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**THE PORT OF NEW YORK
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BY

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PART I
THE COMPREHENSIVE PLAN

CHAPTER I

THE COMPACT

INTRODUCTION

ON April 30, 1921, distinguished guests were assembled in the Great Hall of the Chamber of Commerce of the State of New York. Governor Nathan L. Miller of New York, Senator Walter E. Edge of New Jersey, Senator William M. Calder of New York, Hon. Alfred E. Smith and Hon. Charles S. Whitman (past governors of the state of New York), and members of the New York, New Jersey Port and Harbor Development Commission were among those present to witness and celebrate the signing of a compact between the state of New York and the state of New Jersey¹ in which each pledged to the other "faithful cooperation in the future planning and development of the port of New York, holding in high trust for the benefit of the nation the special blessings and natural advantages thereof."²

The preamble of the Compact declared that the commerce of the port of New York had grown to such an extent as to unify the surrounding territory into one commercial center or district. It expressed the belief that better coordination of terminal, transportation and other facilities for handling the commerce of the port would result in great economies benefiting the nation at large as well as the states of New York and New Jersey. It noted that careful planning and the expenditure of large sums of money would be required to develop such facilities, and that cordial cooperation between the two states was necessary to formulate the physical plans and to

¹ Chamber of Commerce of the State of New York. *Monthly Bulletin, Supplement*, XII (April 1921), 19-34.

² Compact between New York and New Jersey creating the Port of New York Authority, approved in *Laws of New York 1921*, chapter 154, *Laws of New Jersey 1921*, chapter 151, and 67th Congress, 1st Session, *Public Resolution No. 17*, Sen. J. Res. 88 (42 Stat. 174). (Citations to the state laws, hereafter abbreviated as: *L. N. Y.* 1921, c. 154; *L. N. J.* 1921, c. 151.)

encourage the investment of capital. To achieve this end a joint agency, the Port of New York Authority, was created. It was to be a body corporate and politic consisting of six commissioners, three from each state to be chosen as each state might subsequently determine.³ A port district was outlined with boundaries roughly twenty miles from the lower end of Manhattan Island.

The Compact granted to the Port of New York Authority (hereafter called the Port Authority) full power to purchase, construct, lease and operate any terminal or transportation facility in the port district, to make charges for its use, and to borrow money secured by bond or mortgage. But it was forbidden to pledge the credit of either state without its permission. No powers were delegated to the Port Authority which would enable it to control the use of privately-owned, or city-owned property. Only under express authorization by the legislatures of both states, or subject to their concurrence, could the Port Authority make rules and regulations for improving the conduct of commerce and navigation in the port.

However, the Port Authority was authorized to petition any administrative or legislative body, state or federal, for the adoption and execution of any physical improvement, or for any change in the system of handling, warehousing, docking, lightering, or transferring freight, or in the method or rate of transportation which might, in its opinion, be designed to benefit the commerce of the port. The Port Authority was also authorized to intervene in any such proceeding. The Port Authority was intended to function as a planning agency for the port; but the original plan, and all subsequent changes, had to be approved by the legislatures of both states.

³ Each state provided that the commissioners should be appointed by the governor with advice and consent of the senate. *L. N. J.* 1921, c. 152; *L. N. Y.* 1921, c. 203. In 1930 when the Port Authority was vested with control of the Holland Tunnel, the number of commissioners was increased to twelve. *L. N. Y.* 1930, c. 419; *L. N. J.* 1930, c. 244.

Thus there was established a public agency able to function for the benefit of commerce in a highly integrated region regardless of a state boundary line. Being a state agency with respect to each state it was not confined within the limits of any municipality or other local government area. But it had no regulatory powers and its functions were limited to those of study, analysis, persuasion, recommendation, and petition on the one hand, and to the acquisition, construction and operation of terminal and transportation facilities on the other.

BACKGROUND OF THE PROBLEM

In the field of governmental organization the creation of the Port of New York Authority was a major achievement, but like other major achievements it was preceded by a period of struggle. Unhappy chance, dividing the natural area of the port between two states, predisposed its developments so as to give rise to conflict. The immediate controversy bringing forth the Compact of 1921 was known as the *New York Harbor Case* and was waged, under the guise of a railroad rate case, for enjoyment of the fruits of commerce arising out of the port.

The early nineteenth century also witnessed an era of controversy. The quarrels between the two states over a steamboat monopoly granted by the state of New York resulted in a decision by the United States Supreme Court. In *Gibbons v. Ogden* navigation was removed from the jurisdiction of either state.⁴ But the boundary dispute, lying behind the quarrel over navigation rights, remained unsettled. Several attempts to fix the line by negotiation failed. New Jersey invoked the jurisdiction of the United States Supreme Court, but New York simply ignored its summons.⁵

Then, in 1834 after New York had displayed a more conciliatory attitude, a treaty was concluded.⁶ The treaty of

⁴ 9 Wheat. 1 (1824). The details of the quarrel are told here.

⁵ *New Jersey v. New York*, 3 Pet. 461 (1830); 5 Pet. 284 (1831); 6 Pet. 323 (1832). The bill is summarized in 108 U. S. 406-410.

⁶ *L. N. Y.* 1834, c. 8; *L. N. J.* 1833-34, p. 118; 4 *Stat.* 708. The history of

1834 made an important distinction between sovereignty and jurisdiction. The middle line in the waters between the two states was established as the boundary. But the treaty dealt differently with jurisdiction. New York retained the jurisdiction which it claimed over all the waters of the Hudson River and the Upper Bay to the high water mark on the New Jersey shore. New Jersey gained clear title to land under water out to the boundary line, and exclusive jurisdiction over wharves, docks, and improvements upon her shores. As to jurisdiction over the waters between Staten Island and New Jersey, the terms of the treaty were reversed.⁷ It was this distinction between sovereignty and jurisdiction that provided the legal foundation for the Compact of 1921, which was in fact drafted as an amendment to the older treaty.

With the boundary question thus settled and jurisdiction over navigation clearly vested in Congress, no interstate dispute disturbed the growth and development of the port of New York for eighty years.

In the first half of this period the growth of the port was stimulated by traffic through the Erie Canal. Shipping and manufacturing, trade and finance centered on Manhattan Island, rapidly increasing its wealth and population. The New Jersey side of the port did not share in this growth to any marked degree until the coming of the railroads about 1850. In the beginning of their development the railroads made little effort to compete with water transportation. For instance the Erie established its terminal at Piermont and completed the delivery of New York freight by a twenty-five mile water carry. Similarly the Camden and Amboy, later part of the Pennsylvania, transferred its freight and passengers to boats

this boundary dispute has been well told in two cases: *State v. Babcock*, 30 N. J. L. 29 (1862); *Central RR. of N. J. v. Jersey City*, 70 N. J. L. 81 (1903). Judge Elmer, who wrote the opinion in the former case, was one of the commissioners who negotiated the treaty. The text of the treaty was quoted in the latter.

⁷This appealed to New Jersey because it was thought at the time that Perth Amboy would become an important city.

at Perth Amboy. Then, gradually, by a process of consolidation and construction, trunk lines and through routes to the west were completed. Those lines which terminated west of the Hudson pushed their rails as close to Manhattan as they could.

The second half of the period, from about 1870 to 1914, was characterized by three factors which are of special interest here. First, all the trunk lines, excepting, of course, the New York Central, established their terminals on the waterfront opposite the southern end of Manhattan. In order to make delivery in New York a carfloat and lighterage service was developed which in magnitude had no equal elsewhere in the world. The waters around the harbor became an inner belt line of unusual flexibility, making it possible for industry to spread out into Long Island and New Jersey. Following the rate wars of the eighteen-seventies, the railroads began to group local points for rate-making purposes, and included these adjacent areas in the New York rate group.⁸ Thereafter not only was rail transportation available, but rates to and from the west were uniform throughout what was fast becoming a metropolitan region. Competitive advantages were equalized and the way cleared for the operation of a second factor.

A pronounced decentralizing movement set in about 1870. The growth of commerce and population on Manhattan had reached the point of congestion. Lower land values and lower taxes caused population and industry to move outward. On the New York side of the harbor economic decentralization brought about the paradox of political centralization. Joint action by the cities of New York and Brooklyn completed Brooklyn Bridge over the East River in 1883. In 1898 some forty cities, towns, and villages in five counties were consolidated to form

⁸ A rate group meant that the rate applicable to a particular point was also applicable to other points in adjacent territory. The effect was to reduce rates from the west to points in northern New Jersey because hitherto this section had not benefited by the competitive New York rate, but had been forced to pay a higher non-competitive rate.

the city of Greater New York. The tremendous tax resources thus made available were utilized by the city administration to provide facilities for the movement of persons and merchandise: notably, three more bridges across the East River, a great subway rapid transit system reaching up into the Bronx and out into Long Island,⁹ municipal ferry service to Staten Island, and the municipal waterfront development noted below.

However, on the New Jersey side the municipalities along the Hudson remained separate entities and the tax resources necessary for major public improvements were not consolidated. The initiative in the field of transportation was left to private enterprise. The railroads developed an extensive carfloating, lighterage and ferry service. When successive plans to bridge the Hudson failed, tunnels for passenger service were built by the Pennsylvania and the Hudson and Manhattan Railroads and placed in operation between 1908 and 1910.

A third factor was New York City's recognition of the importance to expanding commerce of public ownership of the waterfront. Through successive grants the city had at one time, it was estimated, ceded more than 90 per cent of its waterfront below 42nd Street. In 1870 a Dock Department was created to repossess and develop this property. Over \$100,000,000 was spent for that purpose between 1870 and 1914. It is interesting to note that while the city was spending hundreds of millions for streets and highways, bridges and subways, docks and piers, it did not spend one cent for publicly-owned railway freight facilities.

In New Jersey the waterfront had also been granted to private individuals to an extent even greater than in New York, but no efforts were made to reclaim it. In fact the resources of the individual communities did not permit a program comparable to that of New York. As a result, the mu-

⁹ Elevated rapid transit had been provided by private enterprise prior to this time on Manhattan and in Brooklyn.

nicipalities from Bayonne to Edgewater owned practically none of the waterfront on the Upper Bay and Hudson River. The railroads held 52 per cent of it, and one-quarter of their holdings had not been developed at the end of the period.¹⁰ However, in spite of the tremendous efforts made by the city of New York to retain the commerce of the port and to direct its expansion eastward, and in spite of the backwardness of public development in New Jersey, the west side of the port increased rapidly in population and industry. Something analogous to centrifugal force was at work creating a metropolitan region.¹¹

Toward the end of the pre-World War period growth once again produced congestion. A series of investigations were launched for the purpose of discovering the cause. In 1911 both states appointed commissioners to investigate port conditions jointly, and to suggest remedial measures.¹² The two commissions held many joint conferences, and conferred with federal, state and municipal authorities. The New York com-

¹⁰ This historical summary is based upon facts presented in New York, New Jersey Port and Harbor Development Commission. *Joint Report with Comprehensive Plan and Recommendations*. Albany, 1920. 495 pp., illus., tables, maps.

¹¹ The first problem to arise out of the growth of a metropolitan region was harbor pollution. The New York Bay Pollution Commission (created by L. N. Y. 1903, c. 539) made the first of repeated efforts to bring New York and New Jersey together in a joint administrative authority to control sewage disposal. New York Bay Pollution Commission. *Report, March 31, 1905*. Senate Doc. 1905, No. 39. 135 pp., map. Metropolitan Sewerage Commission (created L. N. Y. 1906, c. 639). *Preliminary Report, March 1, 1910*, n. p. n. d. 8 pp. *Idem. Main Drainage and Sewage Disposal Works Proposed for New York City, Reports of Experts and Data Relating to the Harbor. [Final] Report, April 30, 1914*. New York, 1914. 762 pp., map, plans, diags. Failure to cooperate led to a controversy which was decided by the U. S. Supreme Court in *New York v. New Jersey and the Passaic Valley Sewerage Commissioners*, 256 U. S. 296 (1921) in which it was suggested that the problem could be more wisely solved by conference and mutual concession than by the court. On January 24, 1936 New York and New Jersey signed a *Tri-State Compact Establishing the Interstate Sanitation District and the Interstate Sanitation Commission*.

¹² L. N. J. 1911, J. R. No. 3; L. N. Y. 1911, c. 734.

mission reported that the facilities for handling commerce on its side of the port were "inadequate", that there were insufficient docks to grant all applications, and that "the principal difficulty confronting any attempt at readjustment [on Manhattan south of 59th Street] is the occupancy of a large part of the waterfront by the trans-continental railroads." "Cooperation between the two states—and the general government is what in our opinion is needed."¹³

The New Jersey Commission, after noting the tendency of modern seaports to become public, and the benefits which New York City derived from unified control of its waterfront, reported that the creation of a state agency with regulatory jurisdiction over the waterfront, the waterways and the adjacent uplands was the only plan by which that state could reap its proper share of the benefits of commerce.¹⁴ An ominous note was struck when it was suggested that the natural location for maritime commerce was on the New Jersey side because the trans-continental railroads were located there. It observed that commerce had centered on the other side of the harbor "in spite of the fact that practically all the freight between ships and railroad carriers [was] subjected to the additional cost, delay, breakage, etc. in being lightered across the harbor water" because New York had provided piers and docks, while New Jersey had not.¹⁵ The New Jersey commission made no reference to the need for cooperation with New York.

The legislation creating these commissions had provided for a seventh member to represent the United States. Congress authorized the president to appoint an officer of the Army

¹³ New York (State) Commission to Investigate Port Conditions and Pier Extensions in New York Harbor. *Report Transmitted to the Legislature, April 30, 1913*. Albany, 1913. 18 pp., map.

¹⁴ New Jersey Harbor Commission. *New Jersey's Relation to Port of New York. Fourth Preliminary Report, February, 1914*. Jersey City, 1914. 214 pp., maps.

¹⁵ *Op. cit.* Appendix B, p. 32.

Corps of Engineers.¹⁶ Disregarding the fact that the commissions had been active for nearly two years, President Taft vetoed the bill on the ground that the scope of their work invaded the exclusive jurisdiction of the federal government.¹⁷ An identical bill was signed by President Wilson the following year¹⁸ and the appointment was made.¹⁹ However the unifying effect of a federal representative came too late. The two states were drifting apart, each tending to lay primary emphasis on proposals peculiar to its side of the port, and losing sight of the larger problem of the port as a whole.

In 1914, New Jersey placed the Harbor Commission on a permanent basis with power to approve all plans for the development or modification of the waterfront.²⁰ In 1915, several of its agencies including the Harbor Commission were consolidated into a new Board of Commerce and Navigation.²¹ This body veered sharply away from cooperation with New York, and turned its attention toward seeking competitive advantages for New Jersey. In its first report, it contended that the existing railroad rates, which were the same from the west to all parts of the port region, discriminated against northern New Jersey. The Board argued that the New Jersey side of the port was entitled to a lower rate because of less expensive operation. It also asserted that New Jersey was not getting as good service as New York. The report concluded that, if railroad rates could be reduced to a point below those applicable to New York and Brooklyn, and the service im-

¹⁶ 62 Cong., 3 Sess. *House J. R.* 210.

¹⁷ *Idem. Cong. Rec.*, p. 2553 (Feb. 4, 1913). Both commissions felt that the veto was unfortunate.

¹⁸ 63 Cong. 2 Sess. *Public Res. No. 39*, approved July 17, 1914 (38 *Stat. 775*).

¹⁹ The consulting engineer of the New Jersey Harbor Commission was designated.

²⁰ *L. N. J.* 1914, c. 123.

²¹ *L. N. J.* 1915, c. 242.

proved, it would be "of greatest importance to the state in building up its industries, population and ratables."²²

At the instance of the Board of Commerce and Navigation the mayors and representatives of chambers of commerce and boards of trade of all the cities in northern New Jersey were invited to meet on September 14, 1915 to consider the above propositions. The meeting was largely attended. As a result the governor appointed a Committee on Ways and Means to go into the question of alleged discrimination, to cooperate with the Board of Commerce and Navigation in the preparation of a complaint to be filed with the Interstate Commerce Commission, and to raise a fund for the prosecution of the case.²³ This meant that New Jersey would seek to increase its share of the commerce of the port by litigation, rather than by public improvements, and the stage was set for a major interstate conflict.

Before proceeding to a discussion of the issues and outcome of the *New York Harbor Case*, or as it was popularly known, the lighterage case, it will be helpful to summarize the situation on the New York side of the port. The commission to investigate port conditions in cooperation with New Jersey was permitted to lapse, and with it the vision of interstate cooperation. In 1914 the Board of Estimate and Apportionment of the city of New York appointed a Committee on Port and Terminal Facilities to "prepare a scheme for the better development of the city's port and terminal facilities." This committee fixed its attention on certain specific New York problems which were becoming increasingly acute. Among them were the west side problem, the South Brooklyn marginal freight railroad project, and pier development in the vicinity of 46th Street. Of these three the west side problem was the most pressing and proved to be the most obstinate.²⁴

²² New Jersey Board of Commerce and Navigation. *Annual Report for 1915*, p. 13. Trenton, 1916. 61 pp., map.

²³ *Ibid.*

²⁴ New York (City) Board of Estimate and Apportionment. Committee

The west side problem was a term used to designate a condition of freight and vehicular congestion existing in the streets and railroad terminals along the Hudson River waterfront from 59th Street to the Battery. As generally understood, the primary cause of this congestion was the operation of the New York Central's freight tracks at grade, and the problem was regarded as being one of grade crossing elimination. However there was a second factor, less clearly appreciated but of equal importance, in the utilization of about 25 per cent of the Hudson River piers by the New Jersey railroads as freight stations.²⁸ For this purpose the piers were far from ideal. Their long and narrow shape made difficult the ingress and egress of vehicles. This, together with concentration of street traffic in their vicinity and the delay caused by freight trains in the streets, produced a condition that was well-nigh intolerable.

For many years the city of New York had been endeavoring to have the New York Central's tracks removed from the streets. When the tracks were laid down the route was sparsely settled, but the rapid growth of the city soon made operations at grade both objectionable and dangerous. As early as 1866 there was cause for complaint. In time Eleventh Avenue became notorious as Death Avenue. In 1906, 1911 and in 1917 enabling and mandatory legislation was passed,²⁹ but no results were accomplished. After negotiations with the company under the 1906 law had failed, the city made an attempt to revoke the franchise. But the Court of Appeals rendered a decision to the effect that the city could not withdraw or cancel

on Port and Terminal Facilities. *Report of the Secretary on the Activities of the Committee, June 15, 1915.* New York, 1915. 61 pp.

²⁵ The freight cars were run onto carfloats on the New Jersey shore, floated across the river and unloaded directly to the piers for delivery to the consignee. A tremendous volume of freight including deliveries for the central produce market was handled in this way. The New Jersey roads also had float-bridges and limited team track yards in the vicinity of 30th Street for non-package freight.

²⁶ *L. N. Y.* 1906, c. 109; *L. N. Y.* 1911, c. 777; *L. N. Y.* 1917, c. 719.

the company's franchise; such power rested solely with the legislature.²⁷

Thereafter negotiations were resumed and eventually referred to the above-mentioned Committee on Port and Terminal Facilities. In order to understand the proposal that was evolved, as well as subsequent proposals, it is necessary to describe briefly the New York Central's freight terminal layout. From the point in Spuyten Duyvil where the main line passenger tracks branched off, to 72nd Street the right of way ran near the edge of the river mostly through park lands. The problem in this section was largely one of park improvement and grade crossing elimination, and is mentioned only because those objectives were important to the city and entered into its bargaining position. The company's main terminal yard spread out adjacent to the river between 72nd Street and 60th Street. At 30th Street the company operated another but smaller yard. From 60th Street, where the freight terminal problem began, southward to the important St. John's Park station just below Canal Street, a distance of over four miles, the tracks lay in the city streets. Private sidings branched off at numerous points on the way down.

In 1916, protracted negotiations produced a plan and proposed agreement between the railroad company and the city.²⁸ It contemplated an entirely reconstructed yard at 60th Street extended some distance north under Riverside Park, a four-track elevated line on the Marginal Way to 30th Street, where an entirely new double-decked yard was to be built, and a two-track elevated line on a private right of way close to Ninth Avenue south to the Canal Street terminus, thus eliminating all grade crossings. The city accepted the company's claim to fully established rights from Spuyten Duyvil to Canal Street and agreed to strengthen that claim by grants of land. The

²⁷ *New York Central and Hudson River RR. Co. v. City of New York et al.*, 202 N. Y. 212 (1911).

²⁸ Known as the Mitchel plan.

company agreed to spend considerable sums roofing over its tracks in Riverside and other parks.²⁹

A strong public sentiment developed against the proposed agreement. The fundamental objections were first, that the city would thereby reverse a long-established policy in favor of public ownership by granting to the railroad waterfront property at its 60th Street yard; second, that an indefinite and uncertain franchise right subject to special legislation would be transformed into a property right held in fee forever; and third, that the city had reserved no right to acquire the structures of the New York Central at their physical cost should the city later decide to create a union terminal system.³⁰

There was force in these objections. The opposition culminated in the passage of a bill in 1917 requiring the Public

²⁹ N. Y., N. J. Port and Harbor Development Commission, *Joint Report* . . . , p. 215.

³⁰ The light in which the Committee on Port and Terminal Facilities regarded this and kindred criticism is shown in its report. "It has been urged upon the board with apparent sincerity and earnestness that in order to avoid a monopoly by the New York Central Railroad it is necessary to compel that company to permit the use of its structures and terminals by any railroad willing to pay for the right. It has even further been urged that the company be compelled, at the option of the city, to agree to merge its terminal facilities south of 30th Street in any future general city terminal plan upon receiving compensation to be adjusted in some manner fixed in the contract. The Committee can see no force or justice in the suggestion for the compulsory admission of other railroads to the facilities which the New York Central is providing at enormous cost. . . . The Committee is ready to give consideration to a union terminal when convinced that it is desirable. . . . The business entering New York by one of the trunk lines from New Jersey at one of its pier stations alone in the immediate vicinity of Canal Street would fill the [new St. John's Park] station twice over. It will therefore be seen that there is no force in the argument that it is to be a large terminal to which other railroads should have access. Certainly it has been made sufficiently clear that the trunk line railroads other than the New York Central can see no advantage in an elevated railroad terminal along the west side waterfront. The Committee agrees, however, that despite the persistently indifferent attitude of the New Jersey roads, the possibility should be reserved for securing such a union rail terminal in the future." New York (City) Board of Estimate and Apportionment. Committee on Port and Terminal Facilities. *Report No. 2 upon the Rail Terminal Facilities of the New York Central*

Service Commission to approve any agreement between the city and the New York Central, and authorizing the Commission to compel the railroad to change the grade of its tracks if no agreement were reached. It also required the railroad to pay the city compensation for the use of its streets in the form of an annual rental to be readjusted every twenty-five years. The New York Central flatly refused to continue negotiations under these conditions.⁸¹ And so the matter rested.

On the New York side of the port between 1911 and 1917 an acute problem of freight congestion found no relief. The entrenched position of the New York Central and the failure of public authorities to appreciate the role of the New Jersey railroads were mainly responsible. In New Jersey official action was leading to an interstate struggle for the purpose of diverting to the west side of the harbor a greater share of the commerce of the port. Out of this struggle came the Port of New York Authority Compact.

THE NEW YORK HARBOR CASE

On May 27, 1916, the associated interests in northern New Jersey filed a formal complaint with the Interstate Commerce Commission charging that the railroad rates applicable to their territory on western traffic were unjust and discriminatory because they were constructed to provide compensation for the extraordinary terminal services required by New York and Brooklyn. These costly services, it was said, were not needed or used on the New Jersey side of the port, and therefore rates applicable thereto should "be established lower than those charged . . . on traffic to and from New York and Brooklyn . . . to the extent of the difference in the cost of service."⁸²

Railroad Company on the West Side of the Boroughs of Manhattan and the Bronx, May 12, 1916, p. 2. New York, 1916. 18 pp.

31 New York (State) Commission to Investigate the Surface Railroad Situation in the City of New York on the West Side. *Report transmitted to the Governor and Legislature, January 31, 1918 [with Proceedings], pp. 32-34. Albany, 1918. 639 pp.*

32 Interstate Commerce Commission. Docket No. 8994. Committee on Ways and Means to Prosecute the Case of Alleged Railroad Rates and Service

Ever since the establishment of the group system of rate making northern New Jersey had been included in the New York rate group. It was now proposed to divide this group, which comprised the entire port area, so as to benefit the New Jersey portion by a reduction in rates. The vital importance of this proposal to business in New York was appreciated immediately by Eugenius H. Outerbridge, president of the Chamber of Commerce of the State of New York. His activity caused the state of New York, the city of New York and the Chamber of Commerce to intervene in the proceedings.³³ The Chamber retained Julius Henry Cohen as counsel and obtained his designation as Special Deputy Attorney-General for the state.

Testimony was taken and the issues were argued early in 1917. The New Jersey interests presented voluminous testimony to show the excessive costs involved in floating freight across the harbor. They attacked the general organization of commerce at the port and dwelt at length upon the congestion and high cost of doing business in Manhattan. They claimed that the existing rates denied to New Jersey the natural advantages of its location on the west bank of the Hudson. They sought specific relief by the creation of a new rate group embracing all points within the New Jersey portion of the New York rate group, and the establishment of a spread in the rates of at least two cents per hundred pounds as compared with New York and Brooklyn. It was contended that granting

Discrimination at the Port of New York, Board of Commerce and Navigation of the State of New Jersey, the City of Newark, City of Jersey City, the City of Hoboken, and the City of Elizabeth, All in the State of New Jersey v. The Baltimore and Ohio Railroad Company, et al. [being all the trunk lines and certain terminal short lines]. *Complaint*. George L. Record, Attorney. Frank H. Sommer, of Counsel. [Nov. 1916.] 16 pp., table. Funds were obtained from the complainants and other cities in northern New Jersey. The New Jersey State Chamber of Commerce assisted by retaining counsel. New Jersey Board of Commerce and Navigation. *Annual Report for 1916*, p. 21. Trenton, 1917. 42 pp.

³³ Chamber of Commerce of the State of New York. *Monthly Bulletin*, XVI (May, 1924), 7.

this differential to New Jersey would relieve congestion on Manhattan by inducing the migration of some of the coarser forms of manufacture and perhaps some of the wholesale business to New Jersey. This, it was said, would benefit the port as a whole by giving it a more scientific and economical organization.³⁴

The city of New York denied that it suffered from congestion. The difficulty and cost of marine operations was minimized and compared favorably with the cost of switching operations in New Jersey. At the same time it was argued that harbor points across the bay benefited to a large extent by car-floating and free lighterage. It was charged that to reorganize the port as demanded by New Jersey would be to discriminate against New York.³⁵

The railroad defendants answered the New Jersey complaint strictly as a rate question. They argued that to change the New York rate group in any way would disarrange the port differentials³⁶ and necessitate widespread and unpredictable readjustments throughout eastern territory. While admitting that the Commission had made changes of territory from one rate group to another, they asserted that such changes had not been made without a sound economic basis, and never

34 I. C. C. Docket No. 8994. *Brief for the Complainants and the Following Intervenors: New Jersey State Chamber of Commerce and Staten Island Chamber of Commerce.* George L. Record, Robert H. McCarter, Frank H. Sommer, John R. Walker, Counsel. 190 pp.

35 *Idem.* *Brief on Behalf of the City of New York, Intervener.* Lamar Hardy, Corporation Counsel, Attorney for City of New York. George Wickersham, of Counsel. iv, 116 pp.

36 The other Atlantic ports, except Boston, enjoyed a "differential" against New York, that is a lower rate on western freight. This arose from the fact that years ago the freight rate by vessel between New York and European ports was less than between other Atlantic ports and Europe, and in order to equalize the rate from the interior, the rail rate to New York was made greater. Upon equalization of steamship rates an effort was made, and has since been made, to have the railroad rates to all the Atlantic ports put upon an equal basis, but this has been consistently refused by the Interstate Commerce Commission. N. J. Bd. of Comm. and Nav. *Ann. Rep. for 1915*, p. 13.

for the purpose of giving any particular portion of an economic unit a competitive advantage over any other portion. This, they said, was the essence of the New Jersey petition. At the same time, the railroads pointed out that in local territory a differential between the two sides of the port was being observed: New Jersey benefiting on westward traffic (including most of the bulk commodities), and New York benefiting on the eastward traffic.³⁷

In presenting the case for the state of New York and the Chamber of Commerce, Mr. Cohen endeavored to show that the port of New York was a unit, that geographically all of its parts shared in the same natural advantages, that historically their growth had been stimulated by the same forces and that economically they were closely knit together. Therefore, he concluded, there was no basis for dividing the port between two rate zones. The fact that the New Jersey side of the port had not attained greater stature he attributed to its neglect of the waterfront, and its failure to provide public improvements. He singled out the "water belt line" as the greatest of the natural advantages contributing to the greatness of the port, a belt line "maintained at the cost of the city, state, and nation, upon which no taxes [were] paid, and for which there [were] no fixed or overhead charges." To impose the differential would, he said, decrease, if not destroy its usefulness. At the same time he recognized that the service could be improved, and the cost lessened. "But how is it to come about? Let all hands turn to and cooperate in the solution of this great problem . . . [It] will require the constructive mind of a great engineer . . . , hundreds of millions of dollars, . . . legal power on all sides of the harbor . . . but over and above all . . . a liberal spirit . . . which [will] break down political barriers, [and] put aside petty jealousies and rivalries."

³⁷ I. C. C. Docket No. 8994. *Brief on Behalf of the Defendants*. George Stuart Patterson, Clyde Brown, Jackson E. Reynolds, J. L. Seager, T. H. Burgess, Charles R. Webber, R. W. Barrett, Attorneys for the Carrier Defendants. April 14, 1917. 210 pp., maps, table.

He observed that "the hearings on this application have already developed healthy elements of cooperation and thus may make these proceedings a blessing in disguise; but the grant of the application—the creation of this 'New Jersey' zone—would destroy the newborn spirit, would paralyze the initiative . . . of those who would put endeavor into this great work."³⁸

Mr. Cohen's efforts were rewarded in the decision of the Interstate Commerce Commission which denied that the current rate adjustment unduly prejudiced the people of northern New Jersey and concluded that the solution of the terminal problem at the port of New York did not lie in the establishment of a New Jersey rate group. Its report furnished the first judicial pronouncement of the unity of the port region and a text for the movement which was taking shape to realize that unity in legal form. It said:

If we could overlook the fact that historically, geographically, and commercially New York and the industrial district in the northern part of the state of New Jersey constituted a single community; . . . and if we were not persuaded that cooperation and initiative must eventually bring about the improvements and benefits which the complainants hope to attain through a change in the rate adjustment; then we might conclude that the present rates result in undue prejudice to the people and communities on whose behalf this complaint was filed. On the evidence now before us that conclusion cannot be reached.³⁹

In a less dramatic but equally important line of attack, the New Jersey interests charged that the tidewater railroads were

³⁸ *Idem*. *Brief on Behalf of the State of New York, the Chamber of Commerce of the State of New York and the Merchants' Association of New York, Interveners*. Julius Henry Cohen, Counsel. April 14, 1917. pp. 125-127. 165 pp., tables, map.

³⁹ *Idem*. *The New York Harbor Case. Committee on Ways and Means to Prosecute the Case of Alleged Railroad Rate and Service Discrimination at the Port of New York et al. v. Baltimore & Ohio Railroad Company et al. Report of the Commission*. Harlan, Commissioner. Submitted June 25, 1917. Decided Dec. 17, 1917. p. 739. (47 I. C. C. 643-749)

maintaining circuitous routings and excessive local joint rates between points on their several terminal lines. This charge went to the root of the terminal problem in a situation characterized by competitive railroad operation. These routings and local joint rates were established so as to prevent easy interchange between competitive railroad terminals, and so as to protect the respective advantages and quasi-monopolized freight territories of the several lines. As such, the charge was more important for the future than the attempt to divide the rate group.

The complaint alleged that the failure of the carriers to establish reciprocal switching at uniform and reasonable rates constituted discrimination, in view of the carfloat and lighterage service available across the harbor. The rail connections were said to be in existence and the Interstate Commerce Commission was asked to compel the carriers to operate a switching service.⁴⁰ What the New Jersey interests wanted was the equivalent on land of the "water belt line" serving the other side of the harbor. In support of their plea they pointed to the enormous advantages enjoyed by New York and Brooklyn shippers by virtue of free lighterage enabling them to ship over any railroad without extra charge.⁴¹

The New York interests did not oppose this branch of the application—quite the contrary. Mr. Cohen said: "We do not begrudge our New Jersey neighbors these facilities . . . We hope they get all . . . that the Commission can order the companies to give them."⁴² But the carriers vigorously opposed the idea, claiming that it was contrary to the public interest. The railroads took the position that they should have the right to reserve their terminal facilities (meaning tracks and yards) for their own traffic and not to be compelled, or asked, to handle traffic through their terminals on which competing lines en-

⁴⁰ *Idem. Complaint* . . .

⁴¹ *Idem. Brief for the Complainants* . . .

⁴² *Idem. Brief on Behalf of the State of New York* . . . , p. 117.

joyed the long haul and the bulk of the revenue.⁴³ They argued that the terminal facilities of a carrier were one of its greatest assets, that they controlled considerable traffic for the long haul, that they enabled the carrier to make favorable divisions of the joint rates with lines associated in through routes, and that investment in terminal facilities and their further developments would be discouraged if the carriers were compelled to open them to competitive traffic. Generally speaking, it was said, traffic to and from the terminals should be handled on joint rates through junction points which would insure the maximum mileage to the line owning the terminal, and not on a switching basis.⁴⁴ The reader should note carefully this general position because it was reasserted later every time the Port Authority proposed specific action to rationalize and improve terminal conditions at the port of New York.

In deciding the issue the Commission did not deny "that the establishment of such reciprocal switching would be of benefit to the people of Jersey City and Hoboken", but it said that to require the railroads to perform this service was beyond their power since such action would be equivalent to requiring them to establish through routes and joint rates by which any of the several roads might be short-hauled.⁴⁵

In short the Interstate Commerce Commission denied the New Jersey application in all its aspects, but in so doing it offered an analysis of the terminal problem at the port of

⁴³ It may be noted that American railroad practice, unlike the English, does not establish separate terminal and line haul charges.

⁴⁴ *Idem. Brief on Behalf of the Defendants*, pp. 159-160.

⁴⁵ 47 I. C. C. 722. A carrier is short-hauled when freight originating on its line is so routed as to traverse *less* than the full length of the company's trackage available for transporting the freight to its destination. By section 15 (4) of the Interstate Commerce Act the Commission is forbidden to establish routes having this effect except in emergencies. The most direct route to a destination might be the most economical, but from the point of view of the individual carrier the longest haul on its own lines yields more revenue and is more desirable even though the route be less direct. At present ownership of a terminal enables a carrier to route traffic originating therein over its own lines for as much of the distance as it can provide trackage.

New York which became the keynote of all plans later developed by the New York, New Jersey Port and Harbor Development Commission and by the Port of New York Authority.

We cannot with propriety overlook the fact that the terminal problem at the port of New York is due in no small measure to competition between the railroads. With convenient through routes available to the shipping public over the lines of all the carriers, and with the same rates of freight applying over all the routes, practically the only field of competition left to the railroads is that provided by their separate terminal operations. A shipper will employ the services of the carrier which offers him the most convenient facilities for the receipt and delivery of his shipments. It is this rivalry between the railroads in the matter of terminal service that has induced them to lay hold of almost every available foot of land on the New Jersey side of the harbor. It is this rivalry that prevents the establishment of reciprocal switching arrangements and joint terminal operation on the New Jersey shore, and for the difficulties encountered in endeavoring to persuade the railroads to construct freight tunnels under the river between New Jersey and Manhattan. And it is this rivalry that tempts the carriers to invest large sums in new terminals for their individual use instead of uniting in a common effort to solve in a larger way a problem whose solution can never be attained as long as the present policy of unrestrained competition is continued. It is not too much to expect that the defendants will take immediate steps to reorganize and coordinate their terminal facilities at the port. . . . It is necessary that the great terminals at the port of New York be made practically one, and that the separate interests of the individual carriers, so long an insuperable obstacle to any constructive plan of terminal development, be subordinated to the public interest.

The solution of the terminal problem is to be found, not in a change in the rate adjustment, but in the united efforts of the people of the district and the carriers toward the improvement of conditions in which their interests are mutual.⁴⁶

⁴⁶ 47 I. C. C. 732-734.

Time and again the Port Authority was to cite this language in its efforts to bring about the looked for coordination of terminal facilities.⁴⁷

THE NEW YORK, NEW JERSEY PORT AND HARBOR
DEVELOPMENT COMMISSION.

The Chamber of Commerce of the State of New York had been able to sponsor an approach to the *New York Harbor Case* which elevated it above the plane of two competing interests because its membership included many business men whose interests lay on both side of the harbor. Consequently it was peculiarly in a position to foster the new conciliatory spirit. During the hearings Governor Walter E. Edge, newly-elected governor of New Jersey, and Senator Frelinghuysen, Republican leader, became convinced that their state had more to gain by unifying the port than by splitting it, that cooperation was better than litigation.

On March 1, 1917, prior to final argument in the case, the Chamber of Commerce held a meeting to which were invited the governors of both states, the mayors of the New Jersey municipalities and representatives of their commercial organizations. Governor Edge addressed the meeting assuring his audience that "we are all pressing for co-operation." He said, "I want to see industrial New York and industrial New Jersey co-operating, especially located as they are, with this wonderful harbor between them—and the harbor, my friends, is not New York's alone; the harbor is a national institution . . . I would like to see a joint commission appointed representing the two states . . . with one thought that their responsibility is to develop the port of New York."⁴⁸

A few days later bills for that purpose were introduced in both states. Governor Edge, in a special message, urged the

⁴⁷ Wilbur LaRoe, who as trial examiner wrote the report, later became counsel to the Port Authority in railroad matters.

⁴⁸ Chamber of Commerce of the State of New York. *Monthly Bulletin*, VIII (March, 1917), 43-46.

New Jersey legislature to create a "far-sighted interstate commission, which is oblivious to sectional prejudices and intent upon developing an important section of the country along broad lines."⁴⁹ Governor Whitman addressed the New York legislature to the same purpose, saying:

All but two of the trunk lines serving the Port of New York terminate in our neighboring State of New Jersey. This makes it essential that any solution of the port problem should include a study of that portion of the port comprised within the northern part of New Jersey and, while it is beyond question that great benefits will accrue to the State of New York through a comprehensive port policy, benefits will also accrue to New Jersey . . . It is imperative that both states should give immediate attention to this situation.⁵⁰

This was the first official acknowledgment that New York's port problem began with the railroads in New Jersey.

The bills were passed. Each state created a commission of three members serving without compensation to act jointly with the other. They were both directed to investigate conditions and to agree upon a joint report recommending a policy to be pursued by the two states to the end that the port should be efficiently and constructively organized. Appropriations were provided wherewith to employ a staff.⁵¹ Disregarding precedent the commissioners organized as a single body which called itself the New York, New Jersey Port and Harbor Development Commission. General George W. Goethals was retained as consulting engineer, and Julius Henry Cohen as counsel.

In its preliminary report a year later the Port and Harbor Development Commission recommended a comprehensive study that would cost \$400,000 and require two years to complete. It was expected that a plan of port development and operation could then be reported which would serve as a guide

⁴⁹ *New Jersey Senate Journal*, 1917, p. 414 (March 14).

⁵⁰ Message of March 12, 1917 quoted in N. Y., N. J. P. and H. D. C. *Joint Report* . . . , p. 58.

⁵¹ *L. N. J.* 1917, c. 130; *L. N. Y.* 1917, c. 426.

for fifty years.⁵² This expensive recommendation might not have been adopted but for the convergence of several factors. The first factor was the decision of the Interstate Commerce Commission,⁵³ which, although denying New Jersey's demands, held the door open for future action if something were not done to improve the conditions underlying the complaint. A second was the report of a commission appointed by Governor Whitman to investigate the west side problem declaring that "the most imperative need of the City of New York is a comprehensive and modern freight terminal system, not only for the New York Central lines, but also for the railroads which float their freight across the Hudson River from the New Jersey shore . . . To allow old political and personal bickerings and competitive rivalries among the railroads longer to delay the solution of the west side problem would be to betray the people of the City and State."⁵⁴ Lastly there was a real threat that traffic would be diverted to other ports because of the excessive strain upon the port of New York by the concentration of men and materials for the American Expeditionary Force.

In summary, eighty years of vigorous but haphazard development had culminated in a major struggle between New Jersey and New York. New Jersey had fought to obtain preferential treatment whereby to increase its share of the benefits arising from the natural advantages of the port. The battle was lost, at least in its immediate aims, and New Jersey was ready to join New York, now shaken out of its complacency, in a cooperative undertaking whereby it was fervently hoped that a plan of interstate development could be evolved which would synthesize the elements of past conflict.

⁵² New York, New Jersey Port and Harbor Development Commission. *Preliminary Joint Report, Transmitted to the Legislature, February 18, 1918*. Albany, 1918. 33 pp. (Senate [Doc.], No. 31 [1918]).

⁵³ The *New York Harbor Case* was decided Dec. 17, 1917.

⁵⁴ Commission to Investigate the Surface Railroad Situation . . . on the West Side. *Report . . . , Jan. 31, 1918, pp. 7-8.*

DRAFTING THE COMPACT

After another year of study the Port and Harbor Development Commission was convinced that no matter what physical plan might be evolved, the essential thing was to bring the two states into an agreement providing for a permanent administrative agency.⁵⁵ The legal problem was unique. At the threshold the Commission faced the fact of dual political sovereignty. The port lay in two states. The principles of international servitudes were well established when Mr. Cohen brilliantly conceived their relation to the clause in the United States Constitution permitting states to enter into compacts with each other. While numerous interstate compacts had been signed for various purposes prior to 1918, they had not been used as the legal foundation for a permanent interstate body. Hitherto no state had granted administrative jurisdiction within its borders to a bi-state commission. Yet the Port and Harbor Development Commission felt that a body with interstate jurisdiction was the first essential in the development of the port as a whole. Mr. Cohen's study of the English port bodies had impressed him with the desirability, in fact necessity, of reproducing their autonomous character. Building upon the distinction between sovereignty and jurisdiction observed in the New York-New Jersey Treaty of 1834 he conceived of a port authority corporate in form, enjoying jurisdiction by compact under two sovereignties.

A tentative draft of the proposed compact was submitted for public discussion at a special meeting of the Chamber of Commerce on December 19, 1918. Governor Edge and Governor Whitman both pledged their cooperation towards its adoption.⁵⁶ Further public hearings were held in both states.

⁵⁵ N. Y., N. J. P. and H. D. C. *Progress Report*. Albany, 1919. 216 pp. (Leg. Doc. [1919] No. 103). Appendix B is a Preliminary Report of Counsel to Accompany the Tentative Draft of Proposed Treaty Amendatory and Supplementary to the New York-New Jersey Treaty of 1834. Julius Henry Cohen, Counsel. Dec. 2, 1918.

⁵⁶ Chamber of Commerce of the State of New York. *Monthly Bulletin, Supplement*, X (Dec. 1918).

The main features of the draft were received with general approval by all the larger civic groups and the major part of the metropolitan press.⁵⁷

This tentative draft went through a series of modifications before it was finally adopted in 1921. As originally submitted by the Port and Harbor Development Commission it provided for a strong and independent central port authority. The tentative draft would have made the port authority a regulatory as well as a proprietary body by giving it power to "make suitable orders, rules and regulations for the improvement of navigation and commerce of the district . . . which shall be binding within the district upon all persons and corporations affected thereby when the same shall be accepted by municipalities, towns, villages and other local bodies therein having a total population not less than two-thirds of the entire population of said district." If approval should not be obtained in this way, the port authority was authorized in the tentative draft to apply to the courts of either state for a "determination of the reasonableness and public necessity of such order, rule or regulation," and the determination of the court would be binding and conclusive. Penalties for violations were provided. In the second place it provided that "no grant of land within the port district now owned by either state or in which it has any titular interest shall be made without the approval of the port authority."⁵⁸ And third, the plan of port development to be adopted was safeguarded against any change not approved by the port authority.⁵⁹

In order that the proposed compact might be acceptable to the legislatures of both states in the same form a bi-state commission including the legislative leaders, the attorney-generals,

⁵⁷ *Progress Report*, p. 41.

⁵⁸ This cut heavily into the powers of the New Jersey Board of Commerce and Navigation.

⁵⁹ The text of the original draft may be found in the above-mentioned Chamber of Commerce *Bulletin* (pp. 2-6), and in Appendix A of the Port and Harbor Development Commission's *Joint Report*.

and the legal representatives of the cities of New York and Jersey City, was appointed to revise the tentative draft.⁶⁰

The provisions described above were rejected by the joint conference commission. Their revision merely permitted the port authority to propose rules and regulations for the concurrence of the legislatures. In general, proposed powers were weakened and limitations strengthened, or new ones added. Exercise of the power to acquire property and borrow money was made contingent upon the adoption by the legislatures of a plan of development. Instead of limiting changes in the plan to those approved by the port authority, it provided that no changes should be made except with the approval of the legislatures. Any transportation or terminal facilities which the port authority might come to possess were brought under the jurisdiction of the public service commission in each state just as though the port authority were a private corporation. The port authority was explicitly prohibited from pledging the credit of either state without legislative authority. The tentative draft had provided that the commissioners of the port authority should be appointed by the governor. In the revised draft that matter was left to the determination of the two legislatures.⁶¹

In accordance with the request of the New York members of the bi-state conference commission this revised draft was submitted to the Board of Estimate and Apportionment of the city of New York with the suggestion that acceptance or rejection of the scheme rested with the city.⁶² The Board of Estimate held a public hearing at which the preponderance of prestige and numbers among the civic and commercial bodies again favored the compact. Nevertheless, the Board adopted a

⁶⁰ *Progress Report*, p. 42.

⁶¹ N. Y., N. J. P. H. D. C. *Report of Sub-Committee of the Conference of Governors, the Commission and Conferees from Both States at New York City, March 1, 1919*. n. p., n. d. 13 pp. Also in the *Joint Report . . .*, Appendix C.

⁶² See *Joint Report . . .*, Appendix B for covering letter.

resolution urging that approval be delayed until the comprehensive plan had been presented and adopted. In discussion at the public hearing it appeared, however, that concern for the plan was not the only consideration present. It seemed to be the opinion of members of the Board that they as a whole, or at least two of them, should constitute the New York section of the port authority.⁶³ It was also urged that plans, rules or regulations of the port authority should be subject to the consent of the Board.⁶⁴

The Board of Estimate was effective in delaying legislative action until the 1920 session and in causing certain further modifications in the proposal. The first of these provided that two of the New York members should be nominated by the Board of Estimate. A second provided that no city in the port district should be bound by the comprehensive plan unless and until it had approved the same, nor by any change made without the approval of the city or cities directly affected. The power of any municipality to develop its own port and terminal facilities was specifically reserved. These changes were included in complementary bills which were introduced in each state to provide for the adoption of the compact and for appointment of commissioners.⁶⁵

In New Jersey the compact bill passed both houses of the legislature but was vetoed by Governor Edwards.⁶⁶ His veto represented the opposition of the Jersey City Democrats under

⁶³ Under the voting arrangement in the draft before them concerted action by two members from one state could block any action at all.

⁶⁴ *Progress Report*, p. 44 and Appendix A, Resolution of the Board of Estimate and Apportionment of the City of New York, adopted April 4, 1919, . . . Also *Joint Report* . . . , Appendix D.

⁶⁵ *Joint Report* . . . , Appendices F, G, I, and J. The New York bill relating to the appointment of commissioners provided that the Board should nominate five of whom the governor would appoint two, and that each vacancy would be filled from a list of three nominees.

⁶⁶ *New Jersey Senate Journal*, 1920, p. 696 (March 20); *ibid.*, p. 980 (April 21) for veto message. *Assembly Journal*, 1920, p. 1102 (April 15). In January 1920 Edward I. Edwards succeeded Governor Edge who became United States Senator.

the leadership of Mayor Hague. The Governor maintained that it was not a final rejection of the policy of improving the port as a whole, but he objected to signing a compact before the comprehensive plan had been presented, and also to the provision whereby no city would be bound by the plan without its consent. He said: "Either the port authority should be created with full and complete powers in the premises—organized and authorized to function as a vigorous and virile body, or not at all."⁶⁷

The Board of Estimate and Apportionment was not placated by the changes that had been introduced. In opposing the New York bill it stated that the Port and Harbor Development Commission was created to report a plan and policy of port development, not to procure the enactment of a treaty. The proposed compact was characterized as "merely an attempt to finance private enterprise with public funds and to escape constitutional limitations upon public debt." Then it was objected that the scope of cooperation was too narrow in that river and harbor pollution was not included, nor restraints placed upon private developments in New Jersey which, it was said, would give that state an unfair advantage over New York. Of the arrangement to give the city representation it said: "The power of nomination is a wholly distinct and different thing from representation itself and is of little value." The proposed port authority was attacked as "still another Commission, perpetual in duration and freed from all responsibility and accountability to those over whose property, money, rights and conduct they are given jurisdiction; except for the mere formality of making an annual report to the Legislature, which cannot be questioned when made."⁶⁸ Without commenting upon the validity of these objections, it may be suggested that the Board of Estimate's fundamental, though un-

⁶⁷ *Loc. cit.*

⁶⁸ *Joint Report...*, Appendix K, Memorandum filed by the Board of Estimate and Apportionment before the Judiciary Committee of the New York Senate on the 20th Day of April, 1920.

expressed, objection was to the creation of a public works body which it could not control for partisan purposes.

Governor Smith⁶⁹ and the Republican majority in the legislature favored the New York bill. Therefore it is probable that Governor Edward's veto had more to do with its failure than the opposition of the Board of Estimate. However, neither legislature appeared to be much in favor of the changes introduced for the benefit of the city of New York.

The final report of the Port and Harbor Development Commission was made public early in 1921. Besides recommending a comprehensive plan of development, which will be described in the next chapter, the Commission reaffirmed the absolute necessity of creating a port authority with adequate powers to carry forward port development work. The adoption of the proposed compact was advocated as the essential legal basis for such an agency. The commission pointed out that any comprehensive plan which might be adopted would demand a permanent relationship and a joint agency for cooperation between the two states and among the many municipalities of the district. In addition this agency would prove helpful in obtaining Congressional assent and assistance. The Commission was not satisfied with the grant of powers which had been made, believing that a more efficient instrument would result if the legislatures should restore some of the powers originally proposed and remove some of the limitations which compromise entailed.⁷⁰

Nevertheless, none of the original powers was restored, but concessions made to the city of New York were expunged in the bills introduced in the 1921 session. The language reverted to that of the first revised draft. The New York bill

⁶⁹ Alfred E. Smith succeeded Governor Whitman in January, 1919.

⁷⁰ *Joint Report* . . . , pp. 36-38. The Committee on Harbor and Shipping of the Chamber of Commerce was of the same opinion. See *Monthly Bulletin*, X (Feb. 1919). However, as the *Newark Evening News* (Mar. 3, 1920) put it, "The states are not yet prepared to recognize the broad powers originally proposed for the port authority to the fullest extent."

passed both houses of the legislature by practically a party vote with the Democrats lined up in opposition.⁷¹ The bill was approved by Governor Miller⁷² who had already expressed himself strongly in its favor.⁷³

In New Jersey Governor Edwards again urged the legislature to postpone action on the plea that more time was needed to study the Development Commission's Report.⁷⁴ However, the bill was passed almost unanimously, and repassed over his veto.⁷⁵

Both states passed bills for the appointment of commissioners by the governor, with the consent of the senate, for overlapping terms of five years. The commissioners were to serve without compensation.⁷⁶ J. Spencer Smith,⁷⁷ Frank R. Ford, and DeWitt Van Buskirk, who had been members of the Development Commission, were named in the New Jersey bill for fear that Governor Edwards would appoint men who were out of sympathy with the purposes of the Compact. Governor Miller appointed Eugenius H. Outerbridge, Alfred E. Smith, and Lewis H. Pounds.⁷⁸ Only Mr. Outerbridge had been a

⁷¹ *New York Assembly Journal*, 1921, p. 1013 (Mar. 16); *Senate Journal*, 1921, p. 741 (Mar. 23). Two Republican Senators from Brooklyn and Queens joined the opposition. It is noteworthy that both parties in their platforms had endorsed the principle of cooperation in port development.

⁷² Nathan L. Miller succeeded Governor Smith in January, 1921.

⁷³ *Public Papers of Nathan L. Miller, 1921*. Albany, 1924. Message Transmitting the Joint Report of the N. Y., N. J. P. and H. D. C., p. 83.

⁷⁴ *New Jersey Senate Journal*, 1921, p. 433 (Feb. 28).

⁷⁵ *Ibid.*, pp. 475 (Mar. 1), 848 for veto message, 870. *Assembly Journal*, 1921, pp. 793 (Mar. 28), 1051 (Apr. 7). The Democratic senator from Hudson County voted in the negative.

⁷⁶ *L. N. J.* 1921, c. 152; *L. N. Y.* 1921, c. 203.

⁷⁷ At the same time chairman of the New Jersey Board of Commerce and Navigation.

⁷⁸ Murray Hulbert, Commissioner of Docks of the city of New York and member of the Development Commission, forfeited his claim to an appointment by refusing to support the compact bill. Governor Smith, having been an out-spoken advocate of the compact, and being out of office as a result of the 1920 Republican landslide, was just the right Democrat for the place. Mr. Pounds gave Brooklyn representation.

member of the Development Commission, but he had been its most active member.

The consent of Congress under Article I, section 10 of the Constitution was obtained,⁷⁹ and all the legal steps necessary to establish the Port of New York Authority were completed.

In a final effort the city of New York sued for an injunction. It contended "that the legislature of the state of New York has surrendered its sovereignty, or some part of it, to the state of New Jersey," and that the Compact was unconstitutional for a variety of reasons. These contentions the court denied. It noted that no governmental power was bestowed, and that "the sole power granted to the joint board of managers . . . is to do only what a private corporation may do, namely, to own and operate terminal and transportation facilities, and to operate them not for private gain, but for the welfare and progress of the community."⁸⁰

⁷⁹ 67 Cong., 1 Sess. *Public Res. No. 17*, S. J. Res. 88 (42 Stat. 174).

⁸⁰ *City of New York v. Willcox*, 115 Misc. (N. Y.) 351 (April 21, 1921).

CHAPTER II

THE COMPREHENSIVE PLAN

THE DEVELOPMENT COMMISSION'S REPORT

THE New York, New Jersey Port and Harbor Development Commission rendered its final report in December, 1920. As its first duty the Port Authority was directed to study the findings and recommendations of the Commission and report to the legislatures at their next session a Comprehensive Plan for the development of the port of New York.¹

The Development Commission's monumental report of nearly five hundred quarto pages was the most thorough study ever made of the port of New York.² It included special studies of the geography and history of the port; its railroads, docks, piers, shipping, warehousing and trucking; the operation of its facilities for handling special kinds of freight; and such particular aspects of the port as the west side problem, markets and food distribution, water supply and waste disposal. It also included an analysis of all the current plans for bringing railroad freight in standard cars by bridge or tunnel to Manhattan.

Navigable water, or water easily made navigable, reached into nearly every part of the port district; but rail accessibility and coordination therewith were lacking at many points. Therefore the problem at the port of New York was pronounced by the Port and Harbor Development Commission to be "primarily a railroad problem," and the plan which it recommended was "essentially a railroad plan." Its findings were summarized as follows:

A complete reorganization of the railroad terminal system is the most fundamental physical need of the port of New York. Such a reorganization will involve new methods of handling freight

1 *L. N. J.* 1921, c. 152; *L. N. Y.* 1921, c. 203.

2 *N. Y., N. J. P. and H. D. C. Joint Report with Comprehensive Plan and Recommendations.* Albany, 1920. 495 pp., illus., tables, maps.

from the break-up yards of the railroads. The plan recommended calls for [1] improving and opening up for joint use the existing belt-line links in New Jersey, and constructing other belt-lines along navigable New Jersey waters and farther inland; [2] building similar marginal railroads along navigable waters adjacent to Brooklyn, Queens, Staten Island and the Bronx, and utilizing with them the Long Island Railroad and the New York Connecting Railroad to form a belt-line system in New York; [3] connecting the New Jersey and New York belt systems, at first by car ferry and ultimately by tunnel under the Upper Bay; [4] operating all of these lines jointly and operating jointly, through new rail-head terminals, all railroad marine service not replaced by other service; [5] and building an underground railroad system carrying special electrically operated cars, connecting with all the railroads of the Port, serving virtually all of Manhattan and enabling the railroads to discontinue their pier stations and release the waterfront to other uses.

This remodeled terminal railroad system, bringing every railroad of the Port to every part of the Port, and thus giving every part of the Port opportunity to develop and to have the economical transportation service needed for its commercial and industrial growth and expansion, constitutes the comprehensive plan of the Commission—the plan which the Commission recommends for formal adoption by the two states.

This plan aims to provide for the development of the Port both for the immediate future and for many years to come. Future study will be required to determine the economic sequence of construction. Certain parts of the system, however, . . . should be constructed at once.³

The tremendous scope of a plan which would bring “every railroad of the Port to every part of the Port” is emphasized by recalling the stand of the railroads in the *Harbor Case* where they vigorously opposed a similar, though narrowly limited, proposal on the part of the New Jersey interests.

The report of the Port and Harbor Development Commission was important because of the huge amount of factual

³ N. Y., N. J. P. and H. D. C. *Joint Report* . . . , p. 3.

material which it assembled, and because for the first time a public body locally appointed emphasized simultaneously three factors in the problem: first, that it was interstate; second, that it was a railroad problem; and third, that its solution required the joint use and unified operation of terminals privately owned and jealously guarded. The *New York Harbor Case* had thrown a spotlight upon the deleterious effect of unrestrained competition in terminal development. Government control and operation of the railroads during the World War had demonstrated the possibilities of economy and efficiency inherent in unified terminal operation. The Transportation Act of 1920 and the hearings which preceded its passage further emphasized joint use of terminal facilities and encouraged the hope that the railroads would cooperate to that end.

The machinery for handling the vast commerce of the port had developed as pressure and expediency at the moment dictated, without any coordinated plan. Under the system of individual ownership and competitive operation, twelve trunk-line railroads had duplicated each other's terminal facilities, each seeking strategic locations. When the terminals became congested, each railroad sought to expand its own capacity, often at high cost, without any attempt to find means of increasing capacity by joint use of existing facilities, or by major improvements jointly constructed.

THE PORT AUTHORITY'S PLAN

Now it became the Port Authority's task to prepare for legislative enactment a Comprehensive Plan which would not only meet with general approval, but also be acceptable to the railroads. This involved not so much a duplication of the work of the Port and Harbor Development Commission as a complete re-check against the views and desires of the interests affected. At the first meeting of the Commissioners, Eugenius H. Outerbridge was elected chairman. The documents and data of the Development Commission were taken over, and the major part of its staff, including General Goethals and Mr.

from the break-up yards of the railroads. The plan recommended calls for [1] improving and opening up for joint use the existing belt-line links in New Jersey, and constructing other belt-lines along navigable New Jersey waters and farther inland; [2] building similar marginal railroads along navigable waters adjacent to Brooklyn, Queens, Staten Island and the Bronx, and utilizing with them the Long Island Railroad and the New York Connecting Railroad to form a belt-line system in New York; [3] connecting the New Jersey and New York belt systems, at first by car ferry and ultimately by tunnel under the Upper Bay; [4] operating all of these lines jointly and operating jointly, through new rail-head terminals, all railroad marine service not replaced by other service; [5] and building an underground railroad system carrying special electrically operated cars, connecting with all the railroads of the Port, serving virtually all of Manhattan and enabling the railroads to discontinue their pier stations and release the waterfront to other uses.

This remodeled terminal railroad system, bringing every railroad of the Port to every part of the Port, and thus giving every part of the Port opportunity to develop and to have the economical transportation service needed for its commercial and industrial growth and expansion, constitutes the comprehensive plan of the Commission—the plan which the Commission recommends for formal adoption by the two states.

This plan aims to provide for the development of the Port both for the immediate future and for many years to come. Future study will be required to determine the economic sequence of construction. Certain parts of the system, however, . . . should be constructed at once.³

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Cohen. In December, 1921, after eight months of arduous labor, in which meetings were held weekly and latterly two or three times a week, not counting many unofficial conferences, to which the chairman surrendered practically all of his time, the Port Authority made its report.⁴

It set forth two basic premises and a set of principles intended to govern port development. These premises were, first, that for terminal purposes, where cars and commodities had to be handled and re-handled, water service was more expensive than rail, and constituted one of the most expensive of the complex movements that burdened the commerce of the port;⁵ and second, that the waterfront on both sides of the river should be free for use by water carriers, and therefore, railroad freight terminals on Manhattan should be inland. The principles are quoted in full because of their far-reaching implications, and because, after being written into the statutes, they became the guide for all the Port Authority's comprehensive plan activities.

It already is clear that certain fundamental conditions precedent can alone provide a proper solution of the problem and that any physical plans should comply with and be governed by those principles, so far as economically practicable. Enumerated they are—

First—That terminal operations within the port district, so far as practicable, should be unified;

Second—That there should be consolidation of shipments at proper classification points so as to eliminate duplication of effort, inefficient loading of equipment and realize reduction in expenses;

Third—That there should be the most direct routing of all commodities so as to avoid centers of congestion, conflicting currents and long truck-hauls;

Fourth—That terminal stations established under the comprehensive plan should be union stations, so far as practicable;

⁴ Port of New York Authority (hereafter abbreviated as P. N. Y. A.). *Report with Plan for the Comprehensive Development of the Port of New York, Dec. 21, 1921.* Albany, 1921. 56 pp., maps.

⁵ This conclusion corroborated in part the view taken by the New Jersey interests in the *Harbor Case*.

Fifth—That the process of coordinating facilities should so far as practicable adapt existing facilities as integral parts of the new system, so as to avoid needless destruction of existing capital investment and reduce so far as may be possible the requirements for new capital; and endeavor should be made to obtain the consent of the states and local municipalities within the port district for the coordination of their present and contemplated port and terminal facilities with the whole plan;

Sixth—That freight from all railroads must be brought to all parts of the port wherever practicable without cars breaking bulk, and this necessitates tunnel connections between New Jersey and Long Island, and tunnel or bridge connections between other parts of the port;

Seventh—That there should be urged upon the federal authorities improvement of channels so as to give access for that type of waterborne commerce adapted to the various forms of development which the respective shorefronts and adjacent lands of the port would best lend themselves to;

Eighth—Highways for motor truck traffic should be laid out so as to permit the most efficient interrelation between terminals, piers and industrial establishments not equipped with railroad sidings and for the distribution of building materials and many other commodities which must be handled by trucks; these highways to connect with existing or projected bridges, tunnels and ferries;

Ninth—Definite methods for prompt relief must be devised that can be applied for the better coordination and operation of existing facilities while larger and more comprehensive plans for future development are being carried out.⁸

In accordance with these premises and principles the Port Authority outlined a physical plan consisting mainly of a series of railroad belt lines laid out largely over existing tracks, and in general following the routes recommended by the Port and Harbor Development Commission. When viewed on the map they look like a labyrinth. The picture is simplified by permitting Belt Line No. 1 to stand out alone. It was regarded as the backbone of the entire structure. Shaped like a

⁸ P. N. Y. A. Report . . . , pp. 11-12.

horseshoe arch, this belt line was planned to provide the all-rail connection between the two sides of the port. The keystone of the arch was to be a railroad freight tunnel under the Upper Bay.

New construction was planned in New Jersey on the east side of the Hackensack Meadows to connect all of the break-up yards with the new tunnel at a point in the Greenville waterfront yard of the Pennsylvania Railroad. The proposed cross-bay tunnel was to be built between that point and Bay Ridge, Long Island, in order to connect with the Bay Ridge division of the Long Island Railroad. From there northward Belt Line No. 1 was planned to utilize the tracks of the Long Island and New York Connecting (Hell Gate Bridge) Railroads in order to reach the New Haven yards in the Bronx. A connection with the New York Central was to be supplied by new construction. The yards on Staten Island and west of Newark Bay were to be linked up by an arm appended to the New Jersey wing of the belt line.

The other belt lines were planned as "feeders": marginal roads, connecting lines, and lines to serve future industrial developments. Of these only Marginal Belt Line No. 13, running just back of the Jersey waterfront, had much immediate importance. It traversed a region of heavy traffic; it was physically intact; it offered an interim alternative to that part of Belt Line No. 1 which was to be constructed on the westerly side of the Palisades. This Belt Line No. 13 was what New Jersey had in mind when it asked for a switching service in the *Harbor Case*.

Turning to the Manhattan situation, the Port Authority's report incorporated the recommendation of the Port and Harbor Development Commission for an automatic electric railway system operating in tubes under the streets and under the Hudson River from the railroad break-up yards in New Jersey to union inland freight stations on Manhattan as the only long-range solution of the west side problem which would clear the waterfront of railroad occupancy. The Port Auth-

ority was aware that such a completely new system would require radical changes in the existing customs of trade and methods of railroad operation. It also realized that the eventual operation of Belt Line No. 1 with its tunnel across the Upper Bay would have important, but undeterminable, effects upon the Manhattan freight problem. Therefore it did not anticipate the construction of this tube system in the near future.

For immediate relief on the west side of Manhattan the Port Authority proposed the establishment of a motor truck service to the railheads in New Jersey utilizing the existing Hudson River ferries. A part of the Manhattan freight so handled would be distributed through union inland freight stations to be constructed on sites which could later be served by the tube system. The other part would be handled by "store-door delivery" direct to the consignee. The Comprehensive Plan would be carried out by evolution, not by revolution.⁷

AGREEMENT WITH THE RAILROADS

The Comprehensive Plan being essentially a railroad plan, it was of prime importance to obtain the cooperation of the railroad companies. In the preparation of its plan the Port Authority was directed by law to confer with railroad officials, among others, and its first move was to request the chairman of the Association of Railway Executives to appoint a committee to meet with the Commissioners and their engineering staff. This committee, consisting of the presidents of each of the eleven railroads entering the port district, elected Samuel Rea of the Pennsylvania as its chairman.⁸ The choice was fortunate because the Pennsylvania was deeply involved in the New York situation and Mr. Rea was one of the most far-sighted and public-spirited of the eastern railroad presidents. The committee appointed a sub-committee

⁷ *Ibid.*, pp. 19-20, 33-35.

⁸ P. N. Y. A. "Official Minutes" (hereafter referred to simply as "Minutes"), May 4 and 11, 1921. Letter Outerbridge to T. DeWitt Cuyler, April 26 and reply, May 9.

of their chief engineers to cooperate with the Port Authority's engineers, although they distinctly reserved any commitment as to the use they might eventually make of the plans under consideration.⁹ The Port Authority formed a Technical Advisory Board consisting of three prominent engineering consultants under the chairmanship of their own chief engineer. The presence of General Goethals lent additional prestige to their conclusions.¹⁰

The railroad belt lines which finally became a part of the Port Authority's plan were approved by this Technical Advisory Board after conference with the railroad engineers. A majority of the Board favored the principle of inland terminal warehouses served by an underground system with tunnel connections between New York and New Jersey, but they were generally skeptical of automatic-electric operation as described in the Development Commission's report. The engineers were in agreement that terminal operations should be unified, including joint yards in New Jersey.¹¹

The railroad executives were canvassed by the Port Authority for their views relative to the advisability of including in the Comprehensive Plan the belt lines proposed by the Port and Harbor Development Commission. Samuel Rea for the Pennsylvania and for the Long Island, and E. J. Pearson for

9 "Minutes," June 15, 1921. Letter and memorandum of meeting from Rea, June 9. Also "Minutes," June 29, 1921.

10 "Minutes," May 15, 1921, p. 2. Also I. C. C. Docket No. 14490 (Belt Line 13 Case). *Official Stenographers Minutes*, pp. 235-239. The consulting engineers were Nelson P. Lewis, for many years chief engineer for the Board of Estimate and Apportionment of the City of New York and consultant on city planning, Morris R. Sherrerd, who occupied a similar position in the city of Newark, and Francis Lee Stuart, formerly chief engineer for the Erie and Baltimore and Ohio railroads, then in consultant practice.

11 P. N. Y. A. "Resolutions Embodying Recommendations by the Technical Advisory Board to the Port of New York Authority, Nov., 1921." 7 pp., typewritten. Mr. Stuart revealed his railroad background by urging that unification be carried only so far as possible without destroying the integrity of the trunk-line systems. He also dissented in favor of a bridge connection over the Hudson.

the New Haven, both expressed their approval of a belt line over the New York Connecting Railroad and the Bay Ridge Division (the eastern wing of Belt Line No. 1) "under conditions that would safeguard present and prospective traffic of the owning companies."¹² A. H. Smith of the New York Central joined with them in approving a belt line west of the Palisades (the western wing of the Belt Line No. 1). Mr. Rea expressed the opinion that the connecting link, the Cross-Bay Tunnel, would not be justified from the point of view of cost and volume of traffic for a long time to come. All three endorsed the New Jersey marginal belt line (No. 13). Mr. Smith called attention to the close relation between freight and passenger traffic on the New Jersey waterfront and suggested that the Port Authority could help the railroads if it would devise a plan to remove the passenger terminals from the waterfront.¹³ The executives also were rather skeptical of the automatic-electric system. They seemed to think more favorably of a bridge over the Hudson or else a system of store-door delivery. Mr. Smith asserted in this connection that the New York Central would not in any case give up its 30th and 60th Street yards. The presidents of the other New Jersey roads, insofar as they replied, expressed little sympathy with either belt lines or consolidated marine service.¹⁴

Finally the railroads informed the Port Authority that they were in accord with some of the conclusions as expressed in its preliminary report,¹⁵ but that they did not believe that all

¹² This phrase is quoted because when the test came it served to nullify the indicated approval.

¹³ See *infra*, pp. 63-66 and pp. 128-134.

¹⁴ P. N. Y. A. "Correspondence with Railroad Executives: Letter of Sept. 8, 1921 to Railroad Executives and their Replies; Letter of June 28, 1922 and their Replies to Mr. Rea; Letter of July 10, 1922 to Mr. Outerbridge from New York Central, Lehigh Valley and Erie Railroads and Mr. Outerbridge's Reply of July 13." Typewritten.

¹⁵ P. N. Y. A. *Preliminary Report of a Comprehensive Plan for the Development of the Port of New York: Address by Eugenius H. Outerbridge, Chairman. Conference of Advisory Council, Dec. 7, 1921. New York, 1921. 14 pp.*

of the fundamental principles were desirable or practicable. Neither would they concur in the plan for a Manhattan automatic-electric system, or in certain other "so-called" belt lines. Furthermore they stated that they were not prepared to endorse any of the proposed improvements without definite knowledge of the engineering plans and estimates, of the volume and character of traffic, of the cost or other financial burdens they would be expected to assume.¹⁶

The Commissioners felt that if the railroads were satisfied with their current methods and costs of handling freight in and around New York, and if they thought their facilities were ample to hold to the port its proper share of the nation's commerce, they ought to say so frankly. Therefore a conference was arranged for December 22, 1921. At this conference the Commissioners assured the railroad executives that the Comprehensive Plan would be executed step by step, and only as each step was shown to be economically sound. The long-range character of the Plan was emphasized. It was promised that the economies of each step would be demonstrated at the particular time on the basis of ascertained facts. It was agreed that the phrase "so far as economically practicable" covered this intention, and the phrase was added to the preamble of the statement of principles. The first of these principles had called for unified terminal operations "under one administration". This phrase was deleted and the words "so far as practicable" substituted. A positive statement regarding union stations in the fourth principle was also modified by the addition of the same words.¹⁷ The Commissioners of the Port Authority do not appear to have felt that the changes in their statement of principles constituted concession or compromise, but it is probable that the vagueness of the amending words served to obscure a diversity of viewpoint which could not have been compromised.

The executives raised a question as to whether or not it was contemplated that the Port Authority would take over and

¹⁶ "Minutes," Dec. 14, 1921.

¹⁷ See *supra*, p. 38.

operate existing facilities included in the proposed belt lines, but owned by the railroads. The Commissioners replied that the function of the Port Authority was to coordinate, and not to operate anything; the details of operation would have to be worked out in the future: whether by a terminal company in which all the trunk lines would participate, or by other means. Mr. Rea reaffirmed his previously stated position with regard to the Long Island wing of Belt Line No. 1 and this cooperative attitude was useful in countering the New York Central's objection to the inclusion of a section of its West Shore tracks in Belt Line No. 13. Thereupon all of the belt lines were endorsed excepting the automatic-electric system and the outermost belt line which was said to lie too far in the future.

When polled the executives expressed practically unanimous approval of the plan as amended. But they asked that their votes be not considered as committing the corporations of which they were heads to financial or other obligations which could be authorized only by their several boards of directors. Nevertheless, in view of the degree to which successful administration of the plan would depend upon the cooperation of the railroads, the vote was significant. In the course of the conference it was suggested by the executives that the most effective way to bring the comprehensive plan into being was through the actual cooperation of the carriers with the Port Authority, and the executives assured the Commissioners of their desire to cooperate, provided only that each step was justified by the economies of the situation.¹⁸ Again it is probable that this proviso did not convey the same meaning to the Port Authority that it possessed for the railroads.

¹⁸ No minutes were kept of this conference but in 1928 a memorandum was prepared containing certain letters and the recollections of E. H. Outerbridge as to what took place, concurred in by Julius Henry Cohen, W. W. Drinkler, and Governor Alfred E. Smith (Letter to Outerbridge, May 31, 1928). P. N. Y. A. "Memorandum of Conference, May 16, 1928." 11 pp., typewritten. The "Minutes," June 21, 1922, p. 8 state that all the railroad executives, excepting one, approved the principles of the Comprehensive Plan at the conference here described.

PUBLIC SUPPORT

As directed by law the Port Authority conferred with members of the United States Shipping Board and the Interstate Commerce Commission. On the part of the I. C. C. there was no hesitation in commending the work of the Port Authority and stressing its necessity to the commerce of the port. Moreover it was emphasized that the Port Authority was dealing with a national problem which the federal government would be required to solve if the solution was not found by the two states through their own agency.¹⁹

The law directed the Port Authority to confer with the governing bodies of all municipalities in the port district. The Board of Estimate and Apportionment of the City of New York was invited to meet with the Port Authority to discuss their plans. However, at the appointed hour and place none of the city officials appeared, nor did they cooperate with the Port Authority at any other time.²⁰ Conferences with municipal officials from New Jersey and Westchester County were fairly well attended.²¹

The Port Authority conferred with steamship, lighterage, towing, warehouse and trucking interests, with the Shippers' Conference of Greater New York, and with the large specialized trade organizations. It heard every person or company that had a plan to offer. Most of them dealt with the Manhattan problem alone. Aside from that of the Port and Harbor Development Commission, only the plan of the North River Bridge Company included both sides of the port. This company proposed to build a huge bridge across the Hudson at 57th Street. The upper deck was designed to carry sixteen lanes of vehicular traffic and the lower deck twelve tracks for railroad freight and passenger service. In New Jersey the

19 P. N. Y. A. *Report with Plan . . .*, p. 12; "Minutes," Nov. 4, 1921, p. 5.

20 "Minutes," July 6, 20, and 21, 1921.

21 *Ibid.*, Oct. 21 and Nov. 30, 1921. There is no record of conferences with the officials of Jersey City or Newark.

bridge was to be connected with all of the trunk-line railroads; on Manhattan it was planned to build a double-decked elevated railway linking a series of waterfront terminals.²² The Port Authority rejected this proposal in favor of the tunnel-inland terminal system.

The law required the Port Authority to create an advisory council of chambers of commerce, boards of trade and other civic bodies for the purpose of securing advice and information. One hundred and fourteen organizations were selected so as to include all of those which were prominent and influential, and so as to represent fairly all parts of the port district. Each was invited to name a delegate and alternate.²³ The initial conference was held on July 7 and attended by eighty-two representatives. Chairman Outerbridge assured them that the Port Authority would not arrive at any conclusions without conferring with every interested group. Each representative was asked to form a committee of five within his own organization, if such did not already exist, to which they could report what had been discussed and bring back criticisms and suggestions. Commissioner Alfred E. Smith emphasized the main point of the meeting when he said: "We can sit here and talk engineering figures for a year. We can draw plans for five years, but if there isn't a healthy vigorous determination on the part of localities and organizations and people generally in the port district to make some change in the old-fashioned, worn-out, dilapidated ways of doing business in this port, the figures would amount to nothing . . . The great problem is to excite enough public opinion behind the plan, or any plan, or the problem itself, so as to make the plan effective when adopted."²⁴

A number of general meetings of the advisory council were held as the year progressed. Smaller meetings were arranged

²² *Ibid.*, Oct. 11, 1921. This bridge was the life-long dream of the famous engineer, Gustav Lindenthal.

²³ *Ibid.*, June 10, 1921, p. 4.

²⁴ P. N. Y. A. Advisory Council. "Stenographic Record of Conference, July 7, 1921," pp. 50-52. 52 pp., typewritten. Also "Minutes," July 13, 1921, p. 3.

with groups of New Jersey representatives so that the needs of that part of the district could be discussed informally. For the most part the suggestions that were received in these meetings concerned the extension of belt lines to reach particular localities. The New Jersey groups emphasized the development of Newark Bay and the Long Island groups urged the development of Jamaica Bay. As a result of listening to their demands and generally accepting their proposals, when the Port Authority presented its plan to the advisory council on December 7, it received almost unanimous approval from the delegates, and later from their constituent organizations.²⁵ The advisory council served the Port Authority admirably in bringing suggestions and criticisms to it, and, what was more important, in providing a sounding-board for the proposed comprehensive plan. Later on, when the plan legislation had been passed, the advisory council was permitted to lapse.

In order to broaden the scope of its publicity the Port Authority formed an Educational Council. Its theme was the burden imposed by inefficient transportation methods upon the cost of living. Food marketing and distribution played a large part in this picture. Mrs. Belle L. Moskowitz, Governor Smith's talented aide, was employed in the capacity of secretary to the Council and publicity adviser. A small committee on plan and scope actively cooperated with a bureau of information which had been created in the Port Authority staff. About two hundred civic leaders in both states, many of them women, were enrolled as members of the Council. This membership provided an effective mailing list for educational material.

Under the guidance of the Council's secretary public meetings were held where members of the Port Authority and its

²⁵ P. N. Y. A. *Preliminary Report of a Comprehensive Plan*... No stenographic record of this conference has been found, but see *New York Times*, Dec. 8, 1921, p. 6, and Dec. 13, p. 13. See also Chamber of Commerce of the State of New York. *The Plan of the Port Authority of New York for Future Port Development. Public Opinion Upon Its Adoption as Expressed by Commercial and Civic Organizations and the Press Together with a Few Facts Regarding the World's Greatest Port*. New York, January 1922. 37 pp.

staff discussed their problems. Articles were prepared for the daily and periodical press. A motion picture originally filmed for the Port and Harbor Development Commission was exhibited with an explanatory address in theatres, schools and churches, and before all sorts of gatherings and societies. Mimeographed bulletins and printed pamphlets were circulated. A contest for cash prizes was organized for the best essay by any high school student in the port district on the subject of the port problems and what they meant to the people.²⁶

This campaign for public support was amazingly successful. The problem of the port had been vividly portrayed, and the impression was created that an answer had been found. A belt line had been drawn wherever one was demanded. Sectional jealousies were avoided by the simple expedient of not raising the question of priority. It is probable that most people saw these tunnels and belt lines as a vast construction project. And they were all for it, since the cost would not be levied upon them in taxes.

The time element was overlooked. The public did not see that it would be years before many of these things could be done. There was no general understanding that "a revolutionary principle in the organization of terminal facilities"²⁷ was about to be introduced. It is questionable if people in general realized what it meant to require that certain facilities belonging to the several carriers should be used jointly by all the carriers, or, in other words, that these facilities, usually of strategic importance, should be made available for the use of a competing carrier. It may be doubted if they understood the significance of saying that competitive terminal development should cease and give way to joint development, or alternatively

²⁶ P. N. Y. A. *Report with Plan* . . . , p. 7; "Minutes," June 5, p. 5; June 29, p. 6; Oct. 11, pp. 8-10; Nov. 4, 1921, pp. 8-9. Within the next three years Mrs. Moskowitz gradually withdrew from this work, and its importance declined to that of routine publicity emanating from the bureau of information.

²⁷ Julius Henry Cohen, "Developing the Port of New York," *Proc. 18th Conv. of National Rivers and Harbors Congress*, p. 18. Washington, 1922.

public development, in accordance with a plan designed primarily to serve the shipper. These aspects were passed over in relative silence by the Port Authority's publicity. It may have been that the Commissioners themselves did not fully comprehend their importance.

LEGISLATIVE ADOPTION

Bills were introduced in the 1922 legislative session in both states to provide for the adoption of the Comprehensive Plan. These bills began with a statement of the fundamental principles to govern development almost verbatim as quoted above from the report. Then the belt line system, including the plan for Manhattan service, was described. The Port Authority was to determine the exact location, system or character of each tunnel, bridge, belt line or other improvement after public hearing and further study, but in general they were to be located as indicated in the bill. The Port Authority was authorized and directed to proceed with the development of the port of New York in accordance with the plan as rapidly as might be economically practicable.

The only opposition to the New York bill came from the city of New York and took the form of an alternative plan to be carried out under its direction. Shortly after Governor Miller had signed the bill establishing the Port Authority, he approved another bill sponsored by the city administration authorizing it to construct a tunnel for freight and passenger purposes under New York Bay between Staten Island and Brooklyn, the so-called Narrows Tunnel.²⁸ Prior to signing this second bill the governor consulted with the Port Authority. He was advised that from their point of view there was no reason why the city should not go ahead with its plans subject to mutual consultation to work out a comprehensive plan.²⁹ As previously related the Board of Estimate refused to

²⁸ *L. N. Y.* 1921, c. 700.

²⁹ "Minutes," May 11, 1921, p. 2; May 18, p. 9. *Public Papers of Nathan L. Miller, 1921*, p. 170. Albany, 1924.

confer with the Port Authority. Instead they appointed a committee of engineers to make an independent study of their tunnel project.

This committee recommended that the tunnel be constructed, and together with it a belt line in New Jersey to tap all of the trunk lines approximately in the location of the outermost belt line proposed by the Port Authority, a classification yard in Staten Island, and certain industrial lines around the Brooklyn and Jamaica Bay waterfront. It was expected to connect the tunnel with the Long Island railroad at Bay Ridge and thus make the circuit of the port. This scheme placed little emphasis upon rationalizing the use of existing facilities. It was clearly a construction project. Although acknowledging that the problem began in New Jersey, the public authorities of that state were completely ignored.⁸⁰ However, a bill to carry out this plan was introduced in the legislature.

On January 31, 1922, a joint hearing on the two bills was held before the committees of the Senate and Assembly. The Port Authority was represented by its New York Commissioners and counsel. The Chamber of Commerce organized a large delegation including representatives of twenty-three major civic groups in New York City and five up-state chambers of commerce to support the Port Authority's bill. Commissioner Alfred E. Smith presented the case for the Comprehensive Plan with all his talent for stating a complicated matter in simple language and adorning it with homely sim-

80 N. Y. (City) B'd. of Est. and App. *Preliminary Report of a Special Committee... Concerning the Brooklyn-Richmond Freight and Passenger Tunnel, Oct. 15, 1921.* New York, 1921. 44 pp., maps, plans, diagrams. *Idem. Progress Report... Concerning the Negotiations with the Trunk Line Railroad Companies with Respect to the Brooklyn-Richmond Freight and Passenger Tunnel Project and Elements of Difference Between the Narrowes Tunnel and Port Authority Plans, Jan. 23, 1922.* New York, 1922. 62 pp., maps. P. N. Y. A. *Statement Concerning its Comprehensive Plan as it Affects New York... Comparison of the Merits of the Plan... with Proposal of the Board of Estimate... as Part of an Interstate Comprehensive Plan, Jan. 23, 1922.* New York, 1922. 28 pp., tables.

iles.³¹ The Board of Estimate attended the hearing in a body to urge their bill. They were supported by representatives of groups on Staten Island, the Central Labor Council of Greater New York, and a number of Tammany satellite organizations.³²

After the hearing it became known that the railroads had informed Mayor Hylan that the Narrows Tunnel was not required for the volume of traffic then moving, that the trunk lines would not be justified in assuming any part of the carrying charges, and lastly, that when traffic became too heavy to ferry from Greenville to Bay Ridge, a tunnel in that location would be more economical.³³

The legislature passed the Comprehensive Plan bill without adverse amendment by approximately a party vote, at the same time rejecting the city's Narrows Tunnel bill.³⁴ The Port

31 "Minutes," Feb. 2, 1922. Resolution praising his "wit and skill."

32 "Joint Hearing before the Committee on Finance of the Senate and Committee on Ways and Means of the Assembly relative to a Bill Approving the Comprehensive Plan of the Port Authority, Albany, N. Y., Jan. 31, 1922." 162 pp., typewritten.

33 "Minutes," Feb. 3, 1922. Letter Rea to Outerbridge enclosing copy of letter to Hylan, Jan. 30, 1922; and letter Outerbridge to C. J. Hewitt, chairman of Senate Finance Committee, transmitting Rea's letter to Hylan. This was the location designated by the Port Authority.

34 *New York Senate Journal*, 1922, pp. 389-391 (Feb. 21); *Assembly Journal*, 1922, p. 586 (Feb. 21). Four Democrats in the Assembly and one in the Senate voted for the bill. The Republican Senator from Staten Island voted against it.

In spite of the failure of the city's bill, the Narrows Tunnel project was carried forward under the original authorization until April, 1925. At that time two shafts had been finished and contracts had just been advertised for the under-water portion. The legislature then passed a bill placing the tunnel under the jurisdiction of the Board of Transportation and limiting its use to rapid transit. (*L. N. Y.* 1925, c. 681). Thereupon work stopped.

The Port Authority was largely instrumental in this result, arguing that two freight tunnels could not be supported and that the Narrows Tunnel was illegal under the covenant between the two states and the act of Congress. *Communication from the Commissioners of the Port Authority to His Excellency, Hon. Alfred E. Smith, in the matter of the Nicoll-Hofstadter Bill (S. Int. 620, A. Int. 861) relating to the Narrows Tunnel, April 20, 1925.* New York, 1925. 33 pp., maps. In signing the bill Governor Smith remarked that the city gave no evidence of having a contract with the railroads, or

Authority's plan had previously received Governor Miller's emphatic endorsement,³⁵ and he signed the bill on February 24, 1922.³⁶

In New Jersey there was no opposition. Endorsed by both parties it passed the legislature unanimously.³⁷ After examining the Port Authority's report, Governor Edwards had reconsidered his position of the previous year and announced that "the Commissioners of the Port Authority have dealt justly by this state and the plan should be approved."³⁸ He signed the bill on February 23, 1922.³⁹

Because the Comprehensive Plan had an important bearing on interstate commerce the Port Authority was directed to "request the Congress of the United States . . . to make such grants of power as will enable the said plan to be effectuated."⁴⁰ Immediately a bill was caused to be introduced in Congress assenting to a supplemental agreement between the two states, and also explicitly consenting "to the carrying out and effectuating of the said comprehensive plan," while preserving against impairment the jurisdiction of the United States.⁴¹ The bill was passed without a record vote in either house and signed by President Harding on July 1, 1922.⁴²

even one of them, for the use of the tunnel, while under the Port Authority's plan the cost would be paid for by tolls charged to the railroads and not by the taxpayers. *Public Papers of Alfred E. Smith, 1925*, p. 380. Albany, 1927.

³⁵ *Public Papers of Nathan L. Miller, 1922*, p. 51. Albany, 1924.

³⁶ *L. N. Y. 1922*, c. 43.

³⁷ *New Jersey Senate Journal, 1922*, p. 295 (Jan. 31); *General Assembly Journal, 1922*, p. 354 (Feb. 20).

³⁸ *Second Annual Message of Hon. Edwards I. Edwards, Governor of New Jersey, to the Legislature, Jan. 10, 1922*, p. 12. Trenton, 1922. 16 pp.

³⁹ *L. N. J. 1922*, c. 9.

⁴⁰ *Comprehensive Plan Legislation*, sec. 8.

⁴¹ 67 Cong., 2 Sess. *House Jt. Res. 337*.

⁴² *Idem. Cong. Rec.*, pp. 7977, 9366. *Public Resolution No. 66 (42 Stat. 822)*.

ADMINISTRATIVE POWERS

The Port Authority was now prepared to move from broad planning to administration. It is therefore advisable to pause and inquire into the nature of its administrative powers.

As previously stated the Compact vested power in the Port Authority to construct, purchase and acquire terminal properties, to make charges for their use, and to borrow money upon them as security. But from the circumstances under which the plan was drafted and from a careful reading of the Comprehensive Plan Acts, it becomes apparent that the Port Authority was not expected to construct or acquire all the physical facilities involved in the Plan. The fifth principle explicitly speaks of "coordinating facilities [in order to] adapt existing facilities as integral parts of the new system, so as to avoid needless destruction of existing capital investment and reduce so far as possible the requirements of new capital." Belt lines were laid out largely over existing trackage showing that the Plan was intended to modify the use of property belonging to the railroads.

At first the Port Authority appears to have been under the impression that the Plan could be carried out by cooperation, that the railroads would voluntarily reorganize their terminal facilities, that they would contract with the Port Authority for the use of joint facilities to be built by it with tax-exempt money and would pay charges sufficient to cover the costs. If events had taken that course, the Port Authority's proprietary powers might have proved sufficient.

But should the railroads not cooperate, as turned out to be the case, were the Plan Acts so written as to enable the Port Authority to force the railroads to do their part? On this score the Compact gave the Port Authority no power, and the Plan Acts were woefully vague. While it is the conclusion of the present writer that they contained no language of a coercive nature, respect for the Port Authority's past efforts to interpret these acts as an exercise of the police power makes necessary a discussion of their terms. Since the Port Authority's

contests with the railroads did not reach the courts, the assistance of judicial decisions for the most part is not available.

The Comprehensive Plan Acts consisted essentially of a statement of public policy concerning the development of the port of New York and the outlines of a physical plan. Both the policy and the plan did anticipate changes in the use of privately-owned terminal property. But the Acts did not provide that the railroads, or any other class of persons, should perform any act or desist from any practice, nor did they in any way explicitly modify their rights and obligations. There was created no clearly defined duty on the part of any private person to conform with the principles enunciated. No penalties were established. Could the courts then regard these Acts as authoritative declarations of public policy ignoring the omissions as mere imperfections and holding the owners of private property bound nonetheless? The courts are not prone to place restrictive duties upon the rights of private property by implication.

But for the purpose of further discussion let it be assumed that the Acts were enforceable. What powers of enforcement, if any, were vested in the Port Authority? The Plan Acts provided that the Port Authority should, after public hearing, determine the exact location, system, or character of any facility under the Plan, but they omitted to say upon whom the determination should be binding. The Port Authority was also given power "to apply to all federal agencies, including the Interstate Commerce Commission, the War Department and the United States Shipping Board, for suitable assistance in carrying out said plan." Such assistance would depend upon coincidence between the agency's organic act and the Comprehensive Plan, upon the powers possessed by the agency and its willingness to cooperate.

Then we come to the following provision:

Section 8. The Port of New York Authority is hereby authorized and directed to proceed with the development of the port of New York in accordance with said Comprehensive Plan as rapidly

as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either state, to effectuate the same, except the power to levy taxes or assessments.

It is doubtful if a basis for coercive power is to be found here. Even if it were, the limiting phrase "economically practicable" is susceptible of no precise definition, and offers an opportunity for endless obstruction. Might it not be argued that to require one railroad to permit the entrance of another into its quasi-monopolized freight territory upon equal terms would not be economically practicable? If that argument were to prevail the major purpose of the Plan would be defeated.

Supposing that the Port Authority made a determination which the railroads refused to accept, could it then make an enforcing order? Or supposing that the information necessary to arrive at a determination were withheld, could the Port Authority subpoena persons, books and papers, and take testimony under oath? What do the words "all necessary and appropriate powers" mean?

In view of the traditional attitude of the courts toward private rights it may be assumed that they would be reluctant to deduce coercive powers from such a broad delegation unless they were manifestly intended by the legislature. This intention is not indicated either in the general public discussion or in the committee hearing. The discussion did not center on the administrative features of the plan. Possibly the courts might note that in the original draft of the Compact it was proposed to vest regulatory power in the Port Authority, and that the joint conference of legislative leaders rejected the proposal. It might be presumed that the legislature would not change its mind without stating its intention in more explicit language. Even though to accomplish the purposes of the Comprehensive Plan coercive measures might have been required, the legislature did not clearly and intelligibly describe such powers in the statute and it is not the duty of the courts to make up statutory deficiencies by interpretation.

Now turning to the proprietary powers vested by the Compact which were not specifically amplified or otherwise modified in the Plan Acts except by an emphatic denial of the power to levy taxes or assessments, the phrase "all necessary and appropriate powers" might be susceptible of a broader interpretation. It might include many powers incidental to the acquisition and operation of property, or the borrowing of money, which were not specifically mentioned. In the only case involving the meaning of the phrase the New York Supreme Court held that it included the power to take property by eminent domain for the purpose of building an inland freight station. The court said:

I am very definitely of the opinion that Section 8, Chapter 43, of the Laws of 1922 expressly confers on the Port Authority the right to acquire by condemnation property which may be necessary to carry out the purposes for which that body was created. The language of that section reads that the Port Authority "is hereby vested with all necessary and proper powers not inconsistent with the Constitution of the United States." I cannot conceive how the Port Authority can accomplish the purpose for which it was created without the power to condemn property, and I think the clear intention of this section is to confer on that body the power to acquire property by condemnation.⁴³

Even though the language of the opinion is unrestrained it may be questioned whether the decision would have been the same had the property in the case been railroad property. In 1924 bills were introduced in both the New York and New Jersey legislatures to give the Port Authority power to take property, including property already devoted to a public use, by eminent domain.⁴⁴ They failed to pass. This fact might have

⁴³ *Port of New York Authority v. Lattin et al*, 84 New York Law Journal, 1171 (Dec. 3, 1930); also *Annual Report*, 1930, p. 66.

⁴⁴ New York Senate, *Int. No. 1015 (1924)* by Mr. Walker. An Act Relating to the Exercise by the Port of New York Authority within the State of New York of the Power of Condemnation under and pursuant to the Port Compact... Assembly, *Int. No. 705 (1924)* by Mr. Adler. Same.

been taken as evidence that the Port Authority did not possess the power, and that the legislatures did not intend that it should be possessed.

However, assuming that the exercise of the power of eminent domain was well founded and would extend to railroad property, the Port Authority's proprietary powers still lacked real strength with respect to the Comprehensive Plan as long as the power to tax or to pledge the credit of the state was denied.

In the field of planning and advisory activities the Port Authority was authorized to make plans and recommendations based upon study and analysis, and to submit regulations intended to improve commerce and transportation in the port district for the consideration of the legislatures. It was authorized to petition any appropriate agency, federal or state, for the adoption and execution of any physical improvement, for changes in the methods of handling freight or in the transportation rates which might be designed to improve the use of terminal and transportation facilities in the port. It was authorized to intervene in any proceeding affecting the commerce of the port. It was directed to request Congress for appropriations to improve water channels. It was required to cooperate with state highway officials regarding trunk line highways, and to render advice to municipal authorities concerning their port and harbor improvements.

An impressive body of activities was thus laid out wherein the Port Authority could formulate the needs of the port as a whole and be vigilant to protect its interests. It would serve as the focus and agent of the forces of unity within the port. The primary requirement in this field would not be legal power but adequate funds and continuous application. The Port Authority never lacked support with respect to the former, and was well conceived to function with respect to the latter. But success along this line of endeavor would depend upon coopera-

New Jersey Senate, Int. No. 170 (1924). An Act Relating to the Exercise of the Power of Condemnation, under and pursuant to the Port Authority Compact...and Comprehensive Plan...

tion from public agencies and private interests. Where conflicts developed it could make progress very slowly, if at all.

The Congressional assent to the Comprehensive Plan Agreement differed from the usual form in that the joint resolution not only gave consent but also "authorized and empowered [the Port Authority] to carry out and effectuate the same," "subject always to the approval of the officers and agents of the United States as required by acts of Congress touching the jurisdiction and control of the United States over the matters, or any part thereof, covered by this' resolution."⁴⁵

Did these phrases have any particular significance? Because of them, at one time, the Port Authority maintained that the joint resolution was a regulation of interstate commerce (as it maintained that the state acts were in exercise of their police power), and thereunder the Port Authority became a federal instrumentality.⁴⁶ But the Port Authority did not explain what was the relation established by the joint resolution between it and the Interstate Commerce Act, for instance, or between the Port Authority and the Interstate Commerce Commission. The implications of the Port Authority's argument suggested a scheme of limited jurisdiction and federal-state administrative relations which could hardly be supported by such scanty language.

⁴⁵ 67 Cong., 2 Sess. *Public Resolution No. 66* (42 Stat. 822).

⁴⁶ Early in 1923 the Port Authority wrote: "The Comprehensive Plan is now legally authorized by the two States and the Congress of the United States, and the police power of the States and the interstate commerce power of Congress are joined in effectuating the definite plan, with one coordinating body as the State and Federal instrumentality." P. N. Y. A. *Progress Report*, Feb. 1, 1923, p. 8. In the House of Representatives it was moved to strike out the phrase "authorized and empowered" on the ground that Congress could not authorize a state agency to do anything. The motion was rejected but the debate did not clarify the intent of the House. *Cong. Rec.*, pp. 7974-7977 (June 1, 1922). However, it had long been a commonplace practice for state administrative officers to exercise authority on behalf of the federal government in the administration of federal policies. See P. G. Kauper, "Utilization of State Commissioners in the Administration of the Federal Motor Carrier Act," *Michigan Law Rev.*, XXXIV (Nov. 1935), 37-84.

POLITICAL FORCES

This chapter would hardly be complete without a summary of the political forces attending the adoption of the Compact and the Comprehensive Plan. The entire initiative lay in the business community. The idea was conceived in the Chamber of Commerce of the State of New York. That organization fostered its growth and rallied other commercial and civic associations to its support. Also in New Jersey, the chambers of commerce, excepting the Jersey City Chamber, gave the Port Authority idea its chief strength.⁴⁷ The leading commercial organizations in Brooklyn, Queens, the Bronx and Staten Island favored the compact idea in principle but withheld their approval because they thought their boroughs had not received sufficient attention.⁴⁸ All of these groups, excepting those in Staten Island, swung into line for the Comprehensive Plan. The press on both sides of the river, except Hearst's papers, favored the Port Authority. Organized labor had no share in the movement; if anything it was actually hostile. The first commissioners of the Port Authority were all actively engaged in business.

The railroads appear to have concluded that there was no force in the Acts and that their interests would not be adversely affected. Their opposition showed itself, however, when it was sought to administer the plan.

Although both political parties in both states were committed to the principle of cooperative port development, the Democratic representatives of New York and Jersey City opposed the Compact almost to a man. In Jersey City the opposition relented when the Comprehensive Plan bill was introduced, but the New York Democrats fought to the bitter end.

This unyielding opposition may be attributed to several factors. First, the personalities at the head of the city administration were probably as unintelligent, short-sighted and machine-

⁴⁷ *Newark Evening News*, April 21, 1920; Mar. 24 and 26, 1921.

⁴⁸ *New York Evening Post*, Mar. 12, 1921.

controlled as any that New York had experienced since the turn of the century. These men, being primarily conscious of immediate political results, were more interested in making a showing for Staten Island and Jamaica Bay than in reducing the cost of doing business in the metropolitan area. Second, the commissioners were to be appointed by the governor with the consent of the senate, which had a Republican majority, and the Democrats foresaw that the Port Authority would be, if not Republican, at least bi-partisan and not available to them for purposes of patronage and spoils. A public works body right in Tammany's own bailiwick which it could not control was a matter of serious concern. Third, the city officials thought they saw in the language of the Compact loss to the city of control of its docks and piers.

Demagogy and recrimination played their part. The proposed Port Authority was described as "a hybrid and amorphous commission," "the commercial overlords of the city of New York and other municipalities."⁴⁹ The Compact was denounced as "an audacious piece of camouflage to enable private interests to take away and coin money out of New York City's dock facilities."⁵⁰ From Brooklyn it was charged that the railroads would establish "what will be known as the port of New York [in New Jersey]" with the result that "freight will be dumped over there and consignees will have to pay the expense to bring it over to the city."⁵¹ In the opinion of the President of the Board of Aldermen "the port of New York need not worry about what New Jersey does" since "with these improvements [eighteen piers, the Staten Island waterfront and a Jamaica Bay terminal], New Jersey will be at our mercy." The chairman of the Board of Commerce and Navigation replied that "New Jersey can paddle her own

⁴⁹ New York (City) Corporation Counsel. *Memorandum before the Legislature in Opposition to the Bill*, by John P. O'Brien, March 15, 1921, p. 2. New York, 1921. 12 pp.

⁵⁰ *New York Times*, Mar. 24, 1921, p. 19. Speech by Senator Downing.

⁵¹ *Ibid.* Speech by Senator Burlingame.

canoe to her own great advantage."⁵² At a hearing before the Board of Estimate on the Narrows Tunnel plan those who favored the Port Authority plan were heckled by the Mayor with retorts like the following: "Then you favor having the city's money used to develop the Hackensack meadows?"⁵³ Several factors made the proposed Compact, Port Authority and Comprehensive Plan an easy subject for demagogy. The type of administrative body which was proposed was utterly new in this country. The original draft suggested a much more powerful Port Authority than subsequent proposals. The language of the Acts made the Port Authority appear to be a more formidable body than it really was.

To pilot these bills unimpaired through the legislatures of two states, and the Congress of the United States was no small feat. That fact must be balanced against their unsatisfactory administrative provisions. In large measure the credit for one, and responsibility for the other, belong to Julius Henry Cohen.

⁵² *Newark Evening News*, July 31, 1920.

⁵³ *New York Times*, Jan. 27, 1922, p. 9.

CHAPTER III

ADMINISTRATION BY COERCION

THE history of the Comprehensive Plan falls into a series of overlapping episodes. The plan of treatment observed in the next three chapters will be to differentiate these episodes by their dominant technique of administration.¹ Although the previous chapter indicated that the Port Authority had no power of coercion, nevertheless, when cooperation with the railroads failed, the Port Authority adopted a coercive attitude, seeking and claiming such powers for itself and invoking the power of the Interstate Commerce Commission. This policy lasted until about 1928, when it was abandoned for persuasion and inducement. The present chapter will deal with coercion as an instrument of policy, divided between attempts to compel positive action by the railroads in accordance with the Comprehensive Plan, and efforts to prevent action inimical to it. The next will discuss those episodes involving administration by persuasion and inducement; and the third will describe the fate of proposals to acquire terminal property. This differentiation is somewhat arbitrary since coercion was threatened only when persuasion seemed to have failed.

BELT LINE NO. 13

On June 28, 1922, the Port Authority addressed a letter to the railroad executives through their chairman asking for a declaration of policy with regard to the following proposals:

1. Immediate unification and joint use of Belt Line No. 13 by all of the New Jersey railroads.
2. Consolidation of carfloating and lighterage operations in conjunction with the belt line.
3. Improvement of car-ferry service between Greenville and Bay Ridge to handle Belt Line 13 traffic until its increase

¹ Bridge and tunnel building and operation are excluded for subsequent treatment.

should require the construction of (a) the cross-bay tunnel, and (b) the New Jersey wing of Belt Line No. 1.

4. Consideration of the New York wing of Belt Line No. 1. This communication brought completely negative results. Each railroad executive objected to anything that would disturb current operating practices on his road. No attempt was made to meet the request for a joint declaration of policy.²

Concurrently the Port Authority had been conferring directly with representatives of the Erie, Lehigh Valley and New York Central Railroads. These companies owned or controlled the trackage of the proposed belt line from Edgewater to Bayonne except a mile-long spur along the Hoboken waterfront, known as the Hoboken Manufacturers' Railroad, which was owned by the U. S. War Department. Under government operation during the World War these tracks were operated as a belt line, but not under a single direction or with a unified service.³ Hence the Port Authority was now seeking to obtain what the New Jersey interests failed to obtain in the *Harbor Case*, what the federal government had achieved in a limited way during its period of operation, what had been assented to by the railroads in their 1921 conference with the Port Authority and what had been provided for in the Comprehensive Plan Acts. The first sign of trouble was the reluctance of the owners, and their refusal in one instance, to make available the data for economic proof of the benefits to be derived.⁴

² P. N. Y. A. "Correspondence with Railroad Executives: Letter to Railroad Executives, June 28, 1922, and their Replies to Mr. Rea."

³ P. N. Y. A. *Annual Report*, 1923, pp. 10-11. The mileage was divided as follows:

1. Erie (Erie Terminals RR.)	1.77 mi.
2. New York Central (N. J. Junction RR.)	5.49 "
3. Lehigh Valley (National Docks Br.)	8.43 "
4. U. S. War Dep't. (Hoboken Mfrs.' RR.)	1.20 "

Total	16.89 mi.
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⁴ I. C. C. Docket No. 14490. *Off. Sten. Min.*, pp. 427-429.

The conferences were terminated abruptly by a joint letter from the presidents of the three companies refusing even to consider unification of Belt Line 13 at that time. As a counter-proposal they suggested that the Port Authority direct its attention to (1) the acquisition of the Hoboken Manufacturers' Railroad and the connecting piers from the federal government, (2) a definite plan for the construction of Belt Line No. 1 on the other side of the Palisades to relieve the waterfront tracks of interchange traffic, and (3) a plan to remove passenger traffic from the waterfront. In their letter the railroad executives promised that changes would be made in operations over so-called Belt Line 13 adequate to meet the needs of a terminal development after the Port Authority had acquired the federal property.⁵

The Port Authority had already stated to the War Department its view that public ownership of the Hoboken Manufacturers' Railroad was imperative to proper development of the port. However, the usefulness of this terminal property depended absolutely upon satisfactory operations over the proposed belt line. As a matter of strategy, the Port Authority did not feel that it would be safeguarded in acquiring the property until belt line operation was assured.⁶

The railroad executives asserted that in order to improve freight transportation it was essential to free the Jersey shore from passenger traffic. With some passenger plan in effect they believed that the freight capacity of the waterfront and the adjacent rails could be so greatly increased as to postpone for a long time the need for any large expenditure on new facilities. The communities of northern New Jersey were also becoming conscious of an acute suburban transit problem and their representatives urged the Port Authority to make it their concern. However, the Port Authority felt that its resources would be fully occupied with the freight problem, which it was

⁵ "Minutes," July 12, 1922. Letter A. H. Smith (N. Y. Central), J. A. Middleton (Lehigh Valley), F. D. Underwood (Erie) to Outerbridge, July 10.

⁶ See *infra*, Chapter V.

created to solve, for some time to come. While recognizing the importance of the passenger problem, it was unwilling to do any more than cooperate with other interested agencies.⁷ In sum, the railroads would not cooperate on the basis suggested by the Port Authority, and the Port Authority would not, or could not, cooperate on the basis suggested by the railroads.

In September, 1922, the Commissioners of the Port Authority were profoundly discouraged. The assurances of railroad cooperation had turned out to be a mirage. After prolonged discussion they decided not to relinquish to the railroads the determination of the order in which the Comprehensive Plan should be carried out. Instead they would invoke the assistance of the Interstate Commerce Commission with its powers of coercion.⁸

It is the feeling of the present writer that the Port Authority insisted a little too strenuously upon the order of events. Apparently unwilling to recognize the weakness of the Comprehensive Plan legislation, it did not realize that being unable to give orders it would have to accommodate itself to the wishes of the railroads. Further cultivation of the arts of negotiation and persuasion might have produced adequate protection from the railroads for the acquisition of the federal property and some political assistance in Washington where it would be sorely needed. In view of its later activities with suburban transit, it might have been, perhaps, a little more accommodating in this field also. Whether the ultimate result would have been different, of course, no one can tell.

BEFORE THE INTERSTATE COMMERCE COMMISSION

In November the Port Authority addressed the Interstate Commerce Commission stating that its efforts to effectuate the

⁷ *Annual Report, 1923*, pp. 35-36; *ibid.*, 1924, pp. 23-24. New Jersey. North Jersey Transit Commission. *Report to the Senate and General Assembly, Mar. 11, 1929*, pp. 3-4. Jersey City, 1929. 67 pp., maps. Also see *infra*, p. 128.

⁸ Cf. New York (State) *Governor's Message to the Legislature, Jan. 3, 1923*, p. 29. Leg. Doc. (1923), No. 3. Governor Smith was a Commissioner during the period under discussion.

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Comprehensive Plan had reached a point where their assistance was deemed to be necessary, and requesting that the Commission institute an investigation at which the Port Authority's staff could present facts pertinent to carrying out the first stages of the Plan. The Port Authority suggested a form of order declaring that it was desirable and necessary for the Commission to cooperate with the Port Authority in the execution of the Plan, and inviting the Port Authority to sit jointly with the Commission in a hearing.⁹

On December 12, 1922, the Commission, ignoring the Port Authority's suggested form, ordered an investigation on its own motion "in the matter of efficient, economical and joint use of terminals of common carriers in the Port of New York District." All the railroads entering the Port District were named respondents.¹⁰ No responsibility under the Comprehensive Plan Acts was recognized; nor was the Port Authority invited to sit in a joint hearing, although it was understood that the latter would hear the evidence at the same time. Therefore the Port Authority also adopted an order assigning for public hearing the matter of compliance with the Comprehensive Plan statutes in relation to Belt Line 13. Notice was sent to the same railroads, to the municipal authorities, and to the members of the Advisory Council.¹¹ Although this so-called order was in such form as to give the impression that the Port Authority considered itself vested with powers of coercion, in actual legal effect it merely announced a public hearing to be held in such a way as to take advantage of the Interstate Commerce Commission's power to summon witnesses.

⁹ "Minutes," Nov. 8, 1922, p. 1, Letter Outerbridge to I. C. C., Nov. 9.

¹⁰ *Ibid.*, Dec. 20, 1922, pp. 4-5. It should be noted for comparison with the *Hell Gate Bridge Case* described below that these proceedings were not based upon the Port Authority's formal complaint or petition even though its staff presented the evidence and argued the law.

¹¹ *Ibid.*, Jan. 31, 1923, pp. 4-10; also Comprehensive Plan Acts, sec. 6, relative to public hearings.

The hearings were held in April and September, 1923.¹² Counsel for the railroads professed to be confused by the presence of two bodies, but he was reminded that it was nothing unusual for the Interstate Commerce Commission to sit with state regulatory bodies.¹³ He was assured that whatever action the Commission might take would be based solely on the record as developed before it.

Hitherto the railroads do not appear to have regarded the purpose and content of the Comprehensive Plan very seriously. In this hearing it was brought forcibly to their attention. General Goethals took the stand to tell the work of the Port and Harbor Development Commission and the Port Authority leading up to the adoption of the Plan. He explained that Belt Line 13 was the logical place to begin its administration because unification of this line was not only a condition precedent to bringing all the New Jersey roads to the New York side of the harbor by rail, but also to consolidation of carfloat and lighterage service. He stated that efficient and economical handling of traffic to the steamship piers and industries on the New Jersey shore required a unified belt line operation.

In their testimony the Port Authority engineers distinguished two kinds of traffic in this vicinity: interchange and local. Interchange traffic was said to be characterized by constant congestion, delay, confusion and light engine movements

¹² Interstate Commerce Commission Docket No. 14490. In the Matter of Efficient, Economical and Joint Use of Terminals of Common Carriers in the Port of New York District and the Cost to Carriers of Operating the Terminals in Performing Common-carrier Service (Belt Line 13). P. N. Y. A. Docket No. 1. (In the same Matter). *Official Stenographers' Minutes*. New York, April 5, 6 and 7, and September 17, 18, 19 and 20, 1923. 1108 pp., mimeographed.

¹³ *Off. Sten. Min.*, p. 139. Joint hearings by the I. C. C. and state regulatory bodies were authorized by the Transportation Act of 1920. (49 U. S. C. A., sec. 13 par. 3). Prior to 1920 cooperation had been established with the public service commissions in the New England states and joint hearings were held. After 1920 a greater degree of cooperation developed especially in rate cases and abandonment cases. Martin L. Lindahl, "Co-operation between the Interstate Commerce Commission and the State Commissions in Railroad Regulation," *Michigan Law Rev.* XXXIII (Jan. 1935), 338-397.

because each piece of track was operated subject to the convenience of its own management. The testimony showed that a number of trunk line railroads lightered their freight to steamship piers because the rail service was undependable. It was stated that belt line operation, in contrast with current operation, would assure prompt delivery, carry more freight and save the cost of expensive lighterage.

The handling of local traffic was described as being afflicted with circuitous routings and delays in transit. It was stated that in some instances cars traveled 187.5 miles instead of a practicable distance from origin to destination of 42.5 miles, four days en route; other shipments traveled 115 miles instead of a practicable distance of 8 miles, four days en route; in other cases cars traveled 107 miles to go a practicable distance of 19 miles; 165 miles instead of 16.5 miles; 58 miles instead of 4.

No tariffs comparable to belt line charges were available to shippers on one of the segments of the proposed belt line for direct shipment to points on another. With some exceptions the only tariffs filed by the proprietary carriers were for circuitous routings which would give each the longest haul on its own line, and the greatest revenue. Instead of an ordinary switching charge of \$5 to \$10, the freight charges per car ranged from \$35 to \$240.

Further testimony by the Port Authority staff demonstrated that the capacity of these tracks could be increased by 100 per cent under unified operation as proposed by them, with a neutral director having adequate powers and an expenditure for proper physical improvements estimated at \$700,000. On the basis of predicted increases in tonnage, operating costs estimated at \$1,100,000 could be saved annually. The railroads did not offer any contradictory testimony.¹⁴

¹⁴ The testimony is summarized in the *Annual Report*, 1923, pp. 10-16. The United States Shipping Board made an appearance in order to state that it was very important from their point of view that Belt Line 13 should be established under completely neutral control. *Off. Sten. Min.*, pp. 457-460.

Although pressed time and again for a plan of operation, Mr. Cohen as counsel for the Port Authority, refused to offer any suggestion except to say that it should be neutral as between the several lines, and that the Port Authority did not want to be the operator. The railroads raised questions of ownership and intercorporate relations, meaning competitive advantages, the "prerogatives" of the several lines. Mr. Cohen replied that it was the duty of the railroads to work out the plan, the sole condition being that all trunk lines should be accessible to all shippers in the territory and that operations should be economical. As a result there was a great deal of confusion as to what unification and unified operation meant. The Port Authority staff were thinking of service and the railroads were thinking of the division of traffic and revenue.

In discussing the law Mr. Cohen said that the Comprehensive Plan had been adopted by the two states and by Congress to provide for the unification of terminal facilities as recommended by the Interstate Commerce Commission in the *New York Harbor Case*. He declared that the Port Authority had been authorized and empowered to determine whether unification of Belt Line 13 were economically practicable. If it should so determine, he said, then it would be the duty of the railroads to unify their operations forthwith. If they should refuse, and if the Interstate Commerce Commission should find itself in accord with the Port Authority's determination, then, he argued, the Commission might issue an order directing the owners to unify their operations. In support he cited the Transportation Act of 1920 and the decisions thereunder stating that the Commission was charged with affirmative duties relative to railroad operations. The public interest in terminal unification, he said, had been recognized in the official statements of numerous public agencies.¹⁵

15 I. C. C. Docket No. 14490. *Trial Brief on the Law*. Julius Henry Cohen, Counsel, Port of New York Authority. Parts I-VIII. Oral argument by Julius Henry Cohen, *Off. Stem. Min.*, pp. 12-110; 551-569.

The Interstate Commerce Commission was troubled by two questions. It wanted to know if the Comprehensive Plan Congressional Resolution imposed any duty of enforcement upon it. Mr. Cohen argued that it did, but that the Commission would have to find the appropriate powers within the provisions of the Interstate Commerce Act. Then the Commission wanted to know what form its action could take. Mr. Cohen suggested that if the Commission were to agree to unification of Belt Line 13, it still might be found inadvisable to prescribe the exact form. But he said, the Commission could require the respondents to lay before it a plan which would achieve the desired results, and if the plan were found unsatisfactory the Port Authority would then present an alternative plan. The proceedings could be held open for appropriate orders.¹⁶

It was apparent in the hearing that Mr. Cohen did not wish to meet the question of coercive power and the manner of its exertion until the railroads should have had an opportunity to take voluntary action upon the evidence. The primary purpose of the hearing was to build a public record relying upon the force of the evidence to bring the railroads into a cooperative mood.

The distance separating the railroads' and the Port Authority's point of view may be gathered from two assertions made by counsel for the railroads. As for unification of terminal operations, the first principle of the Comprehensive Plan, he said flatly: "We cannot subscribe to that." Congress and the people of the United States, he said, had declared that competition among privately-owned railroads should be preserved and equalized. "That is the basis of it all, it is either government ownership or that."

As for the element of public interest he said it could best be served by keeping the railroads sensitive to competition. "As long as we are engaged in private business, whether it be serving the public or not, there is only one factor which gives the public a return, and that is self-interest. Now that is the

¹⁶ *Off. Sten. Min.*, pp. 53, 62-64, 103, 106, 266.

philosophy of it all." Somewhat contradictorily he asked the commission also to believe that "railroad property can no longer be operated with the idea that the primary purpose is to get a private return. . . . Everything we do must necessarily be supposed to be in the public interest."¹⁷

This was, of course, political not legal argument. On the other hand it seems to the present writer that Mr. Cohen's thesis fell between the proposition that the Comprehensive Plan Acts created a duty on the part of the railroads which could be enforced, and the proposition that the Interstate Commerce Commission's powers of enforcement were limited to the provisions of the Interstate Commerce Act. Even though the Comprehensive Plan Acts and the 1920 amendments to the Interstate Commerce Act were akin in spirit, to fall back upon the second for the enforcement of the first was to admit that the Comprehensive Plan Acts were unenforceable. If in fact all that the Port Authority asked was enforcement of the Interstate Commerce Act, then Mr. Cohen's argument should have come to grips with the terms of the Act, which it did not. However, the Commission was relieved of the necessity of deciding the issue.

COMPROMISE

Bowing to what they described as "an overwhelming public opinion that traffic conditions in this port must be radically improved," when the hearings were resumed in September, the carriers made a concrete offer. Denying that there was any need for consolidation or unified operation, and threatening endless litigation if the Port Authority attempted to compel them to consolidate their properties, the three owning companies agreed to make certain physical improvements in the proposed belt line at an estimated cost of about \$500,000. They also agreed that a "supervisory operating agent" should

¹⁷ Oral argument by Robert J. Cary, Counsel for the New York Central and chairman of committee of counsel. *Off. Sten. Min.*, pp. 111-185, 526-551, quoted at pp. 126, 178, 180.

be appointed to direct movements over their joint lines. It was promised that the problem of eliminating unreasonable tariffs by switching charges or other means would be canvassed immediately by their traffic officials.¹⁸ The Port Authority accepted this compromise since it appeared to represent a substantial victory.

After the hearings the railroads presented a plan whereby a Director of Operations would be appointed and vested with as much power over operations on Belt Line 13 as though he were in charge of an independent company. He would report to an Operating Committee consisting of representatives from each of the four owning companies. The Director was not to be, or to have been, an employee of any one of the four lines directly concerned. The Port Authority might designate an unofficial observer if it wished.¹⁹

This operating plan received the Port Authority's hearty approval.²⁰ Thereupon the rate structure was thoroughly revised to provide a single scale of class rates in Belt Line 13 territory where twenty-two had existed previously, and to provide three scales to other New Jersey points in the port district in place of fifty-four. The circuitous routings previously complained of were abolished, and rates generally reduced. The new rates which went into effect September 15, 1923 benefited the shippers immediately, one concern alone reporting an estimated saving of \$6,000 per year.²¹

¹⁸ *Off. Sten. Min.*, pp. 520-526, 532-536. Including the resolution taken at a meeting of the railroad executives, Sept. 11, 1923. The railroads also agreed to join in making a study of plans for the construction of Belt Line No. 1.

¹⁹ Letter F. E. Williamson (N. Y. Central), ch'm. of Operating Committee, to Robert J. Cary, Oct. 3, 1923. Also P. N. Y. A. "Memoranda of Meeting between Counsel and Staff of the Port Authority, and Counsel and Operating Representatives of the Carriers, Nov. 7, 1923." 9 pp., typewritten.

²⁰ "Minutes," Nov. 14, 1923. Letter Outerbridge to Cary, Nov. 14.

²¹ *Annual Report*, 1924, p. 12 and 1925, p. 9. For a general description, see P. N. Y. A. *Marginal Railroad No. 13, New Jersey Inner Belt Line: Port Information Bulletin No. 3*, October 1, 1931. New York, 1931. 38 pp., map, illus.

The physical improvements were finally completed late in 1925, but a Director of Operations was not appointed until March 1, 1927, and then only upon the insistence of the Port Authority. Instead of a neutral supervising agent, the division superintendent of the West Shore Railroad (N. Y. Central) was designated for the post without being relieved of his other duties. As a concession to the Port Authority he was given an outside telephone connection listed under "Belt Line 13—Director of Operations." As such his function today (1938) is simply to help shippers to locate their cars. The tracks are operated primarily for interchange movements between the West Shore and the Erie, and remain under the control of four separate managements. The Port Authority has not been able to obtain the real, unified, belt line service which the Comprehensive Plan Acts intended.

Rate abuses were corrected, but a high level of joint rates and other charges still militates against more intensive and efficient use of this facility. The Port Authority continues to be of the opinion that complete coordination of the line for operation purposes and the establishment of uniform switching charges would permit savings to both carriers and shippers, and would divert tonnage to the belt line from high-cost lighterage operations.²²

THE INVESTIGATION AND SUBPOENA ACT

Its experience with Belt Line 13 led the Port Authority to believe that its powers were insufficient. The recalcitrance of the railroads had made clear the need for power to subpoena witnesses and issue orders. A bill to grant such powers was introduced in the 1924 session of both legislatures. The bill was passed in New York;²³ but failed in New Jersey, not only in 1924 but also in two succeeding sessions despite urgent

²² P. N. Y. A. "Memorandum Submitted to Eastern Regional Coordinator in the Matter of Transportation Economies Possible Through Consolidation and Coordination of Railroad Freight Terminal Facilities and Operations in the Port of New York, Aug. 18, 1933," p. 14. 15 pp., 4 exhibits, mimeographed.

²³ L. N. Y. 1924, c. 623.

requests from the Port Authority for affirmative action.²⁴ In contrast with their neutral stand on the Comprehensive Plan bills, the railroads as a group opposed these bills vigorously in both states. They were opposed also by the cities of New York, Jersey City and Hoboken.²⁵ The fact that the bill passed in New York and failed in New Jersey roughly indicated the relative political strength of the railroads in the two states.

The Port Authority endeavored to have its power broadened at this time in another direction. Bills were introduced in both states granting broad powers of condemnation including the right to condemn property already devoted to public use.²⁶ These bills were opposed by the same forces and defeated in both states. They were not subsequently revived.

The New York Investigation and Subpoena Act amended the Comprehensive Plan Act by adding seven sections which authorized the Port Authority to conduct investigations, to compel the attendance of witnesses, the production of books, papers, etc., and to take testimony under oath with the usual protection against self-incrimination. The act further provided that whenever, after hearing, the Port Authority "shall determine any fact or matter which it is authorized by law to hear and determine, or that any step in the effectuation of the Comprehensive Plan is, or in the near future will be economically practicable, it shall make its findings in writing setting forth its reasons therefore, and such findings shall be and be deemed to be a determination by the Port Authority under and pursuant to law. Upon such determination an appropriate

²⁴ *Annual Report*, 1924, p. 43, and 1925, p. 37.

²⁵ *New York Times*, March 27, 1924, p. 21 and May 3, p. 2; "Minutes," Feb. 27, 1924, p. 5 and April 1, p. 2.

²⁶ New York Senate. *Int. No. 1015 (1924)* by Mr. Walker. An Act Relating to the Exercise by the Port of New York Authority within the State of New York of the Power of Condemnation under and pursuant to the Port Compact... Assembly. *Int. No. 705 (1924)* by Mr. Adler. Same. New Jersey Senate. *Int. No. 170 (1924)* by Mr. Case. An Act Relating to the Exercise of the Power of Condemnation, under and pursuant to the Port Authority Compact... and the Comprehensive Plan...

order may be entered by the Port Authority and made effective and may be enforced as herein provided." Where findings called for the joint use of an existing facility, the Port Authority was authorized to determine the amount of compensation to be paid.²⁷ Enforcement was provided by authorizing the Port Authority to apply to the courts of the state for mandamus or injunction, such proceedings to be given preference on the court calendar.

Special provision was made for establishing union inland freight stations by requiring that the Port Authority should call a conference of all the carriers. If the carriers refused to agree to the proposed plan the Port Authority was authorized to certify its findings to the courts which were vested with jurisdiction to make conditions and impose terms in accordance with the principles of the Comprehensive Plan.

No bill was introduced in Congress to extend these powers to cover interstate commerce. The validity of the New York law was brought into question almost immediately in the *Hell Gate Bridge Case* (next to be described), but escaped argument because the case was carried to the Interstate Commerce Commission. In the following year (1925) the Port Authority threatened to invoke the law against the New York Central's west side improvement plan.²⁸ The New York Central responded by denying that the law had any effect until concurred in by New Jersey and approved by Congress.²⁹

²⁷ Many of the provisions of the act were drawn from the Public Service Law and the Interstate Commerce Act.

²⁸ P. N. Y. A. *Communication to Hon. Julius Miller, President of the Borough of Manhattan, City of New York, in Regard to his Report and Plan for West Side Elevated Freight Tracks and Vehicular Highway, Feb. 6, 1925*, p. 18. New York, 1925. 19 pp. New York State Legislative Committee on Grade Crossings. In the Matter of the Tracks of the New York Central Railroad Company on the West Side of the Borough of Manhattan in the City of New York. *Memorandum Prepared for the Use of the Committee by the Port of New York Authority, in Response to the Request of the Committee, Dec. 3, 1925*, p. 7. New York, 1925. 15 pp.

²⁹ New York State Legislative Committee . . . In the Matter of the Relation of the Port of New York Authority to the Tracks of the New York Central

The issue revolved around an article in the Compact which stated that the Port Authority should have "such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other, or by the act or acts of Congress."³⁰

The Port Authority believed that such concurrence was not necessary for the act to have validity in the state of New York. It said, "the Comprehensive Plan . . . is, so far as the states are concerned, an act regulating commerce, and so far as the states are concerned an exercise of the police power regulating railroads. It is binding upon all the carriers in the Port District and must be observed." From that premise it went on to say that the legislature of New York, "having agreed to vest in the Port Authority 'all necessary and appropriate powers' . . . has provided for the manner by which that power is to be exercised with reference to the making of orders within the state, the subpoenaing of witnesses, the conduct of hearings and the effectuation by the courts of this state of legal powers essential to make the decisions and orders of the Port Authority effective. It is not necessary that the two states concur in the delimitation of the jurisdiction of the courts within each state."³¹ As previously indicated the present writer does not agree with the premise. Nor does it seem to him true that the powers contained in the Investigation and Subpoena Act could be construed as merely a "delimitation of the jurisdiction of

Railroad Company on the West Side of the Borough of Manhattan in the City of New York. *Memorandum Prepared for the Use of the Committee by the New York Central Railroad in Response to the Request of the Committee, as to the Jurisdiction of the Port of New York Authority, Dec. 15, 1925.* New York, 1925. 18 pp.

³⁰ Article III.

³¹ New York State Legislative Committee . . . In the Matter of New Facilities for the New York Central Railroad Company on the West Side . . . *Memorandum Prepared for the Use of the Committee by the Port Authority in Response to the Memorandum Filed by the New York Central Railroad Company as to the Jurisdiction of the Port of New York Authority, Dec. 19, 1925,* pp. 2 and 11. New York, 1925. 32 pp.

the courts," but they seem rather to be important "additional powers" and as such requiring concurrence by New Jersey. However, the issue was not tried in court and never came up again. Today (1939) the act is practically forgotten.

THE HELL GATE BRIDGE CASE

In April, 1924, the Chamber of Commerce of the Borough of Queens, viewing with pleasure and some surprise what then appeared to be the successful outcome of Belt Line 13 proceedings, requested the Port Authority to consider the matter of opening a route over Hell Gate Bridge for the Long Island traffic of the New York Central Railroad.³²

It will be recalled that Hell Gate Bridge, situated at the northern end of Belt Line No. 1, was intended under the Comprehensive Plan to provide one of two gateways to Long Island. The southern gateway at Bay Ridge was planned to receive the traffic of all the New Jersey roads via car-ferry, and ultimately by tunnel, from Greenville. Successful operation of Belt Line 13 would bring the traffic of these roads to Greenville, at least until such time as greater volume necessitated new facilities. New York Central and New Haven traffic would enter Long Island via Hell Gate Bridge. Thus by coordinating existing facilities expensive carfloating operations could be minimized.

Hell Gate Bridge and its elevated approaches cost about \$30,000,000. It was built by the New York Connecting Railroad Company, one half of whose stock was owned by the Pennsylvania and the other half by the New Haven. The bonds were guaranteed by the parent companies. The Pennsylvania also owned substantially all of the stock of the Long Island and a large investment in the New Haven. The New York Connecting Railroad was not operated for profit, but

³² P. N. Y. A. Docket No. 2. In the Matter of the Effectuation of the Comprehensive Plan for the Development of the Port of New York—Use of the New York Connecting Railroad. "Transcript of Hearing, New York, Sept. 15, Oct. 14, 15 and Dec. 5, 1924," p. 6. 740 pp., typewritten.

primarily to serve interchange traffic between the Pennsylvania and the New Haven. The New Haven received Pennsylvania cars at Greenville, ferried them across to Bay Ridge, and hauled them over the Long Island tracks and Hell Gate Bridge to its own yard at Oak Point. The Bridge was also used for a smaller interchange movement between the New Haven and the Long Island.

When the railroads were under government operation during the War, New York Central cars for Long Island were handled in the same way, that is via the Hell Gate route. The rate was 3 cents per 100 pounds. After the period of government operation, this rate was increased by steps to 6.5 cents per 100 pounds, which the New York Central considered to be in excess of the cost of car-floating traffic from its Hudson River yard at 68th Street, Manhattan, to the Long Island float-bridges at Long Island City. Consequently it ceased routing via Hell Gate Bridge.

Informal conferences with the operating officials of the New York Central, New Haven and Long Island railroads indicated that they were agreeable to handling New York Central traffic via this route, but similar conferences with the traffic officials revealed complete disagreement on the matter of rates.³³ While aware of the fact that eventually it might be necessary to go to the Interstate Commerce Commission, the Port Authority decided to hold a formal investigation under the provisions of the Investigation and Subpoena Act to determine (1) whether the Hell Gate route could be used for interchange between the Long Island and the New York Central, (2) whether its use would avoid congestion in transportation, (3) whether the joint use of the New York Connecting Railroad was economically practicable and in the public interest, and finally (4) what causes prevented or tended to prevent such use. The order was issued June 11, 1924, the re-

³³ "Minutes," May 7, p. 9, June 4, p. 1, and June 11, 1924, p. 4.

spondents were subpoenaed, and the matter was assigned for public hearing in September.³⁴

In the course of the hearings business interests testified that western Long Island was growing rapidly in population and industry, that congestion and delay characterized the Long Island City float-bridges and yards, and that it would be a great benefit to shippers in that area if the Bridge route were open for New York Central traffic. The Port Authority staff testified that the New York Connecting Railroad was not congested, that the New York Central's cars would impose no burden upon it, and that there was available for interchange use a line of the New York Central, known as the Port Morris Branch, running from Mott Haven to the New Haven's Oak Point yard.³⁵

The general superintendent of the New York Central in charge of the New York terminal district testified as a friendly witness that the Hell Gate route was practicable for Long Island-New York Central interchange, had been so used, and that there was no operating reason why it should not be used again. On the other hand the operating men of the Long Island Railroad and the New Haven testified that such an operation would create difficulties in their yards. They did not deny that it could be done, but insisted that the trouble arising would be greater than the benefits to be derived.³⁶

It should be noted that the route proposed by the Port Authority staff was not entirely that drawn upon the Comprehensive Plan. Use of the Port Morris Branch was substituted for new construction. The staff conceded that operation over these tracks would not be ideal, but insisted that it was possible, and would be beneficial until the volume of traffic justified an expenditure of about \$16,000,000 to construct the line contemplated in the Plan.

³⁴ *Ibid.*, June 11, 1924, p. 6 and Aug. 20, p. 5.

³⁵ P. N. Y. A. Docket No. 2. "Transcript of Hearing," *passim*.

³⁶ *Ibid.*

It appeared in the testimony of the Long Island general superintendent that his road did not consider the Hell Gate Bridge as a gateway to Long Island at all, unless possibly a sort of back door. He stated that there were only two gateways, Long Island City and Bay Ridge, and that his road intended to concentrate all its traffic at the former and close up Bay Ridge except for Pennsylvania-New Haven interchange and emergency uses. In order to do this the Long Island Railroad planned to nearly double its capacity at Long Island City by spending \$1,250,000 for new float-bridges and yard facilities. It further appeared that these plans had been contemplated for some time, but that actual work on the project had been started only after the Queensborough Chamber of Commerce had communicated with the Port Authority.

Testimony for the Long Island and the New Haven sought to show that the traffic in question could be handled more expeditiously through customary car-floating channels, improved as the Long Island planned to improve them; that service by an all-rail route would be no better than by car-float; that to provide reasonably satisfactory operation over the proposed route would require an expenditure of about \$106,000 for changes and additions which would be wasteful and unjustified in view of the improvements at Long Island City; and that, if the Comprehensive Plan demanded this route, then the new line between the New York Central and the New York Connecting would have to be constructed. It became evident that a Long Island shipper could route his traffic via the Hell Gate Bridge if he were willing to pay an extra 6.5 cents per 100 pounds, and that the chief cause preventing the New York Central from using this bridge was the prohibitive rate.³⁷

In presenting the law, Mr. Cohen contended that the powers and privileges derived from the federal and state legislation enabling the construction of the Hell Gate Bridge were granted in consideration of public use and service. He argued that even though the bridge had been built through the enterprise of the

³⁷ *Ibid.*

New Haven and Pennsylvania Railroads, they were not entitled to deny its use to a competing carrier, but only to a fair return on their investment. Furthermore, he said, the whole purpose of the Comprehensive Plan, of which the bridge was a part, was to put an end to the use of railroad facilities for competitive advantages to the detriment of the fullest service to the public.

He contended that under the Investigation and Subpoena Act the Port Authority could take cognizance of a prohibitive rate and undertake to determine fair compensation. However, since the Interstate Commerce Commission was vested with adequate powers regarding that phase of the matter, all the Port Authority had to do, he said, was to determine whether such use of the bridge was in the public interest, economically practicable, and in effectuation of the Comprehensive Plan, and if so, then to ask the Interstate Commerce Commission for an appropriate order.³⁸

It was contended on behalf of the Pennsylvania that the real purpose of the proceedings was to divert a large volume of traffic from that road to its competitor.³⁹ If this were to be done as a rate matter, it was said to be beyond the jurisdiction of the Port Authority; and for the Interstate Commerce Commission to establish a rate having that effect was said to be forbidden by law. It was intimated that whether the matter were to be considered as a division of a joint rate, or as compensation for joint use did not really matter, since the owning carriers, especially the Pennsylvania, would not be satisfied with an amount less than that which would include the net profit to be derived from the entire line haul—which

³⁸ *Ibid.*, pp. 638-640. Oral Argument by Mr. Cohen. Counsel for the Port Authority filed no brief. Their presentation will be found in the transcript, pp. 567-662.

³⁹ What the Pennsylvania appeared to fear was that the New York Central would obtain a basis for advertising claims that it possessed the only all-rail freight route to Long Island from the west, and that competitive traffic would be adversely affected thereby.

would obviously leave things exactly as they were.⁴⁰ Here it became apparent what was meant by the presidents of the Pennsylvania and the New Haven when they wrote in 1921 that the use of these tracks as part of a belt line system would meet with their approval under "conditions that would safeguard present and prospective traffic of the owning companies."⁴¹

The Port Authority reported its findings on February 13, 1925. The questions ordered for hearing were resolved in the affirmative, that is in favor of the contentions upheld by its staff; and it was stated in conclusion, that failure to use the Hell Gate route for interchange between the New York Central and the Long Island was not due to operating difficulties, but to the inability of the proprietary carriers to agree on compensation, and that mere disagreement in this respect did not constitute a reason for denying the shipping public the fullest and freest use of the route.⁴²

While the Port Authority expressed the hope that the carriers would agree forthwith and make the route available to the shipping public, it quickly became apparent that the carriers did not intend to accept the findings. The Port Authority threatened to take the next step under the Investigation and Subpoena Act, and issue an order requiring the owning carriers to permit the New York Central to use the New York Connecting Railroad upon payment of reasonable compensation.⁴³

⁴⁰ *Brief for the Pennsylvania Railroad Company*. Henry Wolf Birké, Counsel. Nov. 14, 1924. 13 pp. Also *Brief for the New York, New Haven and Hartford Railroad Company, and the New York Connecting Railroad Company*. Edward G. Buckland, Counsel. Nov. 13, 1924. 19 pp. *Brief for the Long Island Railroad Company*. Alfred A. Gardner, Counsel. Nov. 12, 1924. 3 pp.

⁴¹ See *supra*, p. 43. Letters Rea, Sept. 21 and Pearson, Oct. 4, 1921, to Outerbridge.

⁴² P. N. Y. A. Docket No. 2. *Report of the Port Authority, Gregory, chairman*. Submitted Dec. 5, 1924. Decided Feb. 13, 1925. 13 pp. Also *Annual Report, 1925*, p. 27.

⁴³ *New York Times*, Feb. 17, 1925, p. 38; "Minutes," Mar. 12, 1925, p. 5 and Mar. 19, p. 3.

However, as long as the Act lacked concurrence by New Jersey, or supplementary federal legislation, any proceedings taken under it would have been open to severe legal attack, whether the order were carried for enforcement to the courts or to the Interstate Commerce Commission. On reconsideration the Port Authority decided to bring its case before the Interstate Commerce Commission *de novo*.

BEFORE THE INTERSTATE COMMERCE COMMISSION

As soon as the railroads had established their course of action the Port Authority filed a complaint with the Interstate Commerce Commission.⁴⁴ Hearings were instituted in February, 1926. In the year that intervened between the two hearings the New York Central Railroad did an about-face, thus uniting all the railroads against the Port Authority's proposal.

The Interstate Commerce Commission handed down its decision on June 11, 1928, two years after the close of the hearings and a full four years after the Port Authority first took action in the matter. The report recognized three main questions: (1) whether the rates in effect via the Hell Gate Bridge were unreasonable to the extent that they exceeded the corresponding rates via the float route; (2) whether interchange between the New York Central and the Long Island via the Connecting was a practicable operation and in the public interest; and (3) whether the use of this route for such purposes would be in effectuation of the Comprehensive Plan.⁴⁵

⁴⁴ Interstate Commerce Commission. Docket No. 16923. *Port of New York Authority v. Atchison, Topeka and Santa Fe Railway Co., et al.* (Hell Gate Bridge Case). *Complaint*. Julius Henry Cohen and Clark & LaRoe; for Complainants. Mar. 28, 1925. 23 pp. Because a certain amount of intrastate traffic was involved, especially milk, a complaint was filed with the New York State Public Service Commission (Case No. 2952. *Port of New York Authority v. Delaware and Hudson Co., et al.* *Complaint*. Julius Henry Cohen and Clark & LaRoe, for Complainants. Dec. 5, 1925. 24 pp.) Both bodies sat in the hearings, but since the latter took no independent action the intrastate phase of the case will not be discussed.

⁴⁵ I. C. C. Docket No. 16923. *Report of the Commission, Atchison, com'r.* Submitted May 16, 1927. Decided June 11, 1928. (144 I. C. C. 514-536) The

In its complaint the Port Authority had alleged that the existing prohibitory rate was in violation of the Interstate Commerce Act, wherein it was made the "duty of every common carrier . . . to provide . . . transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates . . ., and to provide reasonable facilities for operating through routes . . ." ⁴⁶ and also to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines" without discrimination.⁴⁷

Two other sections of the law having a bearing upon the case were discussed at the earlier hearing, but they were not cited at this time except to show the law's primary emphasis upon the public interest. The first gave to the Commission the power to do what the Port Authority wanted done; namely, to establish through routes and joint rates and to fix the divisions thereof, when necessary or desirable in the public interest. But this power was decisively limited by a succeeding paragraph which forbade its exercise if a carrier was thereby required to short-haul itself.⁴⁸ The other section related to

discussion of the case is based upon the following briefs as well as the report of the Commission.

Brief on Behalf of the Port of New York Authority. Julius Henry Cohen, Clark & LaRoe, Attorneys for Complainant. June 18, 1926. 246 pp., fold. pl., chart.

Brief on Behalf of the Pennsylvania Railroad Company. Henry Wolf Bicklé, Counsel. 21 June, 1926. 50 pp.

Brief for the New York, New Haven & Hartford Railroad Company and the New York Connecting Railroad Company. Charles F. Choate, Jr., James Garfield, Counsel. June 21, 1926. 164 pp.

Brief on Behalf of the Long Island Railroad Company. Alfred A. Gardner, Counsel. June 18, 1926. 18 pp.

Brief on Behalf of the New York Central Lines. Clyde Brown, C. A. Halpin, for the New York Central. June 18, 1926. 50 pp.

Brief of Exceptions on Behalf of Complainant. Julius Henry Cohen, Clark & LaRoe, Attorneys for Complainant. April 15, 1927. 98 pp.

⁴⁶ 49 U. S. C. A., sec. 1 (4).

⁴⁷ *Ibid.*, sec. 3 (3).

⁴⁸ *Ibid.*, secs. 15 (3) and (4). For an explanation of the phrase "to short-haul" see Chapter I, p. 22.

terminal facilities and was specifically exempted from the short-haul clause. It provided that the Commission should have the power to require the use of the terminal facilities of one carrier by another, if found to be in the public interest and practicable, for such compensation as the carriers might agree upon, or failing to agree, as the Commission might fix according to the principle controlling compensation in condemnation proceedings.⁴⁹ This was a new and untried paragraph, and the Port Authority hesitated to rely upon it.⁵⁰ Also, strictly speaking, the bridge was not a terminal facility, nor did the Port Authority want the New York Central to run its trains over Hell Gate Bridge. What it wanted was a through route whereby the New Haven would do the hauling,⁵¹ and a joint rate from western territory not greater than the flat New York rate which prevailed on the float route. The Port Authority argued that since the route was physically open, the carriers need only be required to establish a just and reasonable rate.

The railroad defendants went straight to the short-haul clause and contended that to require the rate sought by the Port Authority would be equivalent to requiring the Pennsylvania to short-haul itself. If that was so, the Port Authority pointed out, then the Pennsylvania was being short-hauled on every ton of freight that the Long Island forwarded or received via other lines.

The Commission, however, accepted the contention of the railroads and based its decision upon the premise that its power

⁴⁹ *Ibid.*, sec. 3 (4). Inserted by the Transportation Act of 1920 to replace the older prohibition against requiring joint use of tracks and terminal facilities.

⁵⁰ It had been invoked successfully once in *Hastings Commercial Club v. Chi. Mil. & St. Paul Ry. Co.*, 69 I. C. C. 489 (1922). But when the carriers failed to agree on compensation, the Commission's findings as to public interest were reversed, 107 I. C. C. 208 (1926). See I. L. Sharfman, *The Interstate Commerce Commission. A Study in Administrative Law and Procedure*. Part III, Vol. A, pp. 411-421. New York, The Commonwealth Fund, 1935.

⁵¹ A through route relates to the movement of freight, not to the ownership of trackage or to the operation of trains.

to find rates applicable to through routes unreasonable would have to be exercised, like its power to establish such routes and joint rates, so as to safeguard the carriers' rights under the short-haul clause. In other words, the Commission read the Interstate Commerce Act so as to make a restriction attached to one clause equally restraining upon another of somewhat similar intent but textually and historically dissociate. It also said that what the carriers did voluntarily could not deprive them of protection where an additional route was demanded.⁵²

The Commission held that the Pennsylvania and the Long Island were one system, and that the Pennsylvania had a right to the long haul on (a) all outbound traffic originating on the Long Island and destined to points reached by the Pennsylvania or its connections, and (b) on all inbound traffic originating on the Pennsylvania or coming into its possession. As to this traffic the Commission held that it was powerless to take any action unless the existing interchange facilities by car-float were unreasonable and improper, which had not been proven, or unless the Connecting Railroad could be considered a terminal facility, which was doubtful.⁵³

Two categories of traffic remained: (a) inbound, originating on the New York Central or coming into its possession, of which milk was an important item, and (b) outbound, for points on the New York Central or its connections not reached by the Pennsylvania except circuitously. On the basis of current car-float interchange the ratio was about four in to one out. As to this traffic, which was all that the Port Authority really had in mind when the complaint was filed, the Commission held that it could establish a through route and joint rates if they were found to be in the public interest. Thus the matter boiled down to a finding of public interest, and this, said the Commission, was the main issue in the case.⁵⁴

⁵² 144 I. C. C. 517 and 520.

⁵³ 144 I. C. C. 520-522.

⁵⁴ 144 I. C. C. 523.

The Commission found that a marked improvement had taken place in the operation of the Long Island City float-bridges since 1925, and that under normal conditions use of the Hell Gate route would not result in any economy. The growth of commerce and industry on Long Island, the natural hazards to navigating carfloats in the East River, the intensive use of the Long Island City facilities were not thought to be of sufficient weight to require the carriers to operate an alternative route.

The Commission noted that the findings of the Port Authority concerned only the Connecting and its supporting yards. It will be recalled that the New York Central had not raised any question with regard to its end of this interchange movement. It was here that the Central's reversal of attitude was most effective. The operating officials of each road had magnified every obstacle, but the New York Central now introduced evidence to show that it would be dangerous and virtually impossible to cross in succession at grade the main line tracks of the Hudson Division, the throat of the Mott Haven Yard which supported Grand Central Terminal, the Harlem Division which carried all of the New Haven passenger traffic, and then to pass through the Port Morris Branch which was described as a congested industrial spur. This evidence deeply impressed the Commission and was really controlling in its determination.⁵⁵

The Port Authority's proposal was weakest from the standpoint of operations. Its engineers never maintained that the proposed operation would be perfect, but they did insist that it would be possible and advantageous for the amount of traffic that was expected to use the route. They suffered the handicap of being outside observers trying to prove that a

⁵⁵ Mr. F. E. Williamson, who as New York Central general superintendent for the New York terminal district testified favorably at the Port Authority hearing, had become operating vice-president of the Northern Pacific (*New York Times*, June 3, 1925, p. 37), and could only acknowledge his previous testimony. He returned to the New York Central as president in 1932.

plan of operation was practicable against the opposition of men actually engaged in the operation, a handicap inherent in a policy of regulation. The Port Authority engineers were aware that certain physical improvements would be needed, but they estimated the cost at much less than had been expended on Belt Line 13. In that instance the carriers agreed to a measure of cooperation. Here they had no intention of cooperating. Without the element of cooperation no plan could have succeeded, while with it many of the obstacles cited by the railroad operating men could probably have been adjusted.

General considerations militating against a finding of public interest were advanced by counsel for the Pennsylvania as follows:

It is conceded by the complainant that terminal development in New York City is of importance to the public. Such development will cost large sums of money. The incentive for the expenditure of these sums must be found in the expectation of a reasonable profit. If costly improvements of this kind are to inure, not to the benefit of the carrier making them, but to its competitors, it is obvious that terminal development will be substantially retarded.

The people of this country have deliberately indicated their preference for the private ownership of the railroads. Such ownership necessarily requires for its success a governmental policy which will tend to promote the development of railroad properties, and it seems clear that a course of action which would operate otherwise would run counter to the fundamental purposes of the law.⁵⁶

This argument in support of individual, competitive terminal development will be recalled in the *Belt Line 13 Case*. The Commission could hardly approve such views in their entirety and keep in mind the language of the statutes, its own and judicial decisions, and the nature of the terminal problem. But it did observe that the considerations were not to be overlooked. It found that the return anticipated by the New Haven

⁵⁶ *Brief on Behalf of the Pennsylvania*, p. 33.

and the Pennsylvania in constructing the New York Connecting Railroad need not be limited solely to the income which it earned. The Commission did not come to a clear conclusion as to the public interest in carrier expenditures for terminal development, but it was apparent that the *New York Harbor Case* (1917) carried little weight.⁵⁷

To summarize, the Commission found that the Hell Gate route was not required in the public interest because no economy of time or cost had been proven, because operations would be difficult and dangerous, and because certain general considerations militated against it.

The third question to be decided was whether the desired use of the New York Connecting would be in effectuation of the Comprehensive Plan. The Port Authority stressed those principles in the law which stated that terminal operations should be unified, that routing should be direct so as to avoid centers of congestion and conflicting currents, and that existing facilities should be adapted as integral parts of the new system so as to reduce the need for new capital as far as possible, and to provide prompt relief. It argued that the Hell Gate route with the Port Morris Branch in lieu of expensive new construction was in harmony with those principles. It drew a parallel between this substitution and the substitution of Belt Line 13 for the New Jersey wing of Belt Line No. 1.

However, the Commission found that actually the proposed route ran through centers of congestion and against conflicting currents of traffic. Conceding that an all-rail connection between the Long Island and the New York Central was one of the aims of the Comprehensive Plan, it was said that the proposed route was a very different thing from Belt Line No. 1 with new construction included therein, and could not be considered as in effectuation of the Plan. By its negative answer on the facts, the Commission avoided the legal question of whether the Comprehensive Plan Acts as such could be enforced.

⁵⁷ See *supra*, p. 23.

And so, in 1928, after four years of effort the Port Authority suffered a complete defeat. The assistance which it expected to receive from the Interstate Commerce Commission was denied. In retrospect, it is possible to question the Port Authority's strategy. If the force of the short-haul clause had been evaluated correctly, the Port Authority's complaint would have been limited to that part of the New York Central's traffic for which neither the Pennsylvania nor the New Haven were competitors. As a matter of fact, before the hearings were concluded, the Port Authority conceded that because of operating difficulties the Hell Gate route should be used for only part of the New York Central-Long Island interchange, including the important traffic in milk and other perishables. If the Port Authority's complaint had been thus limited with special stress upon the public interest in perishable commodities, a much stronger case could have been presented to the Commission. Even as it was the Commission found that the public interest did require use of the Hell Gate route in times of emergency. Although the Comprehensive Plan envisioned a much broader use of the Hell Gate route, it may be suggested that one must advance by degrees and not ask too much from an administrative tribunal proceeding cautiously by precedent.

The change in attitude on the part of the New York Central, which contributed so largely to the Port Authority's defeat, can be explained most plausibly in terms of railroad politics. Whereas the Pennsylvania was vulnerable in the Hell Gate Bridge situation, the principles set forth could have been pressed at the expense of the New York Central in other situations, for instance in the west side improvement which was beginning to be agitated again in 1925. The New York Central was forced to sacrifice its desire for an all-rail entry into Long Island in order to preserve the system of mutually respected freight territories.

Once again, the question arises whether the Port Authority did not rush too hastily into coercive action. At the time of the Port Authority hearing the New York Central was agreeable

to the operation of the Port Morris Branch as part of the Hell Gate route. If the Port Authority had undertaken negotiations based solely upon non-competitive traffic, it is barely possible that an agreement could have been reached.

The decision in the *Hell Gate Bridge Case* (1928) brought to an end the efforts of the Port Authority to compel the railroads to carry out the Comprehensive Plan.

RESTRAINING INIMICAL DEVELOPMENTS

The narrative thus far has dealt with two major episodes in which the Port Authority sought to administer the Comprehensive Plan by coercing the railroads into positive performance. The administration of any plan of development has two aspects: first, to obtain positive compliance and, second, to curb developments which might be contrary to the plan. A series of actions involving the latter aspect will now be described.⁵⁸ The first confronted the Port Authority immediately after the adoption of the Comprehensive Plan, and before a policy of coercion had developed.

For some years the Central Railroad of New Jersey had been trying to obtain the consent of the New Jersey Board of Commerce and Navigation to replace its wooden trestle-bridge across the mouth of Newark Bay with a modern structure. Consent was not given because it was thought that the new bridge would affect adversely the use of Newark Bay for shipping.⁵⁹ For the same reason the bridge had not been included in the belt line system of the Comprehensive Plan. On the contrary it was planned to route traffic over bridges across the upper end of the bay. In 1922 the railroad made application to the War Department for a permit. The City of Newark and the Board of Commerce and Navigation opposed the application upon the grounds, among others, that the approval of

⁵⁸ Action to prevent the construction of the Narrows Tunnel by New York City was described in footnote 34, page 52, *supra*.

⁵⁹ N. J. B'd. of Comm. and Nav. *Ann. Rep. for 1916*, p. 25; *Ann. Rep. for 1917*, p. 17; *Ann. Rep. July 1, 1918-June 30, 1919*, p. 13.

the Port Authority had not been obtained. When solicited by the War Department for its views, the Port Authority replied cautiously that "it would be preferable if no new bridge should be built at this time, or perhaps for a few years" until the ultimate character of marine traffic could be more accurately foreshadowed.⁶⁰

Nevertheless, the permit was issued. The city of Newark brought suit to restrain the railroad. The suit was dismissed and in 1925 the decision was affirmed by the United States Supreme Court.⁶¹ Newark cited the Comprehensive Plan Acts insisting that the bridge would be in "conflict therewith, obstructive thereof and inimical thereto." The Port Authority took a neutral position, merely praying that its legal duties in the premises be determined. The Supreme Court said:

Approval by the Port Authority of the company's plans for the proposed bridge is not required. There is no provision in any of the law relating to the Port Authority, or the comprehensive plan for the development of the port, which requires such approval. And the Port Authority does not claim that the company was required to obtain its permission . . . It does not appear that the Port Authority has attempted, or has power, to deprive the company of its right to maintain, improve and use that part of its railroad. The assertion that the bridge is in conflict with the comprehensive plan is not supported by any facts alleged in the complaint or in the answer of the Port Authority.⁶²

Whether the Supreme Court's decision denying to the Port Authority any jurisdiction over the plans of the railroad companies for terminal improvement could have been attributed to quiescence on its part is a matter for speculation. In any case, without waiting for the decision, the Port Authority changed its policy and assumed an aggressive attitude. In 1923, shortly after the conclusion of Belt Line 13 hearings, it

⁶⁰ "Minutes," Aug. 2, 1922, p. 1.

⁶¹ *City of Newark v. Central R. R. Co. of N. J.*, 287 Fed. 196 (1923); 297 Fed. 77 (1924); 267 U. S. 377 (1925).

⁶² 267 U. S. 386.

requested the carriers through the chairman of the Railway Executives Committee to advise it of their plans for new facilities or extensions. Implying that it possessed jurisdiction over these matters, the Port Authority suggested that "it would be most unfortunate . . . if plans were progressed independently to the point of formulation and later found to be, in the opinion of the Commissioners of the Port Authority, inconsistent with the Comprehensive Plan as defined by law; . . . [because] in many instances a certificate from the Port Authority would be a necessary prerequisite to complete authority to make important changes affecting operations and facilities within the Port District."⁶³

The carriers replied that they would be glad to cooperate and advise the Port Authority of their plans "before undertaking any improvement . . . that would prevent the consummation of any [Comprehensive Plan] projects." At the same time they warned the Port Authority that it would not be recognized as a "regulatory or supervising tribunal to which resort must be had by the carriers . . . for approval of proposed railroad construction or development," and that "no instance could arise in which a certificate from the Port Authority would be a necessary prerequisite to complete authority to make changes in or addition to our properties, or alter our methods of operation, but that in this respect the carriers are solely subject to the same extent as heretofore to the jurisdiction of the Interstate Commerce Commission and such state commissions as have power to regulate their affairs."⁶⁴

Within a year it became evident that the offer to cooperate meant little. At the Port Authority's *Hell Gate Bridge Case* hearing⁶⁵ the Long Island Railroad's plans for extensive improvements at Long Island City were revealed. Of these the Port Authority had received no previous official information.

⁶³ "Minutes," Nov. 28, 1923, p. 2. Letter Outerbridge to Rea.

⁶⁴ *Ibid.*, Dec. 26, 1923, p. 1. Letter Rea to Outerbridge, Dec. 21.

⁶⁵ October, 1924. See *supra*, p. 81.

The Comprehensive Plan had not contemplated further development of the Long Island City gateway as proposed by the railroad because of its dependence upon car-floating and railroad occupancy of the waterfront, both of which were deemed to be major factors in the high cost and congestion of freight transportation in the Port District. On the other hand the Plan did emphasize the Hell Gate Bridge and Bay Ridge gateways. The conflict was clear, but the Port Authority was in a weak position to press the point because obvious congestion at Long Island City made immediate relief imperative.

However, the Port Authority did confront counsel for the Long Island with the letter quoted above in which the carriers agreed to advise the Port Authority of their plans. In defense it was asserted that the Long Island's plans were not hostile to the Comprehensive Plan and therefore did not come within the purview of the correspondence. In any case, it was said, the carriers would judge in the first instance whether their plans were hostile or not.⁶⁶

Thereafter the Port Authority wrote to the Interstate Commerce Commission to see if some arrangement could not be made whereby applications for certificates of convenience and necessity on the part of the carriers in the Port District could be submitted to it. The Commission replied that while appreciating the desirability of cooperation, they were not convinced that "it would be proper for us to require the carriers to submit their applications to you before filing them with us." But they agreed to furnish the Port Authority with a copy of any application involving the construction or abandonment of lines within the Port District. This would enable the Port Authority to determine whether or not the application conflicted with the Plan, and whether the Port Authority desired to participate in the proceedings.⁶⁷

Rebuffed by the railroads on the one hand and by the Interstate Commerce Commission on the other, the Port Authority

66 P. N. Y. A. Docket No. 2. Hell Gate Bridge Case. "Transcript," p. 409.

67 "Minutes," Dec. 18, 1924, p. 3, and Dec. 26, pp. 1, 5.

in its report on the *Hell Gate Bridge Case* (1925) still insisted upon "the necessity of reporting to us any plans for the improvement of facilities in the Port District . . . before and not after the construction work on the improvement has commenced."⁶⁸ On the heels of this pronouncement came the Supreme Court's decision in the *Newark Bay Bridge Case*.

WEST SIDE IMPROVEMENT

Nevertheless the Port Authority proceeded to break another lance with the railroads. Operation by the New York Central Railroad at grade on the west side of Manhattan had become increasingly inefficient. It was vitally important to the company to expand and modernize its terminal facilities in order to meet increasing demands upon its services. For over twenty years the city and the railroad had negotiated and battled over the problem of finding a mutually acceptable plan of improvement.⁶⁹

In 1923 the legislature passed an act requiring the electrification of all railroads within the city limits by January 1, 1926.⁷⁰ Although ostensibly a measure to protect public health, it was understood that complete electrification probably could not be provided with operation at grade. Thus spurred the New York Central made application to the Transit Commission⁷¹ for funds under the general railroad law to eliminate all grade crossings on the west side. Sections of the law authorized the state to pay 25 per cent, the city 25 per cent and required the railroad, when so ordered, to pay for the remain-

68 P. N. Y. A. Docket No. 2. *Hell Gate Bridge Case. Report . . . , Feb. 13, 1925*, p. 12.

69 See pp. 13-16, *supra*, for these events and a description of the facilities.

70 *McKinney's Consol. Laws of N. Y. Ann.*: Public Service Comm. Law, sec. 53a; also *L. N. Y.* 1923, c. 901 (Kaufman Act). The time limit was extended several times and the act finally declared unconstitutional as in conflict with the federal Safety Appliances Act. *Staten Island Rapid Transit Ry. Co. v. Public Service Com.*, 16 Fed. (2nd) 313 (1926).

71 A regulatory commission with appropriate jurisdiction over railroad and rapid transit matters within the city of New York.

ing 50 per cent of the cost of grade crossing elimination.⁷² Due to the inadequacy of state appropriations, and the fact that the west side was regarded as a special problem, no previous attempt had been made to apply these provisions. The Transit Commission did order the elimination of certain grade crossings in the vicinity of 125th Street, but rejected the application in so far as it related to the tracks south 79th Street. Lack of funds and confusion in the statutes were the reasons given.⁷³

After the World War the growth of the city along its longitudinal axis, together with a phenomenal increase in the use of automobiles and trucks, produced a condition of serious congestion and intolerable delay in the streets of Manhattan. The city was faced with the problem of finding additional north and south traffic arteries. For some time the idea of an elevated express highway in this connection had excited the imagination of engineers and public officials.

In February, 1925, Borough President Miller of the Borough of Manhattan submitted to the Board of Estimate and Apportionment a plan whereby the New York Central agreed to build, without cost to the city, an elevated express highway above the streets adjacent to the Hudson River from 72nd Street to Canal Street in consideration of the relocation of its tracks south of 60th Street upon an elevation beneath the highway and a readjustment of its existing rights and easements. This plan differed from the Mitchel plan, so bitterly fought in 1916-17,⁷⁴ by making the upper deck of the elevated railroad an express highway and permitting it to occupy the waterfront streets all the way to Canal Street instead of being

⁷² McKinney's . . . : Railroad Law, secs. 91, 94.

⁷³ New York Transit Commission. *The Grade Crossing Problem in the City of New York and its Solution: Report to the Commission by LeRoy T. Harkness, Com'r., Oct. 15, 1925.* New York, 1925. 34 pp., maps. New York State Legislative Committee on Grade Crossings. *In the Matter of the Tracks of the New York Central Railroad Company on the West Side of the Borough of Manhattan in the City of New York. Memorandum Prepared for the Use of the Committee by LeRoy T. Harkness of the Transit Commission, November 1925.* New York, 1925. 16 pp.

⁷⁴ See *supra*, p. 14.

located on a private right of way below 30th Street. The civic associations and trade groups seem to have generally approved the so-called Miller plan.⁷⁵

According to the Comprehensive Plan Acts the west side problem was to be solved by the construction of a series of off-track, inland union freight stations served from the railheads by auto trucks until such time as the underground automatic system was practicable. When the Miller plan was announced, the Port Authority immediately opposed it. Its own plan for union terminals was nearing completion and was published in August, 1925.⁷⁶

Naturally the Port Authority disavowed any jurisdiction over the elevated highway or electrification and grade crossing elimination. But it did assert jurisdiction over the new freight terminal facilities which were included in the Miller plan. To that part of the Miller plan which extended below 30th Street the Port Authority interposed four main objections: 1. It was in conflict with the law because it did not provide for union terminals. The new terminals were to be for the exclusive use of the New York Central. 2. It was not fitted into any plans for service to Manhattan by New Jersey railroads. 3. It was a plan, not for one terminal, but for a series of terminals sufficient to handle all the traffic to and from Manhattan. It was said that if the New York Central possessed these terminals it would control practically all of the competitive traffic on Manhattan, and would not cooperate in a program of union terminals. Rather it would be in competition with them, making impossible a solution of the Manhattan freight problem along cooperative lines. 4. The cost would be so great that in order to earn a fair return on the investment, an increase in freight rates would follow.⁷⁷

⁷⁵ *New York Times*, Feb. 2, 1925, p. 1.

⁷⁶ P. N. Y. A. *Improved and Economic Freight Service for Manhattan, Universal Inland Freight Stations and Industrial Terminal Buildings, August 1925*. New York, 1925. 25 pp., illus., diagrs.

⁷⁷ P. N. Y. A. *Communication to Hon. Julius Miller, President of the Borough of Manhattan, City of New York, in Regard to his Report and Plan*

In bargaining with the city the New York Central had always stressed its franchise rights in the streets. On that score the Port Authority said:

We are not accepting for one moment the point of view that because a railroad has the legal right to occupy either the streets or any other highway, it must be compromised with on the basis of further extending its competitive control. We are quite aware that the carriers would like to extend the field further, and that it is a process of persuasion, and perhaps in some instances coercion under the law, before they will join in an effort to accept the policy of the law and adjust themselves accordingly.

Surrender to the point of view of any one of them would, in our judgment, be most unwise policy, and in the case of the New York Central for New York City would be suicidal.⁷⁸

As a result of these objections Borough President Miller withdrew his plan, but the debate continued.⁷⁹ In its turn the New York Central assailed the union inland terminal plan charging that it would increase the amount of human labor involved in handling freight and would congest the streets. "The whole idea of union freight terminals is bunk; there is nothing in it," said a representative of the railroad at a public hearing.⁸⁰ The New York Central denied that it would enjoy any more or less of a monopoly than it had enjoyed hitherto. It asserted that the first principle to be observed in reducing the general cost of transportation and in improving Manhattan freight service was to bring the railheads as near as possible to the

for West Side Elevated Freight Tracks and Vehicular Highway, Feb. 6, 1925. New York, 1925. 19 pp. Also New York Times, Feb. 4, 1925, p. 23; Feb. 8, 1925, p. 8; Feb. 19, 1925, p. 1, Mar. 8, 1925, p. 16.

⁷⁸ P. N. Y. A. *Communication . . .*, Feb. 6, 1925, p. 18.

⁷⁹ *New York Times*, Mar. 3, 1925, p. 18.

⁸⁰ *New York State Legislative Committee . . . Memorandum Prepared for the Use of the Committee by the Port Authority in Response to the Memorandum Filed by the New York Central Railroad Company as to the Jurisdiction of the Port of New York Authority, Dec. 19, 1925, p. 8, quoting from the record. New York, 1925. 32 pp. See also New York Times, Dec. 4, 1925, p. 25.*

point of ultimate delivery.⁸¹ This principle, it may be noted parenthetically, was made to order for the New York Central, since the railheads of competing carriers were on the far side of the river.

In reply to the threat of coercion the New York Central challenged the powers and jurisdiction claimed by the Port Authority. It contested the interpretation given by the Port Authority to the Comprehensive Plan Acts and the Investigation and Subpoena Act. The former were said to be by their explicit provisions no more than a plan of general development which did not affect or invade existing franchise or property rights, or confer upon the Port Authority any power to supervise, regulate or control the acts of others. Reference was made to the recent decision of the Supreme Court in the *Newark Bay Bridge Case*. The New York Central described the Port Authority as simply a corporate body with power to engage in transportation service subject to all the laws governing a private corporation, and therefore, without power to claim a stay upon the activities of any other corporation. Its "necessary and appropriate powers" were said to include only such corporate powers as would enable it to act within these premises. It was denied that they included the power of eminent domain. As to the Investigation and Subpoena Act, it was declared to be invalid while lacking the concurrence of New Jersey.⁸²

The Port Authority maintained that the Comprehensive Plan Acts constituted a veritable exercise of the states' police power and that the Investigation and Subpoena Act was valid in the state of its enactment as a "delimitation of the jurisdiction of the courts" within that state.⁸³ It is the present

⁸¹ *Idem*. Memorandum Prepared for the Use of the Committee by the New York Central Railroad Company in Response to the Request of the Committee, as to the Jurisdiction of the Port of New York Authority, Dec. 15, 1925. New York, 1925. 18 pp.

⁸² *Ibid*.

⁸³ *Idem*. Memorandum . . . by the Port Authority . . . , Dec. 19, 1925, p. 12.

writer's conclusion that the New York Central's legal position was essentially correct as the law stood, although unwarrantedly minimizing the role of the Port Authority as a public planning agency. Again the issue did not reach a judicial decision.

The year passed without definite progress toward a solution of the problem one way or the other. In July, 1926, Mayor James J. Walker called a conference of all the interested parties. A committee of engineers was appointed to report a plan that would be generally acceptable. This committee narrowed its efforts, over the protests of the Port Authority's representative, to preparing a physical plan without regard to economic or operating considerations. The plan submitted on May 13, 1927 dealt exclusively with the railroad aspect.⁸⁴ The elevated express highway was to be a separate municipal project.

It provided that the railroad tracks should be relocated on a private right of way from 60th Street to a new terminal just north of Canal Street. Between 60th Street and a new double-decked yard at 30th Street the tracks were to be depressed passing under the intervening streets, and south of the 30th Street yard they were to be elevated. The company expected that in course of time the elevated structure would be enclosed in terminal and loft buildings. Insofar as this proposal provided for a private right of way, cessions of land and other adjustments by the city, it followed the Mitchel plan, differing from it chiefly by the elimination of an elevated railroad structure on the Marginal Way north of 30th Street. Those features which then aroused widespread opposition remained. Times had changed and now no loud protests were heard. The Port Authority, having had no success in coercing the railroads, abandoned its belligerent policy. It protested, but not too vigorously, and even so without public support.

The proposals of the engineering committee became the basis of a contract between the city and the railroad by which the city granted to the railroad the right to cross over intervening

⁸⁴ West Side Improvement Engineering Committee. *Report to the Mayor of the City of New York, May 13, 1927*. New York, 1927. 16 pp.

streets without rental payment, and agreed to close those streets adjacent to the 30th Street yard which were already occupied by tracks. It also permitted the railroad to extend the apex of its 60th Street yard seven blocks northward into Riverside Park. In return the city received the right to cross the latter yard with its elevated highway and to roof over the tracks from 72nd Street northward. The second concession made it possible for the city to undertake a vast improvement in Riverside Park including an extension of the express highway to the northern end of the island and the addition of a large amount of filled land to the recreational area. These changes have now (1939) been completed.

The Port Authority restated in the engineering committee its opposition to an elevated freight line below 30th Street as an uneconomical capital investment compared with union off-tracks terminals served by trucks. But later, in addressing the Board of Estimate, it narrowed its objections to that part of the line below 12th Street and conceded that the matter of capital investment was for "determination by the railroad company, it having a clear right to the use of its present facilities until it secures new facilities that are satisfactory to it."⁸⁵ This was certainly a far cry from the position assumed four years previously at the beginning of the controversy.

The Port Authority's plan for off-track, union terminals was excluded from consideration by the engineering committee at the outset because it was said that the New York Central would not agree to it. A design for the down-town terminal suitable for union operation at some future time was the only concession which the Port Authority won. But several of its proposals are of sufficient interest to be noted. It proposed, as part of the physical plan, that all of the float-bridges of the various New Jersey roads and their leads between 25th and 39th Streets should be consolidated, and that a union team-track area should be established with connections to the float-

⁸⁵ P. N. Y. A. "Letter to Board of Estimate and Apportionment of City of New York, May 2, 1929."

bridges on one side and to the New York Central on the other. It urged the imposition of the following operating conditions as part of the agreement: (1) that the cars of the New Jersey carriers should have access to any private siding on the new line, and (2) that any less-than-carload-lot freight stations on the new line should be union stations.⁸⁶ These proposals would have had the effect of providing unified terminal operations, but they were rejected by the committee. The Port Authority did not publicize its proposals or attempt to create public opinion in their favor.

In the end the Port Authority informed the Interstate Commerce Commission, with relation to the company's application for a certificate of convenience and necessity, that "the proposed improvement does not conflict physically with any of its plans for the development of the Port of New York."⁸⁷ The distinction between a physical conflict and an economic or operating conflict acknowledged the Port Authority's inability to carry out the Comprehensive Plan without effective power to control railroad terminal development and operation.

Even though the tracks were removed from the streets and the way opened for a magnificent park and highway program, the contract between the city and the New York Central Railroad was a dubious achievement considering the concessions that it involved. It failed to provide a final solution of the west side problem, and by its concessions forfeited the leverage which offered the greatest opportunity to achieve some form of union inland terminal operation. The unwillingness of the New Jersey roads to press for access to the New York Central's

⁸⁶ P. N. Y. A. "Report on the Plans of the West Side Improvement Engineering Committee as issued May 13, 1927, Billings Wilson, Deputy Manager, May 13, 1927." 13 pp., typewritten.

⁸⁷ P. N. Y. A. "Letter to C. D. Mahaffie, Director of the Bureau of Finance, Interstate Commerce Commission, Sept. 7, 1929." The Commission noted that the project was approved by the Transit Commission, that there was no opposition and issued the certificate on Dec. 10, 1929. Finance Docket No. 7753. Abandonment and Construction by New York Central R. R. Co. in New York City, 158 I. C. C., Finance, 309 (1929).

development did not prove that a solution was possible without unification and joint use; it merely postponed the day.

Here in the west side improvement the Port Authority struggled with the same thing complained of by the Interstate Commerce Commission in the *Harbor Case*, the thing which the Comprehensive Plan was intended to end, and against which the Port Authority had been ineffective in the *Hell Gate Bridge Case*—namely, the principle of privileged traffic areas. So strongly was that principle entrenched, and so valued by the railroads, that one hesitates to say definitely that the city officials, even if they had been so inclined, could have made a settlement more along the lines suggested by the Port Authority.

CHAPTER IV

ADMINISTRATION BY PERSUASION

THE Port Authority entered upon the administration of the Comprehensive Plan in the cooperative spirit suggested by the railroad executives. But when the railroads rejected its plan of procedure the Port Authority turned to measures of coercion by appealing to the Interstate Commerce Commission. At no time, however, did it abandon attempts to persuade the railroads that projects in furtherance of the Comprehensive Plan would be "economically practicable," that is, of benefit to them and to the port of New York. This chapter reviews those episodes in which the technique of persuasion predominated. Where the jurisdiction of the Interstate Commerce Commission was involved, as it was at two points, the Port Authority did not appear as the sole protagonist but in association with the shippers and the truckmen.

On April 27, 1927, the railroad executives and the Port Authority met in the first joint conference since the meeting late in 1921 at which the proposed Comprehensive Plan was discussed. In 1927 the Port Authority brought before the conference three plans which it had been studying for some time, and requested the railroads to cooperate in carrying them out. These plans concerned (1) consolidation of railway carfloating and lighterage operations, (2) Belt Line No. 1 in New Jersey, and (3) universal inland freight stations for Manhattan. With regard to each the request for cooperation was denied. The rejection of these proposals coincided with the end of the first phase of administration by persuasion which had been characterized by initiative on the part of the Port Authority and distrust on the part of the railroads. The second phase began in 1928 when the railroads reversed their position on universal inland freight stations and also agreed to cooperate with the Port Authority on two other matters of interest to them, namely: suburban transit in New Jersey and the cross-bay freight tunnel.

CONSOLIDATION OF CARFLOATING AND LIGHTERAGE

In 1922, when the Port Authority proposed the matter of unification of Belt Line 13 for immediate action, it also asked the railroad executives to consider consolidation of their carfloating and lighterage services. It will be recalled that the request was rejected. But in 1923, after the Belt Line 13 hearings, they agreed with the Port Authority to undertake a joint study of the facts.¹

Railroad marine service in the port of New York had developed as a product of the same competitive drive which caused each trunk-line carrier to try to duplicate and, if possible, to exceed the facilities of its competitors and to exploit every strategic advantage of location or equipment. Almost every railroad had waterfront yards with float-bridges. The cars were brought from the classification yards in New Jersey and run onto carfloats to be towed either to pier stations (practically all on Manhattan) for unloading, or to float-bridges of other lines for interchange, or to numerous non-carrier terminals.² A large amount of freight was loaded on lighters for towing to steamship piers and other waterside delivery points. From Bayonne to Weehawken, approximately 50 per cent of the waterfront was occupied by railroad terminals. On the west side of Manhattan many of the piers in choice locations were similarly occupied.³

The report of the joint committee to study the facts was submitted in June, 1926. The amount of equipment devoted to carfloating and lighterage, the volume and distribution of freight so handled and some relative costs were revealed. The nine railroads under survey owned 84 lighterage piers, 71

1 "Minutes," July 18, 1923, p. 5; Dec. 11, 1924, p. 2.

2 Pier station is a New York term for a railroad freight station located on a pier and served by carfloats. In addition to freight terminals belonging to the railroads there were others, such as the Bush Terminal or the Jay Street Terminal in Brooklyn which forwarded freight to the railroads under contract.

3 *Annual Report*, 1923, pp. 18-20.

terminal float-bridges, 10 off-line team-track terminals served by float-bridges, 35 pier stations (52 piers), not to mention other facilities owned either by them, by contract terminals or by private industries. In floating equipment these carriers owned 158 tugs, 338 carfloats and 1537 lighters, barges and other craft. The 37,000,000 tons of freight handled by this equipment in 1923 was distributed 46 per cent to interchange, 21 per cent to pier stations, and 33 per cent to lighterage. The ratio of costs per ton of pier station to interchange carfloating was found to be about four to one, due particularly to light loading in pier station service. The demand for quick service was found to be unimportant.⁴

The report suggested that the Port Authority and the railroads undertake a joint analysis of these facts in order to recommend such consolidation as might appear to be economically practicable. The railroads were not receptive to this suggestion so the Port Authority went ahead and developed its own plan for consolidated operation. This plan was worked out in three stages: first, central tugboat dispatching; second, pooling of tugs and steam lighters; and third, pooling of all marine equipment.

Central tugboat dispatching meant simply cooperation between dispatchers of the several lines under a chief dispatcher and a joint committee. The carriers would thereby make as many tows for each other as would tend to reduce light tugboat mileage. The Port Authority estimated that the carriers could save \$354,780 per annum from the economies of this type of operation.⁵

The second stage, pooling of tugboats, would require all the carriers to relinquish ownership and operation of their tugs to a unified organization, either a joint enterprise or en-

4 P. N. Y. A. and Committee of Railway Executives. "Joint Report on Marine Cost of Handling Railroad Freight in New York Harbor as of October, 1924, June 15, 1926." 4 vols., mimeographed.

5 P. N. Y. A. "Preliminary Report of Deputy Manager on Central Tug Dispatching, April 22, 1926." 13 pp., appdx., typewritten.

tirely independent. Operations would be functionalized into (1) long-haul service, (2) short-haul, cross-river, carfloat and switching work, (3) terminal shifting at float-bridges and lighterage piers, and (4) miscellaneous services including interchange towing. The congestion at steamship piers and float-bridges would be reduced because lighters and carfloats could be moved without regard to ownership. Operations would be directed by a chief dispatcher with district dispatchers and shore captains, all closely inter-connected by telephone. The possibility of short-wave wireless communication with tugboat captains was considered, because inter-communication was the essential part of this kind of operation. It was predicted that this plan would serve the carriers as well or better than their own fleets. The Port Authority estimated that it would save about 25 per cent of their current marine operating costs, or approximately \$2,120,000 per annum.⁶

This was the plan which was put before the railroad executives at the conference of April 27, 1927. The Port Authority asked them to appoint a committee of operating men to consider it.⁷ They refused. Replying through President Loomis of the Lehigh Valley, they stated that they were not interested in reducing costs at the expense of service. "To consolidate the harbor service of the New York railroads and to eliminate the competition which now exists among them as they strive to meet the demands of their patrons would serve . . . to eliminate in every way the human element which plays an important part in their present efficiency . . . If anything is done to eliminate competition, service is likewise going to suffer." The Port Authority's plan to functionalize towing was branded as "utterly impractical."⁸

⁶ P. N. Y. A. "Consolidated Carfloat and Lighterage Operations: Pooling of Tugboats, Nov. 1, 1926." 50 pp., exhibits, typewritten.

⁷ Conference of Railroad Executives and Port Authority Commissioners, April 27, 1927. "Port Authority Memorandum for Discussion." 8 pp., typewritten.

⁸ *Idem*. "Statement on Pooling Railroad Marine Equipment by President Loomis, Lehigh Valley RR." 2 pp., typewritten.

Nevertheless, the Port Authority completed its study by reconstructing 5,206 lighter and 2,563 carfloat movements with reference to load requirements over a five-day period in the peak month of October. It estimated that an additional \$270,000 per annum could be saved by consolidated operation of this type of equipment making a grand total of \$2,390,000.⁹

Since the railroads were not interested in these plans the Port Authority did nothing more with them until the issue of free lighterage was revived again, when, in 1933, the Port Authority was able to bring its conclusions before the Interstate Commerce Commission.¹⁰ At that time the dire financial straits of the railroads caused them to give unusual heed to elimination of preventable wastes. The creation of a Federal Coordinator of Transportation and the subsequent submission of the Port Authority's marine cost data to the Eastern Regional Coordinating Committee, all taken together, impelled the railroads to arrive precipitately at a decision to "pool their equipment and completely unify their lighterage operations" under one responsible head.¹¹

Even though this step was especially encouraged by the Coordinator's office, it does not appear that the decision to pool equipment and unify operations actually was carried much beyond the first stage of the Port Authority's sequence, that is, central tugboat dispatching. Some time previously the railroads had connected their tug dispatchers by a belt line telephone system so that the towing needs of one road could be supplied by another whenever convenient. The most important change now instituted was to establish a central tug dispatching office on Manhattan from which all towing operations could

⁹ P. N. Y. A. "Report of Deputy Manager on Consolidation of All Railroad Marine Equipment at the Port of New York, Nov. 4, 1927." 73 pp., tables, map, typewritten.

¹⁰ I. C. C. Docket No. 23327. Boston Differential Case. *New York Times*, May 25, 1933, p. 21.

¹¹ *New York Times*, July 20, 1933, p. 27, and July 23, II, p. 7 (text of summary report to the Eastern Railroads Presidents' Conference Committee by a sub-committee of the committee on preventable wastes).

be directed. It is obvious that cooperation when limited to dispatching could not realize all the economies attributed by the Port Authority to its plans. However the railroads did not publish any statement showing the internal organization or the operating results of this cooperative service; nor were the reasons made public when, in May, 1937, they reverted to the rudimentary form of cooperation in use prior to 1933. Reliance upon conjecture and verbal opinions to supply these reasons would be entirely too hazardous.

BELT LINE NO. 1 IN NEW JERSEY

At the conclusion of Belt Line No. 13 hearings in the fall of 1923 the railroad executives also agreed to undertake a joint study for the construction of an interchange belt line on the westerly side of the Palisades to connect the classification yards of the northern group of New Jersey railroads.¹² This line would also serve eventually as a lead for the Cross-Bay Tunnel. Preliminary studies of possible locations were made. Several plans and profiles were prepared none of which were satisfactory to the carriers' operating officials because of unfavorable grades due to numerous highways and trunk line tracks which could not be crossed at grade. In 1926 and 1927 these studies were resumed by the Port Authority engineers without the cooperation of the railroads, and a revised location was mapped out.

At the conference of April 27, 1927, the railroad executives were asked to appoint an operating committee to review the new plans.¹³ They refused. Speaking for the executives, President Pearson of the New Haven expressed doubt if the line would be of much use even if it were in existence. Expanding his remarks to include belt lines in general, he said: "Material changes have transpired in the situation of the railroads and new conditions have created . . . a different picture for consid-

¹² West Shore (N. Y. Central), Erie, D. L. & W., N. Y., Ontario & Western, N. Y., Susquehanna & Western.

¹³ Conference . . . "Port Authority Memorandum for Discussion."

eration today as compared to that when the Port Authority plans were made." Unfortunately he did not stipulate those changes and conditions.¹⁴

Further studies by the Port Authority on the subject centered around plans for the Cross-Bay Tunnel and will be mentioned later in that connection.

UNION INLAND FREIGHT STATIONS

The Port Authority published its plan for the establishment of union inland freight stations in August, 1925. In order to prepare this plan the freight movements of 15,000 business concerns on Manhattan were analyzed. Pick-ups and deliveries were spotted and the routes of travel were charted. The volume and distribution of freight was ascertained. The costs of loading and unloading, of congestion and delay were calculated. Studies were made of the most appropriate type of building and floor plan. Information was obtained as to demand and rentals for floor space above the freight stations.¹⁵

The plan itself provided for nine stations in the region south of 57th Street, one station for each of nine zones approximately equal in tonnage. At each station the shippers in the vicinity would send and receive all package freight without regard to the railroad over which it was routed. The post office idea was extended to package freight. All Manhattan freight except fresh fruits and vegetables, fresh meats and team-track freight, according to the plan, would be delivered from the railroads to these nine stations by truck unless shippers having consignments of five tons or more should elect direct pick-up and delivery service to their places of business. To and from the inland stations the shippers would do their own trucking. The stations would be named in the carriers tariffs at the flat New York rate, but a plus charge would be made for store-door pick-up and delivery. The buildings were to be the size

¹⁴ *Idem*. "Statement on Belt Lines by President Pearson, N. Y., N. H. & H. RR." 10 pp., typewritten.

¹⁵ *Annual Report, 1924*, pp. 15-20.

of a whole city block, and were designed so as to devote most of the street floor and basement to freight handling, while the upper floors would be offered for rent to make the project financially self-sustaining. It was thought that concerns having a large number of package shipments would find such locations desirable, incidentally helping to reduce street congestion.

By the fulfillment of this plan the Port Authority anticipated that the railroads would be able to release forty-three Manhattan piers and a corresponding frontage in New Jersey. It was thought that they could advantageously substitute nine inland stations jointly used for three or four expensive, inefficient pier stations which each railroad operated individually. The amount of costly, cumbersome carfloating could also be reduced. As a result of these economies it was estimated that the railroads could save about \$2,000,000 annually.

To the shippers the plan promised shorter hauls for their trucks, heavier loading, no cross-hauling or split deliveries, and an end to the congestion and delay caused by inadequate space at the railroad pier stations. Truck movements north and south would be limited to a few blocks on either side of the station. It was estimated that the shippers would save about \$12,000,000 per year, without counting the benefits of store-door delivery.

The city of New York, it was said, would derive an advantage from more profitable use of its piers by steamships to which would be added relief from congestion in its streets.¹⁶

It appears that the plan was greeted warmly by the business public and the newspapers. In a short time the Port Authority was encouraged by the response of prospective tenants to take up the question of financing the first unit and of negotiating with the railroads for its use.¹⁷ In March, 1926, the Port

16 P. N. Y. A. *Improved and Economic Freight Service for Manhattan, Universal Inland Freight Stations and Industrial Terminal Buildings*, August, 1925. New York, 1925. 25 pp., diags.

17 "Minutes," Oct. 29, 1925, p. 2.

Authority reported that the railroads had agreed to consider the plan and to appoint representatives to confer on the details.¹⁸

At their conference on April 27, 1927, the Port Authority reminded the railroad executives that detailed reports on how the inland station plan would apply to the operations of each carrier had been in their hands for about a year, and that they had made no response. Furthermore the executives were informed that the Port Authority was at that time preparing to construct the first unit.¹⁹

In a statement unsupported by cost analysis or other data, President White of the Central Railroad of New Jersey²⁰ replied that the proposed stations would not release many piers, that it was cheaper to move freight to Manhattan by carfloat than by truck, and that the railroads were satisfied with their current methods. In his opinion the union stations would not be satisfactory to shippers. Concluding, he stated that the executives were convinced that "the establishment of these stations will not produce the benefits claimed for them, either for the public or for the railroads."²¹

CHANGE OF POLICY

Another impasse had been reached. Efforts to coerce the railroads had failed.²² Efforts to obtain their cooperation by persuasion seemed destined to a similar fate. Either the Port Authority had to find another tactic or acknowledge defeat.

¹⁸ *Ibid.*, Mar. 4, 1926, p. 1.

¹⁹ Conference... "Port Authority Memorandum for Discussion."

²⁰ This road had little merchandise freight on Manhattan, the Lehigh had a relatively small harbor fleet, and the New Haven had no interest in the Jersey wing of Belt Line No. 1. The strategy of allowing the road with least interest at stake to carry the ball against outside interference has become increasingly prominent.

²¹ Conference... "Statement by President White of the Central Railroad of New Jersey." 12 pp., typewritten.

²² Belt Line 13 was not operating as a belt line; the Investigation and subpoena Act was defeated in New Jersey; the Hell Gate Bridge case did not promise a successful outcome; and the Port Authority was making no headway against the New York Central's west side improvements plans.

However, to take the date of April 27, 1927, as the decisive turning point does some violence to the facts. Actually the policy of making plans and proposals with which the railroads were out of sympathy, and expecting that they could be coerced or persuaded into executing them, had been waning for about a year. Even though the Investigation and Subpoena Act contained a provision for the issuance of court orders to compel the railroads to enter the union inland terminal plan, and even though the Port Authority had threatened the New York Central with such action in the west side improvement episode, serious thought of compulsion was soon abandoned. The Port Authority did not really expect much of the 1927 conference. Its policy was already turning to what might be called a "do-something" policy, to a construction program which would offer to the railroads tangible benefits rather than unsympathetic plans. This change coincided with the launching of a New York-New Jersey bridge-building program under Port Authority direction. It was marked by the appointment of a new chairman, George S. Silzer, who as governor of New Jersey had sponsored the bridge program.²³ Internally the change was reflected in a shift of leadership from Julius Henry Cohen, the lawyer, to John E. Ramsey, trained in railroading.

Out of the proposals which the railroads rejected, the Port Authority picked the inland terminal plan as offering the best opportunity for accomplishment. It then decided to proceed with the construction of a single terminal in the heavy tonnage district of the lower west side.²⁴ If the railroads would not cooperate, then someone engaged in the business of consolidating, forwarding and trucking freight might be inter-

²³ Appointed commissioner May 25, 1926, and elected chairman immediately thereafter. In both positions Mr. Silzer succeeded a practicing lawyer, Julian A. Gregory.

²⁴ It was estimated that the building would cost \$7,810,000. The firm of consulting engineers who checked the plans also estimated that rentals would be sufficient to make the project financially sound. Abbott, Merkt & Co. "Report on Universal Inland Freight Station 3-W for the Port of New York Authority, Jan. 18, 1918." 75, 6 pp., mimeographed.

ested. In May, 1928, the Port Authority offered a contract to any operator who could in turn obtain from any two or more railroads an agreement to accept freight at this station at the flat New York rate, and make an allowance to the operator for trucking it to the railroad terminals. Provisions against monopoly control or discrimination were included.²⁵

The significance of this move lay in the announcement of a new tactic, namely that the Port Authority would henceforth deal with the railroads individually or in small groups. It would not restrict itself to their joint committees, resting as they did upon unanimous consent by all the parties to a single proposal. Also it would limit its proposals to such modest proportions as conservative operating officials could consider.

When the Port Authority announced its revised plan, the Pennsylvania Railroad, anxious to improve its competitive position on Manhattan, was definitely interested. When the Pennsylvania decided to act favorably the other railroads could do no less than go along. Consequently, at the Presidents' Conference Committee meeting on July 25, 1928, the position taken the year before was reversed, and the executives agreed to appoint a sub-committee to study the new proposal. Success appeared to attend the change in tactics, and the Port Authority hailed "a new era in [its] relation with the railroads."²⁶ Informally the railroads agreed also to cooperate with the Port Authority to the extent of studying its proposals, one at a time. The suggested sequence was first the inland station plan, second, suburban transit in New Jersey, and third, the cross-bay union freight tunnel.

FROM RAILS TO RUBBER

Before proceeding to the evolution of the inland freight station plan it is advisable to sketch the steps previously taken

²⁵ P. N. Y. A. *Operation of Port Authority Inland Station Number One. Contract It-1. Information for Bidders Proposals, Form of Contract and Bond, June 1928.* New York, 1928. 39 pp.

²⁶ *Annual Report, 1928*, p. 13.

by the New York railroads to develop a motor-truck terminal service.

From 1866, when the first carfloat made its appearance, down to 1921 there had been no change in the methods of transporting freight across the Hudson River. In 1921 the Erie Railroad, being pressed for space in its downtown piers, established three small inland stations for merchandise freight a few blocks from the waterfront, and contracted with a large trucking concern to transport this freight between its railheads in New Jersey and the new stations, utilizing the ferries which it owned. It also offered store-door delivery service through the device of a constructive station.

The constructive station was an imaginary point established just east of the waterfront for the purpose of dividing the cost of trucking. West of the constructive station the truckman acted as agent of the railroad and received an allowance from it. East of the constructive station the truckman became the agent of the consignee and collected with the freight bill a trucking, or plus, charge based upon the additional mileage. Actually, of course, the truck continued without a halt to the consignee's place of business. These two complementary services, inland stations and store-door delivery with a plus charge, were approved by the Interstate Commerce Commission as proper accessorial terminal services.²⁷

Between 1925 and 1927 the Lehigh Valley, the New Haven, the Pennsylvania, the Jersey Central, the Lackawanna and the Baltimore and Ohio for competitive reasons followed the example of the Erie and established constructive stations.²⁸ With the exception of the New Haven, they fixed their constructive station points adjacent to the waterfront. The New Haven, wishing to abandon its pier station on the East River,

²⁷ I. C. C. Docket No. 14828. In the Matter of the Legality of Tariffs Purporting to Embrace or Cover Motor-truck or Wagon Transfer Service in Connection with Transportation by Rail or Water. 91 I. C. C. 539 (1924).

²⁸ The Lehigh and the Pennsylvania also established inland stations.

chose 59th Street which was said to be the dividing line between the territory served by its railheads in the Bronx and its pier station.

The New Haven's move made definite inroads on the New York Central's business. The territory south of 59th Street contained more than ten thousand department stores, warehouses, loft buildings and factories and offered a reservoir of tonnage probably not exceeded by any similar area in the world. In retaliation the New York Central established constructive stations at every lighterage point in the harbor and employed thirty-four firms to do the trucking, paying them allowances in excess of those being paid by other roads. It did not, however, propose to abandon its lighterage service. Neither did the New York Central hold its truckmen to a minimum charge beyond the constructive station point, and they naturally became keen solicitors for New York Central business, which jumped accordingly.²⁹ Trucking and constructive stations had threatened the dominant position of the New York Central on Manhattan and their reply was cut-throat competition.

The Port Authority had regarded the Erie plan with favor and hoped to induce all the carriers to offer a similar service using jointly its proposed union inland terminal system. Instead each railroad developed its service competitively. Now the railroads saw in this competition the spectre of *free* store-door delivery. If allowances were high enough to cover the truckman's costs, he would be forced by competition to forego any plus charge to the shipper. The railroads were afraid that the shipper, having achieved free store-door delivery by indirection would demand it as a part of the railroad service, and demand its extension throughout the port district, perhaps throughout the country. Therefore, in 1928 all of them, except the New Haven, proposed to suspend their constructive

²⁹ I. C. C. Docket No. 19715. Constructive and Off-track Railroad Freight Stations on Manhattan Island, N. Y. *Report of the Commission, July 13, 1929.* (156 I. C. C. 205.)

station tariffs.³⁰ The shippers, the truckmen, and the Port Authority opposed the suspension.³¹

The Interstate Commerce Commission acceded to the wishes of the railroads, but not without stating that it was convinced "that the carriers should make every effort to avail themselves of truck transportation and coordination, properly policed, on Manhattan to the end that the expensive pier stations may gradually be discontinued." It suggested that some provision for direct delivery might be provided if the carriers voluntarily established union inland freight stations.³² This was in accord with the views urged upon it by the Port Authority.³³

However, the Commission found that constructive-station service and trucking in lieu of lighterage, as then operated, could not be sanctioned "because of their plain tendency" to create special rates and rebates, and undue preferences and prejudices, and to reduce the revenues of the carriers below a fair return.³⁴ In vain did the Port Authority protest that the Commission could deal appropriately with abuses without condemning the service.³⁵

It may be inferred that the Commission was genuinely disturbed by the competitive situation, since its findings exhibited more concern for the stability of tonnage distribution than for service to the shippers. In effect the dominant position of the New York Central on Manhattan was recognized and pre-

³⁰ The three roads having inland stations did not propose the abandon them.

³¹ I. C. C. I&S. Docket No. 3100. *Constructive Stations and Trucking in Lieu of Lighterage in New York City and Vicinity* (embraced in Docket No. 19715, *cit. supra*).

³² 156 I. C. C. 225 and 229.

³³ I. C. C. Docket No. 19715. *Brief on Behalf of the Port of New York Authority*. Julius Henry Cohen, Clark & LaRoe, For the Port of New York Authority, Sept. 15, 1928. 161 pp.

³⁴ 156 I. C. C. 235.

³⁵ I. C. C. Docket No. 19715. *Exceptions on Behalf of the Port of New York Authority*. Julius Henry Cohen, Clark & LaRoe, For the Port of New York Authority, Jan. 30, 1929. 37 pp.

served. The Commission's solicitude for established freight territories has been noted before.

The Port Authority had argued that the Commission could compel the railroads to establish constructive stations where they were required to afford adequate transportation service, and that they could not be abandoned without a certificate of convenience and necessity. It had argued further that upon a proper showing of public interest the Commission had authority to convert an inland station of one road into a union station for two or more roads.³⁶ If these contentions had been accepted a basis would have been laid for compelling the railroads to use the Port Authority's proposed union inland stations.

However the Commission took a negative view of its powers and denied the contention saying:

But nowhere in the act is there even a suggestion that the requirement that carriers must furnish reasonable and adequate terminal facilities is intended to supplement their common-law obligation to such an extent that delivery at their freight stations or public team tracks is not complete satisfaction of their lawful obligations. *Interstate Commerce Commission v. Detroit &c. Railway Co.*, 167 U. S. 633.

and also:

From an examination of the authorities it must be concluded as the law now stands that a carrier can not be required against its wishes to furnish personal or store-door delivery of freight . . . It may be as forecast in the *Motor Bus Investigation*, 140 I. C. C. 685, that the time will come when store-door delivery will be accepted by carriers and shippers as the logical solution of terminal problems . . . But that change, under the present state of the law, will have to come with carrier cooperation and cannot come with carrier opposition.³⁷

Since the Port Authority did not ask for an order establishing union inland stations the Commission found it unnecessary to consider the question of its "power to require their

³⁶ *Idem. Brief . . . , cit. supra.*

³⁷ 156 I. C. C. 232.

establishment or to compel the carriers to equip themselves with motor trucks to serve them." But it did take note of the conferences between the Port Authority and the railroads, and expressed the hope that they would result in the establishment of such facilities.³⁸

THE NEW ERA

The railroads' adventure in store-door delivery with a plus charge did not work out successfully. The Port Authority's plan had the Interstate Commerce Commission's blessing, and the railroads were in a mood to try it. After the Commission had rendered its decision, the Presidents' Conference Committee met on July 30, 1929 to hear the report of its sub-committee. This committee under the leadership of the Pennsylvania Railroad had established cordial relations with the Port Authority.

A new plan was devised providing for three (instead of the original nine) inland freight stations to be devoted exclusively to less-than-carload-lot freight, but large enough to be used by all the railroads. It was estimated that these stations could handle all the less-than-carload-lot freight on Manhattan south of 59th Street, other freight to be handled in the usual way until a satisfactory collection and delivery plan could be evolved. The sub-committee estimated that it would cost the railroads somewhat more to handle l.c.l. freight in this way until a complete system of optional collection and delivery for carload merchandise freight would enable them to give up their pier stations entirely. The annual saving which could then be effected was estimated at \$1,496,087.³⁹ The Port Authority suggested a site between 7th and 9th Avenues and 14th and 18th Streets for the first station. Since none of the railroads had stations in that vicinity, the location was perfectly fair from an experimental and competitive standpoint. The sub-committee recommended adoption of the plan.⁴⁰

38 156 I. C. C. 233.

39 The Port Authority estimated \$2,000,000 in 1925. See *supra*, p. 112.

40 Presidents' Conference Committee, *New York Railroads. Report of the*

This recommendation was accepted unanimously by the Presidents' Conference Committee at its meeting on September 4, 1929. A form of contract was approved on April 29, 1930, and executed by eight railroad presidents on December 31, 1930.⁴¹ The agreement provided (1) that the Port Authority should build and lease the station to the carriers for five years with the right of renewal for nine successive five-year terms; (2) that the carriers would establish, operate and promote the use of a union inland freight station, and specify the station in their tariffs for the receipt and delivery of l.c.l. freight; (3) that the carriers would pay a rental of ten cents per ton of freight handled in the station until the net income of the building should exceed \$60,000 per year, then the rental would be reduced to five cents per ton; and (4) that the Port Authority should build and rent to the carriers two or more additional stations on sites mutually acceptable when desired by the carriers.⁴²

On October 1, 1929, as soon as the railroad executives were committed to the use of the terminal in the suggested location, the Port Authority held a public hearing. The union station idea was unanimously approved. However, discordant

Sub-committee, in Connection with the Proposed Universal Inland Freight Station Plan of the Port of New York Authority, and an Optional Collection and Delivery Service Plan Involving Carload Non-perishable Merchandise Freight, July 30, 1929. New York, 1929. 5, 7, 14 pp., plans. (Includes P. N. Y. A. Memorandum for Sub-committee... on Universal Inland Freight Stations for Manhattan, July 19, 1929). The Port Authority estimated that the project would cost \$14,500,000, and that it would have a freight-handling capacity of 680,000 tons per year. Since the sub-committee estimated that only 372,000 tons of l. c. l. freight per year were originated or received in the area assigned to the station, it is apparent that the Port Authority was extremely optimistic either as to the ability of the station to draw from beyond its area or the prospect of handling categories of freight other than l. c. l.

⁴¹ *Annual Reports, 1929 and 1930.* The reader will observe how slowly these things moved, from July, 1928, to December, 1930.

⁴² P. N. Y. A. *Agreement for the Use of Union Inland Freight Station in Inland Terminal No. 1, Located at 15th St. to 16th St., 8th to 9th Avenues, New York City, Dec. 31, 1930.* New York, 1930. 15 pp.

notes were sounded in three other respects. Real estate and warehousing interests protested against government competition in the real estate market, with special emphasis upon tax exemption.⁴³ Sectional interests in New Jersey spoke up to demand similar units. Local real estate groups protested against the site. But the major civic associations including the Regional Plan Association endorsed both the principle and the location.⁴⁴

Construction was begun, land was purchased and buildings demolished on short-term loans. But permanent financing encountered difficulties. Union station bonds could not be sold alone. Early in 1931 the Port Authority acquired the Holland Tunnel. Then a tunnel bond issue and the union station issue were sold together, with the latter secured by Holland Tunnel revenues.

On October 3, 1932, Union Inland Freight Station was opened for business. Its operation⁴⁵ was placed under a joint Board of Managers representing the eight participating railroads. The cost of operation was to be apportioned among them on a tonnage basis.

The railroads agreed to promote the use of Union Inland Station. The record indicates very strongly that they have not lived up to their agreement. Rather, it appears that wherever it lay within their discretion they have hindered its fullest use. With one, sometimes two, exceptions the railroads have not chosen to truck freight direct from break-bulk stations in New Jersey to Union Inland, but have preferred to continue to pass Union Inland freight through their regular pier stations.⁴⁶

⁴³ The Port Authority agreed to pay the City a sum of \$60,000 per annum in lieu of taxes, said to be the amount previously paid in taxes on the real estate to be acquired.

⁴⁴ P. N. Y. A. "Stenographic Report of the Public Hearing to Determine the Character and Location of Inland Terminal No. 1, Oct. 1, 1929." 133 pp., typewritten.

⁴⁵ That is, the freight station, not the entire building.

⁴⁶ Yet the economy of joint or union terminals was recognized by the railroads in 1933 when two or more of them consolidated their pier stations on the East River and in Brooklyn. *Annual Report*, 1933, p. 21.

The participating railroads have, it is true, specified the Union Inland in their tariffs for less-than-carload-lot freight, but only as a special form of delivery. Their regulations instruct freight agents through the country to mark New York l.c.l. freight for delivery at the pier station nearest to the given address (unless by optional pick-up and delivery service).⁴⁷ If the shipper himself designates Union Inland, his freight will be so delivered. But the carriers have not assigned to that station a delivery zone for inbound freight similar to those marked out for their pier stations. The effect of this discrimination is seen in the disproportion of inbound to outbound freight. In 1929 the ratio in all Manhattan l.c.l. freight was 42 per cent inbound to 58 per cent outbound, but in the area of the new station the ratio was 47 per cent inbound to 53 per cent outbound, according to railroad estimates.⁴⁸ In 1936 the actual ratio for Union Inland was 16 per cent inbound and 84 per cent outbound. Even though the station draws some outbound freight from beyond its zone, the discrepancy in ratios may be attributed in large part to the above discrimination.

Again, when three steamship lines with piers on Manhattan applied in 1933 to have the Union Inland designated as delivery point for l.c.l. freight consigned to them for forwarding beyond the port district, the Trunk Line Association (representing the railroads) refused the application with the comment that "it was not the intention that the Inland Station should be used as a point of interchange for through freight by rail carrier or water lines." If this application had been granted it is probable that many other steamship lines would have used the station.⁴⁹

⁴⁷ See *Curlett's Local, Joint and Proportional Freight Tariff Naming Lighterage and Terminal Regulations in New York Harbor and Vicinity...*, effective May 10, 1939 (I. C. C. No. A-620), Item No. 1415.

⁴⁸ Presidents' Conference Committee... *Report of Sub-Committee...*

⁴⁹ *Curlett's...*, Item No. 1315. Also *Annual Report*, 1933, p. 23; *New York Times*, Oct. 13, 1933, p. 39. The Erie was reported as willing to accede, but pressure from the other lines caused it to join in the prohibition.

A third indication of the manner in which the railroads have "promoted" the use of Union Inland Station may be observed in connection with the development of a pick-up and delivery service. In order to meet the competition of the motor truck and its door-to-door service a number of railroads throughout the country for some time had been experimenting with, and expanding a system of optional motor truck pick-up and delivery with a plus charge for l.c.l. freight. In 1933 the Interstate Commerce Commission sustained these tariffs as an experiment to recover traffic lost to highway agencies.⁵⁰ In the spring of 1936 certain carriers proposed to broaden these tariffs so as to make the service substantially universal in eastern territory. The removal of all plus charges on hauls over 260 miles (the minimum charges being thirty cents per hundred pounds), and an allowance of five cents per hundred pounds to those who made their own trucking arrangements were the most important departures from the experimental schedules.

It will be recalled that Union Inland Station was built and the contract for its use as a freight station was signed upon the presumption that the signatory railroads would handle all their l.c.l. freight through it and two other such stations. This presumption was implicitly repudiated under the proposed tariffs. Not only did the carriers propose to handle their l.c.l. freight directly and competitively, but they also discriminated against the Union Inland Station by omitting it entirely from the list of pier stations at which allowances would be made to shippers who did their own trucking. The Port Authority protested vigorously, and was joined by the highway motor carriers and local truckmen.

The Interstate Commerce Commission first suspended and then sustained the proposed tariffs with two provisos: first, the minimum rate for pick-up and delivery service should be increased from thirty to forty-five cents per hundred pounds

⁵⁰ *New York Times*, Nov. 28, 1933, p. 33.

and second, the allowance of five cents per hundred pounds should be paid to shippers using the Union Inland Station.⁵¹

Although the Commission removed a glaring item of discrimination it shied clear of a broader question concerning the manner of operation. The Port Authority took the position that a collection and delivery service was desirable and necessary, but that it should be organized under a unified responsibility. It observed with disappointment that, while the carriers were progressing cautiously toward a motor-truck terminal service, they were actually retrogressing in the fundamentally necessary joint effort to coordinate their facilities. It predicted that competitive trucking was going to cause the railroads additional losses. The Port Authority asserted that this situation offered "an unusual opportunity to the Commission to require the railroads to join cooperatively to solve the New York terminal problem."⁵² But the Commission replied: "Such conditions pertain to details of operation, and in our opinion could not lawfully be attached to our approval of the proposed schedules."⁵³ By a narrow view of the law and its own powers the Commission again refused to support the principle of union terminals.

A final indication of the attitude of the carriers toward the Union Inland and their agreement to promote its use will be cited. After the above tariffs went into effect (November, 1936) preparations were made at the Union Inland Station to pay in one check the allowances due from all the participating railroads to shippers using the Station. This system was satis-

51 I. C. C. I.&S. Docket No. 4191. Pick-up and Delivery in Official Territory. *Report of the Commission, Oct. 13, 1936.* (218 I. C. C. 441).

52 I. C. C. I.&S. Docket No. 4191. *Brief on Behalf of the Port of New York Authority.* Julius Henry Cohen, Wilbur LaRoe, Jr., Attorneys, Sept. 16, 1936, p. 73. Washington, 1936. 75 pp.

53 218 I. C. C. 482. Commissioner Eastman, dissenting, came much nearer the Port Authority's point of view when he said: "If these tariffs were disapproved, as I believe they should be... the chances would be much improved that this important matter of less-than-carload freight would be dealt with in a constructive and really effective way." *Ibid.*, 400.

factory to the shippers and worked efficiently. Nevertheless, within four months the Board of Managers arbitrarily ordered that all payments should be made from the pier stations of each railroad by individual checks.

As a result of these measures the performance of Union Inland Station in terms of tonnage handled has not been impressive. The growth has been steady, but so modest, after the second year, as to be attributable largely to increasing business activity rather than to any important change in freight handling methods. The Board of Managers has not advertised the advantages of the station, nor have they permitted their agent to solicit business for it. However, the Port Authority has, in a limited way, both advertised and contacted the shippers in its favor. It is probable that a vigorous promotion campaign would materially alter the tonnage figures. In 1937 the station handled 74,873 tons of l.c.l. freight, representing only a little over 20 per cent of the l.c.l. tonnage for the area in which the station was located, as estimated in 1929. The basement portion of the station has been leased by the railroads to the Railway Express Agency which handled an additional 110,884 tons in 1937, making a total of 185,757 tons, or somewhat better than a quarter of the station's estimated capacity.⁵⁴

But the value of this station cannot be measured by tonnage alone. Located in what is perhaps the largest originating package freight center in the world, in an area devoted to large stores, warehouses and distributing headquarters, its usefulness to the shippers must also be considered. In the peak month of October, 1937, 13,000 shippers' trucks called at the station with freight which was consolidated into 1,834 railroad trailers, making a net reduction of over 11,000 trucks moving to the waterfront in one month.⁵⁵ Measured in terms of the number

⁵⁴ *Annual Report, 1937*, p. 50. The rental paid by the Railway Express Agency in 1936 was \$48,000 per annum which covered the carriers rental of ten cents per ton more than twice over. I. C. I.&S. Docket No. 4191. *Brief on Behalf of the Port Authority*, p. 37.

⁵⁵ *Annual Report, 1937*, p. 50.

of shipments, the station's usefulness stands out even more clearly. More than half of the railroad l.c.l. shipments south of 59th Street were estimated to have been handled by this station. These for the most part have been small shipments, averaging 230 pounds.⁵⁶ The union station's advantages to shippers in terms of reduced trucking costs, and to the city in reduced street congestion, are obvious and out of proportion to the tonnage volume.

On the record of their performance one might surmise that the railroads would like to abandon the Union Inland Station altogether. They have actually renewed their lease only from year to year instead of for the five-year period stipulated in the agreement. Even the Pennsylvania, with the changes that time has brought in its management, seems to have lost interest in the Manhattan situation and to be giving major attention to developing its competitive pick-up and delivery service generally. Certainly the railroads are not interested in the construction of two more units and the Port Authority is not pushing the matter. Yet if the railroads were to make an attempt to abandon the present Union Station, such a move would surely be met with vigorous protests from the Port Authority supported by the shippers.

In conclusion there is, first, a persistent query whether this venture would not have been more successful if the Port Authority had retained full control of station operations. In view of the many variables which have been involved the present writer is unable to give an answer.

There is then a second question. Could the bold tactics of 1928 be revived to bring about a completion of the 1929 program? The answer must take cognizance of the fact that the railroads seem to have closed their ranks against cooperation among themselves or with any public authority. The only visible leverage whereby the Port Authority could obtain positive results would be through the needs of the shippers on the one

⁵⁶ "Inland Station Five Years Old," *Railway Age*, CIV (1938), 198-200.

hand and the competition of over-the-road truckers on the other. Even if the Port Authority were inclined to force the issue in this way, of which there is little indication, the problem of financing would be complicated by the fact that the revenues of the present Union Station have barely paid its bond interest, much less its maturities, and that all other Port Authority revenue is at present pledged to the service of bridge and tunnel debt.⁵⁷

SUBURBAN TRANSIT

When the railroads agreed in the summer of 1928 to cooperate with the Port Authority upon a program which included the matter of suburban transit, the Port Authority had already devoted more than a year of study to the subject. It will be recalled that in the early days of the Port Authority both the railroads and certain communities in northern New Jersey had urged upon it the need for action with regard to the passenger problem, and that the Port Authority had felt that its resources would be fully occupied with the freight problem. In December, 1926, in response to an inquiry from the North Jersey Transit Commission, the Port Authority stated that it was willing to cooperate in the matter of suburban transit, but that its duties were already onerous and it was not seeking others.⁵⁸

Yet the following spring, when a bill came up in the New Jersey legislature instructing the Port Authority to study the problem and recommend an interstate suburban transit plan,

⁵⁷ In September, 1938, the Shippers Conference of Greater New York adopted a report suggesting that the Port Authority study the matter of union truck terminals. *New York Times*, Sept. 15, 1938, p. 51. In November, 1939, responding to requests from several motor-truck operators, the Port Authority indicated its willingness to join in any conferences or joint studies having in mind the construction of a union motor-truck terminal by the Port Authority. "Minutes," Nov. 30, 1939, p. 180; *New York Times*, Nov. 15, 1939, p. 47.

⁵⁸ "Minutes," Dec. 9, 1926, p. 209; North Jersey Transit Commission. *Report . . .*, Feb. 10, 1927, p. 5.

the Port Authority did not oppose it. This bill was passed, but a similar bill in New York was not.⁵⁹

Soon thereafter the Port Authority and the North Jersey Transit Commission⁶⁰ made an agreement whereby the former would initiate a joint study of suburban transit under a joint board to be jointly financed. It was agreed to spent not less than \$75,000 of which the North Jersey Commission would contribute \$26,500. The Suburban Transit Engineering Board was organized with representatives from the Port Authority, the North Jersey Transit Commission, the city of New York through its Board of Transportation, the New York counties of Westchester, Nassau and Suffolk, and the Association of Railroad Executives. The Port Authority created a Suburban Transit Division in its staff and together with the North Jersey Transit Commission carried the entire cost for the first year.⁶¹

The New York suburban transit bill was reintroduced in the 1928 session, and passed over the opposition of the New York City delegation, only to be vetoed by Governor Smith with the remark that the "Port Authority should stick to [its] program."⁶² In spite of the governor's veto the Port Authority continued to support the Suburban Transit Engineering Board. The power to do so without particular authorization from New

⁵⁹ *L. N. J. 1927, c. 277*, approved Mar. 29, 1927. *New York Senate Journal, 1927*, p. 440.

⁶⁰ This body was created in 1922 (*L. N. J. 1922, c. 104*) at the instance of the communities in northern New Jersey after they failed to interest the Port Authority. It rendered two notable reports. Its *Report to the Senate and General Assembly, Jan. 15, 1926* (Hoboken, 1926, 120 pp., maps, plans, charts, illus.) included an Engineering Report by Daniel L. Turner, consulting engineer, and its *Report . . . Feb. 10, 1927* (Jersey City, 1927. xvi, 281 pp., maps, plans, tables) included Studies in the Means of Financing by Philip H. Cornick, and an Opinion of Counsel Relative to District Organization by Spaulding Frazer.

⁶¹ *Annual Report, 1927*, p. 53; "Minutes," June 2, 1927, pp. 479, 486; June 16, p. 518.

⁶² *New York Assembly Journal, 1928*, p. 2262; *Senate Journal, 1928*, p. 1140; *New York Times*, April 7, 1928, p. 32. The bill passed the Senate again in 1929 but did not move in the Assembly. *Senate Journal, 1929*, p. 1179; *Assembly Journal, 1929*, p. 1754.

York was defended in a resolution adopted by the Port Authority in June, 1928, declaring that it was created to be the agency of the two states in planning and developing the port of New York and "that no adequate or effective transportation development could take place without taking full account of transportation of passengers as well as freight."⁶³

The irony of it was that similar views when expressed by railroad executives in 1921 and 1922 failed to influence the Port Authority in the program which it proposed to follow. The change of policy, which began late in 1926 may be attributed to the general failure of the Port Authority to obtain cooperation from the railroads on a program dictated by it. The Port Authority either had to quit, or proceed along lines agreeable to the railroads. At this time the New Jersey railroads wanted help on their suburban transit problem.

The Suburban Transit Engineering Board remained in existence for four years, publishing two interim reports.⁶⁴ The Port Authority continued to bear more than half the cost. After the first year, when the North Jersey Transit Commission's funds were exhausted, the railroads and the Board of Transportation shared the remainder by detailing members of their staffs. The Board organized itself into three committees, one each for the New Jersey, Westchester and Long Island sectors. In each sector important engineering studies had already been made.⁶⁵ The work of the Board consisted of fitting these studies together and extending the traffic studies.

⁶³ *Annual Report, 1928*, p. 64.

⁶⁴ Suburban Transit Engineering Board. *Preliminary Report on Suburban Transit for the Metropolitan District of New York, Jan. 11, 1928*. New York, 1928. 36 pp. *Idem. Progress Report . . . , Mar. 25, 1930*. New York, 1930. x, 50 pp., tables.

⁶⁵ North Jersey Transit Commission. *Report . . . , Jan. 15, 1926* (*cit. supra*). Westchester County Transit Commission (L. N. Y. 1921, c. 581). *Final Report to the Board of Supervisors of Westchester County, Transmitting an Engineering Report by Henry M. Brinkerhoff, Mar. 1, 1926*. New York, 1926. 41 pp., maps. New York Transit Commission. *Suburban Transit Problem, Report of Daniel L. Turner, Consulting Engineer, April 23, 1924*. New York, 1924. 69 pp., maps. Other studies made by various agencies and individual

The proportions of the problem may be indicated by citing a few of the facts which were revealed. The passenger traffic through the metropolitan railroad terminals approached 400,000,000 passengers in 1928, which was about half the total passenger traffic on all Class I railroads in the United States. About 82 per cent of this traffic was from the suburbs, of which slightly more than half came from New Jersey. In the previous thirteen years, traffic through Grand Central Terminal had increased 100 per cent, Long Island traffic through Pennsylvania Station had increased 300 per cent, and traffic for New York through the Jersey terminal had increased 70 per cent, even though since 1920 total passenger traffic in the United States had been falling off at an alarming rate. From one-quarter to one-half of the suburban traffic was handled in a single hour each morning and evening. About 90 per cent of these passengers were destined for points on Manhattan below 59th Street, and about 45 per cent used the city's rapid transit facilities.⁶⁶ New Jersey's special interest in the problem may be gathered from the findings of the North Jersey Transit Commission which observed that within a 20-mile radius of lower Manhattan, New Jersey had an area of 2.35 times that of New York City, but only 35 per cent of the latter's population and 25 per cent of its taxable values. It also observed that New York City had over 600 miles of rapid transit while New Jersey had only 28, and concluded that northern New Jersey had developed only to the extent of one-half its possibilities because of this lack of rapid transit.⁶⁷

In 1931 the Suburban Transit Engineering Board prepared a tentative draft of its final engineering report. The physical plan combined features which had been previously proposed

engineers are summarized in New York State Suburban Passenger Transit Commission. *Report, March 15, 1926.* (Leg. Doc. No. 81). Albany, 1926. 41 pp., maps; and in Harold M. Lewis, *Transit and Transportation: Regional Survey of New York and its Environs, Vol. IV.* New York, 1928.

⁶⁶ Sub. Tran. Eng. Board. *Progress Report . . .*, Mar. 25, 1930.

⁶⁷ North Jersey Transit Comm. *Report . . .*, Jan. 15, 1926, pp. 34-41.

by other agencies. It provided a double loop, one half extending eastward onto Long Island and the other half westward to New Jersey, joined together in a trunk-line distributing terminal up and down the center of Manhattan south of 57th Street. New tunnels were projected under the East River and the Hudson at 57th Street and the Battery. This was to be all new construction. The existing Hudson and Manhattan system was to be integrated by extending its line north to 57th Street.⁶⁸ In October, 1931, this draft was laid on the table by the Suburban Transit Engineering Board with the statement that conditions had changed materially from those obtaining during the period on which the study was based.⁶⁹

The upward trend of commuter traffic had ceased; in fact, the figures were showing a rapid decline. Moreover, the precarious state of the money market made the financing of any large construction project unpredictable. Shortly thereafter the railroads, for reasons of economy, withdrew their support and the activities of the Board were suspended. Thus ended another endeavor in cooperation.

In 1935 the suburban traffic figures reached the lowest level since 1919. In 1936 they began to move slowly upward. The New Jersey legislature in that year again requested the Port Authority to study and report upon the development of transit facilities for northern New Jersey.⁷⁰ The Port Authority rendered a report which laid stress on the point that rapid transit was not so much an engineering problem as a governmental and economic problem. Large capital investment would be required for new Hudson tubes, new rails and new equipment. If interstate facilities were to be provided, the burden would fall primarily upon New Jersey.⁷¹

68 Sub. Tran. Eng. Bd. "Suburban Transit for the New York Metropolitan District. Engineering Report, Aug. 13, 1931." (Not Approved) xxii, 126 pp., maps, plans, mimeographed.

69 *Annual Report*, 1931, p. 23.

70 *L. N. J.* 1936, J. R. 6.

71 P. N. Y. A. *Suburban Transit for Northern New Jersey*. New York, 1937. 39 pp., map, charts.

The suggested engineering plan was relatively simple. It selected from previous plans those features most capable of immediate development. It had two main parts. The first was based upon the Hudson and Manhattan Railroad which would be extended north to 51st Street, Manhattan, and south by electrifying the Jersey Central tracks through Bayonne with an extension over the Bayonne Bridge to Staten Island. The second part was based upon new tubes under the Hudson at 51st Street through to the far side of the Palisades. There they would connect with several suburban lines, including the main line of the Erie Railroad which could be electrified as far as Paterson. At the juncture of these two parts, in the neighborhood of Rockefeller Center, a new terminal passenger station would be built. The cost of this plan, including the acquisition of the Hudson and Manhattan, was estimated at about \$187,500,000.

Basing revenues principally upon passenger fares not in excess of those currently charged, an annual deficit was indicated ranging from \$5,350,000 down to \$417,000, depending upon the amount of the terminal charge and the extent to which it would be absorbed by the railroads. This estimate was based upon 1935 traffic, already noted to be the low point for many years, and no allowance was made for future growth. It was assumed that the system would be tax exempt. Full payment of federal, state and local taxes would add \$2,480,000 to the deficit. It was expected that the Erie, West Shore, Lackawanna, and Jersey Central-Baltimore & Ohio Railroads would use the 51st Street Station for their through trains, thus giving them a passenger entry into Manhattan and greater revenue to the system. In any event, the Port Authority concluded that its plan for suburban transit would not be self-sustaining and a subsidy in some form would be necessary.

To provide this subsidy the following alternatives were suggested: (a) a federal grant to supplement a state or transit agency bond issue; (b) a state transit bond issue; (c) a state guarantee of interest and amortization charges on a transit

agency bond issue; (d) the creation of a transit benefit assessment district to issue bonds or to guarantee the interest and amortization charges on a transit agency bond issue.

It was plainly stated that a proper transit agency would require broad financial and administrative powers, and that while the Port Authority had some of these powers it lacked others, including the power to levy taxes or assess for benefits. It was also debarred from pledging any of its current revenues for new enterprises.

The railroads did not participate directly in the preparation of this report and they were in no way committed by it. What reactions might be obtained as a result of direct negotiations are, of course, unknown. But it is known that in their present state the railroads are not prepared to take the initiative, individually or jointly, in suburban transit development, or to assume any financial burdens greater than they now have. Unless they do, no New Jersey transit plan will be self-sustaining. Help will have to come from outside sources.

In 1938, almost a year after the Port Authority had issued the above-described report, the New Jersey legislature requested it to continue and extend its studies to include a detailed physical plan, a financial plan and drafts of legislation, and to report its findings and specific recommendations to the next session of the legislature. Then in 1939 it created a Joint Legislative Committee on North Jersey Transit to confer with the Port Authority on matters of state policy arising in connection with suburban transit. The time was extended and a report may be expected in the spring of 1940.⁷²

CROSS-BAY UNION FREIGHT TUNNEL

The cross-bay union freight tunnel was the third subject upon which the railroads agreed to cooperate with the Port Authority back in 1928. Nothing had been done about it when the Long Island Ten-Year Plan Committee was formed in 1931. This committee was composed of representatives of

⁷²L. N. J. 1938, J. R. No. 1; L. N. J. 1939, J. R. No. 5.

various chambers of commerce and real estate boards for the purpose of uniting Brooklyn and the rest of Long Island behind a long-range program of public improvements. One of the first matters to engage the attention of the committee was a rail connection between Brooklyn and the trunk lines to the west.⁷³

Taking the initiative, the Brooklyn Chamber of Commerce established contacts with the Port Authority and the Pennsylvania Railroad. A Policy Committee representing the three parties was formed. A subordinate Fact Finding Committee was directed to make a study of the costs, potential traffic and economic practicability of the proposed tunnel. This committee reporting in September, 1932, without the benefit of a field survey, found that (1) a single-tube, one-track tunnel would be adequate, (2) the cost would be approximately \$56,700,000 including a new classification yard west of Newark Bay, (3) operating savings would be \$5,795,000 per year, or 10.2 per cent on the investment, more than half of which would accrue to the Pennsylvania and Jersey Central, (4) the potential traffic would be 1,472,222 cars per year, based on 1928 figures and the assumption that all the New Jersey carriers would use the tunnel. In this connection Belt Line No. 1 would have to be developed sufficiently to bring in the northerly group.⁷⁴

This report was submitted to Gen. W. W. Waterbury, president of the Pennsylvania Railroad, who was also chairman of the Policy Committee and of the Eastern Railroad Presidents' Conference Committee. In April, 1933, the other members of the Policy Committee were informed that the railroads had decided to take no immediate action due to unsettled conditions.⁷⁵

Nevertheless the Long Island Ten-Year Plan Committee in its second report again placed this project first among the needs

⁷³ *Brooklyn Daily Eagle*, July 1, 1931, p. 1 and July 21, p. 6.

⁷⁴ P. N. Y. A. Fact Finding Committee—1932 Study. "Preliminary Engineering Report for Proposed Tunnel across Upper New York Bay between Greenville, Jersey City, N. J. and Bay Ridge, Brooklyn, N. Y., Sept. 15, 1932." x, 30 pp., map, tables, mimeographed.

⁷⁵ *Annual Report*, 1933, p. 24.

for the development of Long Island and expressed the hope that the newly-appointed Coordinator of Transportation would bring about an agreement among the railroads so that the tunnel could be financed by the Public Works Administration.⁷⁶ On several occasions between August and December, 1933, the Eastern Regional Coordinator was urged to press upon the railroads the advantages of the tunnel as a joint undertaking.⁷⁷ However, it proved impossible to obtain an agreement such as would make the project self-liquidating, and so the opportunity of P. W. A. financing was lost.

In January, 1935, the Port Authority was visited by representatives of the Mayor and the Long Island Committee urging that some action be taken.⁷⁸ Failing to elicit any response from the railroads privately, the Port Authority finally held a public hearing in September. Municipal and civic interests on the east side of the port heartily endorsed the tunnel project. New Jersey interests were either opposed or neutral.

The hearing had the effect of bringing forth a statement from the Pennsylvania Railroad. The savings shown in the 1932 report were said to be altogether too high. Subsequent analyses made by the Pennsylvania (including one for the Eastern Regional Coordinator) were said to indicate about one-half the volume of traffic and less than one-sixth of the savings. It was stated that all the cross-bay interchange of the New Jersey roads could not be regarded as potential traffic for the tunnel and, in any case, adjustments would have to be made in cost figures for floating equipment since much of it would continue to function in other operations.⁷⁹

⁷⁶ *Brooklyn Daily Eagle*, Oct. 26, 1933, Special Section: Second Annual Report of the Long Island Ten-Year Plan Committee.

⁷⁷ Cf. P. N. Y. A. "Supplemental Memorandum Submitted to the Eastern Regional Coordinator in the Matter of Belt Line No. 1, Greenville-Bay Ridge Tunnel, Dec. 13, 1933." 5 pp., mimeographed.

⁷⁸ "Minutes," Jan. 15, 1935, p. 16.

⁷⁹ P. N. Y. A. "Public Hearing re Cross-Bay Union Railroad Freight Tunnel, New York, Sept. 10, 1935." (J. M. Symes for the Pennsylvania Railroad at pp. 59-63.) 98 pp., typewritten.

The Pennsylvania Railroad was the biggest single factor in the situation. Since it disagreed with the assumptions upon which the first report was based, there was nothing else to do but institute a new study. All previous studies were disregarded and the problem was approached from a new angle. It was assumed that potential traffic for the tunnel would come only from the southern group of New Jersey carriers.⁸⁰ A new Policy Committee and a new Fact Finding Committee were created representing only these roads and the Port Authority. The new Fact Finding Committee reported in December, 1936. It found that:

1. A single-track tunnel with changes and additions to operating facilities would cost \$56,954,000. Operations could be simplified so as to use existing facilities with a minimum of new construction beyond the tunnel proper.⁸¹

2. In 1935 the interchange between the southern group and the New Haven and the Long Island amounted to 670,448 cars. (The 1928 figure for this interchange was 1,026,043.)

3. Net operating savings would be \$831,432 to which could be added calculable indirect savings of \$250,800, making a total of \$1,082,232 per year, or a return upon the investment of 1.90 per cent. (These savings were less than one-fifth of the estimate in the previous report.) Using 1935 interchange as a basis the savings per car would be \$1.61. On the other hand, it would cost the railroads \$4,462,000 in dismissal wages and retirement of unamortized equipment to shift to the new plan.

4. Sixty-eight per cent of the traffic would be expedited through the terminal zone, and 29 per cent of it as much as six

⁸⁰ The Pennsylvania, Lehigh Valley and Baltimore & Ohio-Jersey Central Railroad. These roads accounted for 88 per cent of the traffic estimated in the 1932 study.

⁸¹ It is interesting that the Long Island Railroad was willing, apparently, to center its operations at the Holban yard east of Jamaica, curtail its operations at Long Island City and receive its carfloat interchange with other roads at Bay Ridge. Twelve years before over the protest of the Port Authority at the time of the *Hell Gate Bridge Case* it persisted in a development with exactly the opposite intent.

or more hours, not counting the elimination of delays due to fog and ice.

5. Indirect benefits from steadier yard operations, lessening of hazards on the harbor waters, release of waterfront property for steamship terminals and industrial sites, stabilization of industry and tonnage on the carriers' lines by providing an all-rail connection across the harbor and other competitive advantages including general enhancement of good will through improved operations would accrue but could not be calculated in dollars and cents.

6. Another \$833,000 could be added to net savings if all the costs apportioned to marine interchange could be eliminated by the tunnel. But since these costs were incurred on equipment used jointly in pier floating and other services, they could not be turned into savings.⁸²

Several things about this report should be noted. In the first place, it was limited to those facts acceptable from the railroad point of view. In the second place, it probably drew an overly conservative picture, making no allowance for future growth even though 1935 traffic was down to about 35 per cent of the 1929 high figure, and no allowance for the future possibility of drawing in traffic from the northern group, or for the greater savings which a more thorough reorganization of terminal operations might engender. Thirdly, it demonstrated that the tunnel would not be self-liquidating if it had to rely solely upon what the railroads regarded as calculable savings (\$1.61 per car) in contrast with a necessary revenue of at least \$3.00, and maybe \$4.00, per car on a million cars a year.

In view of the repeatedly demonstrated aversion on the part of the railroads to joint operation, one may wonder if the Pennsylvania Railroad was not influenced in its cost figures by the fact that it would not enjoy a monopoly. Neither the Pennsylvania, when it joined with the New Haven to build the Hell Gate Bridge, nor the New York Central when it built

⁸² P. N. Y. A. Joint Fact Finding Committee. *Cross-Bay Union Freight Tunnel: 1936 Study*. New York, 1936. 24 pp., map, plans.

the west side improvement were so concerned with costs and savings. One suspects that if the Pennsylvania were in a position to build this tunnel for its own exclusive use, as it had several times expressed a hope to do, it would interpret the figures differently.

In summary, the policy of persuasion did not even enlist the serious attention of the railroads until the Port Authority agreed to work upon projects meeting with their approval. A survey of these projects in their present state reveals little to encourage that policy. The union inland station plan is in disfavor. The railroads have not been moved to make any commitment whatsoever with regard to North Jersey rapid transit, and the figure that they might be assumed to offer on the Cross-Bay Tunnel is so low as to make the project not self-liquidating.

One is at a loss to know whether the failure of these projects is due primarily to the railroads' aversion to joint operation or to the insufficiency of the inducement. If, however, inducements must be sufficient to overcome without coercion the aversion of the railroads to joint operation, it is clear that no union project in the New York port district can be self-liquidating.

By the terms of its charter the Port Authority is limited to construction projects that are self-liquidating, unless supplied with funds from outside sources. If it is decided as a matter of public policy that the railroads should have financial assistance from the government, be it in the form of higher rates or otherwise, then it is time to consider seriously a program whereby such assistance would be given by constructing publicly-owned terminal facilities which the carriers might be required to use at nominal cost.

CHAPTER V

ADMINISTRATION BY ACQUISITION

IN recounting the Port Authority's endeavors to carry out the Comprehensive Plan two administrative techniques have been distinguished: coercion and persuasion. A third technique was open to it: the purchase or construction of terminal facilities. The idea that the Port Authority would acquire large amounts of terminal property seems to have been quite prevalent at the time of its formation. Actually, aside from the Union Inland Freight Station, it endeavored to make use of this technique in only three instances. Two of them concerned property owned by the federal government in Hoboken on the west shore of the Hudson River.

THE HOBOKEN SHORE LINE

During the World War the United States government took over the North German Lloyd and Hamburg-American steamship piers and gave them a place in history as the chief point of embarkation for the American Expeditionary Force. At the same time the government acquired the stock of the Hoboken Manufacturers' Railroad Company which owned 1.20 miles of railroad, some waterfront property including a pier, and certain "backlands." The railroad, better known as the Hoboken Shore line, was a terminal spur along the waterfront connecting the piers with the trunk line railroads. It will be recalled as one of the four segments designated on the Comprehensive Plan as Belt Line 13.

After the War the piers were transferred to the United States Shipping Board, but the stock and property of the railroad company remained with the Secretary of War.¹ Late in 1921 a joint resolution was introduced in Congress (but not passed) which authorized the Secretary of War to sell the

¹ *Merchant Marine Act, 1920, sec. 17 (46 U. S. C. A., sec. 875).*

stock.³ The Port Authority immediately informed the Secretary that it was of fundamental importance to the development of the port of New York that the railroad should remain in public control.³

As an alternative, the Secretary of War requested the opinion of the Shipping Board with regard to a proposal to transfer the stock to the Board by executive order. The latter held a public hearing at which the Port Authority indicated that it might wish to acquire this property but could not do so under the situation prevailing with regard to the operation of its trunk line connections. It recommended that the War Department should retain control of the railroad in the meantime. This was agreeable to the Shipping Board.⁴ Here the Port Authority made a fatal mistake owing to its failure to understand the political currents then moving in the national administration.

The importance of this little railroad lay in the fact that, together with the piers, it furnished the basis for the most promising rail-to-ship terminal development in the port. On the ship side there were five of the best piers in the harbor, and on the rail side there were potential connections with all of the New Jersey railroads. Both sides were already in public ownership. But until belt line service was established on Belt Line 13 the full value of the rail connections could not be realized.

Because of the excessive delays and high rates prevailing in interchange service on Belt Line 13 as then operated, many railroads preferred to lighten their steamship freight to the

² 67 Cong. 1 Sess. *H. J. Res.* 204. The bill was not reported from committee. *Cong. Rec.*, p. 6302. Without appropriate legislation the Secretary of War could not sell the stock, but the company, it appears, could have sold its assets, except that such action might have subjected the Secretary to unfavorable criticism.

³ "Minutes," Nov. 31, 1921, p. 3. Letter Outerbridge to John N. Weeks, Nov. 19.

⁴ U. S. Shipping Board. "Hearing Regarding the Hoboken Manufacturers' Railroad, New York, Jan. 28, 1922." 54 pp., typewritten.

piers. In fact the steamship lines received only about twenty per cent of their railroad freight (exclusive of grain) by the all-rail route. An undue proportion of freight delivered by lighter congested their slips and caused them additional expense. They would have preferred a much greater movement of freight on the pier side, that is via Belt Line 13 and the Hoboken Shore Line. Even so, freight for the steamship lines accounted for more than half of the Shore Line's business. The importance to the Hoboken Shore Line of improved operations over Belt Line 13 and the consequent shift of traffic from lighters to rails may be gauged accordingly.⁵

Soon after the Comprehensive Plan became law the Port Authority determined privately to acquire both the railroad and the piers if it could be done on a sound economic basis.⁶ But the usefulness and economy of the railroad were seen to depend absolutely upon the establishment of Belt Line 13 with reduced charges under a neutral supervising agent. In view of this relation the Port Authority turned its attention to the belt line problem first and deferred negotiations with the War Department. A suggestion from the railroads that it should proceed in the reverse order was rejected.

However, in August, 1922, the War Department informed the Port Authority that it had received an offer to buy the stock and it assumed that the Port Authority was not in a position to purchase the railroad, nor likely to be in the near future.⁷ In reply the Port Authority repudiated the assumption and repeated emphatically that it would view the sale of this road to private interests as distinctly contrary to the public interest. The Port Authority was assured that it had become "unnecessarily concerned," that plenty of time would be al-

⁵ P. N. Y. A. "Operations of the Hoboken Manufacturers' Railroad Company, Dec. 19, 1924," 23 pp., typewritten.

⁶ "Minutes," April 19, 1922.

⁷ Later it developed that an informal offer of \$1,000,000 in cash had been made by the Delaware, Lackawanna and Western Railroad. Of all the railroads the Lackawanna had been the most uncooperative in supplying data for Belt Line 13 and other studies.

lowed for its Belt Line 13 investigation, and no offer would be accepted without consultation. But the War Department laid stress on its position as "a liquidating agency for war industries purchased for war purposes only, and with which the government has no business operating after the war."⁸

The proceedings on Belt Line 13 before the Interstate Commerce Commission were delayed. Nothing happened concerning the Shore Line until the War Department brought the matter up again in January, 1923. The Port Authority suggested that a committee of three be appointed to negotiate for each side. This was done but no meetings were held until the new Assistant Secretary, Dwight F. Davis, on July 2, 1923, brusquely demanded that the committees meet within a week.⁹ At this conference the Port Authority offered \$1,000,000 in Port Authority 4 per cent bonds, or \$1,250,000 if the interest might be paid only when earned, for *all* the railroad company's property exclusive of "backlands."¹⁰ The War Department refused the offer holding that the road and equipment alone were worth \$1,114,007, not counting \$330,000 in Liberty Bonds and \$127,000 in cash belonging to the company. It intimated these figures might be made the basis of a speedy transaction.¹¹

In October, 1923, after a satisfactory agreement had been reached with the railroads regarding Belt Line 13, the Port Authority made a formal offer to the War Department: \$1,000,000 Port Authority 4 per cent 30-year bonds for the rail-

⁸ "Minutes," Aug. 16, 1922, p. 2; Sept. 8, p. 3. Letter from J. M. Wainwright, Ass't. Sec'y., Aug. 15; reply, Aug. 16; letter from Wainwright, Aug. 25.

⁹ Letter Davis to Outerbridge, July 2, 1923.

¹⁰ P. N. Y. A. "Memorandum of Negotiations between the Port of New York Authority and the Secretary of War . . . , July 11, 1923." 16 pp., type-written.

¹¹ Letters Davis to Outerbridge, July 30, 1923, Aug. 6 and 14. The valuation set upon the railroad property was said to have been made by the I. C. C. earlier in the year, but it was carried on the books of the company at \$983,922 as of Aug. 31, 1923. P. N. Y. A. "Operations of Hoboken Manufacturers' Railroad Company, Dec. 19, 1924."

road and waterfront property alone, and additional bonds in such amount as would be equivalent to a yield of $4\frac{1}{2}$ per cent for the cash in hand (not less than \$100,000).¹² This offer, because it excluded the Liberty Bonds, and included Port Authority bonds in exchange for cash, was almost fifty per cent higher than the first offer.

A number of the Commissioners entertained serious doubts whether the property was worth what they were offering. The estimated net income for 1923 was materially less than sufficient to cover the interest on the bonds.¹³ Nevertheless, the offer was made because the Commissioners felt that in effectuating the Comprehensive Plan as a whole the possession of this line would be of great strategic value. They felt that a direct interest in the terminal situation would strengthen their position in dealing with the Interstate Commerce Commission and the railroads; and, on the other hand, that their task would be greatly complicated if the Delaware, Lackawanna and Western, or any other carrier, obtained possession of it. The Commissioners anticipated that operating economies, increased tonnage as a result of improved Belt Line 13 operations, and adequate switching charges or increased trunk line allowances would raise the net revenues safely above the debt charges. The War Department's attitude indicated that it would not take less.

It came as a surprise to the Commissioners, therefore, when the War Department rejected their offer and made a counterproposal of the same amount in cash.¹⁴ The War Department was well aware that the Port Authority did not possess a million dollars in cash, and that a public bond issue with only

¹² "Minutes," Oct. 24, 1923, p. 1. Letter Outerbridge to Davis, Oct. 24.

¹³ P. N. Y. A. "Operations . . . , Dec. 19, 1924."

Railroad—net deficit	\$9,880
Waterfront property—net income	30,000
Interest on bank balances	5,000

Total estimated net income for 1923

\$25,110

¹⁴ Letter Davis to Outerbridge, Dec. 13, 1923.

the property as security could not be sold until its income was greatly increased. At the conference with Assistant Secretary Davis, which preceded the Port Authority's formal offer, the Commissioners had received the distinct impression that bonds would be acceptable. Otherwise there would have been no point in conferring, but the Assistant Secretary had not committed himself.¹⁵

CONGRESS LEGISLATES

The War Department insisted on cash and the Port Authority could offer only bonds. The War Department regarded the latter as of lesser pecuniary value and stated that if it were to accept bonds, Congress would have to make the decision. "If . . . it is the will of Congress," wrote the Secretary to Senator Wadsworth, chairman of the Committee on Military Affairs, "that sale be made to the Port of New York Authority, I think the act of Congress . . . should designate the Port of New York Authority as the sole vendee and should specifically authorize acceptance of bonds in full payment."¹⁶

Such a bill was introduced by the Senator and by Congressman Mills, both New York Republicans.¹⁷ At the public hearing the Shipping Board appeared in support of the bill stating that their policy was to encourage the holding of port terminal facilities by public bodies. "It would be a grave public misfortune, we think, if this little railroad were to get into the hands, for instance of the Delaware, Lackawanna and Western Railroad, or any other railroad." The only opposition arose from Hoboken interests expressing a fear that the property would be taken off the city tax rolls. An amendment was suggested, and subsequently adopted, to the effect that nothing in

¹⁵ P. N. Y. A. "Minutes on Meeting with Assistant Secretary of War, Oct. 18, 1923." 11 pp., typewritten.

¹⁶ Letter Davis to Outerbridge, Jan. 19, 1924, enclosing copy of letter Weeks to Wadsworth, even date.

¹⁷ 68 Cong. 1 Sess. S. 2287, A Bill to Permit the Secretary of War to Dispose of, and the Port of New York Authority to Acquire the Hoboken Shore Line, Jan. 30, 1924; H. R. 7014, same title, Feb. 15, 1924.

the act should be so construed, but the opposition of Hoboken was not quieted.¹⁸

The only important amendment adopted by the committee was suggested by the War Department and authorized it to sell the property "to other parties if the Port of New York Authority fails to agree to terms and conditions which are considered satisfactory."¹⁹ In other words, having originally suggested that the Port Authority be designated as the sole vendee, the War Department now asked to be permitted to sell the railroad to anybody if it did not like the Port Authority's offer, making the matter wholly discretionary.

In reporting the bill favorably with amendments the Senate committee said:

We are of the opinion that this railroad should not be permitted to go into private hands and that the port authority is the natural and logical agency to take it over. In the national interest the efforts of this agency should be facilitated and encouraged. There would seem to be no doubt of its ability to meet the interest and amortization charges upon its bonds and we are convinced that the Secretary should reject the offer of the private railroad and accept the offer of the port authority to pay in bonds. The amendments in the bill are to meet the request of the Secretary of War that the Congress relieve him of responsibility of decision upon this matter.²⁰

The House committee delayed action for about six weeks and then held a hearing at which the same ground was gone over.²¹

¹⁸ 68 Cong. 1 Sess. *Hearing before the Committee on Military Affairs, U. S. Senate, on S. 2287: Sale of Hoboken Shore Line, Mar. 21, 1924*, p. 60. Washington, 1924. 76 pp.

¹⁹ *Idem. Senate Report No. 353 (to accompany S. 2287), Sale of Hoboken Shore Line, April 4, 1924*. Washington, 1924. 5 pp. Letter Weeks to Wadsworth.

²⁰ *Op. cit.* The committee's impression of the War Department's amendment and the clear meaning of its language are at distinct variance.

²¹ 68 Cong. 1 Sess. *Hearings before the Committee on Military Affairs, House of Representatives, on S. 2287 and H. R. 7014: Sale of Hoboken Shore Line to the Port of New York Authority, May 1 and 2, 1924*. Washington, 1924. 66 pp.

The same amendments were adopted. The House report concurred in the views expressed by the Senate committee and concluded that "the purchase of this railroad by the port authority should be facilitated by taking the bonds of the port authority in payment of the purchase price."²² The Senate passed its bill, and both bills were on the Union Calendar when Congress adjourned. In spite of pleas from the governors of both states, a special rule was denied.²³

Shortly after Congress adjourned the War Department took occasion to announce that the waterfront property would be put up for public sale. When the Port Authority protested that its offer included this property and that the committee reports indicated the will of Congress that its offer should be accepted, the Secretary replied that the bill "has already been so amended as to take away any suggestion of its being mandatory."²⁴

While the Port Authority remonstrated at length citing the deleterious effect of railroad control of the waterfront upon the commerce of the port, the Secretary persisted. Important civic groups in New York City protested, as did the governors of both states.²⁵ Governor Silzer of New Jersey concluded a telegram to President Coolidge as follows:

In our state we cannot see why the public interest should be made secondary to the railroad interest. We believe that the public has rights paramount to those of the railroads, that the time has come when railroad monopoly of our terminals and waterfront should cease.

We believe that the national government should cooperate with

²² *Idem. House of Representatives Report No. 694 (to accompany H. R. 7014): Sale of Hoboken Manufacturers' Railroad, May 9, 1924.* Washington, 1924. 7 pp.

²³ *Idem. Cong. Rec.*, pp. 8450 (May 13, 1924), 68 Cong. 2 Sess. *Cong. Rec.*, p. 3769 (Feb. 14, 1925). Also "Minutes," May 7, 1924, p. 3.

²⁴ "Minutes," June 30, 1924, and July 23. Letter Van Buskirk to Weeks, June 24, and reply, July 19.

²⁵ *Ibid.*, July 30, 1924; Sept. 3. *New York Times*, Aug. 19, p. 30; 23, p. 3; 25, p. 15.

other departments of government and especially one created by the Congress itself . . .

We do not want another Teapot Dome.²⁶

The reader may be reminded that 1924 was a presidential election year.

It was reported that the President intervened personally. The bids were rejected.²⁷ The Port Authority had refused to bid, but renewed its offer of October 24, 1923, namely \$1,000,000 in bonds for the railroad and waterfront property. The Secretary of War now stated explicitly that he would not accept this offer unless expressly directed to do so by Congress, but that he would hold the property until the close of the next session.²⁸

Before Congress convened the Port Authority tried two other approaches to the problem. It suggested that if the War Department wished to retain the property it could be leased to the Port Authority under an arrangement whereby the latter would pay the interest on the cost of reconditioning. A similar arrangement had recently been made between the Shipping Board and the Port Utilities Commission in Charleston, S. C., covering the Army Base piers at that port. The point was stressed the public control of the waterfront was necessary to obtain competitive service from the railroads and the benefits of such service were so great as to invalidate any comparison between the Port Authority's offer and that of any private interest.²⁹ The Secretary did not move from his position that the railroad was surplus war material, and that he was not authorized to give the Port Authority preferential treatment in its disposition.³⁰

²⁶ *New York Times*, Aug. 24, 1924, p. 1.

²⁷ *New York Times*, Aug. 30, 1924, p. 4. The highest cash bid was \$600,000 by the Hoboken Land and Improvement Co. *New York Times*, Aug. 27, 1924, p. 1 and Aug. 28, p. 19.

²⁸ "Minutes," Sept. 3, 1924, pp. 2, 5.

²⁹ *Ibid.*, Sept. 17, 1924, p. 4. Also *New York Times*, Sept. 20, 1924, p. 24.

³⁰ "Minutes," Oct. 15, 1924, p. 1.

Then the Port Authority addressed itself directly to the President on the question of policy which was at issue. It involved not merely the Hoboken Shore Line, but also the Shipping Board's piers and all other waterfront terminal property owned by the United States. The Port Authority declared that efficient and economical development of ports and harbors depended upon complete public control of access to the waterfront. It recalled that this principle had been stated repeatedly by agencies of the federal government and had been adopted by the states of New York and New Jersey. The property in question offered an opportunity to develop a modern ship-to-rail terminal which would be of great value to the United States, the port of New York, and especially to the city of Hoboken. The Port Authority suggested that a conference be held by direction of the President to consist of representatives of the United States Shipping Board, the Secretary of Commerce, the Secretary of War, of the City of Hoboken, the Port Authority, and such others as he might select, to present him with their recommendations.³¹

The suggestion was not accepted, but after the election a committee of the Port Authority met with the President. Senator Wadsworth, Congressman Mills and Secretary of War Weeks were present. Again the Port Authority suggested that the President declare a national policy with regard to the disposition of waterfront property. The President remained non-committal. At the close of the conference Secretary Weeks stated that he would turn the Hoboken Shore Line over to the Port Authority and accept its bonds for \$1,000,000 in payment, if the pending legislation were passed.³² Yet the Secretary afterwards wrote to Congressman LaGuardia, and later to the President that he would not accept the Port Authority's bonds unless he was specifically directed to do so, that the bill in Congress

³¹ *Ibid.*, Oct. 22, 1924, p. 2. Letter Van Buskirk to President Coolidge, Oct. 22.

³² *Ibid.*, Dec. 18, 1924, p. 1. *New York Times*, Dec. 16, 1924, p. 45; 68 Cong. 2 Sess., *Cong. Rec.*, p. 3759, by Mr. Mills.

did not so specifically direct, but rather authorized sale to other parties, and that he intended to sell to the highest bidder very shortly after Congress adjourned.³³

A strange play of cross-purposes ran all through these negotiations. Orally Secretary Weeks agreed to take the bonds and never questioned the adequacy of the pending legislation. In his letters, and in those of Assistant Secretary Davis, there was always recurrent the phrase "unless specifically directed" and expressions of dissatisfaction with the Port Authority's offer.

The decision to request Congressman Mills to press his bill for passage was not taken without trepidation and division of opinion within the Port Authority. The U. S. Shipping Board had made application to the President to have the railroad transferred to it. If there had been any indication of such action by the President, the Port Authority would have stepped aside; but no action was forthcoming, not even a declaration of policy. The railroad and the piers were logically a unit, and the Port Authority had always assumed that the piers would remain in public control. This became uncertain when Hoboken interests began urging that the piers be sold to private interests. Furthermore the annual net income of the railroad property, which was originally inadequate, had turned into a deficit of between \$70,000 and \$80,000 per year. Nevertheless, having in view the great possibilities for development, and the fact that the Port Authority and its friends were committed to acquiring the property, the Commissioners decided to go ahead on their original course.³⁴

The bill finally came up in the House under a special order and was passed.³⁵ The debate indicated with complete clarity that the proponents of the bill expected it to be interpreted by

³³ *Loc. cit.* LaGuardia read into the *Record* the letter from Weeks to himself, Feb. 11, 1925. Also "Minutes," April 30, 1925, p. 3. Letter Davis to Gregory, April 28, quoting letter Weeks to President Coolidge, Feb. 24.

³⁴ *Ibid.*, Jan. 2, 1925. Chairman Gregory voted in the negative.

³⁵ 68 Cong. 2 Sess. *Public No. 479*, approved Feb. 26, 1925 (*43 Stat. 984*).

the Secretary of War as directing him to make the sale to the Port Authority and to accept its bonds.³⁶

THE WAR DEPARTMENT EXECUTES

After two and a half years of negotiation and frustration the Port Authority assumed that the question at issue had been settled by act of Congress. In April, 1925, its counsel went to Washington to arrange the details of a contract. However, the staff colonels representing the War Department took the startling position that negotiations were to begin *de novo*, and that they were not bound by anything that had gone before. They insinuated that the Port Authority did not really want the property anyway, and that means might be found to sell it to one of the trunk line carriers. Secretary Weeks had become ill, and it appeared as though his absence might permit subordinates in the department to frustrate the deliberate will of Congress. After fully reviewing the public record the Port Authority demanded to know whether these staff colonels represented the official position of the Department.³⁷ For a third time, the Port Authority repeated the offer it made on October 24, 1923.³⁸ Assistant Secretary Davis backed down and decided to await his superior's return.³⁹

In due course Secretary Weeks resigned; Mr. Davis became Secretary of War and Hanford MacNider, Assistant Secretary. Negotiations were resumed in October, 1925. As a result of

³⁶ *Idem. Cong. Rec.*, pp. 3756-3770; 3965-3975. An example of the recurrent distrust of the Port Authority was voiced by Congressman LaGuardia who charged that the proposal was a scheme supported by the New York Central to keep the Erie out of the property. *Ibid.*, p. 3768.

³⁷ "Minutes," April 23, 1925, pp. 6-27. Memorandum of Conference with War Department, April 22, 1925; letter Gregory to Davis, April 23. Senator Wadsworth and Congressmen Mills and Wainwright also protested to the War Department. There was inconclusive evidence that a War Department officer tried to work out a backstage deal through a Hoboken real estate dealer to pass the property through the City of Hoboken to one of the trunk lines. *Ibid.*, April 30, pp. 4-9.

³⁸ *Ibid.*, April 30, 1925, p. 1. Letter Gregory to Davis.

³⁹ *Ibid.*, May 14, 1925, p. 2. Letter Davis to Gregory, May 7.

conferences between the Chairman of the Port Authority and the Assistant Secretary there seemed to be no substantial disagreement on the terms of a contract.⁴⁰ On February 6, 1926, a draft of the proposed contract was forwarded to the War Department. On February 17 a Colonel Ely, who had previously shown hostility to the Port Authority, informed its counsel that the draft was not acceptable, and handed him another draft insisting that it be signed before midnight, February 20. The Port Authority protested that this document was at substantial disagreement with the points agreed upon in conference. The Chairman hurried to Washington with counsel to confer with this Colonel Ely and the Assistant Secretary. The conference resulted in an impasse.⁴¹

The War Department took the position that the Port Authority was receiving the property upon such favorable terms that it could not object to incurring liabilities and agreeing to terms that might otherwise seem unreasonable. The Port Authority once again refused to be placed in the position of a private bidder, or in competition with private bidders, asserting that it would deal only as one public agency dealing with another, both acting in the public interest. Furthermore, it was their view that their offer was in excess of the fair value of the property in the light of heavy deficits being incurred. To summarize very briefly the major points of disagreement: the Port Authority did not feel justified in giving \$1,000,000 in bonds for the corporate stock of a company whose assets the War Department refused to specify, in assuming obligations and liabilities unascertained in amount at the time of purchase, in giving a mortgage without a release clause the absence of which might prevent improvement of the waterfront property, or in consenting to a deficiency provision which might serve to embarrass the Port Authority permanently.⁴² It is impossible to

⁴⁰ *Ibid.*, Jan. 21, 1926, pp. 2-5.

⁴¹ *Ibid.*, March 4, 1926, pp. 2-10.

⁴² *Ibid.*; also P. N. Y. A. *Special Report in the Matter of Acquiring the Hoboken Manufacturers' Railroad Company from War Department, March 4, 1926.* New York, 1926. 31 pp.

resist the conclusion that the terms of the War Department's proposed contract were so drawn as to be either unacceptable, or if accepted to discredit the Port Authority through inability to perform.

Thus negotiations came to an end. The War Department advertised the capital stock of the railroad for public sale pursuant to provisions of the act intended ironically to facilitate its transfer to the Port Authority. When the bids were opened on August 3, 1926, there was not a single one for the Hoboken Shore Line. The Hoboken Land and Improvement Company's bid of \$351,000 for the waterfront property alone was rejected.⁴³ Thereafter the War Department continued its efforts to dispose of the stock by private sale.

In the summer of 1927 a deal was made with the P. W. Chapman interests. A Hoboken Terminal Properties, Inc. was organized by the War Department; the waterfront property was separated from the railroad company and vested in the new company. The capital stock of the new company was sold for \$500,000 and the stock of the Hoboken Manufacturers' Railroad Company for \$425,000.⁴⁴ Thus the War Department finally received \$925,000 in cash, instead of \$1,000,000 in Port Authority bonds. The purchaser transferred the stock of both companies to a third company, the Hoboken Railroad and Terminal Company which offered for public sale through P. W. Chapman and Company \$1,250,000 first lien 6 per cent

⁴³ "Minutes," Aug. 12, 1926, p. 57; and *New York Times*, Aug. 4, 1926, p. 24. Its previous bid was \$600,000.

⁴⁴ New Jersey Board of Public Utilities Commissioners. In the Matter of the Transfer of Controlling Stock of the Hoboken Manufacturers' Railroad Company to the Hoboken Railroad and Terminal Company; and, the Transfer of the Real Estate of the Hoboken Manufacturers' Railroad Company to the Hoboken Terminal Properties, Inc. "Stenographer's record of the hearing, Trenton, N. J., Aug. 24, 1927;" and a "Contract dated July 2, 1927 between William L. Diener of the City of New York and Dwight F. Davis, Secretary of War, offered in evidence." Also U. S. Treasury Department. *Combined Statement of Receipts and Expenditures, Balances, Etc., of the United States for the Fiscal Year Ended June 30, 1928*, pp. 16, 18 and 44. Washington, 1929.

twenty-year bonds.⁴⁵ In 1932 a bondholders' protective committee sold the properties of the Hoboken Railroad and Terminal Company at public auction to Seatrains Lines, Inc. for \$200,000.⁴⁶ The property is now operated in connection with that company's unusual transportation business and generally as an independent terminal road.

And so, as a result of the War Department's machinations, the Hoboken Shore Line finally ended up in private ownership, and the investing public, if it bought all the bonds, suffered the loss of a million dollars. Even though the terms of the legislation were discretionary, the clear intention of Congress was to transfer the Hoboken Shore Line to the Port Authority in exchange for its bonds. That intention was not carried out. Who was responsible? Without reviewing all aspects of the question, direct responsibility must be charged to Assistant Secretary, later Secretary, Dwight F. Davis and a group of staff colonels in the War Department. Without precluding the existence of other motives, it is possible that their insistence upon cash was due to the fact that the proceeds of the sale would be credited to the Military Posts Construction Fund.⁴⁷

THE HOBOKEN PIERS

Ever since the close of the World War the city of Hoboken had been protesting against loss of taxes on the Shipping Board's piers, and endeavoring to have them returned to private ownership and its tax rolls. The property consisted of four double-deck piers approximately 950 feet long, a fifth open pier which had been burned and never reconstructed, and bulkhead lands. The piers were in need of extensive repairs and improvements.⁴⁸ In 1930 Congress passed a bill directing the Shipping

⁴⁵ *New York Times*, Sept. 12, 1927, p. 34, financial advertisement.

⁴⁶ *Poor's Railroad Volume*, 1936, p. 171.

⁴⁷ Treasury Department. *Op. cit.*, p. 16, Note 3.

⁴⁸ P. N. Y. A. "Report upon a Survey and Examination of the Hoboken Marine Terminal, Feb. 9, 1931." 10 pp., typewritten.

Board to sell the piers at competitive public sale.⁴⁹ The Shipping Board advertised for bids, and the only bidder was P. W. Chapman, who had previously bought the United States Lines, the American Merchant Lines, and the Hoboken Manufacturers' Railroad. His bid was \$4,282,000.⁵⁰ The city of Hoboken denounced the bid as "inadequate and unfair," tending to reduce waterfront valuations generally.⁵¹

Then the officials of Hoboken came to the Port Authority to see if a plan could not be worked out whereby the city would receive the equivalent of taxes and eventually obtain title to the property free and clear. The Port Authority's interest in this matter was two-fold: first, the firm belief that, as a matter of public policy, pier property should remain in public hands and second, a desire to aid Hoboken in deriving some income in lieu of taxes. A series of conferences resulted in a proposition approved by the city whereby the Port Authority would take an assignment of rights under the Chapman bid and purchase the piers from the Shipping Board; Hoboken would convey to the Port Authority certain rights and interests which it claimed; and the Port Authority would lease the piers to P. W. Chapman and Company for forty years at \$500,000 per year for the first five years and \$515,000 per year thereafter, pay to Hoboken \$160,000 to \$175,000 per year, construct a new pier and warehouse at an approximate cost of \$2,500,000, and finally vest title to the entire property in the city of Hoboken when all of the bonds to be issued by the Port Authority in connection therewith had been fully paid.⁵²

⁴⁹ 71 Cong. 2 Sess. *Public No. 146* (S. 2757), approved April 19, 1930. (46 *Stat.* 219).

⁵⁰ *Annual Report*, 1930, pp. 20 ff. Also *New York Times*, July 24, 1930, p. 42.

⁵¹ *New York Times*, July 30, 1930, p. 42 and Aug. 2, p. 29. Previous valuations had been nearer \$10,000,000.

⁵² "Minutes," Nov. 20, 1930, pp. 352-359. Commissioner Ferguson (now Chairman, 1939) voted against this proposition. See also *Annual Report*, 1930, *loc. cit.*

The Port Authority planned a \$7,500,000 issue of bonds, \$5,000,000 to be sold immediately and \$2,500,000 later for the construction of the new pier. It was informed by bankers that these bonds would be readily salable and that a temporary credit could be arranged. It was also assured by various shipping interests that there was need for more pier space in New York Harbor.⁵³

P. W. Chapman had agreed previously to the general terms of the proposition. When he was questioned on the matter of what security he would give to insure performance, it developed that neither he personally nor P. W. Chapman and Company expected to assume any liability for the operating contract, but planned to organize a company with nominal capital which would be the operating lessee. At that point negotiations were discontinued. Such a lease offered no basis for a bond issue.⁵⁴

Conferences with the Shipping Board resulted in the introduction of a bill in Congress authorizing the Board to accept a purchase price of \$4,282,000 from the Port Authority. As amended the bill permitted thirty per cent to be paid in cash and the balance by a bond and mortgage running for a period of fifteen years, bearing interest at three and one-half per cent. The bill passed in the Senate the day before Congress adjourned.⁵⁵ The House bill was not reported out of committee, due in part to lukewarm support from New Jersey. And the matter was right back where it started from.

The Shipping Board rejected Chapman's bid, returned his check,⁵⁶ and set about obtaining new bids. In response to its inquiry, the Port Authority indicated that if the piers were readvertised, it would submit a bid.⁵⁷ Then it appeared that the terms of the sale included an upset price of \$4,282,000. The

⁵³ *Ibid.*, Nov. 28, 1930, pp. 364-372. ⁵⁴ *Ibid.*, Dec. 11, 1930, pp. 383-384.

⁵⁵ 71 Cong. 3 Sess. S. 6114 by Mr. Wagner introduced Feb. 10, 1931; H. R. 16979 by Mr. Griff, introduced Feb. 9, 1931. See *Cong. Rec.*, p. 6954 for text of the bill as amended. The original drafts set the interest at two per cent ("Minutes," Jan. 22, 1931, p. 21). See *Report No. 1744*, Feb. 24, 1931.

⁵⁶ *New York Times*, Mar. 27, 1931, p. 51.

⁵⁷ "Minutes," June 4, 1931, p. 213.

Shipping Board was informed that the reason for going to Congress for legislation was the inability of the Port Authority to equal the Chapman bid, and that in all probability the Port Authority would not make a bid under the stated conditions.⁵⁸ Since the Port Authority was the only prospective bidder the sale was not held. By this time the depression had set in. Shipping declined, several of the piers were vacated, and the property remains to this day (1939) in the hands of the Shipping Board's successor, the Maritime Commission.

Through the whole decade of the twenties the opportunity to create a great railroad and steamship terminal in Hoboken was permitted to slip by. There was no other place in the harbor where the situation was so favorable. There alone were steamship piers of large dimensions connected directly with the trunk line railroads. The unified development of this property seems to have been beyond the capacity of private enterprise. Developed by a public authority it would have been a key factor in inducing the rationalization of railroad service in the port and in promoting its commerce. Since the property was already in public control the major obstacle to public development would seem to have been absent.

The Port Authority was created by the two states specifically for such a purpose, and its efforts to that end were continuous. Why then did it fail? The explanation lies in the field of politics. One factor was the anomalous situation in the city of Hoboken. Its dense population had long been organized into a smoothly-working political machine whose leaders were skilled in the art of advancing local objectives in order to achieve ends desired by financial supporters and political allies elsewhere. The membership of its outstanding civic agencies included not only resident members, but also non-resident representatives of region-wide and even nation-wide industrial and railway organizations, who on occasion provided both the driving power and the control. In short, the situation was such that the dominant local agencies for the formulation and expression of opinion

⁵⁸ *Ibid.*, June 18, 1931, p. 233; also *Annual Report*, 1931, p. 16.

could speak with the voice of Jacob, though the hands were the hands of Esau.

A more important factor was the deep-seated antagonism to public ownership and operation of transportation facilities which prevailed in the national administration. The Port Authority was placed upon the same plane as a private corporation and treated as a stranger. Strategically the Port Authority made a mistake early in the game by not urging the transfer of the Hoboken Shore Line to the Shipping Board. It failed to see that politically the War Department was a stronghold of forces antagonistic to it. With the railroad and the piers both vested in the Shipping Board at least negotiations would have been unified in a body with closer responsibility to Congress and a keener appreciation of the needs with regard to terminal facilities.

One is tempted to wonder whether the attitude of the War Department would have been different if the Belt Line 13 carriers had strongly supported their early suggestion that this Hoboken property go to the Port Authority. And one wonders if this support was forfeited by the decision of the Port Authority to appeal to the Interstate Commerce Commission instead of taking the railroads at their word, trying to work out some sort of a general agreement tying together the Hoboken properties and the Belt Line so as to protect the Port Authority, and then engaging their support in Washington. These questions are raised, not in criticism of the Port Authority, but to suggest the requirements of administration by acquisition when powers of control are absent.⁵⁹

PIERS FOR JERSEY CITY

The third attempt to use acquisition as a method of terminal development involved the so-called "Little Basin" property in Jersey City. Title to this property, which used to be the Jersey City terminus of the abandoned Morris and Essex Canal, was held by the state of New Jersey. In 1929 the legislature authorized the Port Authority to make a bid for the property.

⁵⁹ Of course, if the Port Authority had been able to possess \$1,000,000 in cash in 1923, the program of development might have started then and there.

Investigation disclosed that this was one of the most desirable sections of the port for the development of a modern steamship terminal.

Inasmuch as the city of Jersey City had previously submitted a bid, the city commissioners and the Port Authority conferred with each other and agreed upon a joint program. The Port Authority would acquire all the necessary property, construct four modern piers, financing the project throughout, and lease the completed enterprise to Jersey City over a term of years for an amount sufficient to pay the carrying charges. Upon amortization of the Port Authority's investment the terminal would revert to Jersey City.

Preliminary plans provided for four double-decked steel and concrete piers, three 150 feet wide and the other 90 feet wide, with 300-foot slips between them. Provision was made for railroad tracks on each pier, and for vehicular access to each deck. Modification of the Jersey City pierhead line was obtained to permit a length of 1000 feet. Action was taken to urge the Army Engineers to recommend deepening the Hudson River channel to 40 feet up to the pierhead line on the New Jersey side. The Jersey City officials began negotiations with prospective operators.⁶⁰

By the end of 1931 the plans had been worked out in detail. Then the full force of the depression began to be felt. The demand for pier space shrank rapidly and the bond market collapsed, making financing impracticable. The whole scheme was abandoned and has not been revived since. Its untimely end robbed this experiment of most of its significance. It is given brief mention here to complete the account of the Port Authority's endeavors in administration by acquisition and to suggest a variant of the method. That the Port Authority was invited to have a part in what might have been considered a purely municipal enterprise is indicative not only of its reputation as an agency for financing and constructing public works, but also of the pressure to find means to finance self-sustaining public works outside municipal debt limits.

⁶⁰ *Annual Reports*, 1929, p. 20; 1930, p. 19; 1931, p. 16.

CHAPTER VI

CONCLUSIONS ON THE COMPREHENSIVE PLAN

THE development of the port of New York presented, and still presents, one of the most complicated problems in governmental organization and public policy confronting any community in the United States. The commercial expansion of the port created a unity transcending political boundaries. Its freight arteries became afflicted with high costs and economic wastes beyond the capacity of competitive private enterprise to control.

As an approach to this problem the establishment of the Port of New York Authority and the adoption of its Comprehensive Plan were major achievements. The use of an interstate compact to create an administrative body having jurisdiction in both states was the logical alternative to federal control, but then utterly without precedent in the United States. The Comprehensive Plan took as its major premise the proposition that competitive use and individual development of major freight terminal facilities were detrimental to the commerce of the port and should be replaced by joint use and public development.

The history of the Port Authority's endeavor to carry out this Comprehensive Plan has been one of repeated failures. Three major obstacles have frustrated its efforts. First and foremost has been the carriers' resistance to any change in the long-standing system of operation whereby the ownership of terminal facilities gave to the owning carrier a right to the long haul for all freight originated on its property, and the power to establish a quasi-monopoly in adjacent territory. The Comprehensive Plan would have destroyed this system by establishing belt line service and a system of joint operation throughout the terminal zone. Thus a shipper using any terminal would have been able to ship or receive over whatsoever trunk line he

chose. It would have removed the incentive for competitive terminal development by individual railroads and substituted development by cooperative endeavor, or by the Port Authority.

The system of privileged traffic areas was, and is, of such importance to the railroads that for one of them to invade the territory of another is tantamount to a declaration of war. A proposal to open all of these areas to each of the railroads by joint use of facilities would be about as welcome to the railroad owners as a proposal for complete disarmament to the nations of the world. If it is suggested that there are points throughout the country, and a few in New York, where carriers are voluntarily cooperating in joint use of terminals, it may be noted that either these operations are clouded with suspicion or that the traffic is too lean to warrant a contest in terminal development. In the port of New York, especially on the west side of Manhattan, the volume of freight is tremendous, and the water belt line has afforded a peculiarly favorable opportunity for competitive development even though the operating cost is high.

The Port Authority has encountered its second obstacle while attempting to demonstrate that its proposed changes would result in economies to the carriers. The economic theory underlying the Comprehensive Plan anticipated that economies of joint operation plus tax exemption would make possible the construction of new union facilities on a self-sustaining basis. The premise of joint operation being unacceptable to the railroads, they appear to have bent every effort to show that the Port Authority's proposals were not economically practicable. This obstacle appeared most clearly in connection with the Cross-Bay Tunnel, but it was also present in the matter of Union Inland Stations for Manhattan.

In order to do this the railroads have insisted upon charging as a cost against savings the unamortized values of inefficient equipment still in service, but naturally rendered obsolete by the proposed change. The savings derivable from the new method could thereby be shown to be negligible, or at least insufficient

to pay interest and amortization upon any new facilities to be provided by the Port Authority.

A third obstacle was found to be the committee system currently in vogue with regard to joint activities among the railroads. Since these committees acted only with unanimous consent to a single item of progress, the committee system gave to one railroad, often the smallest and most reactionary, a veto power over the actions of others, effectively paralyzing their initiative. The manner of its operation may be observed in the conference of April 27, 1927 between the Port Authority and the railroad executives in which all of the former's proposals were turned down.

These obstacles were obstacles only because the Port Authority was devoid of powers of coercion. The period in which the Comprehensive Plan was adopted seemed to place great faith in the promises of leading railroad executives that they would avoid the recurrence of competitive wastes which had been eliminated by unified operation under the federal government. Language in the Comprehensive Plan Acts, as well as in the Transportation Act of 1920, which should have been compulsory, was made permissive in reliance upon these promises of cooperation. As "back to normalcy" gained ascendancy, the railroads returned to wasteful duplication and competitive expansion in their terminals with renewed intensity.

For a time the railroads talked of consolidation as a means of achieving economies without joint operation, but these prospects had already faded when the depression set in. Criticism by the Interstate Commerce Commission,¹ the report of the National Transportation Committee,² and the desperate financial plight of the railroads themselves all underscored the importance of possible economies through unification. Nevertheless,

1 I. C. C. Ex parte 109. Duplication of Produce Terminals, 188 I. C. C. 323 (1932).

2 The National Transportation Committee was organized at the behest of the savings banks, insurance companies and colleges under the chairmanship of Calvin Coolidge to investigate the condition of railroads and transportation generally. It reported in February 1933. *New York Times*, Feb. 15, 1933, p. 1.

the initiative was still left to the railroads in the Emergency Transportation Act of 1933, but with the proviso that if they did not act the Coordinator of Transportation could order joint operations. Before effective use of this proviso could be made the Coordinator's office was terminated. The newly formed Association of American Railroads promised to carry forward the work of reducing competitive wastes. But so far it has exhibited no interest in the New York terminal problem.

For almost two decades public policy has been looking hopefully to the railroads for terminal coordination and leaving with them the power of decision. The result has been very little real progress. If public policy is to remain in the future as impotent as it has been in the past, the railroads, at least in the New York situation, will burrow deeper and deeper into their competitive cul-de-sac, while freight leaves the rails to ride on rubber over the highways. Too much stress on "evolution instead of revolution" has brought about no significant change, merely perpetuation and intensification of old policies with respect to railroad terminal development.

In the language of the Port Authority's memorandum of 1933 to the President's Committee on Railroad Legislation, "it will require a coordinator with plenary powers to bring action out of the inertia" of the situation.³ The Emergency Transportation Act was a notable move in that direction, but it expired before "plenary powers" were brought into play. Whether such powers can best be exercised on the federal level, or on the state, or regional level might be open to debate. If weight is given to the factor of decentralization, and to the fact that the railroads are only one of the elements, although of extreme importance, in planning port and terminal development, it would appear that plenary powers might well be vested in such a local agency as the Port of New York Authority.

³ P. N. Y. A. "Memorandum Submitted to the Secretary of Commerce in the matter of Transportation Economies Possible in New York Harbor through Consolidation and Coordination of Railroad Freight Terminal Facilities and Operation in the Port of New York, April 10, 1933." 10 pp., 3 exhs., mimeographed.

The question of what powers are appropriate to the administration of a plan as broad in scope as the Comprehensive Plan brings up for brief consideration certain features of American administrative law and practice that have a bearing upon port planning and development. There is, first, the constitutional division of jurisdiction over commerce. In terms of a concrete situation, the line between interstate and intrastate commerce is not always readily discernible, as illustrated obliquely in the *Hell Gate Bridge Case*. Second, there is the departmentalization of our federal and state administration, which, appropriate as it may be, presents a serious problem of coordination when confronted with a many-sided regional task such as port development. As a usual thing the authority and responsibility of an administrative agency are limited to the terms of the act or acts which it was specifically created to administer, and contrariwise, it tends to feel no responsibility for the administration of a public policy beyond the terms of its particular statute. This was illustrated in the *Belt Line 13 Case* and also in the divergent policies of the U. S. Shipping Board and the War Department in connection with the Hoboken Shore Line.

Third, there is a general tendency to place regulatory powers and public works powers in separate administrative bodies. For instance, the Port Authority had power to build, and make charges for the use of, a Cross-Bay Tunnel, but without the power to compel the railroads to use it jointly, or to determine a fair charge of such use, an approach to the question of financing the construction was out of the question.

The weakness of this cellular division may be seen in the situation on the New Jersey waterfront where the Interstate Commerce Commission had jurisdiction over the key matter of terminal operations by the trunk line railroads, the War Department owned the Hoboken Shore Line, the Shipping Board owned the piers, and the Port Authority had the power, at least in legal terms, to finance and construct a great public ship-to-rail terminal. Because of the dispersion of power among

public agencies, there was no public terminal development at all, either on the New Jersey waterfront or anywhere else in the port (excepting, of course, New York City's pier properties and the Union Inland Freight Station). The situation cried aloud for concentration of power and flexibility of attack.

To have concentrated in the Port Authority jurisdiction over all governmental activity contributing to the development of the port would have been to introduce so novel a form of federal-state cooperation and to encroach upon the jurisdiction of so many federal and state agencies as to have been beyond the realm of political possibility. Lacking this, at least the terms of the Comprehensive Plan Acts should have been directory and binding upon the owners of private property. The minimum powers with which the Port Authority should have been vested, in addition to its proprietary powers under the Compact, would have included power to hold investigations, subpoena witnesses, take testimony under oath, make determinations and issue orders. By subjecting the orders of the Port Authority to approval or review by appropriate state or federal agencies conflicts of public policy and jurisdiction could have been avoided.

If it be asked why the officers of the Port Authority in drafting the Comprehensive Plan Acts did not provide an adequate pattern of administrative powers and relations, the answer in the main would be that they feared the loss of the whole plan concept in the storm of criticism, opposition and demagoguery which such explicit provisions would have let loose. They were content to enunciate in the statutes merely the general principles and the framework of the Plan. They hoped that by judicial interpretation, perhaps by further legislation, the deficiencies revealed in administration would be remedied. It is no exaggeration to say that statutes could hardly have been drawn which offered greater promise and less substance than the Comprehensive Plan Acts.

If it is still desirable that the basic elements of the Comprehensive Plan be carried out, what should be done? With re-

spect to the Port Authority the minimum would be to strengthen its powers by the enactment in New Jersey of a bill complementary to the New York Investigation and Subpoena Act. Federal legislation should also be passed delegating similar powers with respect to federal jurisdiction and clarifying the relation between the Port Authority and those federal agencies upon whose sphere its action might impinge.

If it should be impossible or inexpedient thus to strengthen the Port Authority it would still be possible to carry out the Comprehensive Plan, insofar as it is a railroad plan, by a change in the attitude of the Interstate Commerce Commission toward those powers which it already possesses, and by amending the Interstate Commerce Act in certain respects.

The Transportation Act of 1920 was written in the same spirit as that which animated the Comprehensive Plan Acts. Its basic contribution to railroad regulation lay in the recognition of a positive responsibility on the part of the Interstate Commerce Commission for railroad management. It marked a shift in emphasis from mere enforcement of restrictive safeguards to the deliberate promotion of public ends.⁴ The Commission's most important power, that of fixing rates, was extended to include minimum rates, and the Commission was directed to exercise this power "so that carriers as a whole . . . will, under honest, efficient and economical management, and reasonable expenditures . . . earn . . . a fair return" giving "due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation."⁵ Yet in the many rate cases which have come before the Commission it has never laid down specific conditions for "economical management and reasonable expenditures." It might

4 I. L. Shariman. *The Interstate Commerce Commission*, Vol. I, p. 177. New York: The Commonwealth Fund, 1931.

5 49 U. S. C. A., sec. 15a (2), (3).

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have done so in the *Constructive Stations Case* and in the *Pick-up and Delivery Case* in relation to the Port Authority's union inland freight station plan.

The Commission was also given power to control extensions and abandonments and the issuance of securities.⁶ This power might have been used in connection with the New York Central's west side improvement, but the Commission raised no question as to the economy of the proposed improvement nor suggested any conditions as to its operation.

In justifying its reluctance to coerce the carriers the Commission has drawn an imaginary line between those matters said to be properly subject to regulation and those matters said to be properly reserved to management. These categories, while neatly antithetical, find no respect in the Interstate Commerce Act, and in actual practice are distinguished by no clear or logical limits. It is true that, as the control of operating practices intensifies, the difficulty of policing increases; but where a local public agency like the Port Authority stands ready and willing to help, it would seem a bit unreal to raise a difficulty to the status of a barrier. If the objectives of the Comprehensive Plan are to be reached through the Interstate Commerce Commission, its attitude on this dichotomy of management and regulation would have to change. It will have to take a more positive stand on conditions and costs of operations.

But a change in the attitude of the Commission would not be sufficient. The Interstate Commerce Act itself would have to be amended in some particulars. The Transportation Act of 1920 gave the Commission broad powers over the movement of traffic, car service and joint use of terminals, but in each instance coupled the grant with a limitation of circumstance or condition confining the exercise of power so as to sap its force.⁷ In general these limitations might well be repealed or modified. One of them is especially pertinent to the terminal problem. The Commission was permitted to require joint use of terminal

⁶ 49 U. S. C. A., sec. 1 (18), 20a.

⁷ 49 U. S. C. A., secs. 1 (15, 16), 3 (4), 15 (4).

facilities if found to be practicable and in the public interest, but compensation had to be fixed according to "the principle controlling compensation in condemnation proceedings." The effect of this limitation has been to preserve the competitive advantage of each individual terminal and to render the grant of power useless. The section should be amended so as to substitute the principle of investment and operating cost apportioned to the users on a per unit basis. This principle is the one generally recognized in voluntary joint use.

Under an older paragraph the Commission is forbidden to establish a through route which would have the effect of "short-hauling" a participating carrier. This paragraph should be repealed, or at least modified so as to have no effect in terminal areas.⁸ This was the clause which defeated New Jersey's demand for improved service in the *Harbor Case*. If the Port Authority had pushed the *Belt Line 13 Case* to a final issue, it would again have stood in the way. In the *Hell Gate Bridge Case*, with respect to the major part of the Port Authority's complaint, it was said to be controlling. As interpreted by the Commission it could be used to prevent any plan of unified belt line operation which permitted a shipper to bring his freight to the terminal of one carrier for shipment via the trunk line of another.

The railroads would without doubt oppose any such changes in the law as they have opposed every other step to rationalize terminal operations. They object basically to the "assumption that private ownership by the several railroads of their several facilities and properties should be disregarded in framing the projects, and in estimating economies to be expected therefrom." They feel that the benefits accruing to one railroad seldom "reimburse it for the use of its property by another."⁹

⁸ The Interstate Commerce Commission has recommended "that section 15(4) . . . be amended so as to enable us to establish through railroad routes where deemed necessary in the public interest regardless of the 'short-hauling' of any carrier." I. C. C. *Annual Report*, 1937, p. 106; *ibid.*, 1938, p. 122. This is not to be confused with the "long and short haul" clause.

⁹ Samuel T. Bledsoe, "Consolidation and Coordination Problems," *Transportation Development in the United States: Proceedings of Academy of Political Science*, XVII (Jan. 1937), 114-126.

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The contradiction between the economies claimed for terminal unification on the one hand, and the losses individually apprehended on the other, is explained by the unequal competitive strength of the carriers. The stronger roads enjoying more desirable terminal facilities would, it is true, be faced with the uncompensated loss of their resulting competitive advantage. Since this element is inherent in all unification plans the stronger roads insist upon the rights of private ownership, to the detriment of railroad transportation as a whole. And the stronger roads speak for the railroads as a group.

Throughout this narrative the premises and principles of the Comprehensive Plan have not been questioned. To do so would involve an economic study comparable to that performed by the New York, New Jersey Port and Harbor Development Commission and the Port Authority over a period of more than four years and at a cost of about \$1,000,000. Furthermore the Comprehensive Plan has been the law, and it has been the Port Authority's duty to administer it.

Yet in the eighteen years after the adoption of the Comprehensive Plan changes have occurred. The rise of the motor truck as a factor in freight transportation is the most obvious and most important. It has had two aspects, first as an over-the-highway competitor, and second as an accessory to rail transportation in terminal areas. With the first aspect this study is not concerned, except to note that it has cut heavily into the volume of rail freight¹⁰ with consequent effect upon the need for new rail facilities, and that this competition has been induced in no inconsiderable measure by the refusal of the railroads to adjust their terminal operations to meet the flexibility of their competitor.

The second aspect, however, has had a direct bearing upon the Comprehensive Plan, not upon its basic principles, but upon the physical plan. When the Plan was drafted, drayage, mainly by horse-drawn vehicles, was a disproportionate factor in ship-

¹⁰ See I. C. C. I&S Docket No. 4191. Pick-up and Delivery in Official Territory, 218 I. C. C. 441 (1936).

ping costs. It was important then for a manufacturer or distributor to be located adjacent to a railroad. Now the motor truck, together with greatly improved streets and highways, enables a shipper located in any part of the Port District to reach rail connections at relatively small cost. Thus one of the objectives of the Comprehensive Plan has been achieved and the numerous feeder belt lines which it proposed have become unnecessary. Also it is safe to say that the motor truck's greater flexibility has removed the proposed underground, under-river, automatic-electric system from the realm of possibility. Vehicular tunnels can more economically serve to connect Manhattan with the railheads in New Jersey.

When in the past a manufacturer or distributor established his location beside the line of a single railroad he had little choice but to ship over that line. In order to gain the benefits of competition the shipper may now truck his freight to whatever terminal he chooses even at some little distance. Thus another objective of the Comprehensive Plan has been achieved, but not in full measure. The absence of joint operation and union terminals on the existing railroad lines has produced needlessly high trucking costs and a tendency to concentrate outgoing shipments from both Jersey City and Brooklyn at the pier stations on the west side of Manhattan, where the railroad competition is keenest and the service best. In addition, excessive trucking places an unwarranted strain upon streets and highways, creating an uneconomical demand for new vehicular facilities.

The problem of replacing expensive and cumbersome marine service with rail facilities has not yet been solved. Pier stations have not been abandoned nor has marine service been reduced or consolidated. That this remains a serious problem is evidenced by the reappearance of the lighterage issue. In October, 1929, the state of New Jersey appealed to the Interstate Commerce Commission for an order directing the trunk lines to discontinue their practice of making deliveries to shipside and freight stations by lighter or truck without assessing an extra

charge. Later a group representing various municipalities, chambers of commerce and shippers in northern New Jersey went further and asked for a complete separation of the New Jersey side of the port from the New York side for rate-making purposes. The state of New York filed an intervening petition in opposition. Here was the *New York Harbor Case* all over again, minus the issue of reciprocal switching.

In April, 1930, the city of Boston joined the fight by demanding lower rates to Boston instead of rates on a parity with New York, and the establishment at New York of separate charges for terminal services such as lighterage, carfloatage, and motor-truck service to off-track stations. The Port Authority as the agent of both states remained neutral in the New Jersey cases, but when Boston filed its complaint the Port Authority entered into active opposition as a matter of protecting the commerce of the port.¹¹ Nevertheless, the main issue in all three cases was the same: the cost of marine service. The complainants attempted to prove that it was so high as to justify the imposition of extra terminal charges and a rate differential.¹²

In January, 1933, the examiner for the Interstate Commerce Commission, consolidating the three cases, filed a proposed report finding that "free lighterage has retarded the development of shipping facilities and business on the New Jersey shore . . . and that a uniform charge for such service is the most practical way for correcting the situation." And with relation to Boston the proposed report also found that free lighterage gave New York "an advantage over Boston which has con-

11 But see P. N. Y. A. *The Lighterage and Trucking Issue: a Series of Questions and Answers on an Important Subject, June 1, 1929*. New York, 1929. 15 pp. Julius Henry Cohen, General Counsel, *The Position of the Port Authority on the "Stop the Rate with the Car" Proposal: An Address before the Rotary Club of Jersey City, June 20, 1929*. New York, 1929. 20 pp. P. N. Y. A. *Communications to the Governor of New York and New Jersey in Reference to the Lighterage and Trucking Issue, July, 1929*. New York, 1929, 23 pp. The Port Authority was severely criticized in New Jersey for its action in the Boston case.

12 P. N. Y. A. *Annual Reports, 1929-1931*.

tributed to the latter's decline . . . , and that this advantage could best be removed by the imposition of a charge for that service."¹³

In August, 1934, the Interstate Commerce Commission rendered its decision, reversing the examiner's conclusions and rejecting the complainants' main contentions. The report quoted the *New York Harbor Case* on the unity of the port and stated that the issues and facts in the current proceedings were "substantially the same now as they were then." It observed "that the New Jersey portion of the port district, as well as New York, has grown and prospered and neither has been injured as a result of the long-established practice of grouping all parts of the district at the same freight rates." Local adjustments were ordered which had the effect of cementing further the unity of the port.¹⁴

In 1937 New Jersey attempted to reopen the case, but its application was denied.¹⁵

Nevertheless, the high cost of marine operation remains the vulnerable spot in the unity of the port. Unless something is done to provide a direct rail connection between its two sides and to reduce costs, the time may come when the examiner's point of view quoted above will be accepted by the Commission. The resulting dislocation of commerce and invested values would be especially serious to Brooklyn and Long Island.

In conclusion, the key to the situation lies in the Cross-Bay Union Freight Tunnel. With rail connections between the southern group of New Jersey railroads on one side and the Long Island and New Haven Railroads on the other a large block of harbor carfloating could be eliminated. By tying in the Brooklyn marginal line and Belt Line 13 (with real belt line

¹³ *New York Times*, Jan. 29, 1933, p. 16.

¹⁴ I. C. C. Docket No. 22824. Lighterage Cases. *State of New Jersey v. New York Central Railroad Company et al.* (Embraces also No. 23040. *New Jersey Traffic Advisory Committee v. New York Central Railroad Co. et al.* and No. 23327. *City of Boston v. New York Central Railroad Co. et al.*) Submitted May 24, 1933. Decided July 10, 1934. (203 I. C. C. 481, 512-13).

¹⁵ *New York Times*, Aug. 28, 1937, p. 23, and Nov. 10, p. 51.

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service) direct shipside delivery could be facilitated and lighterage reduced. Progressive steps to bring in the northern group of railroads in New Jersey, and to open Hell Gate Bridge to New York Central traffic to and from Long Island would practically eliminate all interchange carfloating.

Excepting service by the New York Central, Manhattan depends entirely upon delivery by carfloat and lighter. No concrete alternative has been presented to such service for the central produce market or the west side team-tracks of the New Jersey roads, although a union team-track yard, as suggested by the Port Authority, would reduce railroad occupancy of the waterfront. But with regard to general merchandise freight there is no reason to believe that the plan adopted by the railroad presidents in 1929 is not still economically sound. Increased use of the Union Inland Freight Station, the construction of two more such stations, and store-door delivery of carload merchandise freight from the New Jersey railheads would materially improve the situation.

The Cross-Bay Tunnel, belt line service on Belt Line 13, routing of New York Central cars for Long Island over Hell Gate Bridge, completion of the revised union inland freight station plan: these parts of the Comprehensive Plan are still needed and still remain to be accomplished.

VITA

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