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# NOMINATION

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HEARING  
BEFORE THE  
COMMITTEE ON  
LABOR AND PUBLIC WELFARE  
UNITED STATES SENATE  
NINETY-SECOND CONGRESS  
SECOND SESSION  
ON

JAMES L. COWEN, OF ILLINOIS, TO BE A MEMBER OF THE  
RAILROAD RETIREMENT BOARD

OCTOBER 12, 1972

Printed for the use of the Committee on Labor and Public Welfare



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## NOMINATION

THURSDAY, OCTOBER 12, 1972

U.S. SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
*Washington, D.C.*

The committee met at 10 a.m., in room 4232, New Senate Office Building, Senator Alan Cranston presiding pro tempore.

Present: Senator Cranston.

Committee staff members present: Stewart E. McClure, staff director; Robert E. Nagle, general counsel; and Eugene Mittelman, minority counsel.

Senator CRANSTON. The committee will come to order. This is a meeting of the full committee.

As chairman of the Subcommittee on Railroad Retirement I am delighted to chair this nominations hearing this morning on behalf of the distinguished chairman of the committee, Senator Williams.

Our first nomination this morning is of James L. Cowen of Illinois to be a member of the Railroad Retirement Board.

At this point in the hearing we will enter the biographical sketch of Mr. Cowen and information concerning the duties of the Railroad Retirement Board.

(The information referred to follows:)

### BIOGRAPHICAL SKETCH OF JAMES L. COWEN, CHIEF ACTUARY RAILROAD RETIREMENT BOARD

Home address: 7506 Kildare, Skokie, Illinois 60076

Born: April 27, 1925 in Boston, Massachusetts

Father: Benjamin Michael Cowen (deceased)

Mother: Mary Cohen Cowen (deceased)

Family status: Married Muriel Lois Cohen Peretsman, June 1956 in Brookline, Massachusetts: two stepdaughters

Education:

High school: Boston Public Latin School, class of 1943.

College: Harvard, A.B., class of 1949; University of Michigan, 1 semester, spring of 1949.

Military service: U.S. Army Air Force, June 1943-November 1945, commissioned August 1944 as 2nd lieutenant. Served December 1944-June 1945, 8th Air Force; flew 31 combat missions. Separated from active duty November 1945 as 1st lieutenant.

Work history:

1942-43 and 1946-50: Part-time salesman, Emerson's Shoes, Inc., Brookline, Massachusetts, while attending school.

1951-52: Boston Mutual Life Insurance Co., actuarial trainee.

1952 to date: Actuarial office of Railroad Retirement Board, advancing from GS-7 to GS-17.

Professional memberships: Member, American Academy of Actuaries; Associate Society of Actuaries; Fellow, Conference of Actuaries in Public Practice; Member, Interamerican Association of Social Security Actuaries.

## Awards:

Military: Air medal with 4 oakleaf clusters.

Railroad Retirement: Superior accomplishment awards, 1956 and 1960 Outstanding efficiency rating, 1960; nominated for Arthur S. Flemming awards program, 1959, 1960, 1961, 1962, 1963; nominated outstanding professional employee in Chicago area, 1962.

## Published papers:

Transactions of Society of Actuaries: *1962 RRB Female Mortality and Remarriage Tables*, Vol. XVII, 1965; *New Mortality Tables for Railroad Disability Annuitants*, Vol. XIX, 1967 (with A. M. Niessen).

## Railroad Retirement Board publications:

*11th Actuarial Valuation of the Assets and Liabilities Under the Railroad Retirement Acts as of December 31, 1968 with Technical Supplement* (with A. M. Niessen), 1970.

*Occupational Differences and Separation Rates, 1954-56*, RRB Actuarial Study No. 2, 1959.

*Occupational Differences in Separation Rates, 1957-59*, RRB Actuarial Study No. 5, 1962.

*Occupational Differences and Separation Rates, 1962-65* (with J. J. Stotland), RRB Actuarial Study No. 8, 1968.

Numerous unsigned articles appearing in the Railroad Retirement Board Monthly and Quarterly Reviews and as actuarial notes.

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[Excerpt from the Railroad Retirement Act]

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“RETIREMENT BOARD

“PERSONNEL

“SEC. 10. (a) There is hereby established as an independent agency in the executive branch of the Government a Railroad Retirement Board, to be composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of the term and the terms of office of the members first taking office after the enactment date shall expire, as designated by the President, one at the end of two years, one at the end of three years, and one at the end of four years after the enactment date. One member shall be appointed from recommendations made by the representatives of the employees and one member shall be appointed from recommendations made by representatives of carriers, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and carriers concerned. One member, who shall be the chairman of the Board, shall be appointed initially for a term of two years without recommendation by either carriers or employees and shall not be in the employment of or be pecuniarily or otherwise interested in any employer or organization of employees. Vacancies in the Board shall not impair the powers or affect the duties of the Board or of the remaining members of the Board, of whom a majority of those in office shall constitute a quorum for the transaction of business. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.<sup>1</sup>

“DUTIES

“(b) 1. The Board shall have and exercise all the duties and powers necessary to administer this Act and the Railroad Retirement Act of 1935. The Board shall take such steps as may be necessary to enforce such Acts and make awards and certify payments. Decisions by the Board upon issues of law and fact relating to pensions, annuities, or death benefits shall not be subject to review by any other administrative or accounting officer, agent, or employee of the United States.

<sup>1</sup> As amended by Public Law 90-257, 1968.

"2. If the Board finds that an applicant is entitled to an annuity under the provisions of this Act or the Railroad Retirement Act of 1935 then the Board shall make an award fixing the amount of the annuity and shall certify the payment thereof as hereinafter provided; otherwise the application shall be denied.

"3. The Board shall from time to time certify to the Secretary of the Treasury the name and address of each individual entitled to receive a payment, the amount of such payment, and the time at which it should be made, and the Secretary of the Treasury through the Division of Disbursements of the Treasury Department, and prior to audit by the General Accounting Office, shall make payment in accordance with the certification by the Board.

"4. The Board shall establish and promulgate rules and regulations to provide for the adjustment of all controversial matters arising in the administration of such Acts, with power as a Board or through any member or designated subordinate thereof, to require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations in any matter involving annuities or other payments and shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions. All positions to which such individuals are appointed, except one administrative assistant to each member of the Board, shall be in and under the competitive civil service and shall not be removed or excepted therefrom. In the employment of such individuals under the civil service laws and rules the Board shall give preference over all others to individuals who have had experience in railroad service, if, in the judgment of the Board, they possess the qualifications necessary for the proper discharge of the duties of the positions to which they are to be appointed. For purposes of its administration of this Act or the Railroad Unemployment Insurance Act, or both, the Board may hereafter place, without regard to the numerical limitations contained in section 505 of the Classification Act of 1949, as amended, four positions in grade GS-16 of the General Schedule established by that Act, four positions in grade GS-17 of such schedule, and one position in grade GS-18 of such schedule. All rules, regulations, or decisions of the Board shall require the approval of at least two members, except as provided in subdivision 5 of this subsection and they shall be entered upon the records of the Board, which shall be a public record. Notice of a decision of the Board, or of an employee thereof, shall be communicated to the applicant in writing within thirty days after such decision shall have been made. The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary to assure proper administration of such Acts. Subject to the provisions of this subsection, the Board may furnish information from such records and data to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the board shall be credited to the Railroad Retirement Account. The Board shall have power to require all employers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of such Acts. The several district courts of the United States and the District Court of the United States for the District of Columbia shall have jurisdiction upon suit by the Board to compel obedience to any order of the Board issued pursuant to this section. The orders, writs, and processes of the District Court of the United States for the District of Columbia in such suits may run and be served anywhere in the United States. The Board shall make an annual report to the President of the United States to be submitted to Congress. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.<sup>1</sup>

"5. The Board is authorized to delegate to any of its employees the power to make decisions on applications for annuities or death benefits in accordance with rules and regulations prescribed by the Board: *Provided, however,* That any person aggrieved by a decision so made shall have the right to appeal to the Board.

"6. In addition to the powers and duties expressly provided, the Board shall have and exercise with respect to the administration of this Act such of the powers, duties, and remedies provided in subsections (d), (m), and (n) of section 12 of the Railroad Unemployment Insurance Act as are not inconsistent with the express provisions of this Act.<sup>2</sup>

Senator CRANSTON. Mr. Cowen, will you please come forward. Good morning.

<sup>1</sup> As amended by Public Law 383, 84th Cong., 1st sess., 1955; Public Law 85-927, 1958; and Public Law 89-700, 1966.

<sup>2</sup> As added by Public Law 89-700, 1966.

**STATEMENT OF JAMES L. COWEN, CHIEF ACTUARY, RAILROAD  
RETIREMENT BOARD**

Mr. COWEN. Good morning, Senator.

Senator CRANSTON. I believe it is correct, Mr. Cowen, that, if you are confirmed, the President intends to appoint you Chairman of the Board to replace Mr. Habermeyer who has retired. The term for which you are nominated is 5 years.

I note that you have been with the Board since 1952, when you started as a GS-7 advancing to Chief Actuary of the Board, your present position. When did you become Chief Actuary?

Mr. COWEN. 1970.

Senator CRANSTON. From studying your résumé, it appears to me that you have spent virtually your entire adult work history at the Board; is that correct?

Mr. COWEN. Just about.

Senator CRANSTON. I want to congratulate you on an outstanding record of work achievement and advancement. It is always very gratifying to see a man, who has worked as hard as you, come up through the ranks to become an agency head. I want you to know that I have heard only good comments about your work at the Board and your nomination to be Chairman. I know of no opposition to this nomination, and I will do all I can to achieve confirmation speedily.

We have some great problems, however, you, as Chief Actuary, probably know better than anyone else of the serious problems confronting the railroad retirement system. Indeed, we talked about those problems 2 months ago at our hearings on H.R. 15927, now Public Law 92-460.

My point is that the job you are to undertake, if confirmed, as Railroad Retirement Board Chairman—and I might add our job on the Railroad Retirement Subcommittee—is not exactly an enviable one at this point in time. We must find a way to preserve the solvency of the railroad retirement account in order to be able to make permanent the 51.8 percent cumulative benefit rate increase contained in the last three railroad retirement temporary increase laws.

So, my question now is what is your personal assessment of the situation and what do you plan for the Board to do regarding that?

Mr. COWEN. The problem is very severe, as you say. Railroad labor and railroad management are in the process, or will be very shortly, of commencing negotiations to try to implement suggestions made by the Commission on Railroad Retirement. I would give both labor and management all of the assistance which the Board's technicians could possibly give them in this area.

Senator CRANSTON. I know you are aware of the so-called Cranston amendment in section 6 of Public Law 92-460 calling for a March 1 labor-management joint report, and an April 1 report from the Board on that report on the financial solvency question.

That provision of the bill expresses my philosophy about the situation, now adopted as a declaration of congressional intent, that these increases can be made permanent only if at the same time a method of financing them is also adopted.

Could you comment on this situation, and provide me your information as to how negotiations are proceeding between union and management representatives on financing the increases?

Mr. COWEN. To the best of my knowledge, management and labor have not yet held a meeting. However, there is a meeting scheduled for, I believe, the 24th of this month.

There have been meetings scheduled, but for various reasons they have been postponed.

With respect to how to handle it, there have been many suggestions as to alternative ways of financing the program through alternative methods other than through a payroll tax.

These are being investigated by both the labor and management people. There are going to be other problems.

At the hearings I believe that one of the other Board Members did discuss the dual benefit problem, where an employee could be entitled to both the social security benefit and the railroad retirement benefit.

There are certain windfalls which derive because of this. Elimination of the windfall elements in the dual benefit area will be a substantial saving to the railroad retirement program.

Senator CRANSTON. What role, if any, would you as Chairman, and what role would the Board, generally assume in the labor-management negotiations now going on regarding financing the railroad retirement benefit increases?

Mr. COWEN. I would try to give them some suggestions and my own opinions, and give them the pros and cons of any suggestions which are made by other people; try to be as objective as possible, and as nonpartisan as possible.

Senator CRANSTON. What are your personal views on the validity of the actuarial projections in the report of the Railroad Retirement Commission?

Mr. COWEN. I believe they are fairly accurate. We had made a projection before the Commission was begun, and our projection showed the funds being exhausted at roughly the same time that the Commission's projections show.

Senator CRANSTON. As Chairman, I presume you would see yourself as the public member of the Board, representing the general interest?

Mr. COWEN. That is true.

Senator CRANSTON. I would appreciate it if you would indicate your thoughts just briefly on the general two-tier recommendation of the Commission.

Mr. COWEN. I believe it is the only solution and that it has to come. I have felt this way for many years. I have discussed it as far back as 1968.

Senator CRANSTON. Would you please file with the committee a detailed statement to be made part of the hearing record on your personal views on each of the Commission's recommendations.

Mr. COWEN. Yes.

(The information subsequently supplied follows:)

UNITED STATES OF AMERICA  
**RAILROAD RETIREMENT BOARD**  
 844 RUSH STREET  
 CHICAGO, ILLINOIS 60611

OFFICE OF CHIEF ACTUARY

October 16, 1972

Honorable Harrison A. Williams, Jr.  
 Chairman, Committee on Labor and  
 Public Welfare  
 United States Senate  
 Washington, D. C. 20510

IN THE OFFICE OF  
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 SEN. HARRISON WILLIAMS

Dear Mr. Chairman:

At the hearing on October 12, 1972, concerning my nomination to be Chairman of the Railroad Retirement Board, I was asked to submit for the record my views on each of the recommendations contained in the Report of the Commission on Railroad Retirement. This is given below. In each instance, the recommendation from the Commission is quoted and then followed by my views.

Recommendation 1

"The railroad retirement system should be restructured into two separate tiers of benefits. Tier one should provide regular social security benefits, financed and paid under the social security laws, and represented by a separate social security check. In relation to tier one, the Railroad Retirement Board should function as a social security claims agent and payment center for claims-taking, adjudication, and certification for payment of social security benefits for railroad beneficiaries in accordance with policies set by the Social Security Administration. Tier two should be a completely separate supplementary retirement plan administered by the Railroad Retirement Board under Federal law, structured to fit with and augment social security and float on top of tier one."

In my estimation, the restructuring recommended by the Commission is desirable in order to assure the continued solvency of the system. The Railroad Retirement Board should administer tier 1 benefits for several reasons. First, it would permit railroad employees and their families to have all of their benefits handled through a single agency. Secondly, it would be easier administratively. Since all records for railroad retirement beneficiaries would be held at one central point, there would be a minimum of interagency communications concerning each case.



Although the Board would adjudicate and handle tier one benefits in accordance with the regulations and procedures set up by the Social Security Administration, the Board, in my estimation, should be completely independent of that agency.

#### Recommendation 2

"Legally-vested rights of railroad workers and railroad retirement beneficiaries to benefits based on social-security-covered non-railroad service should be guaranteed, but future accrual of these dual benefits should be stopped."

This area will cause the greatest technical difficulty in the restructuring of the program. The formula for computing social security benefits does not lend itself to splitting the benefit between periods of service. Thus, there is no accurate way of determining the portion of a man's potential social security benefit which was due to service performed before the changeover date. Extreme care must be taken so that there is no increase in the number and amounts of dual benefits.

#### Recommendation 3

"A firm financial plan should be adopted forthwith to finance the second tier of supplementary benefits through the Railroad Retirement Account on an assured, fully self-supporting basis by contributions from the railroad community through the crisis period of the next 20 to 30 years and then beyond."

This is necessary to assure railroad employees that there will be money to pay their benefits as they fall due. I concur in the Commission's view that the next 20 to 30 years is the crisis period and that the source of the funds to finance the benefits should not impose an undue burden on either the railroad employees or their employers.

#### Recommendation 4

"The benefit formulas and provisions of the system should be restructured and revised to assure that the overall benefits in the future continue to bear a reasonable relationship to wages in a dynamic economy and to make benefits more equitable among the various groups of beneficiaries."

Because of the introduction of tier 1 benefits, the basic formulas in the railroad retirement program have to be revised. The current railroad retirement formulas are structured so that they provide a social insurance benefit as well as a staff benefit. Since the tier 1 benefit under the restructured program provides the social insurance part of the benefit, the formula for tier 2 cannot be the same as in current law or there would be a duplication of benefits.

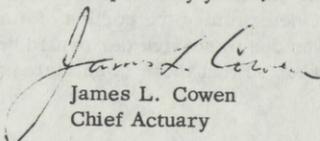
In restructuring the formulas and provisions, consideration will have to be given to the needs of the various categories of beneficiary and to the wishes of the railroad employees and employers who will be paying for the benefits.

\* \* \* \* \*

The recommendations of the Commission will leave many questions which will have to be answered before the restructuring can be completed. If I am confirmed as Chairman of the Railroad Retirement Board, I will give railroad labor and management all the assistance available within the resources of the Board.

I would like to thank the Committee for the consideration given me at the hearing.

Respectfully yours,



James L. Cowen  
Chief Actuary

Senator CRANSTON. Those are all the questions that I have. Senator Stevenson, a member of this committee, and a member of the Railroad Retirement Subcommittee, asked me to express his regrets at not being able to be here this morning, and to convey his congratulations to you.

I want you also to know that, as chairman of the Railroad Retirement Subcommittee, I will attempt to work closely with you, as well as with labor and management representatives, to find a way out of the very difficult situation confronting all of us, and especially the almost 1 million railroad retirement beneficiaries and the 611,000 current railroad workers.

Mr. COWEN. I thank you very much.

Senator CRANSTON. Thank you very much. I appreciate your presence.

The committee will now proceed to other business.  
(The committee then proceeded to other business.)



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