 1976 annual reports of CMC and Railroad to stockholders (Apps. 1 and 3), in CMC's 1976 annual report to the SEC (App. 2), and in CMC's quarterly reports to SEC (App. 6).

SPECIAL COMMITTEE RECOMMENDATION NO. 3 - KENT

Specifically with regard to the Kent transaction, that, until the status of the cash proceeds of the sale

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is further clarified, future reports to stockholders and to the SEC contain such disclosures with regard thereto as outside counsel and auditors may deem appropriate.

The following disclosure was approved by outside counsel and auditors:

> The complaint referred to in the two preceding paragraphs includes an allegation that Railroad's accounting for a 1969 sale to another railroad of a one-half interest in an automobile marshaling yard was improper, and that Railroad has a contingent obligation to deposit the $1.5 million proceeds of the sale with the Trustee of its First Mortgage. House counsel has advised that in his opinion Railroad does not have such an obligation. If the deposit was made, the funds could be drawn down and restored to Railroad's general cash as subsequent property additions or betterments are made.

and appears outlined in yellow in CMC's 1976 annual report to stockholders (App. 1, Page 27); CMC's 1976 annual 10-K report to SEC (App. 3, Note 13 to Financial Statements); Railroad's 1976 annual 12-K report to stockholders (App. 3, Note 13 to Consolidated Financial Statements); and Railroad's 1976 12-K report to SEC (App. 4, Form R-1, Page 13).

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SPECIAL COMMITTEE RECOMMENDATION NO. 4 - OFFICER'S TRUST ACCOUNT

> Specifically with regard to the Officer's Trust Account (the "Fund"), that the purpose, structure and operations of the Fund be promptly reviewed and reconstituted to ensure full compliance with applicable federal and state laws, and that such reconstituted Fund be implemented only after approval by the Board of Directors; further, that the reconstituted Fund be audited by the accounting firm regularly auditing the corporate accounts and, to the extent that such firm is not satisfied with the operations of the Fund, that its recommendations be reported to the Audit Committee of the Board of Directors.

The purpose, structure and operations of the Fund have been reviewed. It is proposed that the Fund be reconstituted by the drafting of a new Trust Agreement and By-Laws which ensure full compliance with applicable federal

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and state laws. The new Trust Agreement as proposed would differ from the present one by requiring that:

1. Three trustees, one of whom shall be an attorney, administer the Fund strictly in compliance with federal and state laws.

2. Any expenditures from the Fund must be approved in advance by at least two of the Trustees.

3. All disbursements shall be by checks drawn on the Fund, signed only by the treasurer or assistant treasurer of the Fund, and countersigned by a Trustee. Contributions shall be by checks so drawn and made payable to the candidate or organization receiving the contribution.

4. Trustees shall be elected by the contributors to the Fund annually. A vacancy may be filled by appointment by the other two Trustees until a new election is held.

5. Reports shall be made to all contributors of amounts received by and disbursed from the Fund not less than semi-annually.

6. The Fund shall be audited by the accounting firm which regularly audits the Railroad's corporate accounts, and said firm shall be authorized by the Trust Agreement, in the event the firm is not satisfied with the operation of the Fund, to report its recommendations to the Audit Committee of the Railroad's Board of Directors.

Copies of a proposed Trust Agreement and By-Laws for the reconstituted Fund will be submitted for the approval of the Boards of CMC and Railroad at an early monthly meeting.

SPECIAL COMMITTEE RECOMMENDATION NO. 5 - ACTIVITIES CONTRARY TO CORPORATE POLICY, LAW AND GENERALLY ACCEPTED BUSINESS AND PROFESSIONAL PRACTICE: ACCESS OF OFFICERS TO AUDIT COMMITTEE

That management be directed to develop methods to insure that personnel will report, through appro-

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> priate channels, any activities which they feel are contrary to corporate policy, law or generally-accepted business or professional practice, and the Board of Directors be advised by management of the methods proposed; further, that officers be given free access to the Audit Committee of the Board of Directors to discuss with such Committee any problems arising in their respective areas which have not been resolved within normal administrative channels.

Management proposes that a statement be prepared stating that the corporate policy of CMC and the Railroad is to conduct their business strictly in accordance with federal and state laws and generally accepted business and professional practices; that all non-union supervisory personnel of CMC and the Railroad be given a copy of such declaration, together with written instructions to report to their supervising officer any activity which they feel is contrary to such policy. All such personnel shall be further instructed that if their supervising officer is involved in the activity or if their report does not receive proper attention, they shall make their report in writing to the appropriate Vice President of CMC or Railroad designated in the instructions or to the President of CMC or Railroad.

Management also proposes to issue a statement to all non-union supervisory personnel on Ethics and Responsibilities for their future guidance. This statement is being prepared with the assistance of outside counsel and will be submitted at an early Board meeting of CMC and Railroad.

For purposes of appropriate liaison between the Railroad's Corporate Audit Section and the Audit Committees of the Boards of CMC and the Railroad on matters of business procedure, legality, and ethics, the Chief Executive Officer wrote a letter on September 7, 1977 to members of the Audit Committees of CMC and the Railroad, advising that he was asking the Director - Corporate Audit Section of the Railroad to arrange for regular meetings with the members of the Committees. A copy of that letter, together with attachments, is

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attached hereto as Appendix 7.

It should be noted here that the non-rail acquired companies of CMC do not have internal audit sections of their own because of personnel limitations due to the relatively small size of each. Each is audited, however, by CMC's outside auditors, Peat, Marwick, Mitchell & Co., and the results of such audits are covered by Peat Marwick in sessions with the Audit Committees of the CMC and the Railroad Boards. In addition, each of the respective Boards of Directors of the non-rail acquired companies meet several times throughout the year. Officers of CMC and the Railroad represent the majority on such Boards and actively participate in such meetings.

Further, on April 5, 1976, Robert E. Dunlap was hired as Group Controller of the acquired companies and works closely on monitoring and counseling with them on financial, accounting, and internal control matters. He reports directly to Mr. R. V. Nugent, Jr., Vice President-Finance and Administration of CMC and Vice President - Finance of the Railroad. The services of the Railroad's Corporate Audit Section can be used for special inquiry into matters at any of the acquired companies if CMC's management deems it advisable or necessary. Mr. Michael D. Sullivan, General Attorney for CMC, is actively involved in legal matters pertaining to the non-rail acquired companies.

All elected officers of CMC and the Railroad have been informed by the Chief Executive Officer that they have free access to the Audit Committee of the Board of Directors of each company to discuss with such Committee any problems arising in their respective areas which have not been resolved within normal administrative channels.

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SPECIAL COMMITTEE RECOMMENDATION NO. 6 - PROCEDURES TO INSURE COMPLIANCE WITH FEDERAL SECURITIES LAWS

> That management be directed to strengthen procedures to insure compliance with the federal securities laws, and the Board of Directors be advised of the action taken. For example, such procedures should recognize that basic disclosure documents, including annual reports to stockholders and annual reports to the SEC, ought to be prepared or reviewed by persons who are sufficiently familiar with the facts to insure accuracy and should also be reviewed and approved in advance by the Board of Directors; and review of such documents by outside counsel for compliance with the requirements of securities laws might be appropriate.

Disclosure documents, including annual reports to stockholders and SEC, quarterly reports to stockholders and SEC, and Current 8-K reports to SEC are prepared by or in collaboration with the Vice President-Accounting, Vice President-Finance, Vice President-Law, and General Attorney and Corporate Counsel of the Railroad, and are reviewed by them and the Chairman, President, Director of Corporate Communications and outside counsel for accuracy and compliance with the requirements of securities laws. Financial statements and notes thereto in the annual reports of CMC and Railroad to stockholders and SEC are reviewed by outside auditors before presentation to stockholders or SEC.

Deadlines for mailing or filing annual reports and the time required for gathering information, obtaining approval by outside counsel and auditors, and printing, do not in all instances permit submission in final form for approval by the Board.

For example, in 1977, Board meetings were held on March 21 and April 18. Preparation and review by officers of CMC and clearance by outside counsel and auditors of CMC's 1976 annual 10-K report to SEC could not be

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completed until March 29. A copy was mailed to each director on that date and the report was filed on its due date, March 30.

A preliminary draft of the Railroad's 1976 annual report to stockholders was circulated to the Boards at the March meeting.

Due to various circumstances, including the delay by the auditors in deciding on the final wording of the Accountant's Report and pending negotiations with the Federal Railroad Administration over the terms of preference share financing and the requisite charter amendments to authorize issuance of the preference shares, CMC's 1976 annual report to stockholders remained in process of revision and completion until immediately prior to mailing on April 14 to stockholder and Directors. The Chairman's letter, which is a part of the report, was mailed, however, to the Directors of CMC on March 31 for their review.

Future reports, to the extent they can be completed in draft form, will be sent to Board members for their review and comment prior to mailing or filing.

SPECIAL COMMITTEE RECOMMENDATION NO. 7 - CANDOR IN COMMUNICATION BY MANAGEMENT WITH BOARD OF TRUSTEES, OUTSIDE AUDITORS AND COUNSEL

> That the need for complete candor in communications between management and the Board of Directors, and between management and outside auditors and counsel in respect of matters within the scope of their respective responsibilities, be emphasized and insisted upon.

The Chief Executive Officer has personally conferred with and advised the members of management of CMC and the Railroad that in their communi-

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nications with Board members, and outside auditors and counsel, nothing less than complete candor will be tolerated.

SPECIAL COMMITTEE RECOMMENDATION NO. 8 - PROCEDURES TO IMPLEMENT SHORT-COMINGS OF MANAGEMENT

> That the Chief Executive Officer be directed to develop and implement procedures designed to overcome the management short-comings identified in this report, and to report to the respective Boards of Directors the procedures which he plans to implement. In particular, he should consider whether the corporations' legal and accounting staffs are in need of strengthening, either through reorganization, personnel changes or otherwise.

The management short-comings identified in the Special Committee's Report with respect to the five subjects investigated by the Committee, and the procedures which have been developed and implemented or which are proposed to be implemented to overcome them are as follows:

1. Sales of Timberland

Management Short-Comings Identified in Report:

> The Committee believes that the annual reports to stockholders starting with the report for 1971 were less than fully informative in not disclosing sales of timberland and, perhaps more significantly, the underlying reasons therefor. By not making clear that a substantial amount of income was attributable to sales of an income-producing asset (i.e., the underlying timberland), and that such sales were initiated because of the precarious cash flow situation of the Railroad, the reports did not give as clear a picture as seems appropriate, at least from hindsight, as to the financial condition and results of operations of the corporations, and may have tended to inflate expectations as to future timber-cutting income. The textual treatment in the 1974 annual report is particularly subject to criticism for its failure to make any mention of timberland sales. (Report 18-19)

Procedures Adopted or Proposed to Overcome Short-Comings:

As indicated in connection with Special Committee Recommendation No. 1, above, annual reports to the stockholders and SEC (Apps. 1, 2, 3, and 4) now disclose the dollar and acreage amounts of timberland sales for the current and prior four years. Such sales in 1975 and 1976 were of 10 and 6 acres, respectively, and had no significant impact on present or future income, and were not initiated because of the cash flow situation of the Railroad. Stockholders are kept currently informed of timberland sales in CMC's quarterly report to stockholders and SEC (Apps. 5 and 6). Disclosure of the anticipated effect of past sales on timber-cutting income is made in the 1976 annual stockholders reports of CMC and Railroad (Apps. 1 and 3). Similar disclosures will be made in future annual and quarterly reports to stockholders as may be required to make them fully informative.

2. Rescission of 1971 Milwaukee Land Company Dividend

Management Short-Comings Identified in Report:

The Special Committee found that the following accounting and corporate procedures followed in the rescission of the 1971 Land Company dividend, i.e.:

(a) Agreement of rescission between Railroad and Land Company was entered into in February, 1972, but was dated December 31, 1971. (Report 24)

(b) Consent resolutions of the directors of the Land Company relating to the rescission were likewise dated December 31, 1971. (Report 24)

(c) On February 17, 1972, at a meeting of the Railroad's Board of Directors, resolutions were adopted ratifying the action of the officers in rescinding the dividend; the resolutions recited that the rescission agreement had been entered into on December 31, 1971. (Report 24)

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(d) On February 29, 1972, in connection with the 1971 year-end audit, a certificate from the Railroad's corporate secretary was delivered to the Railroad's outside auditors listing all of the directors' minutes and consent actions taken for the Railroad, the Land Company and other affiliates from January 1, 1971 to the date of the certificate. With respect to the December 14, 1971 Land Company directors' consent action declaring the $4 million dividend, the entry had been typed on the Certificate but was crossed out prior to its being delivered to the outside auditors. No reference to the December 31, 1971 Land Company directors' consent action rescinding the dividend or to the February 17, Railroad directors' meeting was contained in the certificate. The outside auditors did not see any of those minutes and consents in connection with their 1971 audit and were not then aware of the declaration or rescission of the dividend. (Report 24, 25)

(e) Payment of the dividend was literally eliminated from the accounting records of the Railroad and Land Company by erasing entries in their general ledgers, adding new entries to reflect a loan (rather than a dividend) from the Land Company to the Railroad, and replacing journal entry sheets evidencing the dividend with new ones that made no mention of the dividend. (Report 23)

involved departures from good business and professional practice; not only were they irregular and unsound procedures, but they suggest a lack of adequate managerial attention to administrative procedures and details.

Procedures Adopted or Proposed to Overcome Short-Comings;

Directors of the Land Company, the executive, financial, accounting and legal officers of the Railroad and Land Company, and the Railroad's corporate secretary have been fully apprised of the views of the Special Committee. They have also been directed, in the event a comparable situation should ever arise in the future, that reversing entries shall be used in the accounting records, that corporate documents shall be contemporaneously dated and recite that the action therein is to be effective as of the appropriate earlier date, and that attention of the Boards, outside counsel and auditors

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shall be specifically directed to all such transactions and the accounting and corporate procedures followed.

3. Deferred Maintenance of Roadway

Management Short-Comings Identified in Report:

> In February of 1975, the Railroad petitioned the ICC for relief from the provision in Ex Parte No. 305 requiring utilization of a part of the rate increase to reduce deferred maintenance. The petition indicated that the Railroad's financial condition was such that it needed the funds being generated by the rate increases for general operating purposes 'in order to avoid curtailment of transportation service.' The petition indicated that since the end of 1973 there had been an 'acute erosion' of the Railroad's cash position to a point where the Railroad had less than $5 million of cash at the end of 1974. The petition noted that the Railroad required approximately $32 million each month for its operating expenses, of which about $15 million represented the Railroad's monthly payroll obligations. The 1974 report to stockholders made no mention of the foregoing facts. (Report 29)
>
> The Committee did not find that the Railroad's or CMC's treatment of the subject of maintenance in its reports and financial statements was abnormal as compared with other railroads. Dollar amounts of expenditures for maintenance were regularly shown. There might have been, and perhaps ideally there should have been, more revealing statistical data and textual discussion, as distinguished from dollar quantification, as to maintenance practices and their significance. (Report 31)

Procedures Adopted or Proposed to Overcome Short-Comings:

In the 1975 and 1976 annual reports of CMC and Railroad to stockholders and the SEC, disclosure was made that the Railroad obtained permission from the ICC to use funds generated by the Ex Parte 305 rate increase for general operating purposes due to its financial condition, the amount of funds so released, the date the permission expires, and the conditions imposed by the ICC. (See attached CMC 1976 annual report to stockholders App. 1, page 26

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CMC's annual 10-K report to SEC (App. 2, Note 13 to Financial Statements); Railroad's 1976 annual report to stockholders (App. 3, Note 13 to Consolidated Financial Statements); and Railroad's 1976 annual 12-K report to SEC (App. 4, Form R-1 attachment, Page 15B).

As stated in connection with Special Committee Recommendation No. 2 (Pages 8-9 above), the annual reports of CMC and Railroad to stockholders and SEC contain extensive statistical data and comments concerning the Railroad's maintenance practices and their significance.

The Special Committee notes that the Report cannot appropriately establish maintenance disclosure practices for the Railroad which are inconsistent with those of other railroads, or establish disclosure practices for the entire industry. The Committee concludes they should instead be set forth in regulations of universal application and based upon common standards for calculating deferred maintenance. (Report 32-33).

Rulemaking proceedings have been recently instituted by both the SEC and ICC looking toward such regulations and standards. (SEC Releases No. 33-5824 and 34-13479, and ICC Docket No. 36557).

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4. Sale of Kent Property

Management Short-Comings Identified in Report:

> As is customarily done when the Railroad is conveying property free of encumbrances, the Railroad's directors, at a meeting held on November 20, 1969, adopted resolutions reciting that the property was to be conveyed to the Union Pacific free from the liens of the mortgages, and directing the officers of the Railroad to obtain releases from such lines. (Report 35)
>
> The necessary documentation to obtain such releases was prepared by the Railroad's legal department and forwarded to Mr. Kratochwill for execution, but no application was ever made to the mortgage trustees for release of the property and no part of the proceeds of the sale was ever deposited with the mortgage trustees. (Report 35,36)

of the sale with the mortgage trustee. The stockholders, therefore, are being presently informed of the contingency. It is intended that similar disclosure will be made in subsequent annual reports until the matter is resolved.

5. Milwaukee Road Officers Trust Account

Management Short-Comings Identified in Report:

> Twenty-five Railroad officers received $25.00 a month and at the same time agreed to contribute to the fund, generally at the rate of $15.00 per month...The reimbursement program was not brought to the attention of the Railroad's Board of Directors. (Report 43-44)
>
> ...the Committee seriously questions the 1965 reimbursement program from the viewpoint of sound corporate practice and particularly does not condone management's adoption of such a program without seeking Board authorization. (Report 44-45)
>
> Apart from the SEC's allegations, the Committee found that the Fund has been administered loosely and without full compliance with the Declaration of Trust. ...He (Trustee) has received suggestions from lobbyists and, on occasion, from officers of the Railroad. Some contributions have been made in cash to lobbyists for payment to candidates, or directly to the candidates themselves. On at least two occasions, the trustee apparently permitted a then executive officer of the Railroad to use the Fund's cash to make political contributions in the name of the officer. (Report 45)

Procedures Adopted or Proposed to Overcome Short-Comings:

It is proposed that the Officers Trust Account ("Fund"), be reconstituted in accordance with the Special Committee Recommendation No. 4, (Pages 10-11 above), and in the absence of objection from the Boards of CMC or Railroad, the reconstituted Fund be implemented.

As the Fund is proposed to be reconstituted and implemented,

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> If the funds were legally required to be deposited with the mortgage trustees in order to carry out the transaction with the Union Pacific, they should not have been used for ordinary operating purposes. If the conclusion was reached that no deposit was then required, at least the Board of Directors should have been advised of management's position and asked to reconsider its prior action. (Report 40-41)
>
> What was missing, perhaps, was anote to the financial statements explaining that approximately $1.5 million of restricted cash was being used as if it were free cash, a disclosure which would have emphasized the precarious cash position of the Railroad. (Report 41)

Procedures Adopted or Proposed to Overcome Short-Comings:

A resolution amending the resolution enacted on November 20, 1969, was presented to and approved by the Railroad Board on March 21, 1977, eliminating the recital that the property is to be sold free of liens and directing the officers of the Railroad to obtain a release of mortgage liens if so required by law and if so requested by Union Pacific. The Union Pacific is now requesting only that the Railroad obtain from its mortgage trustees a consent to the grant of an easement in the property for use as a terminal and line of railroad. The Railroad has requested such consent from its mortgage trustees, and the matter is under their consideration.

The Executive, Accounting, Financial and Legal Officers of Railroad have been fully apprised of the Special Committee's views and are instructed that they shall act in strict accordance therewith.

As stated with respect to Special Committee Recommendation No. 3 (Pages 9-10 above), a note to the financial statements is contained in each of the CMC and Railroad's 1976 annual reports to stockholders and the SEC (App. 1, 2, 3, and 4) approved by outside counsel and auditors, advising that the SEC's co plaint alleges that the Railroad has a contingent obligation to deposit the proce

three Trustees would have sole discretion with respect to whom contributions are made and all contributions must be made by check payable to the person or organization receiving the contribution.

If the Boards object to the implementation of the reconstituted Fund, it is proposed that the Fund be terminated in accordance with its terms.

STRENGTHENING OF LEGAL AND ACCOUNTING STAFFS

The workload of the Executive, Law, Finance and Accounting Departments has taken on new dimensions in the last few years, due to special problems encountered by CMC and the Railroad. Outside counsel has been engaged almost without exception to handle new or novel or particularly sensitive matters lying outside of traditional railroad legal affairs, and to review and counsel with management of CMC and the Railroad in the preparation of reports to stockholders and the SEC, bondholder litigation, the SEC investigation, securities transactions, and non-rail acquisition matters.

With respect to the suggestion in Special Committee Recommendation No. 8 that the Chief Executive Officer consider whether the corporations' legal and accounting staffs are in need of strengthening, additions and changes in personnel and assignments for such purpose have been effected since the beginning of the period embraced in the Committee and SEC's investigations.

On February 1, 1974, Michael D. Sullivan, a lawyer with corporate law experience, was appointed as General Attorney of CMC and the Railroad. On May 1, 1975, he was appointed General Attorney and Corporate Counsel for the Railroad, succeeding Mr. R. W. Spangenberg, General Solicitor, who retired.

Mr. Sullivan drafts resolutions for the Boards of CMC and Railroad; advises, together with the Vice President-Law and outside counsel, the Management concerning corporate and securities matters; and participates actively in

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the preparation and review of reports by CMC and Railroad to stockholders and the SEC. Since his appointment by CMC and the Railroad, he has completed an evening law school course on securities regulations and he attends meetings and continuing legal education courses on corporate and securities problems as opportunities arise.

As is customary with railroads of the size of the Milwaukee Road, Chicago Milwaukee Corporation's railroad subsidiary has a Law Department set up to handle the very large volume of matters usually and customarily presented to railroads. There are ten lawyers presently employed in the Chicago headquarters office with several others located throughout the rest of the system. The Law Department is organized along lines best calculated to give prompt and experienced attention to the wide variety of legal matters customarily involving railroads. The personnel of the department is well thought of in the industry and has a reputation for professional ability and high ethical standards. Several lawyers in the Department keep abreast of developments in corporate and securities law and provide assistance, as required, in such areas.

Mr. Richard V. Nugent, Jr. was appointed Assistant to the Chairman of the Board of both CMC and the Railroad on March 27, 1973. Mr. Nugent has had extensive experience in the areas of accounting, auditing, acquisitions, taxes and finance. His work with numerous industries has included substantial exposure to the financial, real estate and railroad industries.

On July 19, 1976, Mr. Nugent was elected Vice President-Finance and Administration of CMC and Vice President-Finance of the Railroad on May 10, 1977.

Mr. Nugent is actively involved in corporate finance and securities matters of both CMC and the Railroad and participates actively in the preparation

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and review of their reports to stockholders and the SEC.

Also as previously noted, Mr. Robert E. Dunlap joined CMC as Group Controller on April 5, 1976. His qualifications include CPA certification and experience with a firm of Certified Public Accountants and as controller or accountant with several major companies.

Effective February 1, 1976, the Internal Auditing Section of the Railroad was reassigned as the Corporate Audit Section of the Executive Department. A copy of the announcement thereof by the President of the Railroad, dated January 26, 1976, outlining its responsibilities and functions is included in Appendix 7. They include:

(1) Reviewing and appraising the soundness, adequacy and application of accounting, financial and administrative controls;

(2) Ascertaining the extent of compliance with established policies, plans, procedures and regulations;

(3) Ascertaining the extent to which assets are accounted for and safeguarded;

(4) Ascertaining the reliability of data provided for management information; and

(5) Recommending improvements.

The foregoing additions to personnel, changes in assignments, and reorganizations have significantly strengthened the executive, legal and accounting staffs and have had a strongly positive effect on the overall operations of CMC and the Railroad.

Yours very truly,

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MUR 312

JOSEPH A. MAUN
MERLYN C. GREEN
LAWRENCE J. HAYES
JEROME B. SIMON
RICHARD E. ARETZ
JOHN A. MURRAY
JOHN C. JOHANNESON
JAMES W. BREHL
BRUCE G. ODLAUG
ALBERT A. WOODWARD
RICHARD D. DONOHOO
GARRETT E. MULROONEY
ROBERT A. DWORSKY
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MARK E. JACOBSON
RICHARD L. GILL
LAWRENCE J. MAUN
JOHN T. HARTMANN

OF COUNSEL
RONALD S. HAZEL

RECEIVED
FEDERAL ELECTION
COMMISSION
'77 AUG 24 AM 11:46

August 23, 1977

Lawrence J. Hayes
Dir Dial 221-1818

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

Re: Our letter of August 18

Dear Mr. Convery:

This is to memorialize the conclusions reached in our telephone conversation this morning concerning the Commission's letter of August 16, 1977.

As to point No. 1, I indicated that our present information was that there had been no bylaws adopted by Milwaukee Road Officers' Trust Fund since its founding in 1965. We are researching the matter further and will advise you if there are any changes in this.

As to point No. 2, there were significant revisions to the executive salary system since 1965. These are now being assembled and will be forwarded shortly.

As to point No. 3, you indicated a willingness, at lease tentatively, to commence the time frame in 1965. You further indicated that the only kind of fund which is of interest to you was a political action fund. I indicated that we are not aware that any fund existed other than the fund in question in this proceeding. You further indicated that you are not interested in funds such as sinking fund or real estate transfer funds.

As to point No. 4, you indicated that for the present you would be satisfied with the abbreviated report which went to the stockholders. A copy of that report is enclosed.

As to point No. 5, some time ago and prior to Mr. Oldaker's letter of August 16, Mr. Quinn had been scheduled

to report to the September 19 Board meeting on a variety of topics including the Officers' Trust Fund. Under these conditions, I requested an extension of time within which to reply to and including September 27. You agreed to this time extension.

Thank you.

Very truly yours,

Lawrence J. Hayes

LJH:msd
Enclosures

REPORT TO STOCKHOLDERS

This report is being sent to stockholders of the Chicago Milwaukee Corporation (hereinafter referred to as "CMC") and of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the "Railroad") pursuant to a Consent and Undertaking entered into on June 29, 1976, by the two corporations in connection with the settlement of a lawsuit filed that day by the Securities and Exchange Commission (hereinafter referred to as the "SEC") against the two corporations and four individuals.

The SEC's Complaint alleged that CMC, the Railroad, and Messrs. William J. Quinn (President of the Railroad from 1958 to October, 1966, Chairman and Chief Executive Officer of CMC and the Railroad since March, 1970, and a director of both corporations during such periods), Worthington L. Smith (President of the Railroad since July, 1972, and a director of CMC and the Railroad), Richard F. Kratochwill (Vice-President-Finance of the Railroad and Treasurer of CMC) and Curtiss E. Crippen (President of the Railroad from 1966 to July, 1972 and presently a director of the Railroad) violated disclosure and antifraud provisions of the federal securities laws in connection with the following five matters:*

1. Failure to disclose the sale of approximately 36% of the timberland owned by the Milwaukee Land Company, a subsidiary of the Railroad (hereinafter referred to as the "Land Company"), during the period 1968-1974, the purpose of which was to raise cash to continue the operations of the Railroad and prevent its insolvency.

2. Failure to disclose an alleged falsification of accounting and corporate records of the Railroad and the Land Company, allegedly undertaken to conceal the payment of a $4 million dividend by the Land Company to the Railroad in December of 1971, and its subsequent rescission in early 1972, in order to "avoid the Railroad's obligation to pay any contingent interest to its bondholders" with respect to 1971.

3. Failure to disclose the existence of "substantial amounts of deferred maintenance of roadway being experienced by the Railroad" as the result of a lack of available funds for such expenditures, with the effect that the Railroad's reported earnings have been enhanced and its ability to operate has been "detrimentally affected."

4. Failure to disclose a "material contingent liability" of approximately $1.5 million resulting from the sale in 1969 by the Railroad of a 50% interest in an automobile marshalling facility in Kent, Washington, and the utilization of "improper" accounting in connection therewith.

5. Failure to disclose the existence, purpose and method of financing of the Milwaukee Road Officers' Trust Account, contributions to which by Railroad employees were allegedly financed by the Railroad and used to make payments to candidates for political office and for other political purposes.

The settlement of the lawsuit did not involve adjudication of the issues raised by the SEC's Complaint, although the defendants, without admitting or denying the allegations of the Complaint, consented to the entry of a permanent injunction prohibiting future violations by them of the federal securities laws.

The Consent and Undertaking required that a committee of independent members of CMC's Board of Directors (hereinafter referred to as the "Committee") investigate the factual matters referred to in the SEC's Complaint and submit a report in writing to the directors of both corporations setting forth the findings of the Committee's investigation and its opinions

*Although the Complaint names four individuals (but no other directors or officers), not all of them were involved in each of the five matters. For example, Mr. Worthington L. Smith was not involved in those matters which arose prior to his association with the Railroad in July, 1972. Similarly, Mr. William J. Quinn was not involved in any matter occurring during his approximately four-year absence from the Railroad (1966-1970).

and recommendations regarding new controls and new procedures deemed advisable which are reasonably calculated to prevent the recurrence of the matters set forth in the Complaint, and any appropriate action to be taken by CMC or the Railroad such as the institution of litigation on behalf of either corporation. This report is a summary of the Committee's report to the directors.*

Set forth in Sections I through V below are summaries of the Committee's factual findings and analysis relating to each of the five areas referred to in the Complaint. The Committee's general conclusions and specific recommendations are set forth in Section VI.

I. Sales of Timberland

The Land Company is a 100%-owned subsidiary of the Railroad. For at least two decades prior to 1968, the Land Company's primary business was the sale of timber growing on properties in Washington and Montana.

Beginning in 1968, Land Company officials were instructed by Railroad officers to sell timberland (as distinguished from timber) in order to raise cash for the Railroad which was in serious financial difficulty during much of the time that such sales were effected. The following table sets forth for the seven years indicated the Land Company's income attributable to sales of timber and timberland:

	(amounts in thousands)	
	Timber	*Timberland*
1968	$2,712	$ 818
1969	2,457	4,471
1970	1,674	534
1971	3,096	2,062
1972	2,772	4,637
1973	5,425	4,304
1974	4,210	3,618
Total	$22,346**	$20,444**

The Land Company's holdings of timberland were reduced by approximately 36% (from 235,000 to 151,000 acres) during the seven years. The amount of timberland sold (or attempted to be sold) was closely tied to the cash needs of the Railroad. Without the sale of timberland, it is doubtful whether the Railroad would have had a sufficient cash flow to remain solvent during at least a portion of the period in question.

The Committee sees no reason to question management's determination to sell timberland from time to time. The Committee found nothing to suggest that the timberland was sold at distress prices or in other than arm's-length transactions, nor anything to suggest that the sale of timberland adversely affected timber-cutting income during the seven-year period. However, it does appear that such income will be reduced during a 15-year period starting about 1985, at least partly as the result of the sales of timberland made during 1968 through 1974.

The only textual description of Land Company activities appearing in annual reports to stockholders for the years in question related to the purchase and sale of land for industrial sites (the income from such sales averaging about $360,000 per year during the seven-year period), except that the 1974 CMC annual report contained a paragraph which described the timber-cutting activities of the Land Company (without mentioning the sales of timberland), and referred to the acquisition, development and sale of land for industrial sites as the Land

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* A copy of the Committee's report to the directors was filed with the SEC as an exhibit to CMC's Current Report on Form 8-K for the month of March, 1977. Copies of the Current Report can be obtained from the SEC upon payment of a prescribed fee.

** The first column includes, and the second column excludes, approximately $5.1 million representing the value of timber standing on timberland sold during the seven years.

Company's "principal" real estate activity. The financial statements in the annual reports combined under a single heading ("Gains on Sales of Property and Timber, Net") income from the sale of timberland and industrial sites with income from timber-cutting contracts.

The Committee believes that the annual reports to stockholders starting with the report for 1971 were less than fully informative in not disclosing sales of timberland and, perhaps more significantly, the underlying reasons therefor. By not making clear that a substantial amount of income was attributable to sales of an income-producing asset (i.e., the underlying timberland), and that such sales were initiated because of the precarious cash flow situation of the Railroad, the reports did not give as clear a picture as seems appropriate, at least from hindsight, as to the financial condition and results of operations of the corporations, and may have tended to inflate expectations as to future timber-cutting income. The textual treatment in the 1974 annual report is particularly subject to criticism.

II. Rescission of Land Company Dividend

For several years prior to 1971, the Railroad followed a regular practice of causing the Land Company, its wholly-owned subsidiary, to pay a year-end dividend to the Railroad. A $4 million dividend was declared on December 14 and paid on December 29, 1971. The payment of this dividend did not result in the Railroad's having any more cash available than it had immediately before because the proceeds were promptly used to repay a Land Company advance of an equal amount. However, the dividend did constitute $4 million of income to the Railroad. This was significant because the Railroad had certain outstanding bonds, payment of the interest on which was contingent on the Railroad's having "Available Net Income" as defined in the bond indentures (hereinafter referred to as "ANI") for the prior year.*

When the dividend was declared and paid, management of the Railroad believed, mistakenly, that there would be no ANI for 1971 even after giving effect to the dividend. However, income for the month of December significantly exceeded management's earlier projections and, as a result, a calculation made on January 19, 1972 revealed that, giving effect to the dividend, there would be ANI of slightly more than $3.8 million for 1971 and contingent interest of this amount would therefore be payable to bondholders.

At this time the Railroad was sorely pressed for cash and, as noted earlier, the Land Company was selling timberland and advancing or dividending the proceeds to the Railroad to ease the cash stringency. The senior officers of the Railroad discussed the situation and concluded that payment of some $3.8 million in contingent interest would have an intolerable impact upon the Railroad's financial and operating position. They concluded that the dividend action must be reversed to avoid that impact.

The reversal was accomplished by making changes in the corporations' accounting records, including erasing previously-made entries in the corporations' respective general ledgers, adding new entries in the general ledgers to reflect a loan (rather than a dividend) from the Land Company to the Railroad, and replacing previously-made journal entry sheets evidencing the dividend with new ones that made no mention of the dividend. The changes were made on or about January 21; at that time the corporations' books of account for 1971 had not yet been closed.

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* At that time the Railroad took the position that ANI did not include the undistributed earnings of the Land Company and, accordingly, such earnings were not included in ANI unless paid to the Railroad in the form of dividends. In 1976, as part of a proposed settlement of three lawsuits, the Railroad agreed that effective as of January 1, 1975, it would follow the principles of equity accounting as prescribed by a September, 1974 order of the ICC so long as such order remains substantially in effect. This will require the Railroad to include in the computation of ANI its proportionate share of the earnings of any company of which 20% or more of the outstanding voting stock is owned by it, regardless of whether the earnings are distributed. An appeal has been taken from the court order approving the proposed settlement and, consequently, the terms of the settlement have not yet been implemented.

The Railroad's outside general counsel was asked to determine whether there was a legal basis upon which the dividend could be rescinded. In early February of 1972, counsel advised that the dividend action could be rescinded by the mutual consent of the Railroad and the Land Company because it had been based upon the mistaken belief that there would be no ANI for 1971 and because the survival of the Railroad "could be in jeopardy should the dividend in question not be rescinded." Counsel recommended that a rescission agreement be entered into and that the directors of both companies approve the rescission.

A rescission agreement was signed sometime in February of 1972, but was dated December 31, 1971. Consent resolutions of the directors of the Land Company relating to the rescission were likewise dated December 31, 1971. On February 17, 1972, at a meeting of the Railroad's Board of Directors, resolutions were adopted ratifying the action of the officers in rescinding the dividend; the resolutions recited that the rescission agreement had been entered into on December 31, 1971.

On February 29, 1972, in connection with the 1971 year-end audit, a certificate from the Railroad's corporate secretary was delivered to the Railroad's outside auditors listing all of the directors' minutes and consent actions for the Railroad, the Land Company and other affiliates from January 1, 1971 to the date of the certificate. None of the directors' minutes and consent actions relating to the payment or rescission of the dividend were listed in the certificate. The outside auditors did not see any of those minutes and consents in connection with their 1971 audit and were not then aware of the declaration or rescission of the dividend.

The Committee does not believe that any of the participants can be faulted with respect to the end result which management desired. Once it was discovered that the inter-company dividend would produce ANI, require the payment of $3.8 million of contingent interest, and thus drain the enterprise of sorely needed cash, it was, in the Committee's judgment, a responsible act of management to rescind the dividend if it could be done legally.* Indeed, management might have been subject to criticism if it had not exhausted all legal possibilities to achieve rescission.

The Committee believes that the objective could have been accomplished by entirely acceptable means: using reversing entries in the accounting records and using contemporaneously-dated corporate documents which recited that the action reflected therein was to be effective "as of" December 31, 1971. The accounting and corporate procedures actually employed involved departures from good business and professional practice; not only were they irregular and unsound procedures, but they suggest a lack of adequate managerial attention to administrative procedures and details.

III. Deferred Maintenance of Roadway

In mid-1974, in a proceeding before the ICC known as Ex Parte No. 305, *Nationwide Increase of 10% in Freight Rates and Charges, 1974*, the ICC granted various railroads, including the Railroad, a 10% increase in freight rates on condition that a portion of the proceeds would be utilized to reduce each railroad's deferred maintenance in order to prevent further deterioration and improve service. In September of 1974, the Railroad filed with the ICC a report which indicated that, on the basis of certain stated assumptions, it had $70,300,000 of deferred roadway maintenance as of June 30, 1974. This was the first time that

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* While the matter is not free from doubt, it is difficult to believe that any rights of bondholders attached irrevocably upon payment of the dividend since there was no legal obligation on the part of the Railroad to cause the dividend to be declared in the first instance, it was strictly inter-company, and it was based on a miscalculation discovered prior to the time that contingent interest would have been payable, prior to the closing of the books of account, and prior to the time that ANI was required to be calculated. Further, to the extent that the action ameliorated the threat of insolvency, it was a move in the interest of the bondholders as well as the holders of other securities.

the Railroad had ever been required by the ICC to quantify deferred maintenance, or had ever done so for any purpose.

The amount of deferred maintenance reported to the ICC was not disclosed to either CMC's or the Railroad's stockholders, although CMC's 1974 report to stockholders did disclose that the revenues generated by the 10% rate increase were required to be applied to "deferred maintenance, delayed capital improvements and the offsetting of higher costs of supplies other than fuel." It is the Committee's understanding that although most of the nation's railroads filed reports with the ICC indicating deferred maintenance in amounts ranging from zero to hundreds of millions of dollars, no railroad informed its stockholders of the dollar amounts so reported. Officers of the Railroad believe that the amount of deferred maintenance reported to the ICC would be confusing if disclosed to stockholders because of the rather arbitrary manner in which the amount was calculated and because of the differing standards used by various railroads in making their calculations, a position apparently shared by the managements of other railroads.

The Committee found that there is no uniformly-accepted definition of the term "deferred maintenance", nor is there any ICC regulation setting forth the manner in which estimates of deferred maintenance are to be calculated.* "Maintenance" is a well-established concept that can be, and regularly is, expressed in quantitative terms. If deferred maintenance measures anything, it presumably measures the difference between what was actually expended and someone's view as to what should have been, or will have to be, expended under certain assumed circumstances. This is obviously an extremely subjective concept, depending on the application of policy judgments to an infinite variety of factual situations. No two railroads are strictly comparable and no two managements would necessarily reach the same conclusions as to what "should have been" or "will have to be" spent even as to comparable situations.

The year-to-year level of maintenance expenditures by the Railroad was closely tied to management's decision as to how to best utilize the Railroad's available cash. There is little doubt that, as a result of the Railroad's inadequate cash flow, maintenance of roadway was "deferred" in the sense that less money was spent for roadway maintenance than might have been the case had additional funds been available. Such cutbacks were no different in this regard from the other measures taken by the Railroad in response to declining earnings, such as personnel layoffs and elimination of dividends.

Although the effect of reducing expenditures for maintenance in any year is to produce larger earnings or smaller deficits for that year than if the expenditures had been made, the Committee found no reason to believe that maintenance was deferred in any year for the specific purpose of enhancing earnings. It is possible, however, that such deferral did result in increased accident and derailment rates and it may have resulted in the Railroad being in a less favorable competitive position than would otherwise be the case.

The Committee did not find that the Railroad's or CMC's treatment of the subject of maintenance in its reports and financial statements was abnormal as compared with other railroads. Dollar amounts of expenditures for maintenance were regularly shown. There might have been, and perhaps ideally there should have been, more revealing statistical data and textual discussion, as distinguished from dollar quantification, as to maintenance practices and their significance.

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* The ICC's calculation of the Railroad's deferred maintenance, using a different basis than that used by the Railroad, was about 50% greater than that reported by the Railroad. In a report prepared for the Federal Railroad Administration in 1976, the Railroad's deferred track maintenance at December 31, 1975 was calculated (on yet another basis) to be about $336 million.

The following table sets forth for the years indicated the Railroad's total roadway maintenance expenditures and certain other data pertaining to the Railroad's maintenance activities:

	1971	1972	1973	1974	1975
Total roadway maintenance ($000)	$49,517	$57,902	$59,074	$61,012	$59,136
Track labor ($000)	14,911	17,090	18,162	19,989	17,727
Ties ($000)	3,854	4,389	3,817	4,395	3,393
Ballast ($000)	201	442	892	675	522
Rail ($000)	1,388	1,565	1,463	(40)	1,193
Number of cross ties installed (000)					
Main track	587	663	535	562	330
Side track	55	49	54	64	54
Miles of track laid*					
New rail	30	32	25	36	21
Used rail	77	72	67	71	59

* Out of approximately 10,000 miles of trackage within the Railroad's system.

This matter, unlike others discussed in this report, is of very wide import because the disclosure problem is not confined to the Railroad but, with differences of degree, is industry-wide. The Committee's report is an inappropriate vehicle for the establishment of disclosure practices by the Railroad which are inconsistent with those of all other railroads, or for the establishment of disclosure practices for the entire industry. Whatever may be the proper standards as to future disclosure practices in the so-called deferred maintenance area, the Committee believes that they should be set forth in regulations of universal application and should be based upon common standards for calculating deferred maintenance.

IV. Sale of Kent Property

In 1969, the Union Pacific Railroad purchased from the Railroad an undivided one-half interest in an automobile marshalling facility at Kent, Washington, paying the Railroad approximately $1.5 million for its interest. At the time of sale the marshalling facility was regarded as being subject to the liens of the mortgages securing certain of the Railroad's outstanding bonds. The one-half interest was conveyed by warranty deed, one of the legal consequences of which is that the seller covenants that the property is free from all encumbrances. The documents prepared by the Railroad's house counsel in 1969 were based on the theory that the conveyance to the Union Pacific was incomplete until releases from the mortgage liens were obtained; resolutions adopted by the Railroad's Board of Directors authorized and directed the officers of the Railroad to obtain such releases by depositing the proceeds of the sale with the mortgage trustees.

No part of the proceeds have been deposited with the mortgage trustees and releases from the mortgage liens have not been obtained. The reason for the decision in 1969 not to make the deposit was simply that the funds were needed for Railroad operating purposes, whereas if they had been deposited with the mortgage trustees the funds could only have been used for property additions or betterments. Regardless of motivation, the determination to use the proceeds for ordinary operations rather than to deposit them with the mortgage trustees was, in the Committee's judgment, of questionable propriety in light of the warranty deed given to the Union Pacific and other documentation of the transaction.

Although the proceeds of the sale were not deposited with the mortgage trustees, the Railroad accounted for the transaction for the years 1969, 1970 and 1971 in a manner intended to give recognition to the Railroad's obligation to obtain releases from the mortgage liens upon the request of the Union Pacific. As a result of a challenge in 1972 by the ICC as to the Railroad's method of accounting for the transaction, the Railroad's house counsel* re-examined

* Such counsel was not directly involved in structuring the original transaction.

the transaction and wrote an opinion in which he expressed the conclusion that the Union Pacific was not entitled to an unencumbered interest in the property. In this opinion counsel did not mention that the property had been conveyed by warranty deed or that the Board resolutions directed that the property be conveyed free of the mortgage liens.* The opinion was inconsistent with the position taken by the Railroad's legal department during the preceding three years. On the basis of this opinion, the Railroad changed its accounting for the transaction in 1972, treating it as if the property had simply been sold to Union Pacific for cash with nothing more required, and the ICC accepted the changed treatment.

The ICC's challenge of the original accounting treatment had been on a technical ground (that funds not actually on deposit with the mortgage trustees could not be carried in the particular account in which the Railroad was carrying it) and not on the ground that the treatment was misleading to investors. It seems clear that such treatment did not result in an overstatement of net assets, net current assets or earnings of the Railroad. The proceeds of the sale belonged to the Railroad in any event (regardless of whether they were deposited with the mortgage trustees) so that there was no actual or contingent liability to any third party. What was missing, perhaps, was a note to the financial statements explaining that approximately $1.5 million of the Railroad's restricted cash was being used as if it were free cash, a disclosure which would have emphasized the precarious cash position of the Railroad.

The Union Pacific has recently indicated a willingness to accept an easement in the property (in lieu of a release) if the mortgage trustees will agree to recognize such easement.

V. Milwaukee Road Officers' Trust Account

The Milwaukee Road Officers' Trust Account (hereinafter referred to as the "Fund") was established pursuant to a Declaration of Trust dated January 4, 1965. According to the Declaration of Trust, the purpose was to

> "secure and advance the interest and well-being of the donors as officers of Chicago, Milwaukee, St. Paul and Pacific Railroad Company by protecting and promoting the legislative objectives of that Company and of the Railroad industry of which it is a part."

Approximately 1,300 employees of the Railroad are considered to be "officers" for purposes of determining eligibility to participate in the Fund. However, fewer than 100 persons have contributed each year. Generally, contributions have been made by payroll deductions and have ranged from $10 to $25 per month, aggregating approximately $12,000 per year. There have been no direct contributions to the Fund by the Railroad or CMC, nor have there been any transactions between the Fund and either of these two corporations.

All "non-union exempt" employees of the Railroad received a 7% pay raise effective on January 1, 1965. Twenty-five Railroad officers received an additional $25 a month and at the same time agreed to contribute to the Fund, generally at the rate of $15 per month. At least some, but perhaps not all, of the participants realized that they were being thus reimbursed for their participation. The reimbursement program was not brought to the attention of the Railroad's Board of Directors.

Other than the initial group of 25 participants in 1965, it appears that no other participants have received salary adjustments related to their contributions. No employee has ever been pressured to become or to remain a contributor. Those of the 25 initial participants who were still in the Railroad's employ in June, 1976 withdrew from the Fund at that time. Total contributions to the Fund by these 25 persons was approximately $42,000 during the period of their participation totalling, in some instances, up to eleven years. None of these 25 persons contributed more than $300 per year.

---

* The Railroad's counsel advises that he was aware of the omitted facts and took them into account in rendering his opinion.

The SEC's Complaint alleges that the reimbursement of employees by the Railroad may have violated federal law which makes it unlawful for a corporation to make a direct or indirect contribution or expenditure to anyone running for federal office. The Committee takes no position as to whether there was such a violation nor for how long it occurred, if at all. However, the Committee seriously questions the 1965 reimbursement program from the viewpoint of sound corporate practice and particularly does not condone management's adoption of such a program without seeking Board authorization. Nevertheless, in view of various salary adjustments affecting the 25 participants since 1965, including a complete restructuring of the Railroad's salary system to an industry competitive basis in the early 1970's, the Committee does not believe that any employee's compensation subsequent to such restructuring can be viewed as related to the 1965 arrangement.

Apart from the SEC's allegations, the Committee found that the Fund has been administered loosely and without full compliance with the Declaration of Trust. For example, although the Declaration of Trust provides that there be two trustees for the Fund, the Fund has operated for about six years with only one trustee. This trustee has exercised ultimate responsibility for deciding to whom contributions should be made and the amount of the contributions. He has received suggestions from lobbyists and, on occasion, from officers of the Railroad. Some contributions have been made in cash to lobbyists for payment to candidates, or directly to the candidates themselves, on at least two occasions, the trustee apparently permitted a then executive officer of the Railroad to use the Fund's cash to make political contributions in the name of the officer. Also, the trustee has permitted his secretary and law partner to sign checks for withdrawal of money from the Fund for making political contributions. The Committee concludes that the administration of the Fund does not meet acceptable standards of accountability.

VI. General Comments and Specific Recommendations

It is the Committee's conclusion, on the basis of its own investigation, that the allegations of fact in the SEC's Complaint with respect to the five matters discussed above are essentially accurate. The Committee takes no position as to the SEC's allegations of violations of the federal securities laws relating to disclosure of these matters, nor does the Consent and Undertaking require it to do so. Whether or not any corporate disclosures were violative of such laws, they were, at some times, certainly far from ideal, and certain of the Committee's recommendations made below are intended to improve the corporations' disclosure practices.

Certain aspects of the transactions discussed in this report involved management conduct which the Committee considers to be unacceptable. Further, there were instances of lack of candor in communications between management and the Boards of Directors, outside auditors and legal counsel.

Nevertheless, the Committee does not believe that, on balance, any personal conduct disclosed in its investigation warrants, or that the corporate interests would best be served by, dismissal of or other punitive or disciplinary action against any person presently employed in management of either of the corporations.* The Committee finds no instance in which it considers the actions of any individual to have been prompted by motives of personal gain as distinguished from motives of protecting the interests of the corporations and their security holders. The Committee also believes that the difficult circumstances in which the corporations were operating, which both gave rise to unprecedented problems and complicated their solution, must be given due consideration. The matters discussed in this report involved only a very small portion of management's activities, and the Committee believes that the various qies-

* The Consent and Undertaking requires the Committee to consider whether litigation should be instituted on behalf of either CMC or the Railroad against any person or firms involved in any of the matters discussed in this report. The Committee finds that none of the matters has resulted in either of the corporations suffering any financial loss; accordingly, the Committee concludes that there is no basis for the institution of such litigation against any person or firm.

tionable practices identified in the report must be viewed in this perspective. Finally, the Committee believes that the SEC investigation and developments flowing from it have themselves constituted a censure for the affected individuals.

In light of the foregoing, the Committee has recommended to the Board of Directors the following:

1. Specifically with regard to timberlands, that future annual reports to stockholders and to the SEC be made more informative by including (a) the number of acres of timberland sold, if material, and the income from such sales (segregated from income applicable to sales of timber and of land other than timberland); and (b) appropriate comments as to the relationship of timberland sales to current cash flow and the foreseeable impact, if material, on earnings.

2. Specifically with regard to maintenance activities, while dollar quantification of "deferred maintenance" may be impractical unless uniform standards for all railroads are established, that future annual reports to stockholders and the SEC be made more informative by including (a) appropriate comments as to maintenance expenditures, the relationship thereof to current cash flow, and the foreseeable impact, if material, on the Railroad's operations and earnings; and (b) pertinent statistical data (for current years as compared with prior years) bearing on maintenance activities, such as numbers of ties replaced, miles of track relaid, trackage subject to slow orders, derailment and accident experience, etc.

3. Specifically with regard to the Kent transaction, that, until the status of the cash proceeds of the sale is further clarified, future reports to stockholders and to the SEC contain such disclosures with regard thereto as outside counsel and auditors may deem appropriate.

4. Specifically with regard to the Officer's Trust Account (the "Fund"), that the purpose, structure and operations of the Fund be promptly reviewed and reconstituted to ensure full compliance with applicable federal and state laws, and that such reconstituted Fund be implemented only after approval by the Board of Directors; further, that the reconstituted Fund be audited by the accounting firm regularly auditing the corporate accounts and, to the extent that such firm is not satisfied with the operations of the Fund, that its recommendations be reported to the Audit Committee of the Board of Directors.

5. That management be directed to develop methods to insure that personnel will report, through appropriate channels, any activities which they feel are contrary to corporate policy, law or generally-accepted business or professional practice, and the Board of Directors be advised by management of the methods proposed; further, that officers be given free access to the Audit Committee of the Board of Directors to discuss with such Committee any problems arising in their respective areas which have not been resolved within normal administrative channels.

6. That management be directed to strengthen procedures to insure compliance with the federal securities laws, and the Board of Directors be advised of the action taken. For example, such procedures should recognize that basic disclosure documents, including annual reports to stockholders and annual reports to the SEC, should be prepared or reviewed by persons who are in a position to verify compliance with the facts to insure accuracy, and should also be reviewed and approved in advance by the Board of Directors; and review of such documents by outside counsel for compliance with the requirements of securities laws might be appropriate.

7. That the need for complete candor in communications between management and the Board of Directors, and between management and outside auditors and counsel in respect of matters within the scope of their respective responsibilities, be emphasized and insisted upon.

8. That the Chief Executive Officer be directed to develop and implement procedures designed to overcome the management shortcomings identified in this report, and to report to the respective Boards of Directors the procedures which he plans to implement. In particular, he should consider whether the corporations' legal and accounting staffs are in need of strengthening, either through reorganization, personnel changes or otherwise.

The Committee recognizes that changes in procedures have already been implemented as a result of the SEC's and the Committee's investigation. The Committee believes that the impact of both investigations upon the corporations' personnel, coupled with the new procedures to be implemented as recommended by this report, will have a positive effect on the overall operations of the corporations.

ROBERT C. GUNNESS, *Chairman*
CHARLES E. STAUFFACHER
ROBERT S. STEVENSON

March 23, 1977

MAUN, HAZEL, GREEN, HAYES, SIMON AND AKETZ
332 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street NW
Washington, D.C. 20463

DMC 1196

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
ATTORNEYS AT LAW
330 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102
AREA CODE NO.
221-1812

77 AUG 22 AM 9:11

August 18, 1977

Lawrence J. Hayes
Dir Dial 221-1818

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: MUR 312 (76)

Dear Mr. Convery:

This morning I received a letter from Mr. Oldaker dated August 16, 1977.

We are giving the Commission's request immediate attention and will be in further communication shortly.

Many thanks.

Very truly yours,

Lawrence J. Hayes

Lawrence J. Hayes

LJH:msd

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
332 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102

FE[illegible]

[illegible] 22 AM 8:44

Vincent J. Convery, Jr., Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

August 16, 1977

Lawrence J. Hayes, Esquire
Maun, Hazel, Green, Hayes,
Simon and Aretz
332 Hamm Building
Saint Paul, Minnesota 55102

Re: MUR 312 (76)

Dear Mr. Hayes:

On November 30, 1976, the Commission found reason to believe that your client, the Chicago, Milwaukee, Saint Paul and Pacific Railroad had violated 2 U.S.C. Section 441b. The Railroad was informed of this determination by letter dated December 7, 1976.

We acknowledge receipt of your December 23, 1976, response to this notice and apologize for our delay in pursuing the matter. Several personnel changes in this office in the past few months have necessitated our assigning the matter to another attorney, Vincent J. Convery, Jr. He has assumed primary responsibility for the case and should be able to answer any questions you may have. You may communicate with him in writing or by calling at 202-523-4057.

In order to facilitate the Commission's continuing investigation of this matter, we request that you submit the following information and documents within thirty days of your receipt of this letter.

(1) A copy of all by-laws adopted by the Milwaukee Road Officers Trust Fund since its founding in 1965, and all amendments thereto.

(2) A copy of all revisions to the executive salary system enacted since 1965, including supporting documents.

(3) The name and period of operation (dates of organization to termination) of every separate segregated fund, other than the Trust, which ever was established, financed, maintained, or controlled by the Railroad or the Chicago Milwaukee Corporation ("CMC").

(4) A copy of the report ("Report") of the Special Committee of the Board of Directors of the CMC on the matters contained in the Securities and Exchange Commission complaint and consent decree entered on June 29, 1976.

(5) A sworn statement setting forth in detail the actions taken with reference to the Trust by the new committee for the Board of Directors of the Railroad in light of the findings and recommendations contained in the Report.

I remind you that, consistent with the provisions of 2 U.S.C. Section 437g(a)(3)(B), this matter will remain confidential until the Commission receives contrary instructions in writing from the respondent.

Sincerely,

William C. Oldaker
General Counsel

vsc
8/12/77

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 312 (76)
Chicago, Milwaukee, St. Paul	)	
and Pacific Railroad	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on August 11, 1977, the Commission determined by a vote of 4-0 to require the respondent to provide additional information as recommended by the General Counsel in a report dated August 5, 1977, in the above-captioned matter.

Commissioners Aikens and Harris were not present at the time of the vote.

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

BEFORE THE FEDERAL ELECTION COMMISSION
August 5, 1977

In the Matter of	)	
	)	MUR 312 (76)
Chicago, Milwaukee, St. Paul	)	
and Pacific Railroad	)	

INTERIM INVESTIGATORY REPORT

This matter was referred to the Commission by letter dated October 15, 1976, from the Acting Director of the Enforcement Division of the Interstate Commerce Commission. That letter, and a supporting memorandum, related that, in January, 1965, the respondent railroad (hereinafter the Milwaukee Road) established a political action committee, the Milwaukee Road Officers Trust Account, (hereinafter, the Trust). It was alleged that the Trust, while purporting to be a political action fund to which top management personnel could make personal contributions by payroll deduction, was in reality a vehicle by which the Milwaukee Road made illegal cor= porate political contributions. Such contributions allegedly were made by granting to each "contributor" a salary increase sufficient to offset both his contribution and the greater income tax liability generated by the increase. The letter and memorandum also alleged that the scheme has continued to the present.

On November 30, 1976, the Commission found reason to believe that a violation of 2 U.S.C. §441b had occurred.

By letter dated December 7, 1976, the respondent was advised of this finding and was invited to demonstrate why no action should be taken against it. Under a cover letter dated December 23, 1976, the respondent submitted its reply memorandum.

In this lengthy memorandum, the respondent, through counsel, appears to have addressed most of the issues raised in the ICC brief. Nevertheless, we do not believe that at this point the Commission has at its disposal all the information sufficient to justify a further determination. Therefore, we recommend that the attached request for additional information be sent to respondent.

DATE: 8/5/77

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON D.C. 20463

Lawrence J. Hayes, Esquire
Maun, Hazel, Green, Hayes,
Simon and Aretz
332 Hamm Building
Saint Paul, Minnesota 55102

Re: MUR 312 (76)

Dear Mr. Hayes:

On November 30, 1976, the Commission found reason to believe that your client, the Chicago, Milwaukee, Saint Paul and Pacific Railroad had violated 2 U.S.C. Section 441b. The Railroad was informed of this determination by letter dated December 7, 1976.

We acknowledge receipt of your December 23, 1976, response to this notice and apologize for our delay in pursuing the matter. Several personnel changes in this office in the past few months have necessitated our assigning the matter to another attorney, Vincent J. Convery, Jr. He has assumed primary responsibility for the case and should be able to answer any questions you may have. You may communicate with him in writing or by calling at 202-523-4057.

In order to facilitate the Commission's continuing investigation of this matter, we request that you submit the following information and documents within thirty days of your receipt of this letter.

(1) A copy of all by-laws adopted by the Milwaukee Road Officers Trust Fund since its founding in 1965, and all amendments thereto.

(2) A copy of all revisions to the executive salary system enacted since 1965, including supporting documents.

(3) The name and period of operation (dates of organization to termination) of every separate segregated fund, other than the Trust, which ever was established, financed, maintained, or controlled by the Railroad or the Chicago Milwaukee Corporation ("CMC").

(4) A copy of the report ("Report") of the Special Committee of the Board of Directors of the CMC on the matters contained in the Securities and Exchange Commission complaint and consent decree entered on June 29, 1976.

(5) A sworn statement setting forth in detail the actions taken with reference to the Trust by the new committee for the Board of Directors of the Railroad in light of the findings and recommendations contained in the Report.

I remind you that, consistent with the provisions of 2 U.S.C. Section 437g(a)(3)(B), this matter will remain confidential until the Commission receives contrary instructions in writing from the respondent.

Sincerely,

William C. Oldaker
General Counsel

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

MEMORANDUM TO: Vincent Convery

FROM: Bill Oldaker Bill

RE: MUR 312

DATE: June 15, 1977

Please be advised that MUR 312 has been re-assigned to you. This case was formerly handled by David Anderson.

cc: D. Anderson

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
ATTORNEYS AT LAW
HAMM BUILDING
SAINT PAUL, MINNESOTA 55102
227-9511
AREA CODE 612

JOSEPH A. MAUN
MERLYN C. GREEN
LAWRENCE J. HAYES
JEROME B. SIMON
RICHARD F. ARETZ
JOHN A. MURRAY
JOHN C. JOHANNESSON
JAMES W. BREHL
BRUCE S. COLADO
ALBERT A. WOODWARD
RICHARD D. DONOHUE
GARRETT E. MURRAY
WILLIAM J. HASSING
M. MICHAEL MONAHAN
JAMES A. GALLAGHER

CHARLES BAHN
BARRY A. GERSON
GEOFFREY P. JARRE
PHILIP A. PFAFFLY
RICHARD M. SAALSAA
MARY E. ALLBSON
RICHARD J. PAUL
LAWRENCE J. MAUN
JOHN F. HARTMANN

COUNSEL
BRUCE S. HAZEL
ROBERT A. PATRON

1 January 1977

Ms. Gloria R. Sulton
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 312 (76)

Dear Ms. Sulton:

We have discovered an error in the submission recently filed with you in the captioned matter.

We have been advised that the figure in line 3 on page 37 should be "0.0014 percent" rather than "0.0002 percent."

Yours very truly,

M. Michael Monahan

M. Michael Monahan

MMM:msd

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
332 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102

Gloria R. Sulton
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

CC # 1192

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
ATTORNEYS AT LAW
SAINT PAUL, MINNESOTA 55102

December 23, 1976

Ms. Gloria R. Sulton
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 312(76)

Dear Ms. Sulton:

We hand you herewith a submission on behalf of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, which we are filing jointly with the Federal Election Commission and the Interstate Commerce Commission.

If you have any questions or need any further information, please call.

Very truly yours,

Lawrence J. Hayes

Lawrence J. Hayes

ktr
Attachment

cc: Raymond K. Merrill, Esq.
Robert Thomson, Esq.

MAUN, HAZEL, GREEN, HAYES, SIMON AND ARETZ
332 HAMM BUILDING
SAINT PAUL, MINNESOTA 55102

FIRST CLASS MAIL

From

MAUN, HAZEL, GREEN, HAYES, SIMON and ARETZ
332 Hamm Building Saint Paul, Minnesota 55102

FOR

Mr. Gloria T. Dutton
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. [illegible]

LAW OFFICES
PRESTON, THORGRIMSON, ELLIS, HOLMAN & FLETCHER
1776 F STREET N.W.
WASHINGTON, D.C. 20006
AREA CODE 202 331-1005

EMANUEL ROSENBERG
JONATHAN BLANK
ROBERT S. THOMSON
JOVAN THORSLUND
ARTHUR PANKOPF

2000 B.M.B.
SEATTLE, WASHINGTON
206 624-7500

76 DEC 17 AM 10:49

761212

December 15, 1976

Ms. Gloria R. Sulton
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Re: MUR 312(76)

Dear Ms. Sulton:

I have been retained to represent the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as Co-Counsel in the subject compliance action.

The Company does not believe it has committed a violation of the Federal Election Campaign Act and intends to respond in much more detail to matters discussed in your letter of December 7, 1976. Counsel must review a substantial number of documents before submitting such a response, but we anticipate completing the task before the end of the year and having a submission on your desk by January 3.

Very truly yours,

PRESTON, THORGRIMSON,
ELLIS, HOLMAN & FLETCHER

By
Robert Thomson

RT:pj

PRESS [illegible] BLACK HERMAN & [illegible]

Ms. Gloria S. Sulton
Federal Election Commission
1325 K Street, N.W.
Washington, D. C. 20463

Mr. Robert S. Turkington
Acting Director
Bureau of Enforcement
Interstate Commerce Commission
Washington, D.C. 20432

Re: MUR 312(76)

Dear Mr. Turkington

The Commission voted to conduct a preliminary investigation of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company based upon the information provided by you under cover letter dated October 15, 1976. Pursuant to 2 U.S.C. §437g(a)(3), this matter will remain confidential unless the respondent notifies us in writing that it may be made public.

In connection with this investigation, the Commission requests your permission to review the transcripts and other documents and material which your office has gathered with respect to this case. Your cooperation and assistance will be appreciated.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

GSulton:caw: 11-12-76

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

- ☐ Show to whom and date delivered ..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY
  Show to whom and date delivered 65¢
- ☐ RESTRICTED DELIVERY
  Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:

[illegible]

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	[illegible]	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. [illegible]

DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

203 456

DEC 07 1976

Mr. Worthington L. Smith
President
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
516 West Jackson Blvd.
Chicago, Illinois 60606

Re: MUR 312 (76)

Dear Sir:

This letter is to notify you that the Federal Election Commission has received information from the Interstate Commerce Commission which gives the Commission reason to believe that your corporation has violated the Federal Election Campaign Act of 1971, as amended ("the Act"). We have numbered this matter MUR 312.

The information received indicates that your corporation established the Milwaukee Road Officers Trust Account, a political action fund, in 1965 and that officers of the company participated by making contributions through a payroll deduction plan. Concurrent with the establishment of the Trust Account, salary increases of $25 per month were given to those participating officers in addition to a "Horizontal" increase approved by the Board of Directors. The information further indicates that your corporation has continued to pay the $25 per month to the participating officers in the Trust Account to the present time. This information gives the Commission reason to believe that a violation of 2 U.S.C. §441b has occurred. This statute prohibits corporations from making contributions or expenditures "in connection with" Federal elections. A review of the reports of receipts and expenditures on file for the Trust Account indicate that contributions have been made to Federal candidates.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously; therefore, your response should be submitted within ten days after receipt of this notification. If you have any questions, please contact Gloria R. Sulton (telephone no. 202/382-4041). the attorney assigned to this case.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

"Signed"

John G. Murphy, Jr.
General Counsel

Enclosure

GSulton:amh:12/6/76

November 29, 1976

MEMORANDUM FOR: BILL OLDAKER

FROM: MARJORIE EMMONS

RE: MUR 312 (76)

The above mentioned MUR was transmitted to the Commissioners on November 22, 1976 at 12:00.

As of 10:00 a.m. on November 29, 1976, no objections have been received on this MUR.

Please note the attached comments provided by Commissioners Aikens and Harris.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 312 (76)
Chicago, Milwaukee, St. Paul	)	
and Pacific Railraod Co.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 30, 1976, the Commission adopted the recommendation of the General Counsel to find Reason to Believe that a violation of 2 U.S.C. §441b had been committed in the above-captioned matter.

Marjorie W Emmons

Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON D.C. 20463

Date and Time Transmitted: Nov 22 - 12:00

Commissioner Aikens

RETURN TO OFFICE OF COMMISSION SECRETARY BY: Nov 26 12:00

MUR No. 312

(✓) I approve the recommendation

( ) I object to the recommendation

COMMENTS: [illegible]

Date: [illegible] Signature: [illegible]

THE OFFICE OF GENERAL COUNSEL WILL TAKE NO ACTION IN THIS MATTER UNTIL THE APPROVAL OF FOUR COMMISSIONERS IS RECEIVED. PLEASE RETURN ALL PAPERS NO LATER THAN THE DATE AND TIME SHOWN ABOVE TO THE OFFICE OF COMMISSION SECRETARY.

FEDERAL ELECTION COMMISSION

1325 K STREET NW
WASHINGTON DC 20463

Date and Time Transmitted: NOV 22 12:00

Commissioner Harris

RETURN TO OFFICE OF COMMISSION SECRETARY BY: NOV 26 12:00

MUR No. 312

(✓) I approve the recommendation

( ) I object to the recommendation

COMMENTS: The letter should state that the political fund contributions & the committee salary increases were $5.00 per month.

Date: 11-22 Signature: Thomas E. Harris

THE OFFICE OF GENERAL COUNSEL WILL TAKE NO ACTION IN THIS MATTER UNTIL THE APPROVAL OF FOUR COMMISSIONERS IS RECEIVED. PLEASE RETURN ALL PAPERS NO LATER THAN THE DATE AND TIME SHOWN ABOVE TO THE OFFICE OF COMMISSION SECRETARY.

DATE AND TIME OF TRANSMITTAL: [illegible] REC'D: 10/15/[illegible]

FEDERAL ELECTION COMMISSION
Washington, D. C.

Complainant's Name: Referral from the Bureau of Prosecutions, Interstate Commerce Commission

Respondent's Name: Chicago, Milwaukee, St. Paul and Pacific Railroad Co. (hereinafter R.R. Co.)

Relevant Statute: 2 U.S.C. §441b

Internal Reports Checked: Trust Fund Reports of Receipts and Expenditures from 1974.

Federal Agencies Checked: ICC

SUMMARY OF ALLEGATION

The R.R. Co. established the Milwaukee Road officers Trust Account in 1965 (hereinafter Trust Fund) to make contributions to Federal and local candidates. The participating officers' salaries were adjusted at the inception of Trust Fund in an amount equivalent to the payroll deduction which they approved for payment to the Trust Fund. The R.R. Co. has continued to pay this amount to those officers who are still participants.

PRELIMINARY LEGAL ANALYSIS

The ICC has forwarded a memorandum prepared by a staff attorney based upon an investigation of violations of statutes under its jurisdiction which involved the payments by the R.R. Co. of additional salary not included as part of an increase to all officers. This additional payment of $25 [illegible] begun in 1965 and coincides with the establishment of the Trust Fund and the concomitant payroll deduction authorized by the officers receiving the

(continued)

RECOMMENDATION

Find reason to believe; send attached letters

Date [illegible] Commission Review: _____

PRELIMINARY ANALYSIS
(CONTINUED)

[illegible] Fund has made contributions to Federal candidates within the three-year statute of limitations.

PRELIMINARY LEGAL ANALYSIS
(CONTINUED)

additional increase. There is some evidence that this additional amount was approved by the Board of Directors. To the extent that some of the original officers are still participating in the Fund and the R.R. Co. has not rescinded the $25 increase, the corporation is making a contribution in connection with Federal elections which is prohibited by 2 U.S.C. §441b.

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

Mr. Robert J. Turkington
Acting Director
Bureau of Enforcement
Interstate Commerce Commission
Washington, D.C. 20432

Re: MUR 312(76)

Dear Mr. Turkington

The Commission voted to conduct a preliminary investigation of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company based upon the information provided by you under cover letter dated October 15, 1976. Pursuant to 2 U.S.C. §437g(a)(3), this matter will remain confidential unless the respondent notifies us in writing that it may be made public.

In connection with this investigation, the Commission requests your permission to review the transcripts and other documents and material which your office has gathered with respect to this case. Your cooperation and assistance will be appreciated.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

President
Chicago, Milwaukee, St. Paul and
Pacific Railroad Company
516 West Jackson Boulevard
Chicago, Illinois 60606

Re: MUR 312 (76)

Dear Sir:

This letter is to notify you that the Federal Election Commission has received information from the Interstate Commerce Commission which gives the Commission reason to believe that your corporation has violated the Federal Election Campaign Act of 1971, as amended (the Act). We have numbered this matter MUR 312.

The information received indicates that your corporation established the Milwaukee Road Officers Trust Account, a political action fund, in 1963 and that officers of the company participated by making contributions through a payroll deduction plan. Concurrent with the establishment of the Trust Account, salary increases of $25 were given to those participating officers in addition to a "horizontal" increase approved by the Board of Directors. The information further indicates that your corporation has continued to pay the $25 to the participating officers in the Trust Account to the present time. This information gives the Commission reason to believe that a violation of 2 U.S.C. §441b has occurred. This statute prohibits corporations from making contributions or expenditures "in connection with" Federal elections. A review of the reports of receipts and expenditures on file for the Trust Account indicate that contributions have been made to Federal candidates.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

The Commission is under a duty to investigate this matter expeditiously; therefore, your response should be submitted within ten days after receipt of this notification. If you have any questions, please contact Gloria T. Bolden (telephone 202/382-4041), the attorney assigned to this case.

This matter will remain confidential in accordance with 2 U.S.C. §437g(a)(3) unless you notify the Commission in writing that you wish the investigation to be made public.

If you intend to be represented by counsel in this matter, please have such counsel so notify us in writing.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure

PS Form 3811, Mar. 1976

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NOV 1 1976

Mr. Robert S. Turkington
Acting Director
Bureau of Enforcement
Interstate Commerce Commission
Washington, D.C. 20423

Re: MUR 312 (76)

Dear Mr. Turkington:

This acknowledges receipt of your letter to John G. Murphy, Jr. dated October 15, 1976 regarding the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. This matter has been assigned to a staff attorney, Ms. Gloria Sulton (telephone 202/382-4041), for review.

Please feel free to contact me if you have any questions.

Sincerely yours,

William C. Oldaker
Assistant General Counsel

GSulton:pjg:10/30/76
cc: Chron file
MUR file
GS

INTERSTATE COMMERCE COMMISSION
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John G. Murphy, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 312