

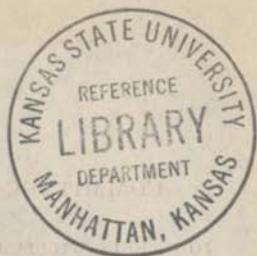
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ICC EMPLOYEE BOARDS

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HEARING

BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 6716

BILL TO AMEND SECTION 17 OF THE INTERSTATE COMMERCE
ACT TO PROVIDE FOR FURTHER DELEGATION OF
DUTIES TO EMPLOYEE BOARDS

JUNE 12, 1961

Printed for the use of the Committee on Interstate and Foreign Commerce



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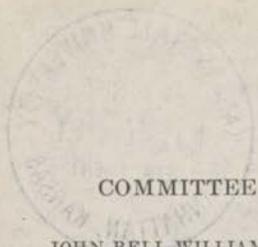
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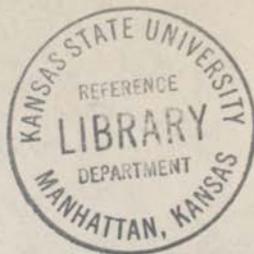
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ICC EMPLOYEE BOARDS

MONDAY, JUNE 12, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AGENCIES
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 1334, New House Office Building, Hon. Oren Harris (chairman of the full committee) presiding.

Present: Representatives Harris, Flynt, Moss, Rogers of Florida, Springer, Younger, and Thomson.

Also present: Andrew Stevenson, professional staff member; Allan H. Perley, legislative counsel, House of Representatives; Charles P. Howze, Jr., subcommittee chief counsel; Rex Sparger, subcommittee special assistant; and Herman Clay Beasley, subcommittee clerk.

The CHAIRMAN. The subcommittee will please come to order.

Today we are holding hearings on H.R. 6716, a bill to amend section 17 of the Interstate Commerce Act to authorize the Commission to delegate three-man employee boards power to make decisions in cases in which a hearing has been held and which do not involve issues of general transportation importance, the right of further appeal to an appellate division whose decision would be administratively final.

I think it is appropriate at this time to commend the Commission for having so energetically these past few months engaged in a program of revising its rules and procedures to provide for the various delegations of authority coping with matters which hitherto have gone to the Commission, in an effort to expedite the handling of the great number of cases which are before the Commission for its decision.

It is my understanding that in most particulars these revisions of the Commission's procedures have been accomplished by rules under its existing statutory authority, and that the Commission believes in the instant case it is necessary to have an amendment to the Interstate Commerce Act to provide for the type of decisions involved here.

At this point a copy of the bill will be inserted in the record.

The report of the Bureau of the Budget will also be included in the record at this point.

(The bill and reports thereon follow:)

[H.R. 6716, 87th Cong., 1st sess.]

A BILL To amend section 17 of the Interstate Commerce Act to provide for further delegation of duties to employee boards

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (5) of section 17 of the Interstate Commerce Act, as amended (49 U.S.C. 17(5)), is amended by changing the paragraph designation from "(5)" to "(5)(a)" and by adding the following new subparagraph:

"(b) Notwithstanding any other provision of this section, in any proceeding in which the Commission has not affirmatively determined and announced that an issue of general transportation importance is involved, but which involves the taking of testimony at a public hearing, including the submission, in whole or in part, of testimony in writing under oath, a board composed of three or more eligible employees, established as provided in paragraph (2), may stay or postpone a recommended order of a joint board established pursuant to section 205 of part II or of an examiner appointed pursuant to section 11 of the Administrative Procedure Act, and such board, upon its own motion may, or where exceptions are filed shall, reconsider the matter either upon the same record or after further hearing, and such recommended order shall thereupon be stayed pending final determination thereof by the board, an appellate division, or the Commission. As used in this subparagraph, the term 'recorded order' embraces an initial decision or recommended decision within the meaning of section 8 of the Administrative Procedure Act."

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 12, 1961.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: This will reply to your letter of May 2, 1961, requesting a report from the Bureau of the Budget on H.R. 6716, a bill to amend section 17 of the Interstate Commerce Act to provide for further delegation of duties to employee boards.

In his message of April 13, 1961, to the Congress on "Regulatory Agencies of Our Government" (H. Doc. 135), the President emphasized the need to give agency heads the statutory authority to delegate work that could better be performed at lower levels. H.R. 6716 has that objective. Accordingly, enactment of the bill would be consistent with the administration's objectives.

It is suggested that the words "recorded order," which appear in line 13, page 2, of H.R. 6716 be changed to "recommended order."

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

The CHAIRMAN. Our first witness this morning is Mr. Everett Hutchinson, Chairman of the Interstate Commerce Commission.

Mr. Hutchinson, I observe that you have several of your associates here and staff members. I think it would be appropriate to identify them for the record at this time.

STATEMENTS OF EVERETT HUTCHINSON, CHAIRMAN, AND LAWRENCE K. WALRATH, MEMBER, INTERSTATE COMMERCE COMMISSION

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Commissioner Freas, of California.

Commissioner Tuggle, of Kentucky.

The Vice Chairman of the Commission, from Georgia, Mr. Murphy.

Commissioner Walrath, Florida.

Commissioner Goff, Idaho.

Several of our staff members, the Secretary of the Commission, Mr. McCoy.

Commissioner McPherson, of Pennsylvania.

The Director of the Commission's Bureau of Operating Rights, Director Stillwell.

The Assistant Director of the Bureau of Rates and Practices, Mr. Prout.

The CHAIRMAN. Mr. Hutchinson, before you start, I notice we have here in the room today one very important spectator, apparently appointed to find out how the committee treated you this morning.

We are glad to see Mrs. Hutchinson in the audience this morning.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

The CHAIRMAN. I am sure that will cause you to do your usual best job.

Mr. HUTCHINSON. It will, indeed.

Mr. Chairman and members of the subcommittee, my name is Everett Hutchinson. I am the present Chairman of the Interstate Commerce Commission and have served in that capacity since January 1 of this year.

I am appearing today to testify on the Commission's behalf on a bill, H.R. 6716, which was introduced by the chairman of this committee, at our request, and which would give effect to legislative recommendation No. 1 in our 74th annual report to Congress.

H.R. 6716 would amend section 17 of the Interstate Commerce Act to permit the Commission to delegate to boards of three or more qualified employees authority to make decisions in certain cases in which a public hearing has been held, but which do not involve issues of general transportation importance.

It would also authorize the Commission to limit appeals from such decisions to appellate divisions of the Commission whose decisions would be administratively final.

In recent years, as a result of the enactment of new laws, intensified competition as between carriers, and our generally expanding economy, the workload of the Commission has steadily increased. This growth in the workload has, in turn, resulted in a corresponding increase in the average time required to dispose of proceedings coming before us.

A corollary effect has been to make it more and more difficult for members of the Commission to find the necessary time to devote to consideration of major transportation issues.

As a part of a rather extensive program to remedy this situation, the Commission has already taken steps under existing law to limit the right of appeal from division decisions to the full Commission to those cases involving issues of general transportation importance.

The Commission has also delegated additional duties to its staff, including the creation of many new employee boards to consider matters arising in nonadversary or uncontested proceedings which do not involve the taking of testimony at a public hearing.

The importance of these actions was emphasized in the President's recent special message to the Congress on regulatory agencies. The President noted that—

Some progress in this direction [reducing workloads] has already been made by the Interstate Commerce Commission in the past 2 months, which has delegated to intra-agency boards some 18,000 matters which otherwise would have required the attention of a Commissioner, a panel of that Commission, or the Commission as a whole.

Notwithstanding the benefits being realized from these changes in procedure and delegations of authority, there still remain a large number of cases which could be acted upon by experienced three-man employee boards, subject to petition to an appellate division whose action would be administratively final.

The cases we have in mind in this connection are those which do not involve issues of general transportation importance, but which, nevertheless, are now required to be decided by regular divisions of the Commission when exceptions are filed to the hearing officer's report and recommended order, or such recommended order is stayed prior to its effective date.

Since most cases involving hearings are confined to evaluating the evidence and resolving the issues in the light of established precedents, they are readily susceptible to review by boards of three qualified employees instead of regular divisions of the Commission under the present provisions of section 17 of the act.

H.R. 6716 would authorize the Commission to adopt this procedure, thereby enabling it not only to expedite the more routine types of cases but also allowing members of the Commission more time to devote to matters of major transportation importance.

In this connection, I want to emphasize that this bill would not necessarily make final the actions of the proposed boards inasmuch as a right of appeal would lie to an appellate division.

Various groups, organizations, and individuals familiar with the problems of the regulatory agencies have endorsed more extensive use of employee boards, and the Commission itself, in its 73d and 74th annual reports, recommended legislation to permit the further delegation of such authority.

In addition to this, greater utilization of such boards was recommended by the management firm of Booz, Allen & Hamilton in its survey of the Commission's organization and procedures made in 1960 at the request of the Bureau of the Budget.

Also, in the October 1, 1960, report of the Special Advisory Committee of Practitioners, created by the Commission in November 1959, and in the report on regulatory agencies to the President-elect, dated December 1960, prepared by the Honorable James M. Landis, former dean of the Harvard University Law School, recommendations were made that employee boards be used to a greater extent.

The Booz, Allen & Hamilton report stated, in part, as follows (vol. II, p. VII-23):

The employee board device is the most satisfactory technique available to the Commission below the level of a division for securing balanced teamwork in responsible decision making in the area of rules and other decisional activities. The existing boards work well and responsibly and dispose of much work which otherwise would find its way to the desks and councils of already overburdened Commissioners.

The use of employee boards should be much expanded * * *.

Volume III, page IX-59:

* * * certain legislative changes will be required for major reductions in caseload at the division level and for major increases in the time available on the part of Commissioners for consideration of broader aspects of regulation. Of particular importance is legislation authorizing delegation to employee boards of final jurisdiction over those elements of the overwhelming caseload which are not of national transportation importance.

We believe that our recent actions in creating 12 new employee boards, and of limiting appeals, will go a long way toward speeding up the disposition of cases and in affording Commissioners more time to devote to important policy considerations.

However, we also feel that a great deal more remains to be accomplished. The enactment of H.R. 6716 would represent an important

step in that direction. We therefore urge that you give this measure your favorable consideration.

Mr. Chairman and members of the subcommittee, we appreciate this opportunity to appear and express our reasons for requesting the enactment of this measure.

At this point, Mr. Chairman, if I may, I should like to call your attention to an error on page 2 of the bill. The first word on line 13 should be "recommended" instead of "recorded."

If there are any questions I shall be glad to try to answer them, Mr. Chairman.

Mr. Moss (presiding). Thank you, Mr. Hutchinson.

Mr. YOUNGER. On page 1, you state, "but which do not involve issues of general transportation importance." Will you give a sample of a case you have in mind.

Mr. HUTCHINSON. I think a good example would be a simple application for extension of a motor carrier operating authority to serve a new plant, or something of that sort.

That might be a case that would fit the procedure under the legislative authority we seek.

Mr. YOUNGER. New routes? Do you include new routes?

Mr. HUTCHINSON. Yes; new routes to a limited extent. Yes, Mr. Younger; I think so.

But the Commission would have to work this out, after the authority is granted, if it is because it is almost impossible, as I view it, to do more than give examples of what might fit the procedure—just as I have tried to do in response to your question.

Mr. YOUNGER. On page 2, I am glad and happy to see you make a remark there about the fact "in recent years * * * and our generally expanding economy."

If I am properly informed by the press and a lot of speeches that have been issued, we have not had any expanding economy in recent years; it has been completely static.

Can we take your statement here as pretty authentic that we have had an expanding economy?

Mr. HUTCHINSON. Well, there has been unquestionably some stagnation very recently, but in the last decade, for example, there we have had a generally expanding economy.

The rate of expansion, as I understand it now, measured by the gross national product, is accelerating as we sit here this morning.

Mr. YOUNGER. On page 7 you say:

The enactment of this bill would represent an important step in that direction.

Now, are there other legislative steps that must be taken that you know of now?

Mr. HUTCHINSON. This, I believe, Mr. Younger, is the only one we have requested that relates directly to the adjudicatory process or the decisional process.

We do have other recommendations in connection with other phases of our work, notably enforcement, to enable us better to deal with such problems as the "gray area" in trucking and so forth.

Mr. YOUNGER. So far as the Commission knows now, this is the only piece of legislation that will be necessary to give you the authority to reorganize and handle your workload in the way you think it ought to be handled?

Mr. HUTCHINSON. Yes, it is, Mr. Younger.

Mr. YOUNGER. That is all, Mr. Chairman.

Mr. MOSS. Mr. Rogers.

Mr. ROGERS of Florida. Mr. Chairman, I think he has made most of the questions I had in mind pretty clear. I want to make sure, however, that, with these employee boards constituted by three men who hear these matters, your procedures would permit, as a matter of right, an appeal from any decisions.

Mr. HUTCHINSON. Yes, Mr. Rogers. I attempted to emphasize that.

Mr. ROGERS of Florida. It is a matter of right and is not decided by the Commission as to whether they would accept an appeal, or not. Is that correct?

Mr. HUTCHINSON. That is correct; yes, sir.

Mr. ROGERS of Florida. These boards are not to go into matters or problems of general transportation importance?

Mr. HUTCHINSON. That is correct.

Mr. ROGERS of Florida. Now, how and by whom is the determination of whether a matter of general transportation importance made? Who determines that question?

Mr. HUTCHINSON. The Commission would determine that, Mr. Rogers.

Mr. ROGERS of Florida. Are there any particular guidelines that you have?

Mr. HUTCHINSON. Frankly, the guidelines are very difficult, indeed, to establish. Perhaps the best approach to this would be through the precedents in the cases themselves, rather than on some theory—that is, at the outset, on some rule not based on experience.

Mr. ROGERS of Florida. Now, suppose a matter were referred to the three-man employee board on a first determination that the matter was not of general transportation importance. It is then appealed?

Is it your idea to have it appealed to a division?

Mr. HUTCHINSON. From a board, yes.

Mr. ROGERS of Florida. Now, could the Commission step in, if someone felt that it was a matter of general transportation importance on the board and the board then determined it is? Would you have the authority to step in and bring that from the division to the entire Commission?

Mr. HUTCHINSON. The Commission would have that authority at all times, sir.

Mr. ROGERS of Florida. If someone did refer a matter which later turned out was of general transportation importance, the Commission could step in and bring it before the Commission?

Mr. HUTCHINSON. That is correct. The Commission could, you might say, recall a proceeding at any stage of the process.

Mr. ROGERS of Florida. Now, who would appoint these various boards? Is that done by the Chairman?

Mr. HUTCHINSON. Well, the appointments to the boards that we have now are made by the Commission.

Mr. ROGERS of Florida. The full Commission?

Mr. HUTCHINSON. And there is no change in this contemplated.

Mr. ROGERS of Florida. Will these employee boards be given the same types of cases? Will you have certain employee boards which handle particular factfinding procedures, or what is your idea?

Mr. HUTCHINSON. I do not know that I could say now what the degree of specialization would be. I am sure there would be some as is presently the case with existing boards.

Mr. ROGERS of Florida. In any of those boards do you change or rotate personnel at all?

Mr. HUTCHINSON. There is actually in practice some rotation or some changes by reason of such things as vacations and normal attrition, but there is no plan.

Mr. ROGERS of Florida. There is no plan?

Mr. HUTCHINSON. There is no planned or built-in rotation.

Mr. ROGERS of Florida. Who would refer these cases to the employee boards? Would it be done by staff members?

Mr. HUTCHINSON. It would normally be done by staff, but on a more or less automatic basis.

That is to say, cases would be assigned in rotation to the extent practicable.

Mr. ROGERS of Florida. Now, who would oversee or what method of overseeing have you planned for a review of this referral? This gets back, of course, to the problem of deciding whether or not it is a matter of general transportation.

Mr. HUTCHINSON. You mean a review of the assignment of proceedings?

Mr. ROGERS of Florida. Yes.

Mr. HUTCHINSON. The good judgment of members of our staff, that is the higher levels of our staff, the members of the Commission.

I do not know that you could call this a plan, but it would seem to me to be a fairly effective review of the procedure.

Mr. ROGERS of Florida. Would it be advisable to have members spot check the referrals. Here it may be that determination of a general transportation problem is really the crux of the problem of whether or not it goes to the employee board.

Mr. HUTCHINSON. Actually, there are matters that would be reviewed, in a sense, on a day-to-day basis. Division 1, for instance, which is the operating rights division of the Commission, is headed by Commissioner Walrath of your State, Mr. Rogers. He is sitting here with me. Mr. Walrath, as Chairman of that Division, and the other two members of the Division would actually review this procedure more or less on a day-to-day basis.

If in their judgment any case were improperly assigned I think it would come to their attention fairly early.

Mr. ROGERS of Florida. And if counsel did not feel it should go to the employee board, they would bring to the attention of the division under the proper procedure.

Mr. HUTCHINSON. This is correct; they would make representations, I imagine.

Mr. ROGERS of Florida. I might say I have very great confidence in Mr. Walrath, of the Commission. Particularly since he is from Florida.

Mr. HUTCHINSON. Thank you, Mr. Rogers.

Mr. MOSS. I am not clear in my own mind on this matter of who would assign these matters to an employee board.

Mr. HUTCHINSON. These are matters that go to boards now. What we seek here would be just additional boards. Cases that are assigned now are assigned as I indicated earlier, by the Directors of the Bureaus

more or less automatically. That is to say, they are assigned in rotation, insofar as practicable, to borrow a phrase from the Administrative Procedure Act.

Mr. MOSS. Is it under delegation from the Commission to him?

Mr. HUTCHINSON. Yes, sir; that is one of their duties now with respect to proceedings handled by existing boards and I would anticipate that the Commission would place the same sort of responsibility on the directors with respect to any additional authority that might be granted by reason of the adoption of this legislation.

Mr. MOSS. Could the Commission delegate to you as Chairman the authority to assign these matters?

Mr. HUTCHINSON. Yes.

Mr. MOSS. It has the authority to delegate specifically to you for redelegation?

Mr. HUTCHINSON. I believe, Mr. MOSS, that the Commission could put this responsibility on any one it chose.

Mr. MOSS. Who would have the right to ask the Commission to make the determination that the matter was of general transportation importance if that was their conviction, even though initially the case had been assigned in the absence of an affirmatively determined and announced policy?

Mr. HUTCHINSON. Those officials whom the Commission might designate, such as a member of the Commission or the chairman of the Proceedings Division.

Mr. MOSS. You indicated in response to a question by Mr. ROGERS that the Commission could at any point step in and review and take jurisdiction in any of these matters.

Mr. HUTCHINSON. That is correct.

Mr. MOSS. We are talking here about an action which takes place when the Commission has not made an affirmative determination. Supposing there is someone who wants the Commission to pass on this question. Do they have the right to petition the Commission to review the matter in making that determination?

Mr. HUTCHINSON. Perhaps I can answer your question this way. The Commission now has authority, which was given in the Transportation Act of 1940, to limit the right of appeal from decisions of a division to the entire Commission to cases of general transportation importance. Those are the same words of art, so to speak, that we are using here.

The legislative history of the 1940 act indicates that this is a matter which, for practical purposes, must be left to the discretion of the Commission.

I would hope that this would be the situation here—that is it would be a matter of discretion with the Commission, as to how far a case could go before becoming administratively final and could be taken to court under another paragraph of section 17.

Mr. MOSS. You are saying that the Commission has discretion to determine that a matter is of general transportation importance.

Mr. HUTCHINSON. That is exactly what I am saying, Mr. Chairman.

Mr. MOSS. But here is a contemplated action when the Commission has not affirmatively determined. How do you bring it then before the Commission if you feel such a determination should be made before the matter is heard by one of these employee boards?

Mr. HUTCHINSON. Of course, if you had to affirmatively pass on that question in every case, you would just be adding another issue to be adjudicated by the Commission. In that event, the legislative authority sought would be as a practical matter, a nullity. You would not have accomplished anything.

Mr. MOSS. A means whereby this matter could be brought before the Commission other than on its own motion.

Mr. HUTCHINSON. There is a means, but if this were done, Mr. Chairman, you would simply add a step rather than take out a step.

In other words, to the parties, at least to those who are resourceful—and that would be most of them—this would be an issue in every case unless it is left as a matter of discretion with the Commission.

So that instead of having, for instance, in a given case the issue of convenience and necessity to determine, you would have also the issue of general transportation importance. This would certainly not relieve the problem that we have in any way.

Mr. MOSS. If this were a case of general transportation importance, it would not be heard by one of these employee boards; is that correct?

Mr. HUTCHINSON. That is correct.

Mr. MOSS. Now, then, I am interested in a matter that has been assigned almost routinely to an employee board, but I am convinced that is a matter of general transportation importance.

How do I get that question considered?

Mr. HUTCHINSON. As a party? You are a party in your example?

Mr. MOSS. Can I petition the Commission at that point to review just that question?

Mr. HUTCHINSON. As I have said, Mr. Chairman, the hope is that this matter would be left to the discretion of the Commission.

Mr. MOSS. How do you get the Commission to exercise its discretion?

Mr. HUTCHINSON. Well, the Commission exercises its own discretion?

Mr. MOSS. Only?

Mr. HUTCHINSON. I would not say "only." Certainly I would not think you could prevent parties from taking a position, for instance, or urging a particular matter if they felt that it was important to them, but, there again, unless this is left to the discretion of the Commission instead of relieving the situation that bothers us it would be aggravated, Mr. Chairman.

Mr. MOSS. I recognize that. I am concerned with the question of who, if anyone, will have the right to ask the Commission to make such a determination.

Remember, you are proposing an action here in the absence of a determination—

Mr. HUTCHINSON. In the absence of a determination by the Commission that a matter does involve an issue of general transportation importance, the issue is not there at least according to the Commission, and the decision would be final and the parties dissatisfied with that decision would go from that decision to the courts.

Mr. MOSS. Then can I paraphrase what you are saying that there is no way and no one has the right to bring this matter before the Commission? That is the impression that I have received.

The Commission can exercise its discretion on its own motion, but in the absence of action by the Commission on its own motion, then

no one has the right to bring this matter to the Commission and request determination.

Mr. HUTCHINSON. Mr. Chairman, we have this now with respect to other types of cases, that is, those coming to the Division. This is a matter that sort of moves along with the case, but it does not mean that the Commission would pass affirmatively on this as an issue in the case the same as it would the matter of convenience and necessity. If you write that into the law we would be worse off than we are now.

This is the point that I would like to make. It is our hope that it would be left as a matter of discretion with the Commission. Parties having a final decision by the Commission could go to court.

Mr. MOSS. The assignment of cases contemplated under this proposed language is made by the Commission staff; is that correct?

Mr. HUTCHINSON. That is correct, yes.

Mr. MOSS. Now, will the Commission adopt rules which spell out rather clearly the categories of cases where the staff would be permitted to make assignments to the contemplated hearing panel, or employee board?

Mr. HUTCHINSON. It would not be a hearing panel. We have that authority now. We can have cases heard by them.

Mr. MOSS. I mean employee panel.

Mr. HUTCHINSON. It would be a review panel. It would be the body to make the initial decision in cases which had previously been the subject of a recommended report by a hearing officer.

Mr. MOSS. Then we have these employee panels now and they are going to have cases assigned to them.

Will the assignments be made under rules which spell out rather clearly the guidelines to be followed in the types of cases where such assignments are made?

Mr. HUTCHINSON. Yes, this would be done.

Also, Mr. Chairman, it might be useful if I called attention to one of our general rules of practice. That is rule 1.102. It provides that when the subject matter of any desired relief is not specifically covered by the rules in this part, a petition seeking such relief and stating the reasons therefor may be served and filed.

Even under this rule a party has the right to seek relief which he could not seek in any other way.

Mr. MOSS. Then if you are not going to adopt rules covering the categories of cases to be assigned in this instance, you feel that the rules that you already have are adequate to permit the assignments to the employee boards that are authorized under this provision.

Mr. HUTCHINSON. I would not want to say that we would not adopt rules. I would rather say we would adopt rules if satisfactory guidelines could be established to determine what would constitute cases involving issues of general transportation importance after some experience.

In other words, as I indicated previously, the best guides that I know of would be in the cases that had been decided under the procedure. It would be most difficult, indeed, to establish rules before we had had that experience.

Mr. MOSS. Mr. Younger, do you wish to ask a question at this point?

Mr. YOUNGER. I was wondering, Mr. Chairman, if we could not by a rule fix the responsibility for the assignment of these cases on the chairman of the division in which division the case would fall?

Mr. HUTCHINSON. Well, actually, this could be done, but it is contemplated, tentatively, of course, that this would be done not at the Commission level, but at the staff level.

Mr. YOUNGER. Yes, but would it not be well to fix some responsibility. I think that is what Mr. Moss and the rest of us have in mind.

If the appeal was made by an individual who thought that he had a very important case to whom on the Commission could he appeal? Why could not that be handled by rules fixing some responsibility in the chairman of the division?

Mr. HUTCHINSON. This could be done, Mr. Younger, certainly. The question, as I see it, would be whether in doing this we created a bigger problem than the one we are trying to solve—that is, created more work for the chairman of a particular division, for instance, than he now has in considering a case without the issue of general transportation importance.

Mr. YOUNGER. I agree with that.

From an administrative standpoint he would not have to make the actual assignment, but you would have in your machinery the responsibility so that if you did have a complaint you would have somebody responsible for the decision. That is the only thing I find.

Mr. HUTCHINSON. I think this could be done.

Of course, all these things now go to a division.

Mr. YOUNGER. But you can do that by a rule. You would not need any additional legislation to accomplish that purpose.

Mr. HUTCHINSON. You mean without this legislation we are seeking?

Mr. YOUNGER. No, I mean any further legislation in this particular bill you accomplish by rule the fixing of responsibility in connection with the assignment of cases.

Mr. HUTCHINSON. It could be done.

Mr. YOUNGER. That is all.

Mr. MOSS. Mr. Chairman, in the new subparagraph (b), insofar as it deals with recommended orders of examiners, why is the provision limited in its application to any examiner "appointed pursuant to section 11 of the Administrative Procedure Act"?

How does this gibe with paragraph 10 of section 17, which is the provision authorizing reference of matters to examiners?

Paragraph 10 describes the examiners as any "examiner of the Commission." Are these two provisions intended to cover the same examiners? If so, should not both describe examiners in the same way? If not, why not?

Mr. HUTCHINSON. Are you reading from the bill, Mr. Moss? I think I can answer your question in this way:

Only an examiner qualified under section 11 of the Administrative Procedures Act can hear a case. Is that the chairman's question?

Mr. MOSS. Then the two provisions cover the same examiners?

Mr. HUTCHINSON. Well, it covers hearing examiners. It covers cases that have been the subject—

Mr. MOSS. Then your answer would be in the affirmative?

Mr. HUTCHINSON. I think so. I am not sure just what your question is.

Mr. MOSS. You have a copy of the question right there before you.

Mr. HUTCHINSON. The answer is "Yes," except possibly to this extent:

A Commissioner can hear cases also. It would apply to that kind of proceeding, but I would think perhaps it is unlikely that it would as a practical matter.

Mr. MOSS. Mr. Harris.

The CHAIRMAN. Mr. Hutchinson, I do not want to appear repetitive. I may ask a question or two that has already been discussed in view of the fact that I was unavoidably detained on other business the last few minutes.

Do you feel that this bill is necessary to complement the actions which have been taken by the Commission to improve your procedures to expedite the work of the Commission?

Mr. HUTCHINSON. That is correct, Mr. Harris. We estimate, although it is just an estimate, that this legislation would relieve the Commissioners of some 1,600 case each year that would all in the category that we have been talking about.

In other words, those that do not involve the issues of general transportation importance.

The CHAIRMAN. In other words, you feel that there are some 1,600 issues or matters before the Commission that could be taken care of if this proposed legislation is enacted and Congress provides that authority to the Commission?

Mr. HUTCHINSON. This is our estimate, yes.

The CHAIRMAN. By the action of the Commission in the last year, I would say, whatever time it has been since your first reorganization proposal, how many matters or questions before the Commission have been disposed of?

Mr. HUTCHINSON. I am sorry. Could you give me the question again?

The CHAIRMAN. By the action of the Commission recently, in the last several months, in its reorganization proposals within the framework of the Interstate Commerce Act, how many questions or issues have been disposed of by the Commission during this time?

Mr. HUTCHINSON. I think I can answer your question this way: Approximately 29,000 matters are now handled by boards that previously required the attention of a division of the Commission, a Commissioner, or the entire Commission.

Is that your question, Mr. Chairman?

The CHAIRMAN. Yes, I suppose that would be an appropriate response.

When Dean Landis was before the committee on the reorganization proposal recently, he commented on the fact that within the last several months the Commission, that is your Commission, had disposed of some 32,000 matters pending before the Commission.

Mr. HUTCHINSON. I believe that figure would be a little high, Mr. Harris. To begin with, we had four, that is to say before we embarked on the reorganizations at the first of this year, we had four such boards and among them they were handling approximately 11,000 decisions each year.

We have since added 12 boards and approximately 18,000 decisions. So that the total now being handled by boards is approximately 29,000 per year.

The CHAIRMAN. In other words, you had prior to your reorganization four such boards composed of staff personnel?

Mr. HUTCHINSON. Yes. The Suspension Board, the Fourth Section Board, the Temporary Authorities Board, and the Transfer Board.

These four boards altogether were handling approximately 11,000 matters per year that were not the subject of the hearing—informal proceedings, you might say.

The CHAIRMAN. Were they composed of staff personnel of the Commission or do some members of the Commission participate in some of them?

Mr. HUTCHINSON. No, sir, each board is composed of, I believe, three employees of the Commission. They were all employee boards.

The 12 new boards that we have created since the first of the year are the same type of board and constituted in the same manner as the existing boards.

The CHAIRMAN. And they have informal procedures?

Mr. HUTCHINSON. That is correct.

The CHAIRMAN. Since the 4 you had before, your reorganization plan has established 11 more?

Mr. HUTCHINSON. No, 12 more. We now have a total of 16 employee boards.

The CHAIRMAN. The 12 boards participating will handle how many decisions?

Mr. HUTCHINSON. 18,000 decisions per year, sir. This is an estimate, but we think it is fairly accurate.

The CHAIRMAN. Now, prior to these 12 boards established, who was handling these 18,000 matters?

Mr. HUTCHINSON. They were handled by a commissioner, a division of the Commission, or the entire Commission, Mr. Chairman.

The CHAIRMAN. This bill, then, will not in any way affect this internal organization which you have mentioned here?

Mr. HUTCHINSON. No. What this bill would do would be to allow the Commission to assign to well-qualified three-man employee boards some of the cases of lesser importance that have nevertheless been the subject of a hearing and a recommended report by the hearing officer.

The CHAIRMAN. What type of cases of lesser importance do you have in mind?

Mr. HUTCHINSON. Well, the example I gave earlier was one for the extension of a motor carrier operating rate, for instance, to serve a new plant, or something of that sort.

The CHAIRMAN. That kind, however, would be subject to review by the Commission or a division in the Commission?

Mr. HUTCHINSON. A division of the Commission sitting as an appellate division.

You see, Mr. Chairman, the decisions that are now made by boards are subject to review by a three-Commissioner division sitting as an appellate division. For instance, Suspension Board actions are reviewed by Appellate Division 2.

Temporary Authority Board actions are reviewed by Appellate Division 1, and so forth.

Transfer Board actions by the Finance Division, Division No. 3.

The CHAIRMAN. In other words, on these particular types of cases, that you referred to as of lesser importance, the division of the Commission then becomes an appellate division?

Mr. HUTCHINSON. That is correct; yes, sir.

The CHAIRMAN. Now, suppose someone wanted a review by the full Commission, could that be obtained?

Mr. HUTCHINSON. Not in this type case unless the Commission on its own motion or in its discretion determined that an issue of general transportation importance was involved.

The procedure for this, you might say, would be—or, rather, the recommendation for action would be made by a responsible staff member in the processing—

The CHAIRMAN. What about the parties to whatever the proceeding might be?

Mr. HUTCHINSON. I would anticipate that they would do this but as I tried to emphasize earlier, Mr. Harris, we would hope that any authority granted the Commission here would leave the determination of this issue as a matter of discretion with the Commission. Otherwise, we might have a situation where we would be adding an issue for the Commission to adjudicate—

The CHAIRMAN. I do not say it is not a right or proper procedure, but I do not want to lock the door on the opportunity of a party to the proceedings to make a request for it.

Mr. HUTCHINSON. He could make the request—I suppose the first place he would make it would be at the hearing if he felt he had this sort of case.

The CHAIRMAN. Suppose you had a case that was considered to be of less importance that went to one of these employee boards, and the parties to the proceeding, at least one side, was satisfied—I imagine the other side would be—but can anyone appoint the matter to be considered by the Division under the proceeding?

There is a sharp question involved there. The Division heard it and after its decision would the parties or either of the parties to that proceeding then have the right to make application to the full Commission for a review?

Mr. HUTCHINSON. Of course, the Division would not normally hear cases. The cases would normally be heard by a hearing officer.

The CHAIRMAN. I know it, but I am talking about after the decision is made and then the Division sitting as an appellate body hears it, that is they decide. Could the matter then by application of the parties involved be brought to the full Commission?

Mr. HUTCHINSON. The Division itself could call it to the attention of the Commission, but, as I have indicated, the need is to cut down the number of issues that the Commission must decide.

The CHAIRMAN. I know that is the purpose of it, but I am asking what is the ultimate right of the individual. That is what I am trying to find out.

I would like to get that on the record.

Mr. HUTCHINSON. He would not have a right of petition to the entire Commission to review his case.

The CHAIRMAN. He would go direct from the Division to the courts, then?

Mr. HUTCHINSON. Yes, that is correct, unless the Commission, itself, on its own motion, within its discretion, if you please, found

that the case is a proceeding involving an issue of general transportation importance.

The CHAIRMAN. As a matter of procedure, if you have a matter of policy involved, which a division has considered, and there is notice of appeal to the courts, would the Commission take a look at it to see whether there is a matter of sufficient transportation importance to warrant full commission review?

Mr. HUTCHINSON. The Commission would have, I believe, the authority to do this, but I could not say whether the Commission in an individual case would do this, or not, sir.

The CHAIRMAN. You mean you have set up a procedure here by your own internal reorganization plan whereby if you have a matter of enough importance to go to the courts, the full Commission is not going to take a look at it to see what the Commission should do about it?

Mr. HUTCHINSON. Actually, in practice, the general counsel calls these matters to the attention of the Commission, but, as I say, the need is to cut down the number of—

The CHAIRMAN. I know what the need is. You do not have to argue that with me.

I am trying to find out what the procedure is and what is the right of the parties involved.

Mr. HUTCHINSON. The procedure would be that the decision of the division would be final.

The CHAIRMAN. And it would go from there to the court if there is any appeal?

Mr. HUTCHINSON. Yes.

The CHAIRMAN. Now, in the instance of a case that is going to the courts and which the courts are going to decide, would not the Commission then think that would be of sufficient importance for the entire Commission to look at before they let it go to the court?

Mr. HUTCHINSON. That is hard to say. I don't know what the Commission might do in an individual case.

The CHAIRMAN. I know you do not know what the Commission might do, but could the Commission do it if it wanted to?

Mr. HUTCHINSON. Yes, definitely it could. As a practical matter I would think the Commission would look at it, but I can't answer your question categorically.

The CHAIRMAN. I would certainly think that if you had an important matter that was going to the courts that the Commission would want to take a look at it to determine by the full Commission.

Now, I have gone out on the limb to try to protect all of these Commissions as such, as a full Commission. I hope that we have the full support of this Commission which is considered to be the granddaddy of all commissions on this particular type.

I want to agree, and I am wholeheartedly in favor of expediting the work and organizing it as you have said here, but I do not want to lock the door whereby the Commission, itself, ultimately does not have the last word.

Now, my whole philosophy is to protect the Commission in its final decision as a Commission.

Now, when you break it down and the Commission does not have final authority over the complete operation, then you are going to have

trouble in the future with your Commissions, I can tell you that for sure.

But what I want to be certain of, in this or any other plan, is that the Commission does have, under whatever procedure, the last voice in the matter.

Mr. HUTCHINSON. May I say this, Mr. Harris, you and your committee certainly have the wholehearted support of this Commission in the work you are doing to strengthen this agency and other agencies. You and your committee have been of great help over the years.

If it is proper to say so, we are grateful for this.

In answer to your question, the Commission would have authority, under what we are proposing, to take, you might say, a last look at the matter before it goes to the courthouse. Rule 1.102 of our rules of practice which I have already read into the record, would provide for just what you are speaking of, Chairman Harris.

The CHAIRMAN. I am glad to get that clarified.

Now, to make it definitely clear, I want again to ask how can it come to the attention of the Commission.

You have said that the Commission can do it on its own initiative if it decides there is a question of sufficient national transportation importance.

Now, are you limiting the Commission, then, to any decision that might be made by the Commission on the right of review of any matter before you unless you decide it is a question of sufficient transportation importance?

Mr. HUTCHINSON. The matter would be raised—it could be raised at the beginning of the case—at the hearing or by the hearing examiner in his report.

This would be before it got to the type of employee board that we are talking about here this morning.

The CHAIRMAN. I follow you there, and into the employee board, and then from the board to the appellate division?

Mr. HUTCHINSON. But if the Commission, or a division of the Commission, or the chairman of a division designated by the Commission, determined that the proceeding is one involving an issue of general transportation importance, it would not go to this board in the first place; it would go to the regular division for decision.

The CHAIRMAN. Yes, that is true, but the Commission would have to determine that.

Does the Commission make these determinations before it is assigned to a hearing officer?

Mr. HUTCHINSON. No, it would not.

The CHAIRMAN. At what point, then, does the Commission make a decision as to whether there is a question of national transportation importance involved.

Mr. HUTCHINSON. It would make it, in the case of the board, we are talking of here, before making the assignment to the board, it would be made by the Commission, by a division of the Commission, or by the chairman of the division to which the general subject matter was assigned.

The CHAIRMAN. After the hearing officer had concluded his work?

Mr. HUTCHINSON. That is correct.

The CHAIRMAN. And from the hearing officer it would go to a board, but before it went to the board the Commission would make that determination.

Mr. HUTCHINSON. That is right; yes, sir.

Mr. Chairman, may I ask the Chairman of Division 1 to comment in this area?

Mr. WALRATH. Coming back to some questions Mr. Moss asked earlier, Mr. Chairman, which ties right in with what you are saying, I think Division 1, which is the real volume spot down there, the way this thing works in practice now and the way the issue of general transportation comes to our attention is that at the outset the hearing officer may note it in his report. If he does then of course that brings it to our attention.

The Director of the Bureau of Operating Rights may notice it and call it to our attention. If he does do that, then we as a division have to pass that question on to the Commission for a determination.

The CHAIRMAN. You cannot.

Mr. WALRATH. We do not decide it ourselves. We must bring it to the attention of the Commission in that event. There is a built-in protection all along the way that this question will not be overlooked if it is meritorious.

Now I do not know how far I have answered Mr. Moss' question but actually in practice now the question does not escape our attention and in turn the Division calls it to the attention of the Chairman and the entire Commission.

Mr. Moss. Will the chairman yield?

You have not answered my question. You have explained to me more definitely how this matter can reach the Commission through the machinery of the Commission

Mr. WALRATH. Yes.

Mr. Moss. But you have not explained to me how I, as a party interested in the proceeding, can make certain that it is brought to the attention of the Commission.

Mr. HUTCHINSON. You would do that by taking a position in the case. I suppose it could be noted on the application, if you wanted to start it that early, or you could do it at the hearing.

Mr. Moss. You are leaving an awful lot to chance; because I can note it on my application, I cannot petition you to make this judgment. You have a decision or order that is supposed to go into effect that goes to the three-employee review panel that will be created under this section.

At that point I feel that the Commission should determine whether it is a matter of general transportation importance.

Mr. HUTCHINSON. Often it might be difficult to tell whether you had an issue of general transportation importance until you knew what the evidence was and what the position of the parties might be on the law in the case, if there were legal issues involved.

Mr. Moss. I have not yet been able to find the method whereby I can assure that this question will be considered by the Commission. Now Division 1 handles it in a certain manner which insures that if it is raised by the hearing examiner it will be brought to your attention.

Do all divisions operate under the same procedure?

Mr. WALRATH. In principle, Mr. Moss, they do. Actually, if you have raised the question as a party before the hearing officer or even in your application, as the chairman suggests, and it has still been overlooked, let us say it has not been called officially to our attention, there is nothing to prevent you in the rules from raising it again in

your exceptions to the hearing officer's findings, you see. That assures the fact that it will come to the division's attention if it is raised in the exceptions.

Mr. MOSS. How do I note it, by what rules or regulations?

Mr. WALRATH. Because we have to act on the exceptions under the rules of procedure in the Administrative Procedure Act. We have to pass on those. If it is filed as part of your exceptions, the argument is advanced, then it is coming to the attention of some responsible person.

Usually it happens that it comes to the director of the bureau who is processing that case and who under this legislation we would contemplate would be the agency through which assignment would go to the board or to the division.

Now if it is brought to the director's attention through the filing of exceptions, then through him it can be brought to the attention of the Commission.

Mr. MOSS. If it is brought to his attention, then it can; but I want to be certain the matter is brought. In the absence of a finding by the Commission, this matter can be referred to a three-employee review panel; is that right?

Mr. HUTCHINSON. That is correct.

Mr. MOSS. Now, assume at that point that the Commission has considered my exceptions and has ordered the assignment to the review panel. How do I know whether or not it has ever been considered? Am I to assume it or have I not some right to be assured that it has been considered?

Mr. HUTCHINSON. Unless the Commission makes a finding that the proceeding is one involving an issue of general transportation importance and notes this in the report, then the proceeding is one regarded by the Commission as not involving an issue of general transportation importance.

Mr. MOSS. We are talking about a finding not made.

Mr. HUTCHINSON. Pardon?

Mr. MOSS. We are talking about a finding not made; in the absence of a finding, then it goes.

Mr. HUTCHINSON. That is correct.

Mr. MOSS. Now is there an assumption that because it was not found to be, it was found not to be?

Mr. HUTCHINSON. That is correct.

Mr. MOSS. And that this is a finding made by the Commission, and, if so, at what point does the Commission make the determination?

You have indicated to me, Mr. Hutchinson, that there are no general rules which would indicate to the person making the assignment the specific categories of cases which would be assigned to this type of panel, and you indicated further you could not now assure me that the Commission would contemplate in the future the making of such rules.

It seems to me that we are dealing here with an area where there is a lot of chance these things might come to the Commission and they might not; they might be considered by the appellant panel, and they might not.

You indicated that the General Counsel could bring it to the attention of the Commission. If he could, is he operating under any general guidelines from the Commission which require him to call to

the attention of the Commission certain types of business? Or, again, is this an area of chance?

Mr. HUTCHINSON. Everything that goes to court, Mr. Moss, comes to our attention.

Mr. MOSS. Only to have this looked at at the point where it has gone to the court?

Mr. HUTCHINSON. No.

Mr. MOSS. You are only shifting a lot of the workload here from the Commission to the courts.

Mr. HUTCHINSON. It would be looked at, as I have indicated, before the assignment is made. In other words, before the assignment is made to the board that we are talking about here.

Mr. MOSS. By whom?

Mr. HUTCHINSON. In the first instance, by the officer who hears the case, then by the director of the bureau, then by the chairman of the division, and perhaps by the division itself.

Mr. MOSS. By what rule?

Mr. HUTCHINSON. By the rule of procedure that we are now operating under with respect to other cases.

Now your question, Mr. Moss, as I understood it, went to the matter of whether rules would be evolved to determine what constituted an issue of general transportation importance.

Now, it may be that we are talking about two different things.

Mr. MOSS. No; my question went to the matter of categories not involved in the case.

Mr. HUTCHINSON. Not involving what?

Mr. MOSS. This question of general transportation importance. These are the ones we are talking about because it is the absence of the finding that makes it possible to assign it.

Mr. HUTCHINSON. The absence of a finding would make it possible to assign it to the board.

Mr. MOSS. So the category of cases subject to this proposed section we are studying here today interests me.

The CHAIRMAN. Let me pursue it this way: The question of national transportation importance can be raised with the hearing examiner.

It can be raised again to the appellate division.

Mr. WALRATH. On exceptions; yes.

The CHAIRMAN. Then it can be called to the attention of the Commission, if necessary, as a matter of general importance.

Mr. WALRATH. At that point, Mr. Moss, the director of the bureau who would normally bear the responsibility of assigning it either to a board or to the division would call to our attention—would call to the division's attention in the first instance, that there was an issue of general transportation importance proposed by one of the parties, or he might of his own motion, which has happened under our petition change since February 1, where he calls to our attention the fact that this case may involve or does involve in his opinion an issue of general transportation importance.

Then under our existing procedure, if the director makes such a suggestion, the division must pass it on to the Commission. There is no discretion on our part. We do that. We do that under the petition procedure now.

But the division itself may feel when it sees the exception and replies to exception or the individual Commissioner whose docket it goes on may see it and call it to the entire Commission's attention.

There are a number of built-in protective devices, Mr. Moss, that we have not explained clearly to you. We have left you uncertain about it.

Of course we are new at it on these questions since February 1, since we have considered this on restriction of petition, but even so it is working the way it is now.

You are concerned with the party's right to bring it to the attention of the Commission. They can do it as the Chairman said at the opening of the hearing; they can do it in their exceptions and presumably if we paid no attention to it they could raise it in court if it actually did involve one and we have not taken cognizance of it.

The parties are pretty free to express themselves. I was a practitioner myself and I know how these things work.

Mr. HUTCHINSON. The decision would be made prior to or at the time the proceeding is ready for assignment for decision on the exceptions. That is, the decision would have to be made then so the director who is assigning the case would know whether to assign it to the employee board or to the division having jurisdiction.

The CHAIRMAN. This is the thing I am primarily interested in and quite concerned about. I want to make it very clear.

No. 1, that there is a procedure where the right of the parties can be protected and, No. 2, that the Commission itself will have or can have within its discretion final decision in the matter pending before the Commission.

Mr. HUTCHINSON. I can assure you that this is the case, Mr. Harris. The Commission was given authority in the 1940 act to make divisions decisions final.

I am going on to something that we have already done. I am not talking about what we now propose. But this was in the 1940 act. We were given authority in 1940 to determine—

The CHAIRMAN. I realize that.

Mr. HUTCHINSON. And we are trying to make it work now.

The CHAIRMAN. I do not want to see the Commission take any action which will nullify that provision of the law.

Mr. HUTCHINSON. It certainly will not nullify it. It will merely make it more workable and more flexible, and will extend the authority down to employee boards whereas now the initial decision has to be made by a regular division of the Commission.

The CHAIRMAN. That is all, Mr. Chairman. Thank you very much.

Mr. Moss. Are there any further questions?

The CHAIRMAN. Now just one question further. Is the Commission unanimous in its decision on this legislation?

Mr. HUTCHINSON. I think it is. I shall be glad to check and advise the committee if it is otherwise.

The CHAIRMAN. No. 2, do you know of any opposition to this proposal?

Mr. HUTCHINSON. I did not know of any, but I have heard rumblings of some here this morning. But I am not advised, Mr. Harris.

Mr. Moss. Thank you, Mr. Hutchinson.

(The following news releases were submitted for the record:)

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

January 9, 1961.

ICC ACTS TO IMPROVE PROCEDURES BY LIMITING APPEALS DELEGATING MORE PROCEEDINGS TO BOARDS OF EMPLOYEES

The Interstate Commerce Commission announced two actions today which will improve its procedures, speed disposition of cases before it, and give the Commissioners more time to act on cases of general transportation importance. Both become effective February 1, 1961.

It limited the right of appeal to the entire Commission generally to those cases involving issues of general transportation importance, and created three boards of staff employees to dispose of all nonadversary or uncontested proceedings processed by its Bureau of Finance.

Both steps were taken after thorough study, and were made necessary by continuing substantial increases in the volume of work handled by the Commission.

Chairman Everett Hutchinson said, "These betterments result from the Commission's continuing study of its organization, operations, and procedures to improve its effectiveness in the face of a constantly increasing workload. In taking these steps the Commission has taken into account various studies, reports, and recommendations, including those of the Congress, the management firm of Booz, Allen & Hamilton, and the Special Advisory Committee of Practitioners set up by the Commission.

By the first action, the number of petitions to be considered by the entire Commission is expected to be reduced by at least 700 a year, or more than 3 per working day. Creation of the Finance Boards will effect a reduction in the number of proceedings initially considered by Division 4, composed of 3 Commissioners by more than 400 a year, or about 2 per working day.

Commissioners thus will be able to devote more time to the disposition of cases which are of general transportation importance and affect the broad public interest.

After February 1, 1961, all decisions by the 4 divisions, each composed of 3 of the 11 Commissioners, will be administratively final except those involving issues of general transportation importance, those in which the division reverses, changes, or modifies a prior decision by a hearing officer or joint board and those in which the initial decision is made by a division.

The Commission declared that the right to apply to the entire Commission for rehearing, reargument, or reconsideration of a decision, order, or requirement of a division of the Commission in any proceeding shall be limited to those proceedings in which prior to, or at the time of issuance of a division's decision, the entire Commission, on its own motion, determines and announces that an issue of general transportation importance is involved. In proceedings in which no such announcement has been made, but in which a division reverses, changes, or modifies a prior decision by a hearing officer or where the initial decision is made by a division, a petition to the same division for rehearing, reargument, or reconsideration of its decision will be received and will be considered and disposed of by such division in an appellate capacity and with administrative finality.

At the same time, provision was made for appellate divisions to consider and determine petitions respecting (1) decisions, orders, or requirements of an individual Commissioner, and (2) recommended orders of an individual Commissioner or hearing officer which have become orders of the Commission by operation of law. The appellate division in each such situation is the division to which the general subject is referred, and its decision will be administratively final.

Another benefit will be a reduction from 15 to 7 in the number of copies of most such petitions to be filed with the Commission, substantially reducing the paperwork burden on the parties.

Finance Board No. 1: Decide principally applications under sections 5, 214 and 210a(b) of the act relating to mergers, consolidations, and acquisitions of control of motor carriers, the issuance of securities related to such transactions, and temporary authority.

Finance Board No. 2: Decide those applications of railroads and motor carriers, not connected with transactions under section 5, for authority to issue securities under sections 20a and 214.

Finance Board No. 3: Decide applications of railroads for authority to abandon or construct a line under section 1(18), applications of railroads and water carriers under section 5, relating to mergers, consolidations, and acquisitions of control, and related applications of railroads for authority to issue securities.

Division 4 will continue to consider and decide all such proceedings which have been the subject of oral hearings.

The work of the presently existing Transfer Board will be expanded to embrace decisions on applications for transfers of water carrier certificates and permits under section 312, and of permits of freight forwarders under section 410(g).

Section 1.225 of the special rules of practice, concerning principally appeal procedure for existing employee boards, has been amended to apply to the three new Finance Boards. Division 4 will function as an appellate division to decide petitions for reconsideration of orders of the Finance Boards, as well as the Transfer Board, and orders for the appellate division will not be subject to review by the Commission.

The three Finance Boards will be composed of the following from the Bureau of Finance:

Finance Board No. 1: Robert E. Wood, Chief of the Section of Motor Carrier Finance, Chairman; Curtis R. Engelhart; and John L. Boyd.

Finance Board No. 2: Vernon V. Baker, Director of the Bureau of Finance, chairman; Frank E. Grutzik, Chief of the Section of Securities and Reorganizations; and David Homer, Assistant Chief of the Section.

Finance Board No. 3: Irving J. Raley, Assistant Director of the Bureau, chairman; Thaddeus W. Forbes, Chief of the Section of Convenience and Necessity; and Bryson M. Pursell, Assistant Chief of the Section.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

JANUARY 23, 1961.

ICC DELEGATES ENFORCEMENT AUTHORITY: CREATES TWO NEW EMPLOYEE BOARDS

The Interstate Commerce Commission announced two more steps today in its program to delegate some of its duties to staff members, thereby giving the Commissioners more time to consider major transportation questions.

Chairman Everett Hutchinson said these will expedite disposition of the delegated matters. Both become effective February 1, 1961.

One of today's actions will delegate authority to the Director of the Bureau of Inquiry and Compliance to institute civil injunction proceedings involving motor carriers and to recommend to the Department of Justice or to the U.S. attorney institution of various criminal prosecutions or civil forfeiture proceedings.

The other action provides for the creation of two boards of employees, designated as the Safety and Service Boards, to consider certain proceedings related to railroad safety and service and transportation of explosives and other dangerous articles.

The delegation to the Director of the Bureau of Inquiry and Compliance is expected to eliminate an estimated 500 enforcement matters annually from consideration by the Commission or its divisions.

Enforcement matters involved are those concerning violation of the Interstate Commerce Act and related statutes, including the Elkins Act, the Clayton Antitrust Act, and the Transportation of Explosives and Other Dangerous Articles Act.

Unaffected by the delegation of authority are the proceedings, handled by the Bureau of Safety and Service, relating to railroad violations of the Safety Appliance Act, hours of service law, Accident Reports Act, signal inspection law, and Locomotive Inspection Act. Also unaffected are the criminal proceedings concerning safety violations and violations of hours of service regulations of the motor carrier safety regulations, which are handled by the regional attorney of the Bureau of Inquiry and Compliance and the District Director of the Bureau of Motor Carriers.

Creation of the Safety and Service Boards is expected to eliminate some 300 matters annually from consideration by the Commission's Division 3. These proceedings are of the nonadversary or unopposed type and do not involve the taking of testimony at a public hearing.

One board, designated the Railroad Safety and Service Board, will consider proceedings related to car service, railroad safety devices, and matters arising under the Accident Reports Act, Safety Appliance Act, Power or Train Brakes Safety Appliance Act of 1958, Hours of Service Act, Locomotive Inspection Act, and Ash Pan Act.

The other Board, designated the Explosive and Other Dangerous Articles Board, will consider proceedings related to safe transportation of explosives and other dangerous articles, flammables, gases, radioactive materials, etiologic agents, and poisonous substances.

Division 3 will act as the appellate division for reconsideration or review of the Safety and Service Boards' actions. The Division's decisions will be administratively final and not subject to review by the Commission.

The informal proceedings of the boards will be similar to the procedures of the Temporary Authorities Board, the Transfer Board, and the Finance Boards.

Earlier actions, also to become effective February 1, 1961, provide for limitation on the right of appeal to the entire 11-member Commission, and for the creation of three new employee boards to deal with carrier consolidations, securities and abandonment or construction of railroad line.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

FEBRUARY 10, 1961.

ICC DELEGATES AUTHORITY TO MOTOR CARRIER BOARDS

Establishment of three more employee boards, designated Motor Carrier Boards Nos. 1, 2, and 3 and effective February 21, 1961, was announced today by the Interstate Commerce Commission.

Chairman Everett Hutchinson said: "This further delegation of authority to staff members will relieve Commissioners from acting on an estimated 100 cases annually, thus permitting more time for consideration of major transportation issues.

The boards will handle insurance, safety, and leasing matters which do not involve testimony at public hearings or submission by affidavit of evidence in opposition.

Division 1 has been designated the appellate division for reconsideration of the boards' actions. The Division's decision then would be administratively final and not subject to review by the Commission.

Motor Carrier Board No. 1 will consider matters involving brokers', motor carriers', and freight forwarders' insurance and other security for financial responsibility and protection of the public. The Board also will consider the designation of motor carriers' and brokers' agents upon whom orders and notices can be served.

Motor Carrier Board No. 2 will consider motor carrier safety matters including qualifications and maximum hours of employees, safety of operation, standards of equipment, issuance of investigation reports, and disclosure of information concerning accidents or compliance with safety regulations. The Board will not act on matters concerning requirements for safe transportation of explosives or certain arrangements for tests and experiments by other governmental agencies.

Motor Carrier Board No. 3 will consider matters related to lease and interchange of vehicles, and will have authority to approve contract carrier rental contracts.

"Creation of these boards, along with other delegations of authority initiated last month," Chairman Hutchinson said, "will free the Commission, its divisions or individual Commissioners from annually considering some 2,000 matters which previously would have required their action."

The earlier delegations of authority, effective February 1, included a limitation on the right of appeal to the entire Commission generally to cases involving issues of wide transportation importance, and the creation of five employee boards to handle certain finance and safety and service matters. They also authorized the Director of the Bureau of Inquiry and Compliance to institute civil injunction proceedings involving motor carriers and recommend to the Department of Justice or the U.S. attorney institution of various criminal prosecutions or civil forfeiture proceedings.

Chairman Hutchinson also noted that the Commission earlier this week renewed a legislative recommendation to the Congress for authority to delegate to staff boards additional proceedings, including those which have involved public hearings.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

FEBRUARY 13, 1961.

ICC IN SWEEPING REORGANIZATION STRENGTHENS CHAIRMAN'S POSITION,
CREATES NEW VICE CHAIRMAN POST

The Interstate Commerce Commission announced today a sweeping reorganization to strengthen the Office of the Chairman and create the Office of Vice Chairman.

Commissioner Rupert L. Murphy was elected Vice Chairman.

The broad reorganization, effective March 1, 1961, also will abolish the "reporting Commissioner" concept, thus relieving the other Commissioners of executive and administrative duties, and will realine and consolidate decisional functions into three instead of four divisions of three Commissioners each.

The plan reemphasizes that the Chairman is the executive head of the Commission, responsible to the Commission for the executive and administrative functions of the Commission.

Chairman Everett Hutchinson said the reorganization will place all of the more important executive and administrative functions under the Chairman and assign others to the Vice Chairman.

"The nine Commissioners serving on the three divisions will therefore have more time to consider and expedite important cases before them," Chairman Hutchinson said. "We anticipate further substantial improvement in the efficiency of the Commission's operations generally and particularly in the disposition of the thousands of cases that come before us annually," he further stated.

Under the "reporting Commissioner" concept, staff directors of the bureaus were responsible directly to one Commissioner, who in turn reported to the entire Commission on particular matters. The reorganization provides that the seven regulatory bureaus will report to the Chairman through the Vice Chairman, while the three proceedings bureaus will report through the chairmen of the respective divisions.

The Offices of the Secretary and the General Counsel will continue to report directly to the Chairman. The Managing Director will continue to be responsible for the day-to-day administration of the Commission and the management of Commission operations, and will report to the Chairman through the Vice Chairman.

All of the present decisional assignments to individual Commissioners of matters processed in the regulatory bureaus will be transferred to the Vice Chairman, who also will act as Chairman in the latter's absence. Both the Chairman and Vice Chairman will be elected by the Commission for 1-year terms.

The present Division 3 (Rates, Safety, and Service) will be abolished. Its ratemaking functions will be transferred to Division 2 (Rates, Tariffs, and Valuation) and all other duties will be transferred to Division 4, which will be redesignated Division 3 (Finance, Safety, and Service).

Specific additions to duties of the Chairman included a delegation of the functions with respect to (1) the appointment and supervision of personnel employed under the Commission, except those in the immediate offices of Commissioners other than the Chairman, (2) the distribution of business among such personnel, and among administrative units of the Commission, and (3) the use and expenditure of funds.

The Commission also specified that the Chairman is to be governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make. His appointment of the heads of major administrative units under the Commission are to be subject to approval of the Commission.

The Chairman will continue to act as correspondent and spokesman for the Commission in all matters where an official expression of the Commission is required.

Another provision was amended to require the Chairman to initiate ways and means of correcting or preventing avoidable delays in the performance of any work or the disposition of any official matter. The Chairman formerly had the duty of making recommendations for such corrective actions to the Commission.

The Chairman was given authority to authorize the performance by any Commissioner, officer, employee, or administrative unit under his jurisdiction of any function delegated to the Chairman.

Earlier delegations of authority, effective February 1, included a limitation on the right of appeal to the entire Commission generally to cases involving issues of wide transportation importance, and the creation of five employee boards to handle certain finance and safety and service matters. They also authorized the Director of the Bureau of Inquiry and Compliance to institute civil injunction proceedings involving motor carriers and recommend to the Department of Justice or the U.S. attorney institution of various criminal prosecutions or civil forfeiture proceedings.

Another delegation of authority, effective February 21, created three additional employee boards to handle certain insurance, safety, and leasing matters.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

FEBRUARY 15, 1961.

ICC OPINION-WRITING RESPONSIBILITY ASSIGNED TO INDIVIDUAL COMMISSIONERS

Another major reorganization step was taken today by the Interstate Commerce Commission with the announcement that it will give opinion-writing responsibility to individual Commissioners beginning March 1, 1961.

Chairman Everett Hutchinson said the change will enable the Commissioners to exercise more individual responsibility in the preparation of final reports. The cases in question generally are those which have been the subject of an oral hearing and which require a division or Commission report.

"Placing initial responsibility for drafting these final reports at the Commission level rather than the bureau level was done," the Chairman added, "as a result of our continuing analysis of the Commission's internal organization and our review of the recommendations by the various groups studying the agency."

The plan will apply only to cases submitted to a division or the entire Commission for initial decision or reconsideration on and after March 1.

These cases generally would be those in which exceptions are filed to hearing examiners' reports and recommended orders in orally heard proceedings. In these cases, which then require division or Commission action, the proceedings bureaus—Finance, Operating Rights, and Rates and Practices—will assign report-writing responsibility to the dockets of individual Commissioners, on a rotation basis.

Entire Commission or division cases which have been orally argued or which are reopened for reconsideration will be assigned to individual Commissioners by the Chairman of the Commission or of the appropriate division.

Report writers in the bureaus' sections of proceedings will be assigned, on a rotating basis, to assist the Commissioner who has responsibility for preparing the final report for the division or Commission.

Under present procedures, draft reports are prepared in each proceedings bureau, reviewed in the bureau, and then submitted to the appropriate division or to the entire Commission for consideration.

Draft reports will now be prepared as specifically directed by the Commissioner having responsibility for the case. Additional staff personnel from the bureaus will be assigned to Commissioners' staffs to implement the program.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

FEBRUARY 23, 1961.

SPECIAL PERMISSION AND RELEASED RATES BOARDS NAMED BY ICC IN FURTHER DELEGATION OF AUTHORITY

Creation of 2 additional employee boards was announced today by the Interstate Commerce Commission, bringing to 10 the number of such boards established since the beginning of the year.

The two new boards, to become operative March 1, 1961, are the Special Permission Board and the Released Rates Board.

"Establishment of these boards," Chairman Everett Hutchinson said, "is expected to eliminate some 16,000 matters annually which under present arrange-

ments require action by an individual Commissioner or Division 2. The action is in accord with the Commission's policy of delegating increased authority to employee boards so as to permit Commissioners to devote more time to consideration of issues of major transportation significance."

The boards' operation and procedure will be similar to those of the eight other new employee boards.

Matters to be assigned to them will not involve taking of testimony at a public hearing or submission of evidence by opposing parties in the form of affidavits. Decisions of the two new boards may be appealed to Division 2 with the division's decision administratively final and not subject to review by the Commission.

Matters to be considered by the Special Permission Board involve applications for special permission to establish rates, fares, or charges on less than statutory notice or to waive rules governing the publication and filing of tariff publications.

The Released Rates Board will consider applications from carriers to establish rates and ratings based on released valuation in connection with liability for loss and damage to property.

The Commission designated the membership of the boards, from the Bureau of Traffic, as follows:

Special Permission Board: Edward H. Cox, Director (Chairman); Robert Newel, Assistant Director; and Grayson B. Robinson, Assistant Director and Chief of the Section of Tariffs.

Released Rates Board: Robert Newel (Chairman); William B. Hammer, Assistant Director and Chief of the Section of Rates and Informal Cases; and Grayson B. Robinson.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

FEBRUARY 28, 1961.

ICC COMPLETES NEW DIVISION ASSIGNMENTS UNDER REORGANIZATION EFFECTIVE MARCH 1

The Interstate Commerce Commission designated today the membership of the three divisions which tomorrow will take over the work formerly handled by four divisions.

Each division under the broad reorganization announced by the Commission February 13, will have a membership of three Commissioners.

Everett Hutchinson, ICC Chairman, said that Commissioner Rupert L. Murphy, elected by the Commission to the newly created post of Vice Chairman, will serve on a division until the present vacancy on the 11-member Commission is filled. Thereafter, he will be relieved of service on any division, as is the Chairman.

Among other duties, all decisional assignments to individual Commissioners of matters processed in the seven regulatory bureaus will be transferred to the Vice Chairman beginning tomorrow.

The new division assignments are—

Division 1 (operating rights): Commissioners Laurence K. Walrath (Chairman), Rupert L. Murphy, and Charles A. Webb.

Division 2 (rates, tariffs and valuation)—Commissioners Howard G. Freas (Chairman), Abe McGregor Goff, and Clyde E. Herring.

Division 3 (finance, safety, and service): Commissioners Kenneth H. Tuggle (Chairman), John H. Winchell, and Donald P. McPherson.

Assignments to the Commission's two committees were not changed. They are—

Committee on Legislation: Chairman Hutchinson as ex officio Chairman, and Commissioners Freas and Tuggle.

Committee on Rules: Chairman Hutchinson as ex officio Chairman, and Commissioners Murphy and Goff.

The Commission also announced the completion of assignments of staff members to the new employee boards dealing with motor carrier matters and with railroad safety and car service. Assignments to the motor carrier boards were made effective February 21, 1961, and those to the Safety and Service Boards, February 1, 1961. The assignments are:

Motor Carrier Board No. 1: (insurance) Herbert Qualls, Director, Bureau of Motor Carriers (Chairman); George A. Meyer, Assistant Bureau Director; and Leonard J. Schloer, Chief of the Bureau's Section of Insurance.

Motor Carrier Board No. 2: (motor carrier safety) Mr. Qualls (Chairman); Mr. Meyer; and Ernest G. Cox, Chief of the Bureau's Section of Safety.

Motor Carrier Board No. 3 (leasing): Mr. Qualls (Chairman); Mr. Meyer; and Thomas J. Delaney, Chief of the Bureau's interpretations staff.

Safety and Service Board No. 1 (railroad safety and service): Charles W. Taylor, Director of the Bureau of Safety and Service (Chairman); Robert D. Pfahler, Assistant Bureau Director; and Henry L. Hilzinger, attorney in the Section of Railroad Safety.

Safety and Service Board No. 2 (explosives and other dangerous articles): Mr. Taylor (Chairman), Mr. Pfahler, and Mr. Meyer.

Members of the other new boards, previously announced, are:

Special Permission Board: Edward H. Cox (Chairman), Robert Newel, and Grayson B. Robinson.

Released Rates Board: Robert Newel (Chairman), William B. Hammer, and Grayson B. Robinson.

Finance Board No. 1: Robert E. Wood (Chairman), Curtis R. Engelhart, and John L. Boyd.

Finance Board No. 2: Vernon V. Baker (Chairman), Frank E. Grutzik, and David Homer.

Finance Board No. 3: Irving J. Raley (Chairman), Thaddeus W. Forbes, and Bryson M. Pursell.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

MARCH 6, 1961.

REORGANIZATION OF ICC'S BUREAU OF ACCOUNTS INCLUDES ADDITION OF SECTION OF REPORTS

The Interstate Commerce Commission will reorganize its Bureau of Accounts, effective today, to consolidate responsibility for reviewing field examination reports and to give more emphasis to revising rules and regulations affecting carriers' accounting practices.

"This move will improve the Bureau's administration without an overall increase in personnel," Chairman Everett Hutchinson said.

A newly created Section of Reports will be added to the Bureau's currently authorized Sections of Accounting, Cost Finding, Field Service, and Valuation.

The Section of Reports will be responsible for examining and disposing of field examination reports, functions now performed by the Section of Accounting for railroad matters and the Section of Field Service for motor carrier matters. This will permit the Section of Accounting to concentrate on updating accounting rule-and-regulation-making work. The action also will enable the Section of Field Service to devote full time to guidance and supervision of the Bureau's field program.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

MARCH 30, 1961.

ICC CREATES TWO NEW EMPLOYEES BOARDS TO HANDLE OPERATING RIGHTS MATTERS

The establishment April 5 of two more employee Boards—Operating Rights Boards Nos. 1 and 2—was announced today by the Interstate Commerce Commission. It is expected that the new Boards will handle more than 400 proceedings annually.

"These Boards and the 10 others created since the beginning of the year," Chairman Everett Hutchinson said, "have been delegated substantial areas of responsibility and authority so as to permit Commissioners to devote more time to transportation issues of broad significance. The 12 Boards and other organizational changes now in effect will relieve Commissioners from considering more than 17,000 proceedings annually which previously would have required action by the entire Commission, a Division or individual Commissioners."

"The Commission now has a total of 16 employee Boards that will handle more than 28,000 matters annually. This completes our reorganization plans in this

area and we have no present plans for additional boards to handle cases which are not assigned for public hearings," the Chairman said. "One of our current recommendations to the Congress, however, would amend the Interstate Commerce Act so as to permit assignment to employee boards of certain cases which are the subject of public hearings. The decisions of such boards would be subject to appeal to a division of three Commissioners under our legislative recommendation."

The Operating Rights Boards' procedures will be similar to those of the 10 other new employee Boards. Matters to be assigned to them are those which do not involve taking of testimony at a public hearing or submission of evidence by opposing parties in the form of affidavits. Decisions of the Boards may be appealed to Division 1 and the Division's decision then will be administratively final and not subject to review by the Commission.

Operating Rights Board No. 1 will act on applications, other than joint board cases, of motor carriers, water carriers, freight forwarders, and brokers to operate in interstate commerce, certificates of exemption to single State motor carriers, and related dual operations matters.

Operating Rights Board No. 2 will be concerned with the determination of issues raised by the filing of protests, or otherwise, in connection with the Commission's deviation rules and intrastate motor carrier operations in interstate commerce, under the so-called second proviso provisions.

The Commission designated the membership of the boards from the Bureau of Operating Rights, as follows:

Operating Rights Board No. 1: James C. Cheseldine, Chief Hearing Examiner (Chairman); Sheldon Silverman, Assistant Director of the Bureau of Operating Rights; and J. Patterson King, Chief of the Section of Proceedings.

Operating Rights Board No. 2: B. E. Stillwell, Director of the Bureau (Chairman); Mr. Silverman; and Mr. King.

Since January 1, 1961, the Commission's reorganization program has included actions to—

Strengthen the position of the Chairman, reemphasizing that the Chairman is the executive head of the Commission, responsible to the Commission for the executive and administrative functions of the Commission.

Create the post of Vice Chairman through whom the seven regulatory Bureaus report to the Chairman. Commissioner Rupert L. Murphy was elected to the post.

Consolidate the Commission's four Divisions into three Divisions of three Commissioners each. The three proceedings Bureaus report to the Chairman through the Chairmen of the respective Divisions.

Limit the right of appeal to the entire Commission generally to cases involving issues of wide transportation importance.

Authorize assignment of responsibility to individual Commissioners for opinion writing involving final decisions.

Create, in addition to the two Operating Rights Boards, three Finance Boards, three Motor Carrier Boards, two Safety and Service Boards, the Released Rates Board, and the Special Permission Board.

Establish the Section of Reports in the Bureau of Accounts.

Delegate authority to the Director of the Bureau of Inquiry and Compliance to institute civil injunction proceedings involving motor carriers. The Director also was authorized to recommend to the Department of Justice or to the U.S. attorney institution of various criminal prosecutions or civil forfeiture proceedings.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

APRIL 25, 1961.

ICC EXTENDS STAFF LEVEL ENFORCEMENT AUTHORITY

The Interstate Commerce Commission announced today the delegation of broad authority to the Director of the Bureau of Inquiry and Compliance which will permit him to act for the Commission in instituting civil injunction proceedings in Federal courts in railroad, oil pipeline, water carrier, and freight forwarder matters.

The Director was delegated similar authority for motor carrier matters, effective February 1. The new delegation is effective May 1, 1961.

ICC Chairman Everett Hutchinson characterized the delegation of authority as another step in the Commission's program to free itself of duties that can be performed by staff personnel.

"This delegation, along with others already accomplished," he said, "will be most helpful in freeing members of the Commission from the more routine matters and giving them more time for consideration of significant transportation issues."

Under the delegation of authority, the Director of the Bureau now may institute civil injunction proceedings in the name of the Commission in all cases where it has such authority under the Interstate Commerce Act. The Director also may make his own recommendations direct to the U.S. Attorney General for institution of civil injunction proceedings in any case where such authority is reserved to the Attorney General by the same act.

INTERSTATE COMMERCE COMMISSION

Washington, D.C.

MAY 1, 1961.

VICE CHAIRMAN DELEGATED AUTHORITY TO INSTITUTE COMMISSION INVESTIGATIONS

Everett Hutchinson, Chairman of the Interstate Commerce Commission, announced today the Commission has delegated to its Vice Chairman authority to institute investigations on its own motion in most cases arising out of the work of the seven regulatory bureaus of the Commission. The delegation is effective today.

Chairman Hutchinson said the move is another step in the Commission's program to delegate duties heretofore performed by the entire 11-member Commission or by one of its three-member Divisions.

The action was made possible by a change in ICC organization, effective March 1, 1961, which abolished the "reporting Commissioner" concept under which each ICC bureau reported to the Commission through one of the Commissioners. The seven regulatory Bureaus now report through the Vice Chairman, while the three proceedings Bureaus report through the Chairman of the appropriate Division.

In making the delegation to the Vice Chairman, the Commission reaffirmed the authority of the three Divisions similarly to institute investigations related to their assignments. The Divisions are: Division 1, Operating Rights; Division 2, Rates, Tariffs, and Valuation; and Division 3, Finance, Safety, and Service.

The Bureaus which report through the Chairmen of these Divisions are Operating Rights, Rates and Practices, and Finance. Division 2 also will act upon matters connected with the work of the Suspension Board, even though the Board is administratively within the Bureau of Traffic, one of the seven regulatory Bureaus. The others are: Accounts; Inquiry and Compliance; Motor Carriers; Safety and Service; Transport Economics and Statistics; and Water Carriers and Freight Forwarders.

Mr. Moss. The next witness will be Mr. Peter Beardsley, general counsel of the American Trucking Associations.

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL,
AMERICAN TRUCKING ASSOCIATIONS, INC.

Mr. BEARDSLEY. My name is Peter T. Beardsley, I am general counsel of American Trucking Associations, Inc. That organization is the national trade association of motor carriers of property, representing both those engaged in for-hire operations and private carriers by motor vehicle.

We oppose enactment of H.R. 6716, primarily for three reasons:

First, we believe it will delay consideration of proceedings before the ICC.

Second, we do not believe it will accomplish its intended purpose, which is to allow members of the Commission more time to devote to matters involving important policy considerations; and

Third, we believe the interposition of ICC employee boards between an examiner and a Division of the Commission could have very undesirable results in certain cases.

I should like to discuss our objections to H.R. 6716 in that order.

Under the Commission's current rules of procedure, a case—I might say here I am talking about cases in which a hearing is to be held—a case is first referred to an examiner or joint board to be heard. After submission of the initial report, the parties may take exceptions and the case is then referred to a division.

Unless the ICC certifies that an issue of general transportation importance is involved, that is the end of the proceeding before the agency.

In short, except on relatively rare occasions, under the current ICC setup, only two steps are involved—an examiner's, or joint board, report and the final action—a division report.

Under the procedure provided by H.R. 6716, whenever exceptions were filed to an initial report, the Commission's employee board would take jurisdiction, with the parties having the right to appeal its decision to the division.

Thus the bill provides for three procedural steps before the Commission, rather than the two presently involved. There is no basis to assume that both the Commission's employee board and the division, on appeal, would not give the matter careful and thorough consideration.

This being so, it becomes obvious that the additional step provided by H.R. 6716 would considerably extend the time within which a final decision by a division could be expected.

The motor carrier industry appreciates and supports the recent efforts of the Commission to reduce delay in its proceedings. It is only because we sincerely believe that H.R. 6716 will result in delay in proceedings before the Commission that we reluctantly oppose the bill.

The rationale underlying the Commission's recommendation for this bill—ICC 74th Annual Report, page 183—is that it will enable Commission members to—

have more time to devote to matters involving important policy considerations.

We honestly believe that the Commission's members will save little, if any, time should this bill be enacted.

While it is true that many proceedings involving oral hearings before the ICC do not go "all the way," most of them which are discontinued are at the examiner or joint board stage.

In short, most of the dropouts follow an unfavorable initial report. It is my understanding and behalf that there are very few dropouts beyond that stage.

In short, most parties to ICC proceedings seem to believe that if a matter is important enough to justify exceptions to the initial decision of an examiner or joint board, it is of enough importance to take it "all the way" before the agency.

For this reason, we see no basis for believing that enactment of H.R. 6716 will—in any substantial sense—enable the members of the Commission to—

have more time to devote to matters involving important policy considerations.

The third basis for our opposition to H.R. 6716 is our belief that in certain cases, enactment of the bill might have undesirable results. Much of the Commission's promotional and regulatory activity is carried out by staff employees. Many of these activities originate with the bureau staffs.

We submit that under our theory of separation of functions, judicial functions should not be performed by those whose regular duties embrace execution of the laws, regulations, and decisions.

Because ATA recently participated in a complex ICC proceeding involving proposed changes in the hours of service of motor carrier drivers, the potential danger in this area comes readily to mind.

An examiner's recommended report was issued last week, June 8, in that proceeding. It is of great importance to the motor carrier industry and considerable time and effort went into the preparation of the industry's case, so the Commission would have the necessary information available on which to make its ultimate ruling.

Under the provisions of H.R. 6716, this safety proceeding could be referred and, if exceptions are filed, would be referred to an employee board. If the board were composed of eligible employees experienced in matters of motor carrier safety, as would be logical, some or all of its members would be employees who in their regular occupation are charged with promotional and enforcement duties in this area, and could be employees whose work—or that of their subordinates—related to the very proposals which were the subject of the proceeding.

We believe that the Commission would take care to see that no man would be both prosecutor and judge of the same case. But we also believe that the staff employees of the ICC are dedicated, conscientious people who keep informed of what goes on in their area of work and follow the progress of those matters with professional interest.

To expect such an employee to ignore his own convictions in such matters is to call for superhuman effort. With all due respect for the integrity of the Commission's staff employees, we believe it places an impossible burden on man to ask him to participate in promoting a position 4 days of a week and to drop his executive attitude and sit as an impartial judge in the same area on the fifth.

A fourth matter which you may wish to consider—I am not here purporting to look after the interest of the Commission's hearing examiners, but I thought this was something that the committee might want to consider and that is the likelihood that enactment of H.R. 6716 would tend to undermine somewhat the status of the independent hearing examiner.

Considerable progress has been made in improving the status of hearing examiners, seeking to establish a corps of trained, independent employees. Even today there are continuing efforts to further improve the status and stature of these "administrative judges." The provisions of H.R. 6716 somewhat negate these efforts.

The bill provides for review of hearing examiners' reports by employee boards of the ICC. Section 17(2) of the Interstate Commerce Act qualifies examiners, directors, or assistant directors of bureaus, chiefs of sections, and attorneys.

Thus, hearing examiners would be subject to reversal by employees sometimes untrained in judicial procedure, whose independence is not

provided for by law or regulation, and who may in some instances have neither the experience nor pay grade status of hearing examiners.

While we imply no disparagement of the training, experience, or qualification of nonexaminer employees for their specific positions, we have some reservations with respect to their qualifications to sit in review of quasi-judicial proceedings.

We submit that the training and background of these employees, in many cases, simply does not qualify them for these judicial duties and, as a result, much effort expended in raising the status of hearing examiners will be set at naught if H.R. 6716 is enacted.

For the reasons stated, we oppose the enactment of H.R. 6716.

Mr. Moss. Mr. Harris?

The CHAIRMAN. Mr. Beardsley, it seems to me that you raise a question that presents a dilemma. In the first place, you make it very clear that you support the Commission in their efforts to do something about this age-old question of delay.

Is it not a fact that one of the major reasons for the delay is that the docket is so congested that the Commission or the division of the Commission is unable to expedite the work and it just piles up and causes further and further delay?

Mr. BEARDSLEY. I suppose that is true, Mr. Harris, but I would say that today in the usual run of the cases I do not think that the Commission is subject to too much criticism, properly so at least, for any delay.

I would also point out that this bill, as I said, does not prevent appeal to the division and there is no basis for believing that the division is not going to thoroughly consider the matter when it gets it.

So since I believe the great majority of cases which go past the examiner stage in which exceptions are filed to his report are going to go all the way before the Commission—that is, as far as the Commission will let them go—I do not see that there is going to be any great saving of time.

The CHAIRMAN. It does seem to me that if there is a procedure whereby a division of the Commission in a majority of cases can make final determination instead of the matter having to go to the full Commission, there would be a lot of time saved.

Mr. BEARDSLEY. Yes, sir. That is the situation today without this bill. Under the Commission's current rules you can go as far as the division except, and nobody knows what the figures will be, except in those cases in which the Commission certifies that a matter of general transportation importance is involved.

So presently you are only going to go as far as the division in the great majority of cases.

The CHAIRMAN. Well, presently they file exceptions with the full Commission, do they not?

Mr. BEARDSLEY. Only under the Commission's rules as I understand them. Unless exceptions were filed to the initial report prior to February 1 of this year an appeal to the full Commission will not lie from a decision of a division unless the Commission certifies in the proceeding that a matter of general transportation importance is involved.

So you presently do not have the right in the great majority of cases to go to the full Commission.

The CHAIRMAN. As I understood it this was a step in between to assist now, since an increased workload is thrown on the division, to assist the division in expediting the cases before them.

Mr. BEARDSLEY. I understand the rationale of it, Mr. Harris, I believe. I just question the likelihood that if the division gives the matter the thorough consideration that it should give it, they are going to save a great deal of time.

If this bill said in effect that the employee board were the last step, I can see where it would save the division a good deal of time. It would never get to the division. I suspect, however, that there would be a lot of objections to the bill for other reasons.

The CHAIRMAN. That is all.

Mr. MOSS. Mr. Younger.

Mr. YOUNGER. No questions.

Mr. MOSS. Mr. Rogers.

Mr. ROGERS of Florida. Now what would you do with the problems that are not a matter of general transportation importance?

Mr. BEARDSLEY. The question is so broad, Mr. Rogers, I am afraid I do not know quite what you mean. At what stage?

Mr. ROGERS of Florida. Well, where disposing of these matters as suggested by these employee boards. It has been stated by the Commission that the purpose of this legislation is to try to aid them in handling these cases, cases that the Commission does not feel are of such broad importance, matters of general transportation importance. They feel an employee board could make an initial ruling with the right of appeal to a panel of the Commission. Then if anyone has any question as to whether the ruling pertains to general transportation, it could be brought up to the board.

How would you handle matters that are not of general transportation importance?

Mr. BEARDSLEY. If I believed, as I do, that this bill will not save the amount of time that it is expected to save, I would leave the situation the way it is, where the matter would first come before the examiner or joint board and then would be appealed, and it would be a final appeal from his decision, as a practical matter, to the appropriate division of the Commission which would sit as an appellate division in those cases.

Mr. ROGERS of Florida. Do you not think there are many matters which could be appealed to a panel of three so the matter could be properly reviewed?

Mr. BEARDSLEY. You mean to a panel of three Commissioners?

Mr. ROGERS of Florida. Yes.

Mr. BEARDSLEY. Yes. I point out again under the current rules, even without the enactment of this bill, you are only going to a panel of three before the Commission as a practical matter in probably, I would guess, 99 percent of the cases.

Mr. ROGERS of Florida. You would have no objection to going on appeal to a panel of three?

Mr. BEARDSLEY. No, sir; I am not criticizing the present rules under which the Commission is now operating.

Mr. ROGERS of Florida. Nor do you object, then, as I understand it, to the provision for the appeal to the three-man board before the Commission can come in?

Mr. BEARDSLEY. Except in the sense that I think the interposition of this employee board between the two steps, making three steps, might and probably will ultimately cause on the one hand either more time or on the other hand the failure by the division to really properly consider the case.

Mr. ROGERS of Florida. Why do you feel there would be a failure by the division to properly consider the case?

Mr. BEARDSLEY. I did not say that. Let us take the present situation. You have a hearing, you have an examiner, we will say. He files a report, perhaps after briefs are submitted, perhaps not. His report is filed. Some parties to the case never like it. They take exceptions. Presently you go to a division of the Commission. That is the last stage in the vast majority of cases.

Well, the division is going to take whatever amount of time it takes to consider the matter before the decision comes out. I am not criticizing it, you understand—that this is taking too much time. I think the Commission is doing fine, generally speaking, in getting the cases expedited today. But you come up with a new arrangement. Instead of an examiner and a division you have an examiner, an employee board, and a division. I find it hard to understand in my mind how the substitution of three procedural steps for the present two is going to save time.

Mr. ROGERS of Florida. Now under the present operation do you have the right of appeal from the division to the full Commission?

Mr. BEARDSLEY. No, sir; except in those cases in which the Commission certifies that a matter of general transportation importance is involved and my guess, and I certainly would yield to anybody from the Commission for correction, is that it will probably be in one case out of a hundred, if it is that many, and that is just a guess.

Mr. ROGERS of Florida. Now on matters which are not of general transportation importance the final appellate authority is within your division?

Mr. BEARDSLEY. Yes. On matters that are not of general transportation importance a hundred percent is the division—unless there is that certification, you do not go beyond the division.

Mr. ROGERS of Florida. Thank you very much.

Mr. MOSS. Mr. Thomson.

Mr. THOMSON. No questions.

Mr. MOSS. I understand it is your position that this would actually create a delay because at the time of filing exceptions to an examiner's decision you are convinced that the parties are going to exhaust all procedures available to them within the Commission itself?

Mr. BEARDSLEY. Mr. MOSS, what I believe is this: That you have a good many dropouts before the Commission but that the vast majority of them occur either in the first instance where they simply do not show up at a hearing or if they go through a hearing and they get an unfavorable report from the examiner or a joint board, that if they are going to drop out of that proceeding that is the time they do it. They will not go to the trouble or expense of filing exceptions to the examiner's report if they have lost their stomach for the case, let us say.

I am just suggesting, and again I do not have any figures and again I will yield to the Commission, but all I can determine from my own experience and the folks I talk to down there is in the vast majority

of cases the dropouts occur on or before the stage when the examiner files his report and that the dropouts after that are so unsubstantial that you are not going to save a whole lot of time by enactment of this bill.

Mr. MOSS. The difference is that the Commission apparently has concluded that the employee review board will dispose finally of quite a number of cases. You are convinced to the contrary. You feel that most of the cases, the great majority of those handled by this proposed employee review board, would have to be heard by a division of the Commission itself?

Mr. BEARDSLEY. Yes, I believe that there would be very few instances in which an employee board decided adversely to one side or the other in which the right of appeal to the division, which would exist under this bill, would not be exercised by the parties.

The CHAIRMAN. Will the chairman yield there?

Mr. MOSS. Mr. Harris.

The CHAIRMAN. What happens to the review examiners? Has the Commission had in the past a procedure whereby there would be review examiners that would go over the matter that has been heard and decided by the examiner?

Mr. BEARDSLEY. Mr. Harris, I am a little loath to say what happens to review examiners. I am just not in a position to say how the Commission will handle that thing in the future. I am not trying to avoid answering your question. I just do not think I know the answer.

The CHAIRMAN. Would you mind if I asked the Chairman of the Commission that question? We should have gotten that in a while ago.

Chairman Hutchinson, does this employee board take the place of the review examiners in that procedure?

Mr. HUTCHINSON. No, Mr. Chairman; it is not contemplated that it would at all. In other words, this Board or these Boards that we are asking Congress to give us authority to create would take the place of the regular division in making the initial decision in these cases of lesser importance.

The CHAIRMAN. You still have the procedure of review examiners?

Mr. HUTCHINSON. Yes; in the sense that they assist members of the Commission and, if we create this Board, they would assist members of the Board in analyzing the record in the decisional process.

The CHAIRMAN. Thank you.

Mr. MOSS. Are there any further questions? If not, Mr. Beardsley, we want to thank you for your appearance.

Mr. BEARDSLEY. Thank you, Mr. Chairman.

Mr. HUTCHINSON. May I say in response to Mr. Harris' question as to whether this was the unanimous position of the Commission, the Commission is unanimous in asking for this legislation. We think it will speed and improve our actions and we are asking the committee and the Congress to help us.

Mr. MOSS. Thank you very much.

That concludes the hearing on this legislation.

(The following information was submitted for the record:)

ASSOCIATION OF AMERICAN RAILROADS,
LAW DEPARTMENT,
Washington, D.C., June 13, 1961.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. HARRIS: We understand that the Subcommittee on Regulatory Agencies is now conducting hearings on H.R. 6716, a bill introduced by you on May 1, 1961, to amend section 17 of the Interstate Commerce Act to provide for further delegation of duties to employee boards. The Association of American Railroads supports the principle and objectives of this bill, which appears to be intended to implement legislative recommendation No. 1 contained in the 74th Annual Report (fiscal year ended June 30, 1960) of the Interstate Commerce Commission, as follows:

"1. We recommend that section 17 be amended to authorize the Commission to delegate to three-man employee boards the power to make decisions in cases in which a hearing has been held and which do not involve issues of general transportation importance, with the right of appeal to an appellate division whose decision would be administratively final."

As stated by the Commission in its 74th annual report, the workload of that body has reached the point where it is becoming increasingly more difficult for its members to find the necessary time to devote to thorough study and constructive thought on major issues. The proposed legislation, applicable in cases where the Commission has not affirmatively determined and announced that an issue of general transportation importance is involved, would appear to be desirable as a means of freeing Commission members of a part of their present heavy workload and thus enabling them to devote more time to matters involving important policy considerations.

It should be pointed out, as a technical matter, that the words "recorded order" in line 13 on page 2 of the bill ought to be "recommended order."

Respectfully yours,

GREGORY S. PRINCE,
Executive Vice President and General Counsel.

THE FEDERAL TRIAL EXAMINERS CONFERENCE,
Washington, D.C., June 14, 1961.

Re H.R. 6716.

Congressman OREN HARRIS,
Chairman, House Interstate and Foreign Commerce Committee,
New House Office Building, Washington, D.C.

MY DEAR CONGRESSMAN: On behalf of the Federal Trial Examiners Conference, the professional association representing a majority of the Federal hearing examiners dedicated to the promotion of sound and expeditious administrative procedures, I respectfully submit for consideration by your committee the following views on H.R. 6716 now pending before you.

As you are aware, the subject bill seeks to amend section 17 of the Interstate Commerce Act to permit the delegation of power to employee boards to decide matters not involving general transportation importance which are initially heard and decided by hearing examiners in lieu of review by a Division of Commissioners. Such employee boards would be appellate bodies empowered to review and stay initial or recommended reports of hearing examiners, or where exceptions to hearing officers decisions are filed, to decide the matters at issue acting in the stead of Commissioners.

In its 74th annual report to the Congress, page 183, the Interstate Commerce Commission stated that such boards are necessary to relieve the Commissioners of the burden of deciding cases which are readily determinable in the light of existing precedents, and to permit the Commission to devote more time to policy matters and the more expeditious handling of particular cases. It further pointed out that in practice the decisions of such boards would be reviewable by petition to an appellate division of Commissioners.

The conference strongly endorses legislation which will promote efficiency and eliminate unnecessary delay in the administrative process. To this end the conference supports the use of employee boards, such as have been established recently at the Interstate Commerce Commission, to dispose of nonadversary proceedings where no hearing is required. However, the conference respectfully submits that

rather than providing a means of reducing the appellate workload and expediting proceedings, H.R. 6716, if enacted, would interpose another intermediate and time-consuming appellate procedure between the hearing officer and the divisions of Commissioners where none now exists. Thus, if review of the decision of an employee board is required by a division of Commissioners, the entire process has been unnecessarily delayed and rendered unduly expensive to litigants and the Government alike.

The conference is further of the view that the proper solution to the problems of unnecessary delay and appellate workload at the Commission level is found in the provision of a certiorari type of review of hearing examiner decisions which limits the grounds of appeal and which makes the examiner's decision final where such limited grounds do not exist. Such an approach is set forth in S. 1734, popularly known as the Carroll bill, on which hearings are presently in process before the Senate Judiciary Committee. The conference takes the firm position that the proper way to expedite administrative proceedings and to reduce appellate workload is not to increase the number of appellate levels within an agency as provided by H.R. 6716, but to reduce them as required by S. 1734. Further, the conference considers it worthy to note the statement of Dean Landis in his report to the then President-elect, that the decisions of hearing examiners at the Interstate Commerce Commission are "too frequently rewritten for no discernible purpose." The desirable goal of expedition can better be attained by limiting review of examiners' decisions except where demonstrable errors of fact, policy, or law have been committed. Another intermediate appellate level is clearly a step in the wrong direction, in our view.

It is respectfully requested that this letter be made a part of the record of the hearings on H.R. 6716. If the conference can be of any further assistance to your honorable committee we will be happy to oblige.

Thank you for your kind consideration and courtesy.

Respectfully submitted,

EDGAR A. BUTTLE, *President.*

ASSOCIATION OF INTERSTATE
COMMERCE COMMISSION PRACTITIONERS,
OFFICE OF EXECUTIVE SECRETARY,
Washington, D.C., June 27, 1961.

Re H.R. 6716.

HON. OREN HARRIS,
Chairman, and Members, Subcommittee on Regulatory Agency of the House Committee on Interstate and Foreign Commerce.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: On June 12, 1961, you held a hearing on H.R. 6716, which was introduced by the chairman of the committee at the request of the Interstate Commerce Commission, and which would give effect to its legislative recommendation No. 1 in its 74th annual report. This bill would amend section 17 of the act to permit the Commission to delegate to employee boards authority to make decisions in cases in which a hearing has been held and which do not involve issues of general transportation importance and would provide for appeal from such decisions to a division of three Commissioners eliminating the necessity for reconsideration by the entire Commission. As I understand it this bill was supported by the Commission through the testimony of its Chairman and was opposed by the American Trucking Associations, Inc., through their counsel, Peter T. Beardsley.

The Association of Interstate Commerce Commission Practitioners had not had an opportunity by June 12 to consider this bill. Since that time the executive committee of the association has had such opportunity and, in addition, has reviewed the statements referred to above. Since this bill relates entirely to the question of efficiency and expedition in the Commission's procedures rather than involving the interests of various modes of transportation in the economic sense, it is our thought that the views of the representatives of the Practitioners Association might be of some help to the committee on its deliberations on this bill. In addition, the writer and several members of the executive committee of the association are members of the Special Advisory Committee on Interstate Commerce Commission Practices and Procedures, whose first report was served October 1, 1960, and have devoted considerable time during the past 2 years to the problem concerned. The association has not polled its members on this matter, but I feel that the views expressed herein represent the consensus of the views of its 4,000 members.

The advisory committee report of October 1, 1960, showed that in 1959 there were 1,686 adversary proceedings in which it was necessary for final report to be released by a division, or the Commission en banc. This total excludes non-adversary cases and cases in which the initial report of an examiner became final. In the reorganization which the Commission has so far accomplished during 1961 under existing law, it has provided for the delegation to employee boards of decisions in nonadversary cases, among others. The pending bill, as we understand it, would deal with the 1,686 adversary proceedings as well as possible other proceedings in which a hearing is required to be held. Under the Commission's present organization these proceedings must be decided by nine Commissioners organized into three divisions of three each. The caseload of adversary proceedings alone, then, requires each division to dispose of 562 such proceedings or an average of approximately 11 per week, assuming equal distribution. Since the Commission has now adopted the recommendation of its advisory committee that cases be assigned to individual Commissioners for supervision of preparation of the final reports, this means that each Commissioner, again assuming equal distribution of the work, has the responsibility for approximately four reports and decisions each week in addition to participating in the decisions relative to reports prepared by the other two members of the division on which he serves. We recognize that with such a caseload it is impossible to attain both the desired level of participation by the Commissioners serving on these divisions in the final decisions and reports and at the same time to accomplish the needed improvement in expedition of Commission proceedings.

The advisory committee made several recommendations to the Commission having a bearing on this matter. One such recommendation was that employee boards be used to the extent possible under section 17 of the act to decide matters which would not require decision by a division. The Commission has, in its recent changes, implemented this recommendation. Another recommendation, again to be accomplished within the purview of section 17 of the act, was to limit reconsideration by the entire Commission to matters of general transportation importance. This recommendation also has been implemented by the Commission. In its recommendation No. 15, the advisory committee suggested that the Commission provide, again within the scope of its existing powers under section 17, decisions in proceedings which are not of general transportation importance by individual Commissioners rather than by divisions. Adverting to the caseload reviewed above, it will be seen that the adoption of this recommendation would not have reduced the caseload of individual Commissioners with respect to preparation by them of final reports that would have remained at the level of four a week in adversary proceedings. It would have eliminated some of the additional seven or eight cases prepared by other Commissioners which each member of a division must review and vote on. The Commission did not adopt this recommendation in the changes in its internal organization so far accomplished.

The advisory committee, in its first report, limited its recommendations to those which could be accomplished within the purview of existing law. It is apparent that the Commission believes that delegation of decisional authority to individual Commissioners in place of divisions, in proceedings which are not of general transportation importance, would not sufficiently reduce the workload of the Commissioners so as to provide them with the time needed for their more active and intensive participation in the preparation of final reports in cases which are of general transportation importance. Rather, it would delegate such responsibility to employee boards. H.R. 6716, then, is consistent with the views of the advisory committee that substantial delegation of decisional authority within the Commission is necessary both to reduce the time required to secure decisions, and to improve the decisional process itself, particularly in cases of general transportation importance. It has been felt that the Commissioner should be provided with such additional time, together with other aids such as adequate research facilities, so that they can anticipate and deal promptly with new problems and issues which are constantly developing in the field of regulation of surface transportation.

We recognize that there is novelty in the idea that staff personnel rather than the Commissioners themselves, under the proposed new legislation, would officially be making decisions. It is apparent to those who are active in the practice, however, that the study and deliberations and preparation of final reports as a practical matter is now accomplished largely by the staff of the

Commission. While we seek to encourage the greatest possible individual leadership and participation by Commissioners, it cannot be accomplished with their present caseload. The proposed change would lead to greater Commissioner responsibility in major cases through providing for staff decisions in cases not involving important policy determinations. So long as the right of appeal is preserved to a division of the Commission, as this bill proposes, the change, then, for the cases of lesser importance, is one largely in form rather than in substance. At the present time, in the class of proceedings concerned, a staff attorney prepares the final report which, together with the briefs of the parties is transmitted to the division for consideration, decision, and, if necessary, revision of the report. Under the proposed procedure the report prepared at the staff level would be considered and the decision made by an employee board and the report would be immediately released. It may be anticipated that in a substantial number of cases no petition would be filed and this portion of the workload of the divisions would be eliminated. In those instances in which petitions for reconsideration were filed, the parties would be in a better position than is presently the case since they would know to what extent the cognizant bureaus of the Commission were recommending to the Commissioner changes in the findings and conclusions contained in the initial reports of the hearing examiners. The appellate divisions instead of having to deal with the entire contents of the report in order, would be able to limit their review to those particular matters of alleged error raised by the petitions for reconsideration filed. In this sense the criticism that H.R. 6716 would cause delay in the Commission proceedings is not considered to be well founded.

For the same reason we believe that the criticism of H.R. 6716 to the effect that it will not provide the members of the Commission with more time to devote to matters involving important policy considerations, is not well founded.

We have noted also that the Federal Trial Examiners Conference has some misgivings about this bill, again on the ground that it might not provide the saving in time intended and with the thought that a better method would be to limit review of hearing examiners' decisions to a certiorari type of review. Much will depend, of course, on the manner in which the Commission would implement the legislative authority which it seeks. Would such release provide adequate opportunity for parties to assert at a proper point in the proceeding that the particular matter in which they are concerned is one of general transportation? Would such assertions be given adequate consideration? Would the employee boards be more inclined or less inclined to accept the findings of fact of the hearing examiners who have had the opportunity to see and hear the witnesses? Would the review on petitions for reconsideration by a division be a certiorari type review, as seems desirable, or would it be an added third level of report preparation? We are in general agreement with the views of the Federal Trial Examiners Conference that the reports of hearing examiners should not be entirely rewritten, as has frequently been the case, in the preparation of final reports for presentation to the deciding authority. The advisory committee dealt with this subject and it has been noted that the Commission has now adopted a procedure of issuing a one-page report where no essential changes were required to be made in the examiner's report, in essence adopting all of the principal findings and conclusions of the examiner.

We have been gratified with the actions which the Commission has taken to implement both the recommendations of members of our association who served on the special advisory committee, the recommendations of other advisers, and the recommendations produced in its own staff studies to improve its internal organization and procedures. In our view, it must be borne in mind that securing expedition in Commission decisions is of no greater importance than securing the best possible decisions and intelligent, informative, reports, expressing them. The important policy determination functions of the Commission must be exercised by the Commissioners themselves who, in turn, must be provided with adequate time for the execution of these functions not only through the ad hoc case-by-case decisional method, but through general investigations, research, rule-making proceedings and similar methods. The Commissioners must be afforded sufficient time for execution of these functions both in the consideration of proceedings of general transportation importance and through these other methods. We feel that the Commission should be afforded the widest possible latitude in revising its procedures to accomplish these results. The passage of H.R. 6716 would provide the Commission with one important method of contributing to that result. In our view, the advantages to be derived from giving the Commis-

sion this authority materially outweigh the doubts which have been expressed concerning this type of legislation. If it should develop that there is substance in such criticisms, it can be determined only through experience. It would then be possible, of course, to seek further legislative action with respect to this matter.

Very truly yours,

DAVID G. MACDONALD.

(Whereupon, at 11:45 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.)

