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RAILROAD WORK RULES DISPUTE

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

H.J. Res. 565

A JOINT RESOLUTION TO PROVIDE FOR THE SETTLEMENT OF THE LABOR DISPUTE BETWEEN CERTAIN CARRIERS BY RAILROAD AND CERTAIN OF THEIR EMPLOYEES

JULY 24, 25, 26, 29, 30, 31; AUGUST 1 AND 2, 1963

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

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RAILROAD WORK RULES DISPUTE

WEDNESDAY, JULY 24, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order.

The committee this morning is initiating hearings on House Joint Resolution 565, which is the resolution proposed by the President in his message to the Congress to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees.

(The document referred to follows:)

[H.J. Res. 565, 88th Cong., 1st sess.]

JOINT RESOLUTION To provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees

Whereas the labor dispute between the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that transportation services of these carriers be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to secure the continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through collective bargaining, and preserves the carriers' right to initiate work rules changes under procedures to which they are accustomed and assures reasonable conditions of employee security: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That changes in work rules involving the manning of train or engine crews and the protection of the interests of employees affected thereby, which changes come within the area of those proposed by a carrier in the notices of November 2, 1959, or by a labor organization in the notices of September 7, 1960, shall become effective upon application to and approval or modification by the Interstate Commerce Commission in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act, such rules to be operative only as interim rules and until the current controversy regarding such rules is resolved by the parties through continued collective bargaining; and no provision in this joint resolution shall be construed as limiting the right and responsibility of the carriers and organizations to reach agreement regarding such rules.

SEC. 2. An application filed under section 1 shall be given priority over all other matters pending before the Commission, and shall be acted upon within one hundred and twenty days after it is filed or as soon thereafter as is practicable. The Commission may consider as evidence before it the evidence introduced before the Presidential Railroad Commission, created by Executive Order 10891, of November 1, 1960, and before Emergency Board 154, created by Executive Order 11101, of April 3, 1963, and shall not be required to receive evidence cumulative thereto. The Commission may establish a Special Advisory Panel to assist in the discharge of the functions conferred upon it by this joint resolution.

SEC. 3. In acting upon an application filed pursuant to section 1, the Commission shall give due consideration to the effect of the proposed rule upon adequate and safe transportation service to the public and upon the interests of the carrier and the employees affected, giving due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154, and to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation following the Emergency Board report. As a condition of its approval of any interim rule involving, directly or indirectly, the reduction of existing manning requirements or practices, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provided in section 5(2)(f) of the Interstate Commerce Act, and with due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154 relating to the retention of job rights by senior employees, relocation expenses and earnings protection to less senior employees transferred to other jobs by the employing carrier, preferential hiring rights, displacement allowances, supplemental severance allowances, and retraining allowances. To the extent that provision for such payments and retraining may be available to an employee under the Manpower Development and Training Act of 1962 or other Federal statutes, the carrier will be relieved of this obligation.

SEC. 4. The Commission shall act upon any application filed with it under section 1 of this joint resolution, by way of approval, modified approval, or disapproval; and upon such approval or modified approval an interim rule consistent therewith shall be put into effect and shall remain operative until the parties reach agreement regarding the matter involved or, if no agreement is reached, for two years following the date the interim rule goes into effect.

SEC. 5. No change in rules coming within the scope of the notices referred to in section 1 of this joint resolution may be made except by agreement or by the procedures prescribed herein, and any strike or lockout to accomplish, prevent, or interfere with such change shall be subject to the procedures of section 5(8) of the Interstate Commerce Act.

SEC. 6. The parties shall proceed immediately to bargain collectively, with the assistance of the National Mediation Board, concerning any unresolved issues regarding any proposals which were included in the notices of November 2, 1959, or September 7, 1960, but which do not involve the manning of train or engine crews and the protection of the interests of employees affected thereby. If agreement has not been reached with sixty days following the effective date of this joint resolution, any party may submit its proposal to the Interstate Commerce Commission for disposition by such special procedures, not confined to those set out specifically in this joint resolution, as the Commission, after consultation with the parties, deems appropriate. Due consideration shall be given in any such procedure to the recommendations of the Presidential Railroad Commission and Emergency Board 154 and to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation. The provisions of section 5 of this joint resolution shall be applicable to matters covered by such proposals.

SEC. 7. The provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," shall not be applicable to an action under sections 5 or 6. In any such action, service of the complaint and summons shall be made on the parties to the controversy by delivery thereof to an officer or to any other agent of said parties authorized by appointment or by law to receive service of process. The delivery of the summons and complaint may be made by certified mail. The orders, writs, and process of a district court issued in any such action shall run, be served, and be returnable anywhere in the United States.

SEC. 8. This joint resolution shall expire two years from the date it becomes effective: *Provided*, That the jurisdiction of a District Court of the United States under sections 5 and 6 shall continue for so long as any interim rule under section 4 continues to be operative. Prior to such expiration, the President shall report on its operation to the Congress and make such further recommendations, if any, as he deems appropriate, including his recommendation as to whether this joint resolution should be extended. In addition, the Interstate Commerce Commission may, from time to time, submit interim reports to the President on its actions pursuant to this resolution.

The CHAIRMAN. It would be unnecessary for me to make any comment regarding this problem because the situation has been so thoroughly discussed and publicized over the last several weeks and months, and indeed years, that the problem is a familiar one to all of us.

Not too long ago I received a letter from a constituent who said that this constituent had a real problem. He said that he had gone to every place that he could think of in his appeal and failed, so "I am appealing to Congress to give me some relief." Apparently that is the situation we are in now with this important problem. We have been given a week to consider a problem of such tremendous importance. There was a time when problems of this nature would arise that did not present the complications that are presented today and it was more logical that in the past they could have been handled rather expeditiously.

But today the problems get more and more complicated, as is understandable, because of our society and our economy being so much different than it was 50 years ago. I must say in all candor that we cannot conclude this problem and act on it as we should and give it the consideration that it deserves by Tuesday of next week, or Monday.

As a matter of fact. We have only 5 days left. I have therefore requested the representatives of the railroad industry to defer for a period of 30 days the institution of the proposed work rules which, as we all know, would invoke a strike on a national basis. I am sure I speak for every member of the committee when I say that in our judgment this would not be unreasonable.

I have asked that they advise this committee in 24 hours their decision in view of the imperative need for this matter to be settled to a point that it could be given the attention it should have. I am hopeful that we will have, and I believe we will have, a favorable response.

Mr. LOOMIS. Mr. Chairman, may I have permission to make a statement?

The CHAIRMAN. Mr. Dan Loomis, president of the American Association of Railroads and representing the railroad industry.

STATEMENT OF DANIEL P. LOOMIS, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. LOOMIS. First I may say that I do not have any authority at the moment to agree or disagree with the request. I would, however, point out certain facts. I am deeply concerned with the request for such a long postponement. On the surface it would appear to be a simple one, but the facts that the railroads for many years have attempted to negotiate a solution to various phases of the work rules problems with the organizations engaged in train and engine service. We have had very little success in that connection.

Meanwhile costs have increased, competition has increased, and these unnecessary payments for work not needed and not performed which were only a burden in more prosperous times are becoming intolerable under present conditions. I think you are familiar with the recent history in this area. Our notices were served on November 2, 1959, seeking to negotiate relief. Finally when all the bargaining procedures had been exhausted and the subject had been explored intensively for 13 months by the Presidential Railroad Commission, when mediation had brought no progress, and when arbitration contemplated under the Railway Labor Act had been rejected by the unions.

The railroads served notice, as they were legally entitled to do, that the rules changes would go into effect on August 16, 1962, almost a year ago. Injunctive proceedings forced a postponement at that time while the case was argued in the U.S. district court, the court of appeals, and finally settled in the Supreme Court. Again the railroads served notice that rules changes would go into effect on April 8, 1963, only to have the date postponed by the appointment of an emergency board under the Railway Labor Act.

When this board's report was rendered, accepted by the railroads and rejected by the unions, the railroads again set a date for the rules changes, only to have it postponed again at the request of the administration. In all there have been six postponements, growing out of legal moves or voluntary agreement at the request of the administration. I think indeed it was in recognition of the railroad's cooperation in this field that led the President himself to say in his July 10 statement that the administration would not ask for a further postponement. The record is crystal clear that the railroads have been completely cooperative and deeply aware of the public interest throughout all of the developments in this trying case.

But how much longer can we continue this and survive? In addition to the fact that the rules are not settled and no savings are being made, it is a fact that so long as there is uncertainty and the strike date continues to be postponed there is a continuing diversion of traffic by shippers to other forms of transportation. That has to be very carefully considered by the railroads, because the mere threat of a work stoppage drives business away and bitter experience shows that a substantial portion of this never returns to the railroads. So that a continuing postponement is equivalent to draining off more of the livelihood of an anemic industry.

This dispute can certainly be no surprise to Members of the Congress or to the American public. The newspapers have provided full coverage of the matter for the last 4 years and for weeks it has been apparent that collective bargaining had collapsed, that the Railway Labor Act procedures had been exhausted, that administrative efforts of the Secretary of Labor and the President have been unsuccessful in budging the unions, and that the ultimate answer to the problem would have to be in Congress. We shall, of course, give any consideration and very serious consideration to a request by the Congress, but I think the Congress should fully understand the position in which we find ourselves, that we have already been delayed and that this has continued for some 4 years.

I would also remind the Congress that the Adamson Act when the shoe was on the other foot was passed in 4 days between the 29th of

September or the 29th of August and the 2d of September. We do have considerable difficulty in considering any further postponement. We will, of course, submit your request but I want it clearly understood what our problems are.

The CHAIRMAN. We can appreciate you have a problem, Mr. Loomis, but your statement seems to me to give substance to the request that I have just made, that a 30-day postponement of invoking the rules would be reasonable, because the problem has been under consideration these 4 years that you spoke of. Others who have been much more familiar with the problem of labor were with you and with the railroad brotherhoods for all this time. It was brought to the attention of the Congress only the day before yesterday. There is a rather intriguing and unique proposal here, a rather new proposal in a matter of this kind, though there are precedents in connection with problems affecting labor and management relationships.

But we do feel that in view of your statement and the fact that it has been brought to our attention, that a 30-day extension would be reasonable and we hope that your organizations and your industry can give approval to it in order that we might make what contributions we could to the national welfare, No. 1, of the present emergency. And No. 2, that we can give the consideration to this proposal that it is entitled to.

Mr. LOOMIS. As I said, Mr. Chairman, I hardly construe my statement quite that way but we will give consideration to the request. I think our problem should be fully understood by the Congress and by the public.

The CHAIRMAN. Thank you very much.

Mr. Wirtz, the Secretary of Labor, has been involved in this problem now for some time and on behalf of the administration is in a position to present the matter to the committee and explain what is proposed here.

It is our hope that we can have the Government witnesses today, following which we would expect to have the railroad industry and the railroad labor organizations, and then the Interstate Commerce Commission and probably the Department of Commerce. But it is our purpose to proceed with these hearings as expeditiously as conditions and circumstances will permit. I want that to be definitely understood.

Mr. Secretary, you may proceed.

STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR, ACCOMPANIED BY JAMES J. REYNOLDS, ASSISTANT SECRETARY OF LABOR, AND FRANCIS A. O'NEILL, CHAIRMAN, NATIONAL MEDIATION BOARD

Secretary WIRTZ. Thank you, Mr. Chairman. There are with me today Mr. Francis A. O'Neill, who is Chairman of the National Mediation Board, and Mr. James J. Reynolds, the Assistant Secretary of Labor. The three of us have been engaged in the attempts to bring this matter to a solution and I should like to share with them or have them share with me the responsibility for answering whatever questions the committee may have.

I have, Mr. Chairman, and members of the committee, no formal statement. The President's message of the day before yesterday

covers a good deal of the background of this particular matter and suggests the outline of the recommendation which he has made, which is reflected in House Joint Resolution 565 and it will be my purpose to supplement that presentation in some detail, but to do it as quickly as possible to those questions which the committee may have.

The CHAIRMAN. I think it would be advisable to include the message from the President of July 22, 1963, in the record.

(The document referred to follows:)

[H. Doc. 142, 88th Cong., 1st sess.]

RAILROAD-LABOR DISPUTE

Message from the President of the United States relative to railroad-labor dispute

To the Congress of the United States:

This Nation stands on the brink of a nationwide rail strike that would, in very short order, create widespread economic chaos and distress. After more than 3½ years of constant but fruitless attempts to achieve a peaceful settlement between the parties through every private and public means available, this dispute has reached the point where only prompt and effective congressional action can assure that serious injury to the public will be prevented.

BACKGROUND OF THE CASE

This dispute is between virtually all of the Nation's major railroads and the five railroad operating brotherhoods—the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America. It involves—in addition to the more traditional issues of wage structure and fringe benefits—new and complex issues relating to changes proposed by the carriers and the brotherhoods in work rules affecting the manning of certain railroad operations and the assignments of particular crafts. The background and history of this case, the issues in dispute and the respective positions of the parties have been clearly and concisely set forth in a July 19, 1963, report unanimoulsy signed by six tripartite members of a special subcommittee of the President's Advisory Committee on Labor-Management Policy. That report, including the appendixes, is included as an appendix to this message, and should be carefully read by all who seek the facts on this case.

Without attempting to summarize either the findings of that report or the excellent work of the other panels mentioned below, the following points are worth noting:

After the carriers on November 2, 1959, had served notice of proposed rules changes on the brotherhoods, and the brotherhoods had served notice of other proposed rule changes on September 7, 1960, and no agreement was forthcoming, both parties agreed on October 17, 1960, to submit the entire subject to a special Presidential study commission of 15 members, composed of an equal number of public, railroad, and brotherhood representatives. Following 13 months of extensive hearings and deliberations, 15,500 pages of oral testimony and more than 300 exhibits, this Presidential Railroad Commission, under the chairmanship of Judge Simon H. Rifkind, recommended specific rules changes and employee protection provisions in a comprehensive 342-page report.

Following a Supreme Court determination that there was no legal barrier to the carriers initiating such changes, with appropriate bargaining and recourse to the Railway Labor Act procedures, and following the continued inability of the parties to negotiate an agreement, the National Mediation Board recommended to the parties that the case be submitted to binding arbitration.

As disagreement continued and a nationwide strike threatened an Emergency Board established pursuant to section 10 of the Railway Labor Act, under the chairmanship of Judge Samuel I. Rosenman, following its own unsuccessful efforts to mediate the dispute, made a series of recommendations designed to serve as the basis for constructive collective bargaining.

After further discussions and an extension at my request of the status quo period, the Secretary of Labor on July 5, 1963, recommended solutions for the two most controversial issues along with procedures to dispose of the rest.

On July 9, 1963, I recommended to the parties that all issues be submitted for final settlement to Associate Justice of the Supreme Court Arthur Goldberg, whose judicious temperament, expert competence, and many successes as a mediator uniquely deserved the confidence of both parties. This recommendation, and each of the preceding four sets of recommendations, were accepted by the carriers; but the brotherhoods rejected them in whole or in part.

On July 10, at my request, the parties agreed to maintain the status quo until July 29 to permit time, first, for the Labor-Management Subcommittee to examine and report the issues, and, second, for the Congress to consider this entire matter. It was my hope—and remains such—that the parties would recognize the importance of settling this dispute without resort either to legislation or to a crippling national strike. However, too little progress has been made in the past 11 days to release me from my July 10 commitment to transmit to the Congress on this date a review of the case and my recommendations for its disposition.

We face this prospect: In the absence either of an agreement, postponement, or reversal of position on the part of the parties, or of enactment of some contrary measure on the part of the Congress, July 29 will almost certainly witness the start of a general rail strike. The carriers on that date can be expected to initiate work rules changes along the lines of those approved by the various panels. And the brotherhoods thereupon can be expected to strike 94 percent of the Nation's rail mileage.

THE EFFECTS OF A PROLONGED NATIONWIDE RAIL STRIKE

In the event a strike occurs it will bring widespread and growing distress. Many industries which rely primarily on rail shipment—including coal and other mining which is dependent on rails leading directly to the mine, steel mills that ship by rail, certain chemical plants which load liquids directly into tank cars, and synthetic fiber mills dependent on chemicals which for safety reasons can be carried only in rail tank cars—all of these and others would be forced to close down almost immediately. There would not be enough refrigerated truck capacity to transport all of the west coast fruit and vegetable crop. A substantial portion of these and other perishable products would rot. Food shortages would begin to apear in New York City and other major population centers. Mail services would be disrupted. The delay, cost, and confusion resulting from diverting traffic to other carriers would be extremely costly; and considerable rail traffic would be wholly incapable of diversion.

The national defense and security would be seriously harmed. More than 400,00 commuters would be hard hit.

As more and more industries exhausted their stockpiles of materials and components—including those engaged in the production of automobiles, metal products, lumber, paper, glass, and others—the idling of men and machines would spread like an epidemic. Construction projects dependent on heavy materials—exports and waterway shipping dependent on rail connections—community water supplies dependent on chlorine which also moves only by rail—slaughterhouses and stockyards, iron ore, rubber and machinery, magazine publishers, and transformer manufacturers—all would be hard hit by a strike. The August grain harvest would present a particularly acute problem.

The Council of Economic Advisers estimates that by the 30th day of a general rail strike, some 6 million nonrailroad workers would have been laid off in addition to the 200,000 members of the striking brotherhoods and 500,000 other railroad employees—that unemployment would reach the 15-percent mark for the first time since 1940—and that the decline in our rate of GNP would be nearly four times as great as the decline which occurred in this Nation's worst postwar recession.

At the same time, shortages and bottlenecks would increase prices—not only for fruits and vegetables but for many industrial materials and finished products as well—thus impairing our efforts to improve our competitive posture in foreign and domestic markets and to safeguard our balance of payments and gold reserves. And even if the strike were ended by private or congressional action on the 30th day, at least another month would be required before

the economy would be back on its present expansion track. Indeed, a prolonged strike could well break the back of the present expansion and topple the economy into recession before the tax reductions and other measures now before the Congress for reinforcing the expansion have had a chance to take hold.

THE LEGISLATIVE SETTING

In short, the cost to the national interest of an extended nationwide rail strike is clearly intolerable. No responsible government could accept the present situation with complacency. Because in the past both sides have recognized the serious consequences involved, there have been only two brief national rail strikes in this century. The likelihood of a strike next week thus means that we are confronted with an extraordinary situation, both in terms of the impact of the strike on our economy and in terms of the issues involved. These issues, unlike those of typical wage disputes, are ones with very little collective bargaining play left in them. The work rules aspects of the present dispute are regarded as do-or-die matters by both parties—and the history of industrial relations shows that when employers and employees consider the issue to be this vital, they can both stand a strike much longer than the country can stand it. Therefore the parties being unable or unwilling to reach agreement or accept arbitration, and the executive branch having exhausted all statutory and other tools available, the responsibility now lies with the legislative branch.

The Congress has expressly refused to give the Executive authority to seize the railroads in time of peace and has expressly excluded railway labor from the national emergency provisions of the Labor Management Relations Act of 1947. The Supreme Court has stated that the Congress is the appropriate forum for considering remedies against strikes designed to prevent the railroads from reducing employment for economic reasons (*Telegraphers* v. *Chicago & N.W.R. Co.*, 362 U.S. 330, 342). When adopting the Railway Labor Act in 1926, moreover, it was contemplated that special congressional action might be required "to protect the public interest in adequate and uninterrupted transportation. If (the bill) does not so work * * * so as to avoid any impairment of the public interest * * * Congress will be unembarrassed in adopting any means it sees fit to protect the public interest" (report of the Senate Committee on Interstate Commerce, S. Rep. 222, 69th Cong., 1st sess., 1926).

In 1916, the Congress set a precedent that is of interest today. As a result of a dispute over hours and wages, the railroad brotherhoods had issued a call for a nationwide rail strike; and President Wilson held a conference with the parties. When he proposed arbitration, the carriers agreed and the brotherhoods refused. When he proposed the 8-hour standard of work and wages, the brotherhoods agreed and the carriers refused. Confronted with the prospects of an early strike, the President then asked Congress to enact the 8-hour standard as an interim law pending a further report to the Congress by a special Presidential Commission. He pointed out that he had "no resources at law * * * for compulsory arbitration, to save the commercial disaster, the property injury, and the personal suffering of all * * * if the strike was not prevented."

The Interstate Commerce Commission, he stated, would protect the carriers through its rate powers against any undue cost increases resulting from this change. Congress acted promptly and effectively; and the Supreme Court (*Wilson* v. *New*, 243 U.S. 332, 333, 342, 1917), emphasizing the fact that the nature of the railroad industry required both employers and employees to defer to regulation in the public interest, held that Congress had the power to impose a settlement binding on both parties "for a reasonable time, in order that the calamity may be averted and that opportunity may be afforded the contending parties to agree upon and substitute a standard of their own."

With all of these legal, economic, and other facts in mind, this administration has given careful consideration to the kind of legislation Congress might usefully enact to meet the needs of the present situation.

Ineffective measures which would not halt an injurious nationwide rail strike have been rejected as inconsistent with the public interest.

Punitive antilabor measures which would destroy railway labor's rights to collective bargaining and reasonable job security have been rejected as harmful to the Nation and insensitive to the very real issues posed by the proposed work rule changes.

Seizure of the railroads has been rejected as unjustified in the circumstances of this case, as creating complex legal and financial problems for the Government, and as merely postponing the day of reckoning on more efficient work rules and their acceptance by the brotherhoods.

Compulsory arbitration of this dispute by a special or congressional panel has been rejected as inconsistent with the principle that solutions reached through free collective bargaining should always be permitted and preferred.

Indefinite extension of the status quo for one or both parties has been rejected as an invasion of a serious public, as well as labor-management, issue that must be squarely faced.

Our objective instead was to find a solution which—

(1) Is sufficiently familiar to the Congress, in terms of the procedures and principles involved, to facilitate its prompt enactment;

(2) Encourages the parties to achieve their own solutions through collective bargaining;

(3) Confronts the parties, on issues where voluntary agreement is not possible, with methods and standards of solution which are comparable to those both sides have previously experienced and found acceptable;

(4) Recognizes both the public interest in promoting railroad efficiency and preventing a disastrous strike and the public's concern for those adversely affected by a settlement; and

(5) Provides for an interim remedy while awaiting the results of further bargaining by the parties.

RECOMMENDED LEGISLATION

As noted above, the railroad 8-hour law of 1916 provides a precedent for congressional intervention of this type; and the Interstate Commerce Act provides a pattern to which both Congress and the parties are accustomed. Recognizing that both railroad mergers and their effect on railroad employment are deeply affected with the public interest, section 5 of that act wisely supplements the results of private decisionmaking and collective bargaining in this area with the quasi-judicial regulatory powers of the independent Interstate Commerce Commission. Proposed mergers must be passed upon by the Commission after due regard to their effect on public service and safety, the rights of employees and other considerations. In its order of approval the Commission includes specific terms and conditions to protect the job security of the employees involved. The carriers and brotherhoods remain free to supersede these employee security provisions with their own collective-bargaining agreement. The value which railroad and other unions attribute to this section was reflected in their urging that comparable provisions be included in this year's mass transportation bill; and there are such provisions in this bill as it passed the Senate and as it was reported in the House.

There is no reason why these principles and procedures, if they are applicable to the employment security problems raised by railroad mergers and mass transit modernization, are not equally applicable to the employment security problems raised by railroad modernization and mechanization. An expert body should pass on these proposed rule changes in the light of public service and safety; and it should also make provision to prevent the employees from bearing the full cost of technical or economic progress, so long as priority is given to agreements privately reached by the parties themselves.

I recommend, therefore, that—for a 2-year period during which both the parties and the public can better inform themselves on this problem and alternative approaches—interim work rules changes proposed by either party to which both parties cannot agree should be submitted for approval, disapproval or modification to the Interstate Commerce Commission in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act, the Commission being directed to use to advantage the work of the two previous panels which received evidence on these matters. At its discretion, the Commission may also appoint a special advisory panel to assist it in the discharge of its functions. The Commission shall judge the effect of each proposed rule on the adequacy and safety of transportation service to the public and on the interests of both parties; and it shall, with the advice of the Secretary of Labor, require fair and equitable arrangements to protect the interests of the affected employees, giving proper weight to the protection provisions of section 5(2)(f) of the Interstate Commerce

Act and those recommended by the Presidential Commission and Emergency Board reports. Emerging from the recommendations of these boards was the principle that, while many jobs would not be filled following the death, retirement or voluntary transfer of the present occupants, every present employee with a significant attachment to the railroad industry would retain the right to his present employment or to comparable railroad employment at comparable pay. Provisions would also be made for rehiring priority, relocation expenses, displacement allowances, education and retraining grants, supplemental severance and retirement benefits and other features. In short, no one would be thrown out in the street; and, while the railroads gradually modernized their operations, there would be little, if any, loss to individual employees.

Unlike compulsory arbitration, this method would preserve and prefer collective bargaining and give precedence to its solutions. But any strike or lockout designed to impose a rules change which has not been approved by the Commission or the parties, or to oppose one which has been approved, would be subject to the remedies of section 5(8) of the Interstate Commerce Act.

This procedure is most appropriate to the disposition of those rule changes involving the manning of train or engine crews—the automation issues, in a sense. It would build on the progress made to date in defining and refining those issues through the various panel studies and subsequent bargaining efforts.

While the disposal of those issues should be sufficient to remove the barriers to a peaceful solution of all other issues by collective bargaining between the parties, many of them are closely interrelated to the work rules changes—and I recommend that the same joint resolution of the Congress provide that either party may submit such issues to the Commission to be settled by procedures deemed appropriate by the Commission.

I stress the fact that, unlike compulsory arbitration, these procedures would provide only interim changes and only for those situations and for such length of time as the parties are unable to agree by collective bargaining. This was also true of the 1916 act. Experience with both the interim rules and these temporary procedures should enable the parties to consider in 2 years, under considerably less pressure, whatever more comprehensive and final solution is needed, if any.

This recommendation contemplates that the Nation as a whole, which shares in the benefits, would also bear part of the burden imposed by advancing railroad technology. To the extent that provision for retraining and other payments may be available to an employee under the Manpower Development and Training Act of 1962 or other Federal statutes, the carrier will be relieved of this obligation. As Congress recognized in the readjustment provisions of the Trade Extension Act and selective service laws, the Government has some obligation to assist those adversely affected by governmental decisions which are required in the national interest; and there is little logic in protecting the economy by methods which also lead to increased unemployment and more distressed areas. The unfairness of place the entire burden of readjustment costs upon either the carriers or the workers is an additional reason why legislation is particularly appropriate in this case.

The combination of elements stressed in this bill—permitting progress for the carriers and assuring job security and readjustment assistance for the workers—was also stressed by both the Presidential Railroad Commission and the Emergency Board established in this case. Referring to the provisions of section 5 of the Interstate Commerce Act and their successful application to other areas, the Presidential Commission states:

"An adequate program to realize the benefits of advancing technology in the public interest, therefore, must include both reasonable opportunity for management to achieve change, and for workers to enjoy reasonable protection against the harsh effects of too sudden change. Progress plus protection must be our choice * * * in the case of technological improvement * * * as in the case of mergers."

The Emergency Board stated:

"We are mindful also of the necessity for progress in the railroad industry, for efficiency in order to meet the challenge of competing industries. We have sought by our recommendations to increase these prospects of the carriers, and at the same time to preserve not only strong unions for the employees, but for the individual worker a continued life of usefulness to himself and his family, and to society itself. The railroads, and society as a whole, have benefited by these changes; and they should both share generously in the burdens which have been cast upon the workers by the dislocations. These burdens, in addition to

dollar payments, involve education or retraining for new jobs at the expense of the carriers, supplemented by public funds now or hereafter committed to general retraining of displaced manpower."

AUTOMATION

This brings me to the broader issue to which this message is addressed. The dispute which confronts us today has many special features—including the unusual public interest nature of the industry, the disastrous impact of a prolonged strike, and the particular circumstances of this case. It would be wholly inappropriate to make general and permanent changes in our labor relations statutes on this basis.

It would be particularly unwise to enact a general and permanent compulsory arbitration law, which I have always opposed. The Congress contemplated, in enacting the Railway Labor Act as well as the Labor-Management Relations Act of 1947, that special actions by the Congress may be required as a final recourse in any individual dispute; but the automatic assurance of compulsory arbitration would encourage one or both parties to neglect their bargaining responsibilities. The measure I am recommending today, in contrast with compulsory arbitration, gives encouragement and preference to solutions reached by collective bargaining, and provides only for interim decisions. It recognizes, moreover, that disputed rules changes and their effects on employment are appropriately matters for regulation by an independent agency which has specialized knowledge of the railroad industry and possesses procedures for handling these matters.

I would be remiss in my duty, however, if I failed to note that this dispute over railroad work rules is part of a much broader national problem. Unemployment, whether created by so-called automation, by a shift of industry to new areas, or by an overall shortage of market demand, is a major social burden.

During the past 6 years the level of unemployment has remained far too high. Men have been without jobs and factories have been without orders, primarily because the overall level of market demand has fallen short of the Nation's productive capacity. But when job opportunities are already scarce, those whom technological progress or industrial change displaced are more likely than ever to join the ranks of the unemployed than to find a new job. General unemployment is thus a double burden: as it penalizes those without jobs, it also creates fear and resentment against the very kind of modernization and change upon which our economic progress must in the long run depend. This is why I have placed such heavy emphasis upon the prompt enactment of my tax proposals, designed to stimulate market demand and return the economy to full employment.

To be sure, even with full employment, economic change will still bring problems in the wake of progress. Problems will remain for workers who are displaced by advances in technology, obsolescence of their skills or their industries, inadequacy of their education or training, or geographical shifts in economic activity. These problems are not new; they are the price of progress in any dynamic society. More particularly, the phenomenon that we call automation is not new: technological innovation and change have been the mainspring of economic growth in this country for more than a century. Nor is there yet convincing evidence that the overall pace of such change has accelerated recently.

But seen through the magnifying lens of our general unemployment problem of the past 6 years, the difficulties faced by those who are technologically and structurally displaced from work have captured unprecedented attention: and this is as it should be. Our awareness has been mounting that it is unfair to ask particular workers—or in some instances, even particular employers—to bear the full social costs that attend such progress.

This problem is particularly but not exclusively acute in the railroad industry. Forty percent fewer employees than were employed at the beginning of this decade now handle substantially the same volume of rail traffic. The rapid replacement of steam locomotives by diesel engines for 97 percent of all freight tonnage has confronted many firemen, who have spent much of their career in this work, with the unpleasant prospect of human obsolescence. The introduction of self-propelled vehicles for railroad maintenance, repair and construction work—the use of longer, heavier, faster and more efficiently filled trains—and the initiation of centralized traffic control, electronic inspection equipment, telephonic and radio communications, and automatic switching and braking equipment have all decreased the need for railroad employment. The Presidential

Commission was established in part, it said, because of the need to close the gap between technology and work.

That Commission recognized, however, that "revolutionary changes even for the better carry a high price in disruption * * * (that) might exceed the value of the improvements."

Yet we cannot stop progress in technology or arrest economic change in transportation or any other industry—nor would we want to. For technological change has increased man's knowledge, income, convenience, leisure, and comfort. It has reinforced this Nation's leadership in scientific, economic, educational, and military endeavors. It has saved lives as well as money, and enriched society as well as business. Our task as a nation, to use the phrase of the Commission report, is simply to make sure that this public blessing is not a private curse. We cannot pretend that these changes will not occur, that some displacement will not result or that we are incapable of adapting our legislative tools to meet this problem.

While last year's Manpower Development and Training Act recognized the Federal Government's responsibility to help retrain and readjust workers who have been displaced by industrial change, as do this year's vocational education proposals, their scope is too limited to provide the full answer to a problem of this magnitude. The problems of manpower displacement, of which automation is only one cause, should not be settled primarily by the use of private economic power and pressure, or discussed only on the picket lines. They cut across many departments of Government, all types of occupations, all standards of income, all sections of the country. Their solution is of importance to the entire Nation which now enjoys all the benefits of economic progress but, except when it is part of the employee group affected, now bears very little of its burdens.

For these reasons, it is my intention to appoint a Presidential Commission on Automation, composed of the ablest men in public and private life, and charged with the responsibility of—

(1) Identifying and describing the major types of worker displacement, both technological and economic, which are likely to occur during the next 10 years, and the social and economic effects of these developments on our economy, our manpower, our communities, our families, and our social structure and human values; and

(2) Recommending, in addition to those actions which are the responsibility of State and local government and private management and labor, specific administrative and legislative steps to be taken by the Federal Government in meeting its responsibility to share the costs and alleviate the losses of automation job displacement, in such a way as to assure both the continued advance of our technology and the continued well-being of our people.

This Commission should undertake the most comprehensive review of this complex and many-sided subject ever ventured, and report no later than the close of next year. Its report must pioneer in the social, political, and economic aspects of automation to the same extent that our science and industry have pioneered in its physical aspects. For the pending railroad dispute is likely the first of many, and a comprehensive long-range policy will be needed. I have no doubt, let me add, that such a policy will embody the basic elements of the measure recommended today—encouraging the advance of technology while protecting the security of the workers, encouraging private bargaining while protecting the public interest.

Thus the prompt enactment of this measure by the Congress will help launch a new national effort to meet the growing challenge of worker displacement by technological and economic change. Both the proposed bill and the new Commission are actions that will benefit both labor and management—but above all, they will benefit the public interest, and that is our primary test.

JOHN F. KENNEDY.

THE WHITE HOUSE, *July 22, 1963.*

The CHAIRMAN. I observe that it has with it certain communications which will be included. The report to the President of July 19, 1963, which will be included.

The appendixes which include certain information affecting this problem which in my judgment should be a part of the record, and without objection it will be included.

(The document referred to follows:)

REPORT TO THE PRESIDENT ON THE RAILROAD RULES DISPUTE

By the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy, Washington, D.C., July 19, 1963

PRESIDENT'S ADVISORY COMMITTEE ON LABOR-MANAGEMENT POLICY,
Washington, D.C., July 19, 1963.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: On July 10, 1963, you requested that this special subcommittee of your Advisory Committee on Labor-Management Policy immediately review and report to you the facts and issues of the railroad rules dispute and the respective positions of the carriers and the five brotherhoods. You specifically asked that we carry out this assignment in full consultation with the parties.

We have met with the parties to this dispute on a number of occasions since July 10. They have provided the subcommittee with statements which we have discussed with them. We also have reviewed with the parties a draft of our report and carefully considered their comments.

The report which we respectfully submit with this letter is one to which we unanimously subscribe. We believe that it fairly and accurately reflects the current posture of the case within the scope of this assignment.

Respectfully,

GEORGE MEANY.
JOSEPH L. BLOCK.
STUART T. SAUNDERS.
G. E. LEIGHTY.
W. WILLARD WIRTZ,
Chairman.
LUTHER H. HODGES,
Vice Chairman.

FACTUAL BACKGROUND

This dispute involves virtually all the Nation's major railroads and the five railroad operating brotherhoods. These five unions—the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America—represent approximately 200,000 train and engine service employees, or about 27 percent of the railroad workers in the United States.

The work rules and pay structures at issue have evolved over almost 100 years of railroad operation and collective bargaining. Both the carriers and the brotherhoods recognize a present need to modernize their assignment rules and methods of compensation. They differ sharply, however, as to which rules should be revised and the manner and timing by which changes should be made.

The present dispute had its formal beginning on November 2, 1959, when the carriers served notice of proposed changes on the brotherhoods. Substantial modifications were sought in many existing work rules and in the pay structure controlling the compensation of workers engaged in passenger, freight, and yard service.

Conferences on individual roads produced no agreement and, in June 1960, it was decided to handle the notices on a national basis. In September, the brotherhoods served notices on the railroads of proposed rules changes. Shortly thereafter, both parties, under the suspices of then Secretary of Labor James P. Mitchell, agreed that the magnitude of their respective demands was such that a special study commission should be created. By Executive order on November 1, 1960, President Eisenhower appointed a Presidential Railroad Commission of 15 members composed of an equal number of public, railroad, and brotherhood representatives.

For 13 months, from January 1961 through February 1962, the Commission conducted extensive hearings and detailed studies, and formulated its recommendations. The report, submitted February 28, 1962, for the most part rejected

the carriers' demands for unilateral discretion over work assignments but recommended relaxation of the restrictions and requirements imposed by many existing rules and practices. A major revision of the pay structure was also recommended.

The carriers accepted the Commission's recommendations. The brotherhoods rejected most of them as unsatisfactory. Following unsuccessful negotiation and mediation the carriers announced on July 17, 1962, their intention to put into effect on August 16 new rules based upon recommendations of the Commission.

A period of litigation followed, during which the carriers were restrained from putting into effect any rule changes. After the Supreme Court determination [1] that the parties were free to exercise self-help, the carriers again announced that rules changes would be put into effect, and a nationwide rail tieup became imminent. The President, acting pursuant to the Railway Labor Act, established on April 3, 1963, a public board (Emergency Board No. 154) to make recommendations for the resolution of the dispute. Neither its recommendations nor those of the previously established Presidential Railroad Commission were to be binding upon the parties.

Following efforts to mediate the dispute, the board issued its report on May 13, 1963. It recommended a series of guidelines and procedures designed to assist the parties in establishing the groundwork for constructive bargaining. The carriers accepted the recommendations. The brotherhoods indicated that the board's proposals furnished a basis for subsequent negotiations but specifically rejected proposals for arbitration to settle unresolved issues.

Direct discussions between the parties proved unfruitful and on June 4 the Secretary and Assistant Secretary of Labor joined with the National Mediation Board in the negotiations. On June 15 the Persident requested the parties to extend the 30-day statutory status quo period until July 10 and they agreed to do so. After further intensive bergaining had not produced agreement, the Secretary of Labor made specific proposals for the disposition of two key issues relating to firemen and the consist (makeup) of train crews. The carriers accepted these proposals. The brotherhoods rejected them on the ground that they involved arbitration.

On July 9, the President proposed that the parties agree to submit all issues in dispute for final settlement to Associate Justice of the Supreme Court Arthur J. Goldberg. The carriers accepted this suggestion, and the brotherhoods rejected it on the basis that it provided for binding third-party settlement of unresolved issues.

On July 10, 8 hours before the time the carriers had set for the promulgation of their rules and the time the brotherhoods had set to strike, the President asked the parties and they agreed to maintain the status quo until July 29 in order to permit a subcommittee of the President's Advisory Committee on Labor-Management Policy to review and report to him, for transmittal to the Congress, the facts and issues in controversy and the respective positions of the parties.

ISSUES AND POSITIONS OF THE PARTIES

The issues in dispute include employment of firemen, consist of crews, interdivisional runs, combination of road and yard service, manning of self-propelled machines, wage structure and fringe benefits, employment security, and training.

1. *Employment of firemen.*—Present rules require, with certain exceptions, that there be two men (an engineer and a fireman) in the cab of diesel passenger, freight, and yard locomotives. Typically, a "head-end" brakeman also rides in the cab of diesel road freight locomotives.[2] The carriers by their notices sought the right to remove all firemen (except in passenger service), contending that the work traditionally performed by firemen has almost entirely disappeared or could be performed by other employees. The brotherhoods contended that firemare essential for safe and efficient operations as well as for relief of engineers and for training future engineers.

The Presidential Railroad Commission concluded that firemen "are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels." It recommended that firemen with less

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[1] *Brotherhood of Locomotive Engineers, et al.* v. *Baltimore & Ohio Railroad Co., et al.*, 372 U.S. 284 (Mar. 4, 1963).

[2] The term "diesel" as used in this issue refers to other than steam-powered locomotives.

than 10 years' seniority be separated from service, with various provisions for severance pay, retraining, and preferential hiring rights on other railroad jobs. Firemen with over 10 years' seniority were to be retained with full job rights.

In its report, the Emergency Board concluded that there should be determination, by bargaining and by neutral proceedings, if necessary, of "those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety, and to prevent placing an undue burden upon the remaining crewmembers." The Board suggested negotiating a procedure whereby positions could be eliminated as they became vacant but which would permit the brotherhoods to question the elimination on the grounds of safety or undue burden. Disagreements would be settled by local negotiations, or, failing agreement, by a special referee procedure. All firemen—except those hired recently or those working only irregularly—were to continue in the employ of the carriers although firemen with less than 10 years' seniority could be transferred to other comparable jobs with an earnings guarantee. For those electing to withdraw from service, educational scholarships, retraining allowances, and separation allowances were recommended.

In the post-Emergency Board negotiations, the brotherhoods made an offer to agree to a reduction in certain categories of jobs (on an attrition basis), which they estimated would include 5,500 such jobs of the approximately 32,000 firemen jobs in freight and yard service. The carriers rejected this offer for various reasons, among them that the conditions attached to it would reduce the number of jobs actually affected to only a few hundred.

The Secretary of Labor on July 5 suggested that the parties accept the recommendations of the Emergency Board, qualified by specific conditions, as a basis for the establishment of a general rule to be in effect for 2 years. During this 2-year period, a joint board (with neutrals to be added if necessary) would study the issue and the developing experience and make binding recommendations for ultimate disposition. This recommendation was accepted by the carriers but because it included a terminal arbitration clause the brotherhoods rejected it.

2. *Crew consist.*—Road and yard train service crews generally consist of one conductor and two brakemen. The carriers proposed a national rule to gain the "unrestricted right" to determine appropriate crew consists; the brotherhoods sought a national rule establishing one conductor and two brakemen as a minimum crew in all instances.

The Presidential Railroad Commission concluded that a national rule establishing a procedure for determining undermanning or overmanning of train crews was justified.

The Emergency Board recommended the negotiation of national guidelines based upon safety, efficiency, and avoidance of undue burden, with any disputes concerning the application of these guidelines to be resolved by local bargaining and a special referee procedure.

On the question of the crew consist, developments since the report of the Emergency Board have narrowed considerably the area of disagreement. Based upon a proposal made by the Secretary of Labor on June 19, both parties have agreed in principle to a procedure for handling the problem. However, the brotherhoods proposed to limit its application to crew consist situations which deviate from the generally prevailing pattern of one conductor and two brakemen. The carriers indicated that the brotherhoods' modification would be acceptable if it did not apply to certain classes of service; they referred specifically to branch lines, secondary main lines, and main lines equipped with newly developed or automated control equipment. The carriers accepted, but the brotherhoods rejected, the July 5, 1963, proposal of the Secretary of Labor that the remaining differences be submitted to arbitration.

3. *Manning of motorcars and self-propelled vehicles.*—Motorcars and self-propelled vehicles are used in a variety of maintenance, repair, construction, and inspection operations. The Commission and the Emergency Board recommended that the parties negotiate a rule which would eliminate (with certain exceptions) existing rules which require the use of engine, train or yard service employees on, or in connection with, the operation of motorcars and self-propelled vehicles used in maintenance, repair, construction or inspection work. Indications are that this matter may be settled if other issues are resolved.

4. *Interdivisional runs.*—Interdivisional runs extend over territories where more than one group of employees hold seniority rights. The carriers seek the unrestricted right to establish such runs and to effect the necessary related

changes with provisions for an equitable distribution of earnings opportunities between affected employees and the negotiation of protective conditions.

The Commission recommended that the carriers be given the right, subject to a number of conditions designed to protect the interests of the employees, to institute interdivisional runs, and the Emergency Board recommended the negotiation of guidelines within which the carriers would have the right to establish such runs. Recent discussions indicate that agreement may be reached once the manning issues (firemen and crew consist) and the compensation issues are resolved.

5. *Combination of road and yard work.*—Over the years a "jurisidictional" distinction has developed with respect to the work to which road service and yard service crews are entitled. Three problems have been posed by this distinction: extending switching limits; road crews performing work in yards; and the discontinuing of yard engine assignments. The carriers sought the elimination of restrictions affecting their operations in each of these areas. The brotherhoods maintained that any further combination of road and yard service should be prohibited unless sanctioned by local agreement.

The Commission found that present agreements concerning extending switching limits—agreements providing for arbitration—were working satisfactorily and should not be disturbed. However, it recommended that even where yard crews are on duty road crews should be permitted, subject to specific conditions to prevent abuse, to perform certain movement and switching operations in yards in connection with their own train. The Commission recommended that when a shift had less than 4 hours of yard engine assignment work for 10 consecutive days, it might be discontinued but that it must be restored according to the same formula.

The emergency board recommended the negotiation of a rule which would permit more flexible use of road and yard crews but which would preserve the basic distinctions reflected by separately existing seniority rights. Specific, negotiated rules to limit possible carrier abuse and to provide employee protection were also recommended.

The brotherhoods continue to maintain that this issue should be handled locally, while the carriers feel minimum criteria should be developed as suggested by the emergency board.

6. *Compensation (wage structure and fringe benefits).*—The industry's pay structure is one of extreme complexity. Many engine and train service employees' pay varies from day to day because of the interrelationship of a variety of factors such as a dual basis of pay (miles or hours), overtime, weight of the locomotive or length of train, higher-than-standard rates, and special allowances. Both parties sought to modernize the existing structure. In the aggregate, the carriers' proposals would have reduced their payrolls; the brotherhoods' proposals would have increased them.

The Commission found the present wage structure to contain "widespread anomalies and inequities" together with "unconscionable" disparities in hours on duty. A major revision of the wage structure was recommended and outlined in detail; continuous study by a standing joint committee was also proposed. In the fringe benefit area, the Commission recommended paid holidays and premium pay for holidays worked for certain employees, and "away-from-home" lodging or equivalent allowances. It declined to recommend a differential for night work.

The emergency board proposed two modifications of the Commission's recommendations: a full 2 percent of current payroll be used to work out adjustments in the pay structure and provision be made to assure that "incumbent employees will not be unduly [adversely] affected by the structural changes."

The brotherhoods have indicated a willingness to discuss these issues. The carriers, having accepted the recommendations, take the view that further discussions on compensation issues cannot be undertaken until the firemen and other manning questions are resolved.

7. *Employment security.*—The brotherhoods proposed extensive protection for employees affected by technological change, mergers, consolidations, or similar actions. Their proposals incorporated financial and other protections including limitations or reductions in force.

The Commission recommended that separation allowances, retraining provisions, and preferential hiring for employees deprived of employment as a management to introduce such changes. Modifications in existing agreements necessary to accommodate innovation would be effected by negotiations, and, if necessary, arbitration.

The report of the emergency board did not address itself to this question. The carriers have expressed a willingness to protect employees adversely affected by technological changes so long as they are not impeded in instituting such changes. This committee has been informed that "the employee representative advised [the emergency board] that in the interests of reaching an accord, if satisfactory settlement could be reached on all other matters in dispute, this proposal would be withdrawn."

8. *Training of engine service employees.*—Formal apprenticeship programs—which do not exist for operating employees—were requested by the brotherhoods for engine service employees.

In essence, both the Commission and the emergency board recommended that the parties should negotiate a training program to insure an adequate supply of qualified engine service employees. Discussion of this proposal has been largely deferred pending resolution of related manning issues.

APPENDIXES

APPENDIX A. STATEMENTS OF THE PRESIDENT

A–1. Statement of July 10, 1963.
A–2. Statement of July 9, 1963.
A–3. Statement of June 15, 1963.

APPENDIX B. ORIGINAL NOTICES FOR CHANGES IN RULES FILED BY THE PARTIES

B–1. Proposals of the carriers (Nov. 2, 1959).
B–2. Proposals of the organizations (Sept. 7, 1960 with implementing proposals).

APPENDIX C. OFFICIAL REPORTS RELATING TO DISPUTE

C–1. Report of the Presidential Railroad Commission, February 28, 1962.
C–2. Report of Emergency Board No. 154, May 13, 1963.

(NOTE.—These reports are included as appendixes to the report of the subcommittee transmitted to the President. The documents are a matter of public record and are not attached hereto.)

APPENDIX A. STATEMENTS OF THE PRESIDENT

APPENDIX A–1

[For release July 10, 1963, Office of the White House Press Secretary, the White House]

STATEMENT OF THE PRESIDENT

In view of the unique and all-important nature of this labor-management dispute, I am asking a special six-man subcommittee of the Labor-Management Advisory Committee, to be composed of Joseph Block, George Harrison, George Meany, Stuart Saunders, Secretary of Labor as Chairman, the Secretary of Commerce as Vice Chairman, to undertake immediately, in full consultation with the parties, a comprehensive review and report limited to the facts and issues in this case and the respective positions of the parties.

This report will be transmitted to the Congress on July 22, 1963, with appropriate legislative recommendations from me which would be designed to dispose of the issues in this particular case.

After consultation with the congressional leaders, I am asking the parties to withhold any rules change or strike notice until July 29 to permit appropriate consideration of this matter, with the understanding that no further such request for a continuance will be made by this administration.

The railroads and the unions have accepted this proposal, and there will be no strike this evening.

APPENDIX A–2

[For release July 9, 1963, Office of the White House Press Secretary, the White House]

STATEMENT BY THE PRESIDENT AS READ TO THE RAILROAD CARRIERS AND OPERATING BROTHERHOODS, THE WHITE HOUSE, JULY 9, 1963

I have been advised by the Secretary of Labor and the parties to the current railroad controversy that this dispute remains unresolved; that the carriers have served notice that they will put certain rules changes into operation, effective as of midnight tomorrow night; and that the unions have served notice that they will strike if this is done. In short, this Nation faces widespread economic disruption, dislocation and distress unless this dispute is settled by other means.

I continue to believe that this controversy can and should be settled by voluntary and peaceful processes.

It is essential that the particular issues in dispute be resolved. It is equally important that the freedom of collective bargaining be preserved.

It is obvious that the parties cannot reach agreement on the specific terms of settlement before the deadline which has now been set for midnight tomorrow. They can, however, agree voluntarily on a procedure for reconciling these differences.

Yesterday the Brotherhood of Railway Clerks, largest of the unions representing rail and airline employees, entered into a voluntary agreement with Pan American World Airways to submit to binding arbitration all disputes which cannot be settled by the full processes of negotiation, convinced that they can resort to "voluntary referral to a system of impartial adjudication rather than economic warfare without weakening collective bargaining."

The operating brotherhoods and the railroad carriers are equally free to avail themselves of similar voluntary settlement procedures. Such procedures are not substitutes for collective bargaining; they are part of such bargaining, to be used when the possibilities of negotiation have been exhausted.

It must be made clear, in this connection, that there has been no proposal for arbitration at any point in this case by any Government representative or board except after every effort has been made to get the parties to agree on specific settlement terms. These arbitration proposals have not reflected Government's desire or design; they have resulted solely from private failure or refusal or inability to agree.

I consider negotiated agreement infinitely superior to arbitration. But where private parties cannot negotiate successfully, arbitration is infinitely superior to a shutdown over a period of a vital segment of the Nation's economy.

I am convinced that an agreement now, in this case, to follow this course will be in the interest of the parties. I urge strongly that it be followed in the public interest—not only in maintaining continued rail transport but in preserving the freedom of private decisionmaking.

It is of vital importance that this most critical of all labor controversies end with the parties' agreement upon the procedure to be followed in resolving this dispute. The future of collective bargaining may well depend upon this being achieved.

I accordingly propose to the parties that they agree to submit all issues in dispute between them for final settlement to Associate Justice of the Supreme Court Arthur J. Goldberg, with the understanding that this matter will be completed before the convening of the next term of the Court. Mr. Justice Goldberg has previously made clear his intention to disqualify himself from any decisions coming before the Court which may arise out of this dispute. Although the use of a member of the High Court for additional duties has been and should be reserved for extraordinary situations—such as the Nuremberg trials and the Pearl Harbor inquiry—I believe this situation is extraordinary, in terms of its impact on collective bargaining, its relationship to the whole problem of technological unemployment and the potential effects of a nationwide rail strike on our economy, our defense effort, and our citizenry.

I urge the adoption of this proposal by both parties, with the understanding that the rules change and strike notices be immediately withdrawn.

I request the parties to advise me by 10 a.m., tomorrow, July 10, of their response to this proposal.

APPENDIX A–3

[Office of the White House Press Secretary, the White House, June 15, 1963]

STATEMENT OF THE PRESIDENT

I am advised by the Secretary of Labor that you have reached no agreement.

The report I have received indicates, beyond this, that there has actually been no real bargaining, in any effective sense, in this case—although it has gone on for almost three and a half years.

This means that in this vitally important case, involving great private interests and with the national welfare at stake, collective bargaining has failed—so far.

It means that in its most vital testing, the procedures established in the Railway Labor Act have failed—so far.

I have supported free collective bargaining as a Member of the House of Representatives, as a Member of the Senate, and as President. I always will, for I consider it a keystone of private democracy. But it has to work.

I have always supported the Railway Labor Act, and its essential feature of recommendations that are to be the basis for bargaining, although the ultimate decision is up to the parties. I hope to be able to continue to support this act and this principle. But it must work, too.

This case has already dragged on much too long. There has been one postponement of the hour of showdown after another. Only the critical, crucial nature of the basic issues involved—especially the replacement of men by technology—justifies this at all. But there have been two Presidential Board recommendations concerning these issues. It should be possible to find a solution which permits the termination of jobs which are not justified and protects the equities of the men involved.

It is clear, at the same time, that the whole future of free collective bargaining, and of the effectiveness of the Railway Labor Act as a supplement to free bargaining, is involved here. If no settlement is reached in this case, there will be no alternative to the enactment of new legislation which will protect the public against a loss of its rail transport. The effect of such legislation on free collective bargaining will be incalculable.

I therefore propose that you make one last major effort to resolve this dispute, not just as parties to this one case, but as stewards of the free bargaining tradition.

I ask that you proceed immediately to the hardest kind of bargaining with the assistance of the Secretary of Labor, Assistant Secretary Reynolds, and the National Mediation Board.

If, by July 10 there has still been no accord reached, I shall ask for an immediate report from the Secretary of Labor and from you on the circumstances of this failure. I shall then make such recommendations to the Congress as these circumstances appear to dictate.

I request that you agree to maintain the status quo to permit the completion of this proposed procedure.

I point out, in conclusion, these plain facts. If this case does have to go to the Congress, it is going to mean, necessarily, the disposition of the disputed issue or issues through some agency other than the parties. There is nothing which legislation can do which you are not free to do *voluntarily*, including the selection of your own special procedures if this is necessary to complete any part of your settlement. If either or both of you should decline to take advantage of this opportunity, the responsibility for what follows will have to be accepted where it lies.

I urge you to act, as it is in your power to act, not only to settle this case but to preserve the freedom of private collective bargaining and the effectiveness of the established statutory procedures.

Appendix B. Original Notices for Changes in Rules Filed by the Parties

Appendix B–1

Proposals of the Carriers

Use of firemen (helpers) on other than steam power

A. Eliminate all agreements, rules, regulations, interpretations, and practices, however established, applicable to any class or grade of train, engine, or yard service employees, which require the employment or use of firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous services to which mileage rates do not apply).

B. Establish a rule to provide that:

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous, and unclassified services) and in all classes of yard service (including all transfer, belt line, and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

BASIS OF PAY AND ASSIGNMENT OF EMPLOYEES

Basis of Pay

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations, and practices, however established, applicable to any class or grade of train, engine, yard, or hostling service employees, which:

(i) provide for rates or bases of pay, daily earnings minima, minimum daily earnings or daily, weekly, or monthly earnings guarantees,

(ii) provide for arbitrary payments, or special or constructive allowances, which conflict with the payment of single time in miles or hours from the time called to report for duty until released from duty, or

(iii) impose restrictions on weekly, monthly, or annual earnings through the limitation of miles run or paid for, hours worked or paid for, or compensation received.

B. Establish a rule to provide that:

1. Train and engine service employees used in road service, including all miscellaneous and unclassified services, shall be paid single time in miles or hours, whichever is greater, from the time called to report for duty until released from duty at the end of the trip or tour of duty, as follows:

(a) All road miles actually run during each trip or tour of duty shall be paid for at the rates provided in paragraph 3 of this rule; or

(b) All time on duty shall be paid for on a minute basis at the straight time hourly rates provided by paragraph 3 of this rule, except that (i) In freight service overtime shall be paid for at 1½ times such straight time hourly rates. In assigned local freight service overtime shall begin when the time on duty exceeds the miles run divided by 12½, and in all other classes of freight service (including miscellaneous and unclassified services) overtime shall begin when the time on duty exceeds the miles run divided by 20; but in any case overtime shall not accrue until the expiration of 8 hours from time of first reporting for duty; and (ii) On short turnaround passenger runs, no single trip of which exceeds 80 miles, including suburban and branch line service, time shall be paid on the minute basis at straight time hourly rates for all time actually on duty, or held for duty, in excess of 8 hours (computed on each run from the time required to report for duty to the end of that run) within 9 consecutive hours; and also for all time in excess of 9 consecutive hours computed continuously from the time first required to report to the final release at the end of the last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. For calculating time paid for as provided herein, the Management may designate the initial trip.

2. Train and engine service employees used in yard service, including transfer, belt line, hostling, and all miscellaneous services to which mileage rates do not apply, shall be paid single time, from the time called to report for duty until released from duty, at the straight time rates provided in paragraph 3 of this rule; except that under circumstances where existing rules provide for the payment of overtime at 1½ times the hourly rate, such payments shall be continued at 1½ times the hourly rates provided in paragraph 3.

3. Mileage and straight time hourly rates of pay shall be as follows:

NOTE.—The mileage and straight time hourly rates to be provided in this paragraph 3 shall be determined by multiplying standard mileage and pro rata hourly rates currently paid under existing agreements immediately prior to the effective date of this proposed rule by the conversion factors set forth in the following table. For classes and grades of service where rates of pay are graduated, the rate paid in the weight on drivers or car scale rate bracket specified in Column (2) of the table shall be used in computing the new single rates.

Grade of service	Identification of the current graduated rate, if rates are graduated, to be used in calculating the new single rates—weight on drivers or car scale rate bracket	Conversion factor	
		Rate per mile	Rate per hour
(1)	(2)	(3)	(4)
Passenger Service Other Than Short Turnaround			
Engineers and motormen	450,000 to 499,999 lbs	0.625	1.6
Fireman and helpers	Less than 80,000 lbs	.625	1.6
Conductors		.667	1.067
Assistant conductors and ticket collectors		.667	1.067
Baggagemen	Minimum rate	.667	1.067
Brakemen and flagmen		.667	1.067
Short Turnaround Passenger Service			
Engineers and motormen	170,000 to 199,999 lbs	0.6416	1.0
Firemen and helpers	Less than 80,000 lbs	.625	1.0
Conductors		.667	1.0
Assistant conductors and ticket collectors		.667	1.0
Baggagemen	Minimum rate	.667	1.0
Brakemen and flagmen		.667	1.0
Assigned Local Freight Service			
Engineers and motormen	250,000 to 299,999 lbs	1.0	1.0
Firemen and helpers	Less than 140,000 lbs	1.0	1.0
Conductors	Less than 81 cars	1.0	1.0
Brakemen and flagmen	Less than 81 cars	1.0	1.0
Through Freight Service			
Engineers and motormen	750,000 to 799,999 lbs	0.625	1.0
Firemen and helpers	Less than 140,000 lbs	.625	1.0
Conductors	106 to 125 cars	.625	1.0
Brakemen and flagmen	106 to 125 cars	.625	1.0

NOTE.—Under circumstances where existing rules provide for conversion from through to local freight rates, the following amounts shall be added to the above mileage and hourly rates:

(a) Engineers, motormen, and conductors—0.35 cents to the mileage rates and 7.00 cents to the hourly rates.
(b) Firemen and helpers—0.25 cent to the mileage rate and 5.00 cents to the hourly rate.
(c) Brakemen and flagmen—0.26875 cent to the mileage rate and 5.375 cents to the hourly rate.

Other Freight Service (Including All Miscellaneous and Unclassified Services)

Engineers and motormen	250,000 to 299,999 lbs	0.625	1.0
Firemen and helpers	Less than 140,000 lbs	.625	1.0
Conductors	Less than 81 cars	.625	1.0
Brakemen and flagmen	Less than 81 cars	.625	1.0

NOTE.—The conversion factor shall be applied to the standard through freight rate paid in the bracket specified.

Yard, Transfer, Belt Line and All Miscellaneous Services to Which Mileage Rates Do Not Apply

Engineers and motormen	200,000 to 249,999 lbs		1.0
Firemen and helpers	Less than 140,000 lbs		1.0
Conductors and foremen			1.0
Brakemen and helpers			1.0
Switchtenders			1.0
Outside hostlers			1.0
Inside hostlers			1.0
Outside hostler helpers			1.0
Car retarder operators			1.0

NOTE.—Where the 5-day work week is in effect, the factors set forth above shall be applied to currently applicable 5-day work week rates. Where the 5-day work week is not in effect, such factors shall be applied to currently applicable (or basic) rates covering other than 5-day work week service. Where existing rules provide for paid holidays, 4.0 cents per hour shall be deducted from the rates derived by such application of the foregoing factors.

4. Minimum earnings from all sources for each tour of duty, from the time called to report for duty until finally released, including aggregate service for which payment is made on a continuous time basis, shall not be less than pay for 5 hours at straight time rates in passenger engine service (other than short turnaround); 7½ hours at straight time rates in passenger train service (other than short turnaround), and 8 hours at straight time rates in short turnaround passenger engine and train service, and in all classes of freight and yard engine and train service, including miscellaneous and unclassified services.

5. Compensation for time held at away from home terminal, deadheading, attending court and attending investigations shall be paid under existing rules (if any) at the rates provided in paragraph 3 of this rule or at a fractional part thereof as may in each case be provided by existing rules.

6. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the foregoing provisions of this rule shall be eliminated; and no employee paid pursuant to the provisions of this rule shall receive any other or additional compensation for any service performed during his tour of duty; provided that existing rules and practices considered by the carrier to be more favorable are preserved.

Road Train and Engine Service Assignments

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations and practices, however estblished, applicable to any class or grade or road train or engine service employees, which:

(i) prohibit or impose restrictions on the right of the carrier to establish, move, consolidate or abolish crew terminals, or merger or consolidate seniority districts;

(ii) prohibit or impose restrictions on the establishment or operation of interdivisional, interseniority district, intradivisional or intraseniority district runs;

(iii) prohibit or provide penalties for running crews through established crew terminals; or

(iv) provide for automatic release of crews upon arrival at terminals or end of run, or when off of assigned territory.

B. Establish a rule to provide that:

1. The carrier shall have the right to establish, move, consolidate, and abolish crew terminals, to merge and consolidate seniority districts and to establish interdivisional, interseniority district, intradivisional and intraseniority district runs in assigned and unassigned service with the right to operate any such run, whether assigned or unassigned (including extra service), on either a one way or turnaround (including short turnaround) basis and through established crew terminals. The right to operate such runs as may be established under the provisions of this rule will be free of the imposition of any restrictions as to class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs; and such service shall be paid for at the rates provided in paragraph 3 of the Basis of Pay Rule.

2. No rule, regulation, interpretation or practice, however established, shall be construed to in any way prohibit, restrict or limit the provisions of paragraph 1 of this rule except as provided in subparagraphs (a) and (b) of this paragraph 2.

(a) The carrier shall distribute the mileage ratably as between employees from the seniority districts affected.

(b) Before a run is established under the provisions of this rule which the carrier does not now have the right to establish without agreement with its employees, and which involves both the establishment of a new home terminal for the class of service involved and operation through an established crew terminal or terminals for such class of service, the carrier shall give notice to the general chairman of its intention to establish such run and the carrier and the general chairman shall endeavor to agree within 30 days upon such other conditions not inconsistent or in conflict with the provisions of paragraph 1 of this rule upon which such proposed run shall be established. In the event the carrier and the general chairman cannot so agree on the matter within 30 days, then the dispute will be submitted to arbitration in accordance with the procedure provided for in Sections 7 and 8 of the Railway Labor Act, as amended, with the limited authority to decide what conditions shall be met under this subparagraph (b) by the carrier, if and when such run is established.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that existing rules and practices considered by the carrier to be more favorable are preserved.

Combination of Road and Yard Service

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine, yard or hostling service employees, which—

(i) prohibit or impose restrictions upon the use of passenger crews to perform switching or station work in connection with the cars of their own trains, or to handle the light engine or engines of their own trains,

(ii) prohibit or impose restrictions upon the use of road crews in other than passenger service to perform any and all switching and station work, whether or not such switching or station work is in connection with the cars of their own trains, or to handle the light engine or engines of their own trains,

(iii) prohibit or impose restrictions upon the use of yard crews to perform road work, or to perform service outside of switching limits,

(iv) provide for arbitrary payments, special or constructive allowances or penalty payments to any employee, or class or grade of employees, when road or yard crews perform any of the work described above, or

(v) prohibit or impose restrictions on the right of management to designate or change switching limits or to establish or abolish yard or hostling service or yard or hostling service assignments.

B. Establish a rule to provide that:

1. Passenger crews will perform any and all switching and station work in connection with the cars of their own trains as may be required of them at their initial and final terminals and at all intermediate points, including the clearing of any track or tracks and the shoving and coupling of cars on any track for the purpose of handling the cars of their own trains, and the handling of the light engine or engines of their own trains; and in the performance of such work will handle cars of other than their own trains as may be required, including the respotting of displaced cars. Road crews in other than passenger service will perform any and all switching and station work as may be required of them at their initial and final terminals and at all intermediate points, including the handling of the light engine or engines of their own trains, whether or not such switching and station work is in connection with cars of their own trains. When switching or station work is performed by road crews as provided herein, such work shall be paid for as a part of the road day or trip and additional compensation for such work shall not be paid under either road, yard or hostling rules or regulations. The provisions of this paragraph 1 shall apply whether or not yard crews, yard men or hostlers are on duty when and where the work is performed.

2. Yard crews, where employed, may be required to perform both road and yard service; and where switching limits are established yard crews may be required to perform service outside of such switching limits. When service is performed by a yard crew as provided herein, such work shall be paid for as part of the yard day or tour of duty and additional compensation shall not be paid for such work under either road or yard rules or regulations. The provisions of this paragraph 2 shall apply whether or not road crews are available when and where the work is performed.

3. When road crews perform switching or station work or handle the light engine or engines of their trains as provided in paragraph 1 of this rule, neither yard crews, yard men nor hostlers shall be entitled to any penalty pay or other compensation; nor shall road crews be entitled to any penalty pay or other compensation when yard crews perform road work or perform service beyond switching limits as provided in paragraph 2.

4. Management shall have the exclusive right to designate and change switching limits, and to establish and abolish yard and hostling service and yard hostling service assignments.

5. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the foregoing shall be eliminated, except that existing rules and practices considered by the carrier to be more favorable are preserved.

CONSIST OF CREWS

Consist of Road and Yard Crews

A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of

(i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) or more than one conductor in any crew used in any class of road service, including all miscellaneous and unclassified services.

(ii) a stipulated number of brakemen or helpers or more than one conductor or foreman in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates no not apply, or

(iii) a conductor or trainman in connection with the movement of light engines or in pusher or helper service, or an engineer, conductor or trainman in pilot service.

B. Establish a rule to provide that:

1. Management shall have the unrestricted right, under any and all circumstances, to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer, and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.

2. Management shall also have the unrestricted right, under all circumstances, to determine when and if more than one conductor shall be used in any crew employed in any class of road service, including all miscellaneous and unclassified services; and when and if more than one conductor or foreman shall be used in any crew employed in any class of yard, transfer, or belt line service, including all miscellaneous services to which mileage rates do not apply; and when and if a conductor, trainman, or yardman will be used in connection with the movement of light engines and in helper and pusher service, and when and if an engineer, conductor, trainman, or yardman will be used in pilot service.

3. All agreements, rules, regulations, interpretations, and practices, however established, which conflict with the provisions of this rule shall be eliminated.

Manning Motor Cars and Self-Propelled Machines

A. Eliminate all agreements, rules, regulations, interpretations, and practices, however established, which require the use of engine, train, or yard service employees in any capacity on (or in connection with the operation or use of) any motor car or self-propelled roadway or shop equipment or machine used in maintenance, repair, construction, or inspection work, whether operated on tracks or otherwise.

B. Establish a rule to provide that:

1. Engine, train and yard service employees shall have no claim to man or to be called to work in any capacity on or in connection with the use or operation of inspection motor cars used by company officials, or motor cars operated with or without trailer cars and used by telegraph, telephone or company forces in the performance of maintenance, construction or inspection work, or self-propelled roadway or shop equipment or machines used in repair, construction or maintenance work, such as (this enumeration being by way of illustration and not by way of limitation) track motor cars operated with or without trailers, inspection motor cars, locomotive cranes, ditchers, clamshells, pile drivers, scarifiers, wrecking derricks, weed burners, rail detector cars, and all other self-propelled roadway and shop equipment and machines, whether operated on tracks or otherwise, or with or without cars.

2. Management shall have the unrestricted right, under all circumstances, to determine when and if engine, train and yard service employees shall be used on motor cars and self-propelled roadway and shop equipment and machines, as described in paragraph 1 of this rule; and to determine the number and classification of such employees when so used. If an engine, train or yard service em-

ployee is so used, he will be paid the rates and under the rules applicable to work train service; and in such case, each day such service is performed the time of the employee used shall be computed from the time he is required to report for duty until he is released from duty at the point where he is so relieved.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

APPENDIX B–2

PROPOSALS OF THE ORGANIZATIONS

Notice of September 7, 1960

A. Negotiate agreements providing for the following:

1. Improvements in the existing wage structure including but not limited to provision for adequate compensation for night work and shift differentials, daily, weekly and monthly guarantees, payment for time held away from home and improved overtime rules.

2. Consist of crews including Engineers (Motormen), Firemen (Helpers), Conductors, Brakemen, Hostlers, Hostler Helpers, Yard Conductors (Foremen) and Yard Brakemen (Helpers), the adequacy of the number of men in the crew and their qualifications and training.

3. Financial and other protection of employees affected by mergers, consolidations, abandonments, technological changes in operations, or by changes in working conditions.

4. Stabilization of employment.

B. Establish a commission to function in general conformity with the recommendation of Emergency Board No. 109 to investigate and report respecting the changes requested above and your notices of November 2, 1959, with the view of assisting the parties to arrive at an agreement.

EMPLOYEE IMPLEMENTING PROPOSALS

I. WORK DAY AND WORK MONTH

A. Through Freight Service—Engine and Train Service Employees

Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work month with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, including those based on weight on drivers or cars hauled, except that mileage rates shall be maintained.

Basic Day—Basic Unit

Six (6) hours or less, one hundred (100) miles or less, shall constitute a basic day and basic unit of work. (This is intended to mean that six (6) hours shall constitute a basic day, one hundred (100) miles shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Month

The work month shall consist of twenty-six (26) calendar days with four (4) days off at home terminal each thirty (30) days, off days to be assigned in assigned service and, where possible, in pool and unassigned service.

B. Straightaway Passenger Service—Engine and Train Service Employees

Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work month with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, including those based on weight on drivers, except that mileage rates shall be maintained.

Basic Day—Basic Unit

(a) Engineers and Firemen: Four (4) hours or less, one hundred (100) miles or less, shall constitute a basic day and basic unit of work. (This in intended to mean that four (4) hours shall constitute a basic day, one hundred (100) miles

shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

(b) Conductors and Trainmen: Six (6) hours or less, one hundred and fifty (150) miles or less, shall constitute a basic day and basic unit of work. (This is intended to mean that six (6) hours shall constitute a basic day, one hundred and fifty (150) miles shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Month

The work month shall consist of twenty-six (26) calendar days with four (4) days off at home terminal each thirty (30) days, off days to be assigned in assigned service and, where possible, in pool and unassigned service.

II. WORK DAY AND WORK WEEK

A. Short Turnaround Passenger Service

1. Train Service Employees: Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work week with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, except that mileage rates shall be maintained.

Basic Day—Basic Unit

Seven (7) hours or less, one hundred and fifty (150) miles or less, shall constitute a basic day and basic unit of work. (This is intended to mean that seven (7) hours shall constitute a basic day, one hundred and fifty (150) miles shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Week

The work week shall consist of five (5) consecutive work days with two (2) consecutive assigned days off at home terminal each seven (7) days.

Hours of service paid for at the time and one-half rate during any twenty-four (24) hour period or trip in the work week shall not be used in computing the work week.

The work week of any employee shall be considered as starting on the first day of any calendar week in which he renders service.

NOTE.—Short turnaround passenger service for train service employees is service no single trip of which exceeds eighty (80) miles, including suburban and branch line service.

2. Engine Service Employees: Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work week with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, including those based on weight on drivers, except that mileage rates shall be maintained.

Basic Day—Basic Unit

Seven (7) hours or less, one hundred (100) miles or less, shall constitute a basic daly and basic unit of work. (This is intended to mean that seven (7) hours shall constitute a basic day, one hundred (100) miles shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Week

The work week shall consist of five (5) consecutive work days with two (2) consecutive assigned days off at home terminal each seven (7) days.

Hours of service paid for at the time and one-half rate during any twenty-four (24) hour period or trip in the work week shall not be used in computing the work week.

The work week of any employee shall be considered as starting on the first day of any calendar week in which he renders service.

NOTE.—Short turnaround passenger service for engine service employees is service no single trip of which exceeds eighty (80) miles, including suburban and branch line service.

B. All Other Classes of Road Service—Engine and Train Service Employees

Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work week with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, including those based on weight on drivers or cars hauled, except that mileage rates shall be maintained.

Basic Day—Basic Unit

Seven (7) hours or less, one hundred (100) miles or less, shall constitute a basic day and basic unit of work. (This is intended to mean that seven (7) hours shall constitute a basic day, one hundred (100) miles shall constitute a basic unit of work; provided that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Week

The work week shall consist of five (5) consecutive work days with two (2) consecutive assigned days off at home terminal each seven (7) days.

Miles or hours of service paid for at the time and one-half rate during any twenty-four (24) hour period or trip in the work week shall not be used in computing the work week.

The work week of any employee shall be considered as starting on the first day of any calendar week in which he renders service.

C. Yard, Belt Line, Transfer and Hostler Service—Engine and Yard Service Employees

Establish or amend rules, regulations or agreements relating to hours of service and rates of pay to provide the following standards for the work day and work week with maintenance of basic take-home pay.

The percentage of increase in basic rates required to maintain basic take-home pay shall be applied to all wage rates, including those based on weight on drivers. Wage adjustments accompanying past reductions in the work week of yard employees shall be completely resurveyed to correct any remaining conversion inequities.

Basic Day

Seven (7) hours or less shall constitute a basic day. (This is intended to mean that employees shall be paid not less than the applicable daily rate whenever assigned, called or used.)

Work Week

The work week shall consist of five (5) consecutive work days with two (2) consecutive assigned days off each seven (7) days.

All time paid for at the time and one-half rate during any twenty-four (24) hour period in the work week shall not be used in computing the work week.

The work week of any employee shall be considered as starting on the first day on which he is assigned to render service after two (2) consecutive days off.

III. OVERTIME

A. Through Freight and Straightaway Passenger Service—Engine and Train Service Employees

Compensation at one and one-half times the applicable hourly or mileage rate shall be paid for miles run or time on duty, whichever is greater:

1. After the expiration of the hours constituting the basic day.
2. Outside the regular assignment, whether or not within the hours covered by the regular assignment.
3. On any off day.

NOTE.—For the purpose of applying subparagraph 3 of this rule, the day on which a trip or tour of duty commences shall govern.

B. Short Turnaround Passenger Service—Engine and Train Service Employees

Compensation at one and one-half times the applicable hourly rate shall be paid for all time actually on duty, or held for duty:

1. In excess of seven (7) hours (computed on each run from time required to report for duty to the end of that run) within nine (9) consecutive hours; and also for all time in excess of nine (9) consecutive hours computed continuously from the time first required to report to the final

release at the end of the last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one (1) hour. This rule applies regardless of mileage made.

2. Outside the regular assignment, whether or not such service is performed within the hours covered by the regular assignment.

3. On the sixth (6th) or seventh (7th) day of any work week.

C. All Other Road Service—Engine and Train Service Employees

Compensation at one and one-half times the applicable hourly or mileage rate shall be paid for miles run or time on duty, whichever is greater:

1. After the expiration of the hours constituting the basic day.

2. On any second assignment, call, or unit of work beginning within the calendar day in which the first unit of work started, or within ten (10) hours of the conclusion of the first unit of work, if that unit overlaps a calendar day.

3. Outside the regular assignment, whether or not within the hours covered by the regular assignment.

4. On the sixth (6th) or seventh (7th) day of any workweek.

D. Yard, Belt Line, Transfer and Hostler Service—Engine and Yard Service Employees

Compensation at one and one-half times the applicable hourly rate shall be paid for time on duty or held for duty:

1. After the expiration of the hours constituting the basic day.

2. On any assigned off (relief) day.

3. Outside the regular assignment, whether or not within the hours covered by the regular assignment.

4. To regular and extra employees working a second shift in a twenty-four (24) hour period.

IV. GUARANTEES

Apply to all regular and extra employees the following guarantees:

A. Engine Service Employees

Establish or amend rules, regulations or agreements to provide:

1. Through Freight and Straightaway Passenger Service: Engineers (motormen) and firemen (helpers) shall be guaranteed not less than the pay for twenty-six (26) basic days per month, exclusive of overtime and other compensation, at the average of graduated rates of pay applicable to the service in which engaged.

2. Short Turnaround Passenger Service: Engineers (motormen) and firemen (helpers) shall be guaranteed not less than the pay for five (5) basic days per week and twenty-two (22) basic days per month, exclusive of overtime and other compensation, at the average of graduated rates of pay applicable to the service in which engaged.

3. All Other Classes of Road Service: Engineers (motormen) and firemen (helpers), other than those set forth in sub-paragraphs 1 and 2, shall be guaranteed not less than the pay for five (5) basic days per week and twenty-two (22) basic days per month, exclusive of overtime and other compensation, at the average of graduated rates of pay applicable to the service in which engaged.

4. Yard, Belt Line, Transfer and Hostler Service: Engineers (motormen), firemen (helpers), hostlers and outside hostler helpers, shall be guaranteed not less than the pay for five (5) basic days per week and twenty-two (22) basic days per month, exclusive of overtime and other compensation, at the rate or average of graduated rates of pay applicable to the service in which engaged.

NOTE 1.—An employee shall receive the pro rata of the monthly guarantee, or guarantees, according to the class and grade of service in which engaged and work days he is available during the month in the application of the foregoing provisions.

NOTE 2.—This shall not be construed as revising or abrogating daily, weekly or monthly guarantees which are considered by the employees to be more favorable on individual carriers.

B. Train and Yard Service Employees

Establish or amend rules, regulations or agreements to provide:

1. Through Freight and Straightaway Passenger Service: All employees shall be guaranteed not less the pay for twenty-six (26) basic days per month, ex-

clusive of overtime and other compensation, at the rate or average of graduated rates of pay applicable to the service in which engaged.

2. Short Turnaround Passenger Service: Conductors and trainmen shall be guaranteed not less than the pay for five (5) basic days per week and twenty-two (22) basic days per month, exclusive of overtime and other compensation.

3. All Other Classes of Road Service: Employees other than those set forth in sub-paragraphs 1 and 2, shall be guaranteed not less than the pay for twenty-two (22) basic days per month, exclusive of overtime and other compensation, at the rate or average of graduated rates of pay applicable to the service in which engaged.

4. Yard, Belt Line and Transfer Service: All employees shall be guaranteed not less than the pay for five (5) basic days per week and twenty-two (22) basic days per month, exclusive of overtime and other compensation, at the rate of pay applicable to the service in which normally engaged.

NOTE 1.—An employee shall receive the prorata of the monthly guarantee, or guarantees, according to the class and grade of service in which engaged and work days he is available during the month in the application of the foregoing provisions.

NOTE 2.—This shall not be construed as revising or abrogating daily, weekly or monthly guarantees which are considered by the employees to be more favorable on individual carriers.

V. SPLIT TRIP COMPENSATION

Establish rules to provide:

A. In short turnaround passenger service any assignment with an interval of release of more than one (1) hour shall be considered a split trip and shall be paid additional half time for all time in excess of a spread of ten (10) hours, computed from the time of first reporting for duty until time of final release, in addition to all straight time, overtime and other compensation otherwise provided.

B. In any other road service any assignment or combination of assignments having one or more intervals of release of less than ten (10) hours within or between such assignments shall be considered split trips. In addition to all other compensation, additional half time shall be paid on such split trips for all time in excess of ten (10) hours between the time of first reporting for duty and final release.

NOTE.—This shall not be construed as revising or abrogating the provisions of automatic release rules, regulations or agreements, however established

VI. DIFFERENTIAL FOR NIGHT WORK

Establish rules to provide:

Employees in all classes of service shall be paid at ten percent (10%) of the applicable hourly rate (based on weight on drivers or cars hauled, where applicable) for all time on duty between the hours of 6:00 P.M. and 6:00 A.M., in addition to all other compensation.

NOTE.—This shall not be construed as revising or abrogating the provisions of the starting time rules, regulations or agreements, however established.

VII. ARBITRARIES AND SPECIAL ALLOWANCES

Revise rules, regulations and agreements establishing arbitraries and special allowances so that their equivalent shall be expressed in hours or minutes, which shall in the future be adjusted with basic hourly rates. Conversion from money or mileage to time equivalent shall be on an equitable basis but at not less than the relationship existing November 1, 1959.

VIII. HOLIDAYS WITH PAY

Establish or amend rules, regulations or agreements to provide that all employees shall be allowed holiday pay equivalent to one (1) basic day at the rate for the class of service in which last engaged for each of the following holidays:

New Year's Day
Washington's Birthday
Good Friday
Memorial Day
Independence Day
Labor Day
Veterans' Day
Thanksgiving
Christmas

Employees assigned, called or used on any such holiday shall be paid their holiday allowance as specified above and in addition thereto shall be paid at the rate of time and one-half for all services performed with a minimum of one and one-half times the rate for the basic day. Employees who have heretofore allocated part of their wage increases to be paid as though for holidays will have the amount thus allocated restored to their basic rates.

IX. AWAY-FROM-HOME TERMINAL EXPENSE

Establish or amend rules, regulations or agreements to provide that employees required to lay over at any point other than their home terminal shall be allowed for expenses incurred during such layover, one (1) hour's pay for layovers of four (4) hours or less; one (1) hour's pay for the next four (4) hours or less; and two (2) hours' pay for the next five (5) hours or less, such hourly pay to be computed at the rate of the last service performed. These payments to be cumulative, to be repeated for each twenty-four (24) hour period of any layover, and to be in addition to all other compensation.

X. MINIMUM SAFE CREW CONSIST

Establish rules or agreements to provide:

A. Crews in all classes of road train service shall consist of not less than one (1) conductor and two (2) trainmen and such additional employees as are required to assure maximum safety.

B. Train and yard crews in yard, belt line and transfer service, shall consist of not less than one (1) conductor (foreman) and two (2) brakemen (helpers) and such additional employees as are required to assure maximum safety.

C. Crews in all classes of engine service shall consist of not less than one (1) engineer (motorman) and one (1) fireman (helper) and such additional employees as are required to assure maximum safety.

XI. QUALIFICATION AND TRAINING FOR SERVICE-ENGINE SERVICE EMPLOYEES

Establish a uniform, progressive training program for locomotive helpers and apprentice engineers including training in the operation, maintenance and inspection (en route or in service) of all types of motive power and in safety of operations, jointly administered, as set forth in Appendix "A" [See Employees Exhibit No. 1].

NOTE.—Progression under the training program shall be in the order set forth below:

1. Locomotive helper (trainee).
2. Locomotive helper.
3. Locomotive helper (apprentice engineer).
4. Locomotive engineer.

XII. PROHIBITION FROM COMBINING SERVICES

Further combination of road and yard service shall be prohibited and nothing in these proposals shall be otherwise construed.

XIII. IMPLEMENTATIONS

Implementations of the foregoing rules in reference to exceptional situations, where necessary, may be made by agreement on individual properties.

XIV. FINANCIAL AND OTHER PROTECTION

The following provisions shall apply, in all instances in which the Washington Agreement of May 1936, is not applicable, to all mergers, consolidations, unifications, or abandonments of facilities, or technological changes in operations, or changes in home terminals, home locations or other rearrangements or changes in operations or employee assignments, designed to or resulting in reduction of forces, displacement, loss of compensation or changed working conditions (hereinafter referred to as "effected change"), whether on any one carrier or more than one carrier.

A. The number of employees in the service of the carrier shall not be reduced below the number in compensated service during the month of June, 1960, after deducting the number who have been removed from the payrolls after the ef-

fective date of this agreement as a result of death, normal retirements, or voluntary resignation, but not more in any one year than five per centum (5%) of the number in compensated service during June 1960.

B. 1. No employee shall be placed in a worse position with respect to compensation, rules, working conditions, or benefits than he occupied at the time of the effected change so long as he is unable in the normal exercise of his seniority rights under the existing collective bargaining agreement and under all related practices in effect to obtain a position producing compensation and related conditions and benefits equal to or exceeding those of the position held by him at the time of the effected change; provided, however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under said agreement, supplements and practices which carry rates of pay, compensation, conditions and benefits exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

2. The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

3. Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee during the highest year out of the last five (5) years and his total time paid for during said year in which he performed service immediately preceding the date of his displacement (such year being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve (12), thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, and he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

4. The protection afforded herein shall only apply to displacements occurring within a period of five (5) years from the effective date of the effected change (referred to herein as the claim period); and the period during which this protection is to be given (referred to herein as the protective period) shall extend for a period of five (5) years from the date on which the employee is displaced.

C. 1. Any employee who is required to change the point of his employment and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, used in securing a place of residence in his new location.

2. The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is required to move his place of residence:

(a) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value or original cost whichever is higher. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the effected change to be unaffected thereby. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party. If housing at the new location is more costly, fair value shall represent the cost of comparable housing at the new location.

(b) If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

(c) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

Changes in place of residence subsequent to the initial change which grew out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

No claim for loss shall be paid under the provisions of this section which is not presented within five (5) years after the effective date of the employee's displacement.

Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conferences between the representatives of the employees and the carriers, and, in the event they are unable to agree, the dispute may be referred by either party to a board of three (3) competent real estate appraisers, selected in the following manner; one to be selected by the organization representing the employees and one by the carrier, respectively; these two (2) shall endeavor by agreement within ten (10) days after their appointment to select the third (3rd) appraiser; and in the event of failure to agree, then the Chairman of the National Mediation Board shall be requested to appoint the third (3rd) appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third (3rd) or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

D. No employee shall be deprived of benefits due him under any provisions of the existing collective bargaining agreement or of any related practices providing conditions or benefits, including (but not limited to) hospitalization and medical benefits, pensons, free transportation, etc., under the same conditions, for the same period, and to the same extent to which such benefits or conditions are available to employees who have not been affected by the effected change.

E. Appropriate provisions shall be made for the following:

1. Dispute Committee or other procedure for the handling of disputes, controversies or grievances arising under the foregoing.
2. Protection relating to disciplinary procedure and physical examination.

XV. STABILIZATION OF EMPLOYMENT

Any employee who has had compensated service in eight (8) or more months in any calendar year, and compensated service on the same railway (or predecessor railway) in any five (5) of the preceding ten (10) years shall be guaranteed twelve (12) months' employment in the succeeding year, with payment in each month of that succeeding year of not less than the monthly guarantee applicable to the class of service in which the employee holds seniority; providing, that this guarantee shall not apply to employees who resign voluntarily.

NOTE.—The term "predecessor" shall be understood to include any railway, facility, or operation which has become a part of a successor railway.

XVI. SAVINGS CLAUSE

A. Nothing herein shall eliminate or modify the provisions or bases for minimum separate or additional payment for required road or yard service such as, but not limited to, lap-back and side trips.

B. In lieu of any one or more component parts of the foregoing proposals, existing rules, regulations, agreements, practices, or interpretations considered more favorable by the employees' committee on each individual railroad are preserved.

Secretary WIRTZ. Would it be convenient in that connection, Mr. Chairman, to refer to Document 142 which has just been handed to me?

The CHAIRMAN. Yes.

Secretary WIRTZ. In setting the background for this consideration, Mr. Chairman, and members of the committee, I should like to emphasize the fact that there are two problems before us. One is the settlement of this particular dispute. The other is the preservation of the basic institutions of collective bargaining, free private collective bargaining in this country. I am sure that there is complete awareness of the importance of both matters. It is of significance,

I think, that this is only the fourth time in the past 50 years that it has been necessary for the President of the United States to participate in a labor dispute and then to bring that particular labor dispute to the attention of the Congress. I find in this an important reflection of the fact that free private collective bargaining is working extraordinarily well in this country. I am sure there is no other nation in which a similar record has been accomplished.

It is to us of vital importance that this matter be met and be met with the finality which this point requires. It is of equal importance that we do this in some way which does not undermine the institutions of free collective bargaining in this country. With respect, first, to the proposal which has been submitted by the President to the Congress, I want only to indicate three things about it and then go back into the background of the case enough to supply a context for evaluation of this proposal, returning then finally to the details of the proposal itself.

Three things are important about the proposal, which is embodied in the joint resolution which you have before you. First, it does prevent a shutdown of the Nation's essential rail facilities, and second, it does provide specific procedures for the expeditious disposition of the issues in this case.

Third, it does preserve collective bargaining as the preferred method of resolving issues between labor and management. It does those three things and they are all of vital importance to the parties and to the country. Now with respect to the background of this matter, as the chairman has indicated it has become a matter of general understanding so that detail is at this point superfluous. But I should like to point this out about the case we have before us. It is in the public mind identified as involving a single issue, a single phrase has been applied to that single issue.

The thoughts of people about this case have been polarized in connection with a single phrase—featherbedding—which has been given its reality in most people's minds in terms of the number of firemen on the railroads. Mr. Chairman, members of the committee, you will realize, and it is important that the public realize, that this is a case which involves dozens and dozens of issues.

Work rules, of a great variety, proposals by both carriers and the brotherhoods, proposals which are set out in Document No. 142, running from pages 19 through 32 of fine print.

This is an exceedingly involved and complex case involving a great many of the work rules issues on the railroads and is not limited to a single matter. The background of this case very quickly is this:

It starts at least in its present form with the service on November 2, 1959, by the carriers, of notice which were set out in Document No. 142, at page 19, and the pages immediately following. There were then notice of proposed changes in work rules served by the brotherhoods in September of 1960. They cover a great variety of matters. In October 1960, it was agreed by the parties that the dimensions of this case were such as to warrant special procedures, that the matter should be combined as a matter for national attention, and that it required the consideration of a special body.

The then Secretary of Labor, James Mitchell, proposed, and the parties agreed, upon the establishement of such a special procedure

and in November 1960, President Eisenhower established the 19-man commission which has been referred to subsequently as the Presidential Railroad Commission, or sometimes identifying the Board with the name of the Chairman as the Rifkind Commission. That was a 15-man commission made up of 5 representatives of the public and 5 representatives of each of the parties. It met with the parties over a period of a number of months and submitted a report publicly and to the President in February of 1962. That was 15 months after it had been set up. It had been agreed in advance that the report and recommendations of this Board would not be final and binding. This recommendation and report did cover virtually all of the issues in dispute.

It was announced upon the submission of the report by the carriers that they accepted the recommendations in the report. It was indicated in less definitive terms by the brotherhoods that they could not accept a good many of the report's recommendations in the report. It is important to an understanding of the case that with respect to each, of which this is the first, there were expressions of approval and acceptance of the recommendations without qualifications by the carriers. That there were statements with respect to the brotherhoods which indicated that in key respects they did not accept the recommendations but it should be made clear that in the rejection of those recommendations as a whole there was not a rejection of all of the individual parts.

I think it is not realized fully that, in the course of this series of procedures, there has been developed a substantial area not of formal agreement at all because there is not formal agreement today on anything, but at the same time an enlarged area of understanding about the possible areas of accommodation which lie. But in any event, that recommendation did not produce agreement. That was in February 1962.

For 3 months after the submission of that recommendation the parties negotiated between themselves. No agreement was reached. In May and June 1962, the National Mediation Board proceeding under the Railway Labor Act, entered this matter and attempted by mediation to secure agreement. Agreement again proved impossible. In July 1962, the National Mediation Board, made, under the Railway Labor Act, a proffer to both parties of arbitrations of all of the issues.

That proffer was accepted by the carriers and it was rejected by the brotherhoods. Following that, there was an announcement by the carriers to which Mr. Loomis has already referred of the intention to promulgate the new rules under the recommendations of the Presidential Railroad Commission which would be effective on August 16, 1962.

That was followed by a period of litigation to which Mr. Loomis has referred, which is a matter of record, which went to the Supreme Court, which resulted in a decision by the Supreme Court in February 1963, which, without going into its details, put this matter back in the form where it was left to the collective bargaining and to the application of the Railway Labor Act. The brotherhoods petitioned, objecting to the procedures which the carriers had followed and was rejected by the Supreme Court which put the matter back again in the regular track of the Railway Labor Act. That was followed,

then, by a period in early 1963, this year, of attempted negotiation again between the parties through collective bargaining which again resulted in no agreement. In April of this year, April 3, 1963, President Kennedy established Emergency Board No. 154 again frequently identified with the name of the Chairman, Judge Rosenman, of New York, with the other members of the Board, Clark Kerr, president of the University of California and Nathan Feinsinger of the University of Wisconsin. That Board made its report on May 13, 1963.

With respect to the report the carriers indicated their acceptance of the recommendations in the report. The brotherhoods have taken a position with respect to that report which is hard to state in a single phrase. To the extent that the recommendations of that Board required or proposed final and binding settlement by an outsider of certain issues the brotherhoods rejected that proposal. There were also recommendations in the report for negotiation about a number of issues and the brotherhoods' position has been that that part of it is acceptable to them.

I don't mean to refine this too clearly. I do mean to try to stay away from any oversimplification about it. In general, the carriers accepted that recommendation and in general the brotherhoods rejected enough of it that it made it not a basis for final settlement. On June 4, then, the members of the National Mediation Board and Mr. Reynolds and I, after consultation with the parties, entered upon an attempt to settle this matter by negotiation or by mediation.

The time for the effectuation of the rules under the act or the time at which the carriers could have effectuated those rules would have been June 12 or 13, or approximately that time.

We requested that there be an extension of this time and that was granted. On July 5, as Secretary of Labor, I made a recommendation to the parties with respect to the two key issues in the dispute or those which had received the most attention of the patries. They are the firemen issue and the so-called crew consist issue, which involves the managing of the crews as far as the traincrews are concerned.

That recommendation was accepted by the carriers. It was rejected by the brotherhoods so far as it involved the references of certain disputed issues to arbitration and the effect again was of rejection—net rejection—by the brotherhoods, but it is proper to make it clear that was with respect to the final and binding provisions in that recommendation. There is one element of that recommendation which becomes important to the later stages of the development of this case.

That recommendation was that these matters be settled for a 2-year period, with the parties then during this 2-year period to set up a joint board which would consider ways of working out the problem for the future.

This element of the recommendation was accepted by both parties. The brotherhoods rejected that part of the recommendation which provided that at the end of the 2-year period recommendations should be made by a board which would include neutrals which recommenations would be final and binding.

That was the part which was rejected. There were additional requests for extension which are part of the record and then on July 10 the President made another proposal to the parties which was that the issues in dispute be submitted for final determination to Associate Justice Goldberg of the Supreme Court.

This proposal was accepted by the carriers. It was again rejected by the brotherhoods. At that point it was indicated, or after that point it was indicated by the President or requested by the President, that this matter be put off again as far as any change in rules are concerned, until July 29, with the suggestion by the President that he would propose during that period to set up a six-man subcommittee of his Advisory Committee on Labor Management Relations which would make a complete factual report on this matter. That was done.

That subcommittee included the Chairman and the Vice Chairman, which are the Secretary of Labor and Secretary of Commerce, and then Mr. Block, Mr. Saunders, Mr. Meany, and orginally Mr. Harrison from the President's Committee, with Mr. Harrison's place being taken because of his illness by Mr. Leighty.

That report is submitted to the Congress by the President along with his message and is again part of Document No. 142. That brings us to the point where on Monday of this week the President addressed a message to the Congress which is before you and proposed the procedure which is outlined now in House Joint Resolution No. 565.

Now turning to that matter of the recommendations in the joint resolution, I will preface the discussion of it in detail with just these two points. First, there is in the judgment of the administration, the necessity at this point of taking action which will protect the public interest against a shutdown of the railroads.

The President's message outlines or summarizes the result of our study of the situation which shows that the economic impact on the railroads would immediately be a matter of extreme seriousness to the whole economy and would become progressively and very quickly disastrous as far as the economy is concerned.

I will be glad to go into further detail about that if it becomes a matter of particularized interest. But it is quite clear to us that this simply cannot happen as far as the public interest is concerned. There is in our judgment every reason in the world for preserving, as fully as possible, the right to strike, or to take action on the other side on the management side which would precipitate a shutdown if agreement cannot be reached.

But it is equally our judgment that is not an absolute right on either side and that it must yield to the public interest where the result would be that the public would be hurt too seriously before either party was hurt enough to precipitate a settlement.

So it is first in our judgment essential that we at this point take action which will in one way or another protect the public interest against the results of an industrywide shutdown.

Now, the second point of general contention as far as this joint resolution is concerned, is this: It is essential that this case be settled. It is essential, if there has to be action taken by way of legislation, that it be done in a way which will not undermine the institution of free collective bargaining in this country.

Just as the history of this case has been characterized by the polarization of the issues in the minds of the public in terms of the reaction to a single phrase, featherbedding, which is a dangerous oversimplification, the public reactions to the possibilities of settling this case and methods for settling it have been oversimplified in terms of the single phrase which has infected and corrupted the discussion of this matter and that phrase is "compulsory arbitration."

There were several approaches which might have been recommended to the Congress by the President. One of them would have been some kind of status quo order leaving the matter subject only to continuing mediation of one kind or another.

The history of 3½ years informed us that would not lead to a solution and that recommendation would be ineffective. Another possible recommendation drawing upon the history of the relationship of Government to the transportation industry and to the railroads in particular, might have involved seizure of the properties.

That seemed to us a wrong kind of answer in this case. It would not have in itself produced a settlement. It would have involved the taking of action which does not seem consistent either with the broad principles which are applicable to this situation or to the circumstances of this particular situation. That was rejected.

A third possibility would have been compulsory arbitration. By "compulsory arbitration" I understand that we mean the reference of a case to an outside group whose decision will be final and binding on the parties, period.

The reason for rejecting that recommendation or that possibility would be that such a procedure would in effect undermine the whole institution of collective bargaining because it would become a procedure which could then be used in every case which might come along.

We have had experience in this country with compulsory arbitration. We had it during the war in the War Labor Board which was administering a statute which provided for compulsory arbitration in every case.

By the end of the War Labor Board period 625 cases were being decided every week by the Government. That is the price of compulsory arbitration, of the referral, of the establishment of a precedent which could be extended to cover all of labor disputes in the country.

So these possibilities were rejected.

There was brought to the Congress for its consideration the proposal that this case be put within a procedure which has been in the law for over 23 years now covering situations closely comparable to the one before us.

The problem before us is what should be done when developing technology which makes certain jobs no longer necessary and what should be done about the interests of the employees who are affected by that technological development.

This problem was first faced by the Congress and by the country in the period in the late 1930's. In 1936, during a kind of legislative hiatus as far as the Transportation Act was concerned, representatives of the carriers and of the brotherhoods faced up to the question of what ought to be done about this kind of situation when it developed as the consequence of a merger or coordination or consolidation on the railroads.

In May 1936, they signed here in Washington as a collective-bargaining matter, the so-called Washington job protection agreement. That agreement provided in general that when a job disappeared as the result of consolidation or coordination or merger, provision should be made for the protection of the individual interests of the employees adversely affected by that development to the extent in general of

protection which would accord him some payment of one kind or another or protection of his job up to 4 years.

In 1940, that agreement, arrived at by collective bargaining, was written into section 5(2)(f) of the Interstate Commerce Act.

The situation we have before us today is exactly the same except that now the desirability or necessity of cutting down the number of jobs results from technological development instead of from mergers.

The problem is exactly the same as far as the interests of the employees in such at situation is concerned. The recommendation of the President is that exactly that same procedure be used to meet the problem which we now face, which is of such a closely comparable nature.

The provisions in section 5(2)(f) of the Interstate Commerce Act have been applied to situations of this kind in between 200 and 300 cases in the last 23 years. Some 83 of those are matters of record. The others are not.

What we are proposing is the adoption of the extension of a procedure which has been used for that kind of displacement, manning, employee protection case, to the kind of problem which we have now before us which is so exactly the same.

I point out that the adoption of such a procedure could not possibly have the undermining effect of collective bargaining as a whole which any of the other procedures under consideration might have had.

It is the application of an established statutory procedure to the kind of problem which is involved in this particular case and could not in any way be extended beyond this situation.

Now, turning to the details of the proposal itself and using the text of House Joint Resolution 565, I am going over the matter only briefly on the assumption that you would refer to it in questions. The situation and the procedure proposed is this: It is provided first in section 1, unnumbered as part of the resolution, that a procedure be established to cover changes in work rules involving the manning of train or engine crews and the protection of the interests of employees affected thereby which changes come within the area of those proposed in the notices of November 1959 and September 1960.

It is very important to be clear about the scope of the application of that section. If I could refer you, Mr. Chairman, and members of the committee, to Document 142, you will find on pages 12 and the few pages following the report of the special factfinding committee which the President set up.

On pages 14 and 15, you will find identified those issues which would be subject to this procedure. They are, first, employment of firemen, as noted on page 14. Second, crew consists noted on the same page.

On page 15, there is identified the issue of manning of motorcars and self-propelled vehicles.

Fourth, the issue of interdivisional runs. And fifth, the issue of combination of road and yard work.

The proposal is that those issues would be submitted to the procedure identified in section 1 and then in section 2 of the joint resolution.

Section 2 provides that either party may file under section 1 an application for approval of its rules or its proposed rules in connection with any of these matters. It is provided in this section and then in the sections following that the Commission will within 120 days, or soon thereafter as is practicable, and it is intended that the 120-day

provision be a meaningful provision, the Commission will issue an interim rule and order permitting the establishment of an interim rule covering these matters.

This interim rule would continue in effect for 2 years after its operative date, or until the parties had agreed upon a different disposition of the case.

The 2-year provision goes back to the point of the recommendation by the Secretary of Labor on July 5 which found a considerable degree of acceptability by both parties as far as that feature is concerned.

The basic assumption in this resolution, or in the recommendation which underlies this resolution, Mr. Chairman and gentlemen, is this: that there is only one possible ultimate settlement of this issue or these issues and that will be by the parties. That what is necessary now is to provide some mechanism which will cover this situation for the period until they do settle it by collective bargaining.

Section 1 of the joint resolution identifies specifically in its last clause the proposition that nothing in this joint resolution shall be construed as limiting the right and responsibility of the carriers and organizations to reach agreement regarding such rules.

That provision is taken directly from the Interstate Commerce Act. The whole contemplation here is of a settlement at some point by the parties with a provision of the interim rules to cover the situation until they do.

You will note from section 1 that the procedure is limited to those matters which are covered by or come within the scope of the area covered by the notices of November 1959 and September 1960. This procedure will not apply to any other case involving any other issues which may come up through the Railway Labor Act.

Proceeding, then, with the procedures outlined in the joint resolution, it is provided in section 2 and it is a matter of very great importance, that the Commission may consider as evidence before it the evidence which was introduced before the Presidential Railroad Commission and the emergency board.

The thought is not to start over. The thought is to take the fullest possible advantage of what has already been done in this case. It is provided that evidence of those matters may be brought in and that no cumulative evidence need be added to that.

In section 3 there is again a provision that the Interstate Commerce Commission shall give due consideration to the recommendation of the Presidential Railroad Commission and Emergency Board 154 and also to the narrowing of the areas of disagreement which has already taken place.

There is set out in section 3 a concept of the protection of individual employee interests in this situation, which has been developed in the recommendations of the Presidential Railroad Commission and Emergency Board 154. It is very important that it be realized that the recommendations of those boards provided two things. First, the authority of the carrier to remove those jobs which were found in bargaining and by procedures of which this recommendation will be one to be unnecessary.

And second, a set of provisions for the protection of the interests of the individual employees involved which cover every single employee on the railroads today.

There is provision in these recommendations that employees with over 10 years seniority shall keep their jobs. There is provision in these recommendations that employees with less than 10 years seniority—and there are different groupings of them—keep those jobs, some of them, until they are offered or unless they are offered alternative jobs of a comparable nature by the railroad with equivalent earning opportunities for up to 5 or 6 years, or that other provision of one kind or another will be made.

It must be made clear that there is nothing in these recommendations which ignores the individual interests of any single employee involved in this situation. Without in any sense endorsing, because that would be beyond my competence or authority, the recommendation in any respect of any of these boards, I must say that I think the establishment in these recommendations and these joint resolutions of the principle that technology must be given every encouragement if this economy is to proceed, but that the interests of the employees who are affected by technological development must also be preserved is one of the monumental advances which has been made in this case.

I hope it will be possible in whatever settlement or proceeding is finally developed to capture fully this essential principle of the accommodation of the economy to technological development.

It is essential to the continued economic advance in this country that full advantage be taken of technological development. It is essential that be done in such a way that the individual interests involved are protected. We will not move ahead technologically if we place the full impact of the advent of a machine, the full cost of the impact of the advent of that machine on a single individual.

There must be procedures to work out to meet that aspect of the problem. That principle is one of the great important principles in this case and in this joint resolution. There is complete provision in section 4, taken almost entirely from the wording of the Interstate Commerce Act, for the protection of the public interest in safey and efficiency of operations.

That is in section 3, I beg your pardon, of the proposed recommendation.

That language is taken directly from the Interstate Commerce Act because it is directly applicable here.

Then section 4 sets out the matters which I have already referred to. The provision that the rule which is put into effect after approval or modified approval by the Interstate Commerce Commission shall be an interim rule which shall continue in effect for the 2-year period until agreement is reached.

Section 5 is a section which incorporates section 5(1) of the joint resolution with the effect that there can be no change of conditions by either party and no strike or no lockout, except that there can be change in these conditions by agreement between the parties.

There are injunctive provisions in section 5(8) of the Interstate Commerce Act which are brought into effect here.

I should skip section 6 for the moment to note that section 7 ties in with section 5 and is a provision which would make inapplicable the Norris-LaGuardia Act in this situation.

Section 6 of the proposed procedure covers the other aspect of this case in addition to the manning rules and the employee protection

points to which I have referred. There are also these literally dozens of other issues. They have not received the serious attention of the parties in their bargaining.

The other matters have been given precedence for one reason or another and there has been virtually little bargaining with respect to the other matters. They cover an infinite variety of matters. Some of them are interrelated with the management and the job protection issue; some of them are not.

So it is provided in section 6 that a different procedure shall be followed with respect to them. This would require that the parties proceed immediately to bargain collectively about these other issues. If they can't reach agreement on them within the next 60 days then either party would be permitted here to file an application with the Interstate Commerce Commission or a proposal whereupon the Interstate Commerce Commission would after consultation with the parties work out whatever kind of procedure seemed best fitted to the circumstances of that particular issue.

In connection with these issues it is also provided that they not start over but that due consideration be given to the recommendations of the Commissions which have already heard these matters.

Then finally, Mr. Chairman, and gentlemen, in section 8 of the resolution there is a provision that it shall expire 2 years from its date, with the proviso that as authority may be needed to protect the operative effect of any rule which has been adopted in the meantime, sections 5 and 6 continue in effect for that purpose.

It is also provided that prior to the expiration the President's report of its operation to the Congress make such further recommendations, if any, as may appear necessary at that time. There are two small points of change which I would bring to your attention in this connection.

In the last section of section 8 there is a provision for reporting by the Interstate Commerce Commission to the President, interim reports, on its action pursuant to this resolution.

We are assuming that it would be proper and advisable that it be modified to put it in the usual pattern which involves the Commissions making reports to the Congress with copies to the President which we think would be the proper procedure here.

Also, in connection with section 4, there has been consideration of the advisability of referring in section 4 not only to the recommendations of the Presidential Railroad Commission and Emergency Board, but to the advice of the Secretary of Labor which could be brought to bear upon this matter and such a change as that in section 4 would probably be an improvement.

In summary, Mr. Chairman and gentlemen of the committee, but really only in closing because I know there will be questions, we bring this to you as our recommendation of the proposal which will meet the public and the private interests in this particular situation and which will at the same time preserve free collective bargaining as one of the cornerstones of private democracy in this country.

We are sorry, Mr. Chairman and members of the committee, that this matter has to come to the Congress. We regret that fact greatly. We think, facing this situation, this is the best procedure which can be devised.

Thank you.

Mr. SPRINGER. Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. I note the full attendance of this committee. I know that everyone is anxious to participate and almost everyone I have talked to is going to have some questions.

I am wondering if it would be possible for me to ask unanimous consent that on the first time around that everyone's questions be restricted to 5 minutes?

The CHAIRMAN. I have discussed with Mr. Bennett, your ranking member, the suggestion that in the first round we give each one approximately 5 minutes. So, in view of the fact that the gentleman from Illinois has thoughts in the same way, I would presume that other members of the committee have the same idea.

If there is no objection, we will proceed accordingly.

Secretary WIRTZ. Mr. Chairman, could I suggest that there be added to the record copies of the Presidential Railroad Commission and of the Emergency Board of which we have copies here that we will be glad to supply.

I think everything else of direct relevance is in Document No. 142 but those two should probably be added.

The CHAIRMAN. Do you have in mind, Mr. Secretary, the report of the Presidential Railroad Commission of February 1962?

Secretary WIRTZ. That is correct, Mr. Chairman. And the report of Emergency Board No. 154 of May 13, 1963.

The CHAIRMAN. Without objection, they will be included in the record.

(The report of the Presidential Railroad Commission has been placed in the committee files. The report of the Emergency Board follows:)

REPORT TO THE PRESIDENT BY THE EMERGENCY BOARD

APPOINTED BY EXECUTIVE ORDER 11101 DATED APRIL 3, 1963, PURSUANT TO SECTION 10 OF THE RAILWAY LABOR ACT, AS AMENDED

To investigate a dispute between certain carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America

WASHINGTON, D.C., MAY 13, 1963

(National Mediation Board Case A–6700)

EMERGENCY BOARD NO. 154

LETTER OF TRANSMITTAL

WASHINGTON, D.C., *May 13, 1963.*

THE PRESIDENT
The White House, Washington, D.C.

MR. PRESIDENT: The Emergency Board established by you on April 3, 1963, by Executive Order 11101, pursuant to section 10 of the Railway Labor Act, as amended, to investigate a dispute between certain carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switch-

men's Union of North America, labor organizations, has the honor to submit herewith its report and recommendations based upon its investigation of the issues in dispute.

Board members Feinsinger and Kerr note their realization that there may be some differences of opinion as to the exact scope of the terminal procedures contained in section 6 of the Report, but express their confidence that procedures for the resolving of any such differences can be developed in the course of the negotiation period.

Respectfully submitted.

NATHAN P. FEINSINGER, *Member.*
CLARK KERR, *Member.*
SAMUEL I. ROSENMAN, *Chairman.*

REPORT TO THE PRESIDENT BY EMERGENCY BOARD NO. 154

This Nation faces the prospect of a crippling nationwide railroad strike unless the dispute submitted to us for investigation is resolved within the next 30 days.[1] Should this dispute erupt into a general railroad strike or lockout, it would stop all movement on 92 percent of the total railroad mileage within the United States, and render idle 94 percent of the industry's employees. If such a stoppage were to last even a few days, the damage to the Nation would be inestimable. The railroads involved reach into, and affect the life of, almost every county, city, village and hamlet of the United States; and form the arteries of our highly integrated industrial society.

The dispute involves the work rules and pay structure of the almost 200,000 operating employees of 195 of the Nation's major railroads and terminal and switching companies. It had its formal origin in the carriers' proposals of November 2, 1959, to eliminate or revise many long-established and agreed-upon rules and existing practices; and in the counter-proposals of the brotherhoods on September 7, 1960, to revise existing agreements in other respects.[2] Both parties seek to alter the rules and practices which to a large extent determine the wages and working conditions of the employees. Certain rules which the employees regard as essential for their protection against arbitrary, unsafe and unreasonably onerous working conditions, and for necessary security and stability of employment, are regarded by the carriers as requiring the employment of unneeded manpower, and preventing the most efficient assignment and use of manpower.

Prior to serving its November 2, 1959 notice, the carriers had sought "the appointment of a Presidential Commission to study the impact of our present rules on the public welfare." At a later date the brotherhoods sought such a commission because, in their words:

"These issues are of such breadth and scope, and their investigation necessarily so extensive, that we believe consideration of them can best be given by procedures that will permit full study outside of the usual pattern of collective bargaining in the railway industry."

On October 17, 1961, the parties joined in a formal agreement which submitted this dispute to a Presidential Commission. This Commission, composed of five employee members, five carrier members, and five distinguished public members—each able and experienced—devoted over 13 months of study to the issues. Ninety-six days were devoted to public hearings. The record consists of 15,306 pages of transcript. An additional 20,319 pages of exhibits were received. Staff and independent studies were undertaken; observation trips were made on trains by the public members.

The public members of the Commission filed with the President on February 26, 1962, a 186-page report containing many recommendations. Dissents or separate statements were filed by the employee members. A statement was filed

[1] To forestall such a strike, the President of the United States, on April 3, 1963, pursuant to Executive Order No. 11101 and subsection 10 of the Railway Labor Act, as amended, created Emergency Board No. 154 and appointed as Chairman, Samuel I. Rosenman, Esq., of New York, N.Y., and as members, Dr. Clark Kerr, of California, and Professor Nathan P. Feinsinger, of Colorado and Wisconsin, to investigate and report on this dispute.

[2] The employees are represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America; the carriers by the Eastern, Western and Southeastern Carriers' Conference Committees, and by the National Railway Labor Conference.

by the carrier members reluctantly accepting in general the recommendations of the Commission.

We have had access to the record of that proceeding. We have also received and examined numerous exhibits, supplementing and expanding the material before the Presidential Railroad Commission.

Although all parties agree that the recommendations of the public members were not a binding arbitration award, the parties have quite contrary views as to the weight to be given these recommendations. In the time allotted to this Board, we could not attempt to redo the work of the Commission. We believed, however, that we could be of maximum service to the parties—and to the country—by attempting to bring about a mediated settlement. We have sought constructive solutions rather than the mere restatement of the previously fixed positions of the parties, and have explored paths which may develop into avenues for settlement.

In seeking to find possible grounds for adjustment of this dispute, we have been most deeply mindful of the important human values involved. Workers who have spent a good portion of their working years in this industry are now being faced with the prospect of losing their jobs, and, perhaps, of seeking employment in new fields for which they may not be presently adequately equipped. It is not always enough to provide them with dollars, even in generous amount, and suggest that they are then on their own. The dislocations have come about by fundamental industrial changes—by technology, by reorganization, or by improved efficiency of mechanics and methods. These are changes over which the employees have had no control. The railroads, and society as a whole, have benefited by these changes; and they should both share generously in the burdens which have been cast upon the workers by the dislocations.

These burdens, in addition to dollar payments, involve education or retraining for new jobs at the expense of the carriers, supplemented by public funds now or hereafter committed to general retraining of displaced manpower. Each worker substantially affected should have not only the privilege but the right to obtain the benefits of continued general education, or to seek retraining for a new job in any field in which experts find him qualified. Only in this way can he continue to live and work with the dignity and respect to which all willing workers in the United States are entitled.

We are mindful also of the necessity for progress in the railroad industry, for efficiency in order to meet the challenge of competing industries. We were impressed with the evidence submitted to us that the vitality and earning capacity of the railroads as a whole are improving, that the productivity of its workers is rising at a rapid rate, and that the industry can face the future with confidence and even optimism.

We have sought by our recommendations to increase these prospects of the carriers, and at the same time to preserve not only strong unions for the employees, but for the individual worker a continued life of usefulness to himself and his family, and to society itself.

These objectives are all equally important. For in our democracy, as has been shown in times of war and peace, our national strength and the strength of our industrial system depend alike upon the vitality of our essential industries and the opportunity for workers to make their full contribution to the wealth and welfare of their Nation.

We are unable to report today the signing of an agreement which will remove from the country the threat of a calamitous nationwide railroad strike. And yet we believe that considerable progress has been made. Positions have softened; the atmosphere has improved; a climate which can support genuine negotiation seems to have been created. Our recommendations are designed to foster and stimulate such bargaining. The issues here involve rules which have been developed by negotiation over a period of decades to meet the needs of both parties as they viewed them at the time they were made. They govern the working conditions of almost 200,000 employees with varied and sometimes conflicting interests. The issues permit more than a single and exclusive solution.

Our recommendations are designed to aid the parties to explore several solutions in order to find those which best fit their vital needs at this time. We have not attempted to specify precise solutions to these problems. We believe that true collective bargaining will more likely succeed, if we suggest general directions rather than specific solutions.

1. THE FIREMEN'S ISSUE—THE JOB AND THE INDIVIDUAL

a. The Job

The National Diesel Agreement of 1937 established the basis for employment of a fireman on passenger and road freight and yard diesel operations. ("Diesel" is used here to mean "other than steam.") That agreement has been continued through a succession of national negotiations. We do not know what, if any, consideration the carriers received from the brotherhoods for either the initial or subsequent agreements.

It is important to understand the real nature of the dispute on this issue. The carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab. Also, they do not contend that the bulk of the work performed by firemen on freight diesels is not needed—left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions. They contend only that such work can be combined with other work performed by employees in other classifications, and that, in the interest of economy, the job of fireman as such can be dispensed with entirely, without impairing safety or unduly burdening other employees. They believe that two, rather than three men can adequately handle all of the work in the cab except under very unusual circumstances.

On the other hand, the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished. As a matter of fact, just as the carriers, being realists, have suggested that there may be a few freight situations in which the services of a fireman are needed, so the firemen have implied that there may be some significant number of jobs on daylight yard and branch-line freight diesels which can be eliminated.

The basic problem, therefore, becomes one of establishing a procedure for ascertaining those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety, and to prevent placing an undue burden upon the remaining crew members. We believe that a national rule can be negotiated which will provide such a procedure—perhaps along the following lines:

(1) The carrier may eliminate a fireman's job when it becomes vacant, if filling the vacancy would require taking on a new hire. Notice of its action should be given to the brotherhoods involved.

(2) If the brotherhoods involved file no protest in writing within 5 days after such notice, the job remains blanked.[3]

(3) If a brotherhood does give such notice, it must be prepared to establish that the discontinuance of the job in question would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibilities formerly performed by the firemen.

(4) After such notice the parties will attempt to resolve the dispute through negotiation.

(5) If the dispute is not resolved within 15 days from the receipt of the notice, it shall be submitted in accordance with a special procedure hereinafter discussed in section 6 for a definitive disposition within 15 days.[4]

(6) The job shall remain vacant during the course of this procedure.

Properly administered, these principles can be applied so as to prevent or correct abuse by one party through arbitrary elimination of jobs on the one hand; or abuse by the other party through a flood of grievances known to be baseless, on the other. It should be possible, with the assistance, perhaps, of a third party neutral, serving as a special referee or by other suitable title, to establish certain categories of jobs or situations the elimination of which by the employer would probably be protested on the basis of safety or undue hardship. These could be designated as key jobs, with the understanding that the settlement of one would settle all the others in the same category. As with almost every issue discussed in this report, the success or failure of such a procedure would depend entirely on the attitude of the parties and their willingness to cooperate with the neutral.

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[3] We agree that no yard diesel should be operated with only one man in the cab unless the locomotive is equipped with a "dead man's control" or other appropriate safety device.

[4] If as a result of this procedure, the number of firemen in passenger, road freight and yard service should be insufficient to supply efficient adequately trained engineers, the parties should negotiate a training program to insure an adequate supply of qualified engine service employees.

The essence of our suggested procedure is that "safety" and "hardship" are merely words except as they take on meaning in actual situations. Safety and hardship are related to time and place; and we know of no way to abstract them from time and place. However, we do not wish to impose on the parties an unnecessary burden of grievances. The selection of key situations is the way to avoid a hailstorm of grievances while providing assurance that safety is protected and hardship avoided.

b. The Individual

Constructive change is the source of progress. The benefits of change are shared by the employee, the employer and society generally; similarly, the burdens of dislocations should be equitably shared. The railroads and the brotherhoods have been in the vanguard of those who have recognized this principle, and provision for displaced rail employees has become increasingly prevalent since the historic Washington Job Protection Agreement of 1936 was negotiated to assist employees adversely affected by mergers and consolidations.

The important protective provisions of the Washington Agreement are: displacement allowances for those reduced to a lower paying job to guarantee former earnings for a period; furlough allowance payments or lump-sum separation options for those who are entirely deprived of employment; and relocation expenses and indemnification against real estate losses for those required to move.

In this case the carriers have recognized the need for some form of security. They have expressed a willingness to grant extensive financial aid and preferential rehiring for the men with less than 10 years' seniority, and to rely on natural attrition and promotion for the termination of those with more than 10 years' seniority.

We recommend:

(1) No new hiring of firemen need take place except as provided in this report.

(2) Those firemen who obtained employment after some reasonable date when it may be presumed that they were on notice that their jobs might not be permanent may have their employment terminated.

(3) Those who have been employed in recent times as firemen but on an irregular basis, and who consequently have not been able to rely upon the carriers as their primary source of livelihood, may have their rights terminated with a severance allowance equal to some percentage of their recent earnings as a fireman or they may choose to remain on a seniority list with preferential hiring rights for such jobs as may become available and for which they are qualified.

(4) Firemen who have not been employed in recent times shall be treated as the group in (2) immediately above.

(5) The remaining employees with less than 10 years' seniority should retain their rights to firemen's employment unless and until offered, by the carrier involved, another comparable job for which they are, or can become qualified.[5] This job offer should carry with it relocation expenses if moving is involved, and the continuation of his accumulated seniority rights toward such purposes as vacation and other appropriate benefits. A displacement allowance similar to that provided by the Washington Job Protection Agreement should be made to protect such employees against loss of earnings for a period not exceeding 5 years. Such offers of a bona fide jobs shall be posted and made available to all qualified firemen in order of seniority.[6] If no senior man elects to transfer, the most junior man on the firemen's roster must accept the transfer or resign with one-half the severance allowance. Educational scholarships and retraining allowances of the type mentioned above, or the provisions of the Washington Agreement, should be options to be chosen promptly by the employee involved upon the conclusion of an agreement settling this dispute.

(6) Those employees with 10 years or more seniority should retain their rights to firemen's employment, with the possibility of withdrawing and receiving an educational or retraining scholarships, special severance allowance, or a special early retirement plan to which the Carriers should make an additional special contribution.

We believe that within this general framework, peaceful and private collective bargaining should be able to produce agreement.

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[5] We note, for example, that 6,000 new brakemen were hired in 1959.

[6] Such jobs should first be posted for bidding in the appropriate seniority district.

2. CREW CONSIST

(a) Road and Yard Crews (Other Than Engine Service)

As a general rule, road and yard train service crews consist of three men, one of whom is a conductor or foreman. The consist is not now the subject of a national rule, but is governed by numerous local agreements, rules, regulations and practices, and in several states by statute.

This issue involves the choice of the most appropriate mechanism for adjusting any undermanning or overmanning of individual crews which may exist. Neither side purports to desire the maintenance of dangerously undermanned crews or the retention of unnecessary crew members.

We believe that this is essentially a local problem which can be best handled by local negotiations. It should be possible for the parties in direct bargaining to establish guidelines nationally to provide overall direction for these local negotiations. These guidelines ought to be based on considerations of safety and efficiency and of undue burden on other members of the crew. Alleged violation of these guidelines would then be discussed locally. Should such negotiations fail to resolve the matter within 5 days, a grievance may be filed in accordance with the special procedures hereinafter discussed in section 6.

We believe that no force reductions in this area should be made except by natural attrition. Educational scholarships, retraining allowances and severance options should be available not only in justice to the workers involved but also to accelerate attrition.

(b) Manning of Self-Propelled Vehicles

This issue involves the use of operating employees upon self-propelled machines employed in maintenance, repair, construction, or inspection work.

We do not believe there is a need for operating personnel upon such vehicles when they are being used for the purpose intended. However, operating personnel should be employed on such machines, in accordance with existing rules, if they are used to move or switch other cars or machines except when no more than two such cars or vehicles are used exclusively in hauling material in connection with the work to which the self-propelled machine is assigned. Some provision to prevent abuse of this rule may be appropriate.

Since dislocations and displacement of personnel are likely to be occasioned by application of the new rules, adequate protection such as those discussed elsewhere in this report should be provided.

3. INTERDIVISIONAL RUNS

Because interdivisional runs go through normal crew-change points without changing crews, such runs permit the carriers to expedite service. Because the institution of such runs also affects total compensation and work opportunities, this issue is related to the compensation issue.

At the present time, there is a national rule concerning interdivisional runs, but it establishes only a procedure for negotiating them; it does not give the carriers the right to institute them. The carriers seek this right.

Clearly, to the extent that such runs permit the carriers to compete more effectively by providing faster service, the interests of the carriers and the brotherhoods coincide. But to the extent employment opportunities and conditions are adversely affected, their immediate interests diverge.

We believe an accommodation is possible. The brotherhoods offered a proposal in Chicago in mid-1962 which would establish guidelines within which the carriers will have the right to establish interdivisional runs. Although those specific guidelines were not satisfactory to the carriers, the basic procedure of establishing guidelines appears sound.

4. COMBINATION OF ROAD AND YARD SERVICE

Involved here is the extent to which road crews should be permitted to perform work in connection with their own trains within switching limits.

We believe that a rule can and should be negotiated which would permit a more flexible use of road and yard crews, while preserving the basic distinctions which are reflected by the existence of separate seniority rights. Attention must be directed to devising limitations which will prevent abuse by employers while permitting the desired flexibility.

The negotiation of specific rules to limit carrier abuse and the development of protections for employees adversely affected by changes in operations occasioned by any new rules in this area, should allay the fears of the employees and make possible the resolution of this issue.

5. COMPENSATION (WAGE STRUCTURE AND FRINGE BENEFITS)

Both parties seek to modernize the present pay structure. We believe that this is long overdue. Our suggestions are designed to ease the path to this goal, without undue impairment of the equities and legitimate expectations of incumbent employees.

The compensation system for the railroad operating crafts is one of extreme complexity. It has grown up over the years and has generated new inequities and aggravated old ones. Technological change has greatly increased earnings and reduced hours for some, with little effect upon the earnings and hours of others.

After exploring the many ramifications of this problem with the parties, we propose the following recommendations, which differ in two respects from the report of the Presidential Railroad Commission:

(1) A modest increase in average compensation is a normal accompaniment of a thorough wage structure revision. While individual adjustments will vary greatly in such a revision, an average increase of about 2 percent is frequently associated therewith. We recommend that a full 2 percent be used in working out the adjustments in this case. This would make possible a further correction of compensation inequities among the various crafts and classes of service; and assist in meeting the transitional problems which are the subject of the next recommendation. It is unfortunate that these adjustments cannot be part of a general wage movement, but we would expect, of course, that consideration will be given by the parties to the impact of these wage adjustments when they next consider such a movement which is even now in the early stages of processing.

(2) Reductions as well as increases in rates are a normal and expected result of wage structure revision. Where these reductions are more than nominal, we suggest two possible approaches, as illustrations, designed to insure that individual, incumbent employees will not be unduly affected by the structural changes. First, that a very long service employee might be allowed, as a matter of individual choice for himself alone, to elect once and for all either to go on the new pay structure or to remain on the old pay structure for the duration of his employment, which would, of course, maintain his earnings opportunities.

Second, that a monthly or other periodic guarantee be developed assuring an opportunity for the appropriately covered employees to approximate their current earnings, provided they are not the result of unduly long hours. However, the carriers shall be given significantly greater flexibility in making assignments so that this guarantee can be met through actual work performed within a normal number of hours. Such a guarantee would not relate, of course, to prior arrangements of the parties to provide for movement from a 6- to a 5-day week for certain employees.

6. SPECIAL PROCEDURES

The need for the help of neutrals will not terminate with the overall settlement of this dispute. In various instances we have recommended the negotiation of guidelines or criteria to implement general principles set forth in this report. Disputes may arise over the establishment of the guidelines or the application of these guidelines, once established, to particular cases.

Disputes such as those concerning firemen, crew consist, interdivisional runs, combination of road and yard service, and pay structure should be the subject of negotiations. If these negotiations do not result in reasonably prompt resolution, the disputes should be quickly and definitely resolved by submission to a special referee procedure.

7. RELATED ISSUES

There are at least two issues which are not formally part of the dispute, but which relate to certain aspects of it. This dispute already has plenty of issues combined within it; but we believe that the overall dispute might be easier of solution if these two additional issues were open for discussion:

(1) The parties will shortly consider the matter of a general wage increase. Wage structure revision would be subject to easier solution in the context of a general wage increase.

(2) If provisions for early retirement were subject to current negotiation, the problems of attrition might be more readily solved—especially if the carriers were to contribute some additional funds for this purpose.

CONCLUDING OBSERVATIONS

The parties should arrange for immediate negotiations for the purpose of completing agreement on all of the issues, using the foregoing recommendations to the extent they may prove helpful.

Recent years have been years of progress and innovation for the carriers. Technological and organizational changes have been many and far reaching. Forty percent fewer employees than were employed at the beginning of this decade now handle substantially the same volume of traffic. Productivity gains have outstripped those in industry generally by a wide margin.

Unfortunately the industry's techniques for collective bargaining have not made similar advances. This dispute is now over 3½ years old. We believe progress toward solution has been made and that both sides have stepped away from their former, doctrinaire positions. But the passing of time has not generally worked to make this dispute easier to resolve—quite the contrary.

The next 30 days will be important not only to the parties, but also to the Nation and to the future of collective bargaining as an effective method of disputes settlement. Although the general public is not a formal party to this dispute, each citizen of the United States has an acute interest in its resolution.

There has been an unfortunate tendency in this industry to postpone real collective bargaining until the final hour. That hour is about to strike.

Each of the parties should reexamine its responsibilities not only to itself, but to the Nation. Each must take a long, noot a short-range view. Realism will need to be combined with ingenuity; courage with tolerance. If the parties approach the bargaining table in this spirit, and will immediately undertake serious negotiations, we believe that the difficulties raised by the number and complexity of the issues and by the number and diversity of the parties can be overcome. This dispute can and must be resolved, promptly and constructively, peacefully and privately.

NATHAN P. FEINSINGER, *Member.*
CLARK KERR, *Member.*
SAMUEL I. ROSENMAN, *Chairman.*

WASHINGTON, D.C., *May 13, 1963.*

The CHAIRMAN. Mr. Secretary, I want to commend you for a very forceful and forthright presentation this morning of this very knotty problem. It certainly manifests your knowledge of this problem as well as the seriousness of it and your recognition of the complications involved.

Do I understand you to say that this proposal here has precedence for the resolving of disputes in the railroad industry?

Secretary WIRTZ. Yes, sir; involving issues of this same kind.

The CHAIRMAN. The suggestion here is to follow what has already been established in these precedents over the last 20 years in an effort to avoid some of the pitfalls that you have explained.

Secretary WIRTZ. That is right, Mr. Chairman.

The CHAIRMAN. Mr. Secretary, is this compulsory arbitration in your opinion?

Secretary WIRTZ. It is not at all compulsory arbitration in my opinion, Mr. Chairman.

The CHAIRMAN. Is there in any of the notices referred to which the resolution covers, either of the notices, or in the recommendations that have been made by either of the groups referred to, anything to suggest seizure in any way?

Secretary WIRTZ. No, sir; in no respect.

The CHAIRMAN. In the resolution you referred to the notices and nothing else being included.

Secretary WIRTZ. That is correct. It would not cover anything except what comes within the area of the notices.

The CHAIRMAN. In section 3, page 3, lines 18 and 19, you would provide that the Commission shall consider the effect of the proposed rule upon adequate and safe transportation service to the public.

In looking over section 5(2)(c) of the Interstate Commerce Act it includes only adequate service.

Am I correct?

Secretary WIRTZ. That is correct, Mr. Chairman.

The CHAIRMAN. You have therefore added "safe"?

Secretary WIRTZ. That is correct.

The CHAIRMAN. As another consideration?

Secretary WIRTZ. That is correct.

The CHAIRMAN. Now, while I think I understand what you have in mind, and appreciate the consideration of safety and we all do as being terribly important, but over the years we have had proposals that railroad rules covering a multitude of subjects, particularly operating rules, should be passed upon by the Commission on the grounds of safety.

You are familiar with that?

Secretary WIRTZ. Yes, sir.

The CHAIRMAN. This raises the question in my mind about what is contained here. Then you do not intend to include any rules of this kind as being part of safety under this resolution, but confine it only to matters included in the two notices?

Secretary WIRTZ. That is correct, Mr. Chairman. I think it would be helpful in answer to your question that the addition of the concept of safety, line 18 to which you referred, represents an incorporation of the recommendations of the Emergency Board 154 to meet this problem.

The CHAIRMAN. My time is up. I will have to defer. I have another one later on.

Mr. Bennett?

Mr. BENNETT. Mr. Secretary, you state emphatically that this is not compulsory arbitration. As I understand compulsory arbitration, it is a decision reached by a third party in a dispute between two other parties which is binding upon the two parties concerned and is final.

Is that your understanding?

Secretary WIRTZ. No, it is not, Congressman. That is very close to the heart of the discussion of this subject. I think it has been a great mistake to assume, as the public has assumed, that any kind of settlement procedure at all is properly identified as compulsory arbitration.

If the question is whether a finality of decision for an interim period and subject to change by the parties' agreement is involved here, there is that finality.

Mr. BENNETT. In other words, the decision that the Commission would be given authority to reach under this proposal would be just as final, just as binding upon the parties, as that which would be reached through what you understand and define as compulsory arbitration by some other board?

Secretary WIRTZ. Not at all, sir.

Mr. BENNETT. Is not the decision of the Commission with respect to the issues here concerned final for a 2-year period?

Secretary WIRTZ. It is for a 2-year period. It is operative for a 2-year period unless the parties have in the meantime reached their own agreement with respect to it.

Mr. BENNETT. Is the decision not final and binding upon the parties for a 2-year period in the absence of a collective bargaining agreement?

Secretary WIRTZ. In the absence of an agreement reached between them it would be.

Mr. BENNETT. Is it not just as final and binding as a decision of an arbitration board in the same situation?

Secretary WIRTZ. The only point——

Mr. BENNETT. Can't you answer that yes or no?

Secretary WIRTZ. No, I don't think a yes or no answer is appropriate to it. If the question is whether this has the degree of finality subject to a time period and subject to an agreement exception which you could get by some other process, the answer is "Yes."

Mr. BENNETT. Is there any appeal from the decision of the Commission in respect to the issues we are concerned with here?

Secretary WIRTZ. There is.

Mr. BENNETT. There is an appeal to the court?

Secretary WIRTZ. Yes.

Mr. BENNETT. It is not binding in the sense that there is no right to court review. What is the court review provided for?

Secretary WIRTZ. This would bring in the procedures of the Interstate Commerce Act and those provisions of the judicial code which are applicable to the regular decisions of the Commission.

I don't want to take up your time but I would point out that in the several hundred cases of this type which the Commission has decided over the last 23 years, the phrase "compulsory arbitration" has never been applied to it.

Mr. BENNETT. But there is the right of appeal.

Secretary WIRTZ. There would be the right to appeal.

Mr. BENNETT. Because of the time limit I want to ask you one other question with respect to section 3. On page 3, line 25, the approval for any interim rule, and so forth, down through the rest of that to line 12 on page 4.

Does that mean, for example, if the Commission under the authority given here should enter a finding removing 30 firemen from their positions, that section 5(2) would become operative and those employees would automatically be entitled to the rights provided under section 5(2)(f), providing for job security for a period of 4 years.

Secretary WIRTZ. They would be entitled—the answer ought to be a square "yes," because it is intended that 5(2)(f) be provided.

There is a different formulation with respect to the recommendations which follow this.

Mr. BENNETT. But in respect to the removal of any employee or the elimination of a job under section 3, as soon as that Commission made that decision, then 5(2)(f) of the act would apply and their positions would be secure for an additional 4 years.

Secretary WIRTZ. No, I should refine that to this extent: With due consideration to the recommendations of the Presidential Board and so on and so forth you do bring in this matter which has had great

attention by the Commission and the Board of what to do with employees hired since this case started and with respect to employees who have only an irregular attachment to the railroad work force.

I would think this formulation would permit the Interstate Commerce Commission to give due consideration to those recommendations. It would not mean that everybody gets a 4-year job.

Mr. BENNETT. It would not mean that 5(2)(f) would necessarily apply?

Secretary WIRTZ. My understanding is that it does not apply to every case of every employee.

Mr. BENNETT. Then the language is a little ambiguous.

Secretary WIRTZ. There has been a lot of interpretation of 5(2)(f).

Mr. BENNETT. I do not mean 5(2)(f). I mean the language of section 3 that I am referring to as ambiguous, because it appears to be clear that it sets 5(2)(f) in operation as soon as an order would be made to eliminate a job.

Secretary WIRTZ. I would think the answer, Congressman, would be that you would apply a combination of 5(2)(f), which has only the one kind of provision in it and the more precise refined recommendations of these boards to meet the particular situation which was involved.

Mr. BENNETT. I have used up my 5 minutes.

The CHAIRMAN. I might say here because it fits right in with it: the *New Orleans* case was decided by the Supreme Court in which the 4-year proposition was interpreted as not being limited to the 4 years.

Secretary WIRTZ. That is correct.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. I am sorry, Mr. Chairman, I missed the testimony in main and I may ask a question that has been asked and if I do, Mr. Secretary, I wish you would tell me.

During the time you were handling the negotiations here in Washington did you meet with any of the presidents of the American railroads?

Secretary WIRTZ. I did not.

Mr. ROBERTS. Were any people——

Secretary WIRTZ. Except Mr. Saunders, president of the Norfolk & Western was a member of the six-man committee set up by the President. That was in his capacity as a member of the President's Advisory Committee on Labor Management Relations.

Mr. ROBERTS. The Norfolk & Western?

Secretary WIRTZ. That is correct.

Mr. ROBERTS. Were any people representing the carriers consulted in the preparation of the joint resolution?

Secretary WIRTZ. No, sir.

Mr. ROBERTS. What about people representing the brotherhoods?

Secretary WIRTZ. No, sir; not at all. There were discussions in the White House on the morning the message came over but those were by way of advice as to what the President's proposal was to be. There was no consultation with respect to the working out of the proposal.

Mr. ROBERTS. How was the carriers conference negotiating team established?

Secretary WIRTZ. I don't believe I have enough of that detail to answer. But I will be glad to add a statement to the record about it. I don't know as a matter of individual knowledge.

Mr. ROBERTS. You will supply that for the record?

Secretary WIRTZ. I will be glad to.

(The information to be furnished follows:)

STATEMENT ON ESTABLISHMENT OF CARRIER CONFERENCES

The Department of Labor has been advised by an official of the Association of American Railroads, as of January 1, 1963, labor negotiations for railroad employers were centralized in a national committee known as the National Railway Labor Conference. Previously, these matters had been handled on a regional basis with conferences for the East, West, and Southeast. The national conference superseded these bodies for purposes of negotiations in the current dispute.

In organizing the regional groups, railroads included in the group select a small number of representatives, who comprise the conference, which represents all the railroads through a power of attorney. The national conference likewise acts on behalf of the regional groups. So far as legal authority is concerned, the conferences are reconstituted for each big negotiation.

Secretary WIRTZ. Except as I might suggest that the testimony of the carriers would probably be more direct on that but I will be as helpful as I can to the committee.

Mr. ROBERTS. What connection, if any, does the negotiating team with any railroad or railroads have?

Secretary WIRTZ. I should like to defer on that question to the carrier witnesses. Again I would be glad to supply for the record a general statement.

Mr. ROBERTS. Is the Southern Railway part of this national movement?

Secretary WIRTZ. It is not.

Mr. ROBERTS. Can you give any reason why that is not true?

Secretary WIRTZ. If I may go back to your preceding question, Congressman, Mr. O'Neill, as Chairman of the Mediation Board, would be in a position to give you a good deal of the detail on that previous question. I should perhaps turn it to him.

Mr. O'NEILL. The general practice is when notices are served the unions put in a paragraph requesting the individual carrier, in the event agreement is not reached at the local level, to establish a carrier conference committee.

That is usually done. The individual carrier in turn will give power of attorney to a carrier conference committee. Thereafter the carrier conference committee has full authority to act for the railroad in that dispute.

Does that answer your question, sir?

Mr. ROBERTS. Not entirely.

Mr. O'NEILL. There are three conferences. Geographically the country is divided up into the eastern region, southern, and western. You usually have three carrier conference committees.

In this particular case there are some 195 railroads and they have designated the carrier conference committees to handle these notices to a conclusion.

Mr. STAGGERS. Would the gentleman yield there?

Mr. ROBERTS. I would be glad to.

Mr. STAGGERS. I would like to know who these men are who are appointed; do they have connections with the railroads in any way?

Mr. O'NEILL. Some of them are vice presidents of railroads. You take the eastern committee, Guy W. Knight, vice president of the Pennsylvania Railroad, L. B. Fee, vice president of the New York Central Railroad. Take the West, Mr. Wolfe, who is the chairman of the western carriers' conference committee is no longer with the Burlington Railroad. When this dispute started he was with the Burlington Railroad. E. H. Hallmann, who was formerly a vice president of the Illinois Central Railroad. Mr. McRee was at one time an officer of the Seaboard Railroad.

Mr. STAGGERS. May I interrupt you there? You named two on the eastern conference. How many are on the eastern conference?

Mr. O'NEILL. Five.

Mr. STAGGERS. Could you tell me the other three and what connection they have?

Mr. O'NEILL. John Gaherin was formerly with the New Haven Railroad. Bear in mind, Mr. Congressman, this conference has been going on 4 years and there have been changes since it started.

I have before me now the members of the eastern committee. Guy W. Knight, vice president, Pennsylvania Railroad System; John Gaherin, chairman of the labor relations committee of eastern railroads; Fred Diegtel, vice president, labor relations committee, Erie-Lackawanna Railroad; L. B. Fee, vice president, employee relations, New York Central System; R. L. Harvey, director of labor relations, Baltimore & Ohio Railroad Co.; and Mr. R. W. Pickard, vice president, personnel, Boston and Maine Railroad.

Western carriers' conference committee:

E. H. Hallmann, chairman, committee on labor relations, Association of Western Railways, formerly associated with the Illinois Central Railroad; A. D. Hanson, vice president, labor relations, Transportation Division, Union Pacific Railroad; K. K. Schomp, manager of personnel, Southern Pacific Co. (Pacific Lines).

In the southeastern carriers' conference committee:

Mr. C. A. McRee, chairman, chairman of the southeastern carriers' conference committees; W. S. Baker, assistant vice president, Atlantic Coast Line Railroad; W. L. Burner, Jr., manager of the bureau of information of the southeastern railways; F. K. Day, Jr., assistant vice president of the Norfolk & Western Railway; W. S. Scholl, director of personnel, Louisville & Nashville Railroad; and G. M. Seaton, Jr., assistant vice president, labor relations, Chesapeake & Ohio Railway.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Secretary, how long do you say this legislation is valid?

Secretary WIRTZ. There is not a short answer to that. The legislation would expire 2 years from the date of its enactment unless it was renewed, but it would continue to be operative for the purpose of enforcement of any interim rules which has been put into effect—that had become operative and with respect to which the 2-year period had not expired.

Mr. SPRINGER. If, for instance, one of these proposed working rules and the other disagrees, the Interstate Commerce Commission enters a finding. Undoubtedly the other party will take an appeal. Usually to get to the Supreme Court and through the Supreme Court I under-

stand is about 3 years. It is then possible that this legislation could extend as long as 5 years, couldn't it?

Secretary WIRTZ. Any answer which the Government and the Congress has to work out to this case will include the possibility of judicial review. I think there is no avoiding that. I think the time figures you have used are quite different from those which have emerged from our discussions with the ICC. There would be a substantially shorter period of time. I don't mean to bring the fact that there is the prospect of judicial review regardless of what procedure we use.

Mr. SPRINGER. And judicial review will be taken in almost and each instance assuming the difficulty they have in arriving at agreement thus far; isn't that true?

Secretary WIRTZ. I appreciate the point you are making. I don't think I could add anything.

Mr. SPRINGER. The ICC has 120 days. We will assume that it is the earliest date they can get it done. That leaves 21 months for an appeal to get through if you are going to do it within this 2-year period. It means that the enforcement of this is going to take place for all practical purposes if they exercise all of their steps of review, the enforcement of this is going to be in almost every instance—and I would say in every instance—after the legislation has expired.

Secretary WIRTZ. That would depend on what was done at the end of the 2-year period. It would not have expired, Mr. Springer, with respect to the rules that we are talking about.

Mr. SPRINGER. But if he takes his review first to the U.S. district court under section 4?

Secretary WIRTZ. That is the special three-judge court.

Mr. SPRINGER. Then he goes to the U.S. circuit court of appeals.

Secretary WIRTZ. No, the procedure takes them directly to the Supreme Court.

Mr. SPRINGER. Do you visualize that can all be done and get a decision in less than 21 months?

Secretary WIRTZ. Yes. Our advisers indicate that it would probably be within less than that period.

Mr. SPRINGER. You are thinking then that this could be done within a 2-year period?

Secretary WIRTZ. Yes, sir.

Mr. SPRINGER. Now let us see what we have accomplished after all of that is done. It would be enforced for 2 years, is that right?

Secretary WIRTZ. When you say it would be enforced, the resolution would be operative for 2 years except it would continue for what ever period is necessary in connection with the particular rules.

Mr. SPRINGER. We will say finally you get an order affirming this by the U.S. Supreme Court 2 years from now, we will say, it is then operative for 2 years, is that right?

Secretary WIRTZ. That would be correct.

Mr. SPRINGER. Now at the end of 2 years, where are you?

Secretary WIRTZ. I don't know what you mean where are we?

Mr. SPRINGER. At the end of the 2-year period for which the order is entered where are you then on the same rule?

Secretary WIRTZ. The interim rule would at that point no longer be effective.

Mr. SPRINGER. You would be back exactly where you are this morning?

Secretary WIRTZ. I don't know what you mean by where we are this morning. If the parties had not accomplished anything at all in the 4-year period to which you refer, which is contrary to every reasonable expectation in this case, if they had accomplished nothing, then we would be, and none of them had accomplished anything, then we would face the same situation we do now.

Mr. SPRINGER. Mr. Wirtz, this disagreement has been in effect since 1959. That is 4 years.

Secretary WIRTZ. That is right.

Mr. SPRINGER. Haven't these parties had a right to sit around the table for 4 years? Every view has been presented that could conceivably be presented in that 4-year period as evidenced by these reports.

Secretary WIRTZ. I don't think that is true.

Mr. SPRINGER. What do you think has happened?

Secretary WIRTZ. I think the case is going to be settled at one point or another. I think it will be developed within some pattern that has already been suggested but I don't think they have exhausted. They have not found the answers yet is all I am saying.

Mr. SPRINGER. Do you think that the people who are involved in this dispute, that their resolution has diminished any today from what it was 4 years ago?

Secretary WIRTZ. Yes; but not enough.

Mr. SPRINGER. Both of these parties have been to see me. I don't get that impression. Maybe, Mr. Wirtz, you do, but I don't. It seems to me that the resolution of both of these parties is even firmer today than at any time I have ever talked to them in the 4 years.

Secretary WIRTZ. I could perhaps be more helpful if I knew the point you are pursuing because it seems to me that we face this situation if something has to be done by law then it is going to involve the kind of period we are talking about. Any proposal that could possibly be suggested.

If there is an alternative proposal which would avoid these difficulties we should perhaps have it for consideration. But if you enacted compulsory arbitration, if you enacted seizure, if you enacted any of those things different from these there would still be the appellate period involved. There would still be the problems you are suggesting. I would like to be helpful but I am not clear about the alternative.

Mr. SPRINGER. My suggestion is that you have not accomplished anything with this legislation except one single thing, and that is you have put off a strike. We can do that. We can pass a resolution to that effect through the Congress postponing the strike. I don't think the general rule of taking this legislation as I take the respective steps through which each will go and the appeals that will be taken by either party that you in the end will accomplish anything except what you hope will come with. I had a lot of hope in 1959 that these parties will come to a resolution but I am convinced they are further apart psychologically than they were in 1959.

Secretary WIRTZ. I respect that judgment, Mr. Springer. My view is far different.

The CHAIRMAN. Mr. Staggers.

Mr. STAGGERS. I think you have made a very good presentation of your side as the third party. I would like to pursue what Mr. Springer said, that the interim period of 2 years would be compulsory work rules. They would be obligated to follow those rules laid down by the ICC during that interim period; is that right?

Secretary WIRTZ. I didn't mean to be timid about the phrase. I don't think compulsory adds anything to the fact that they would be binding and there is no question about that.

Mr. STAGGERS. They would be binding. We are just using two different words.

Secretary WIRTZ. Surely.

Mr. STAGGERS. We have heard a lot about deadlines. I notice in the President's message he said a deadline would be averted as of tomorrow or a strike this evening. Who set this deadline? Who was going to do this striking and who said there would be a strike?

Secretary WIRTZ. The situation on that is that a shutdown will result, if it does; as a result first of the carriers' promulgation of new rules and second the brotherhoods announced intention to strike if those rules are changed.

Mr. STAGGERS. The brotherhoods, did they ever say they are going to strike? I have not seen it in the paper.

Secretary WIRTZ. Yes; they have issued formal public statements to that effect conditions——

Mr. STAGGERS. If certain things happen?

Secretary WIRTZ. If the carriers take action.

Mr. O'NEILL. The carriers issued notice to all of the railroads to make effective at 12:01 a.m., I think, July 10, these rules, whereupon the unions notified the National Mediation Board and the Government that they were going to strike at that time.

Mr. STAGGERS. With this, were the carriers all in agreement on this?

Mr. O'NEILL. We understand Mr. Wolfe, speaking for the carriers, notified the Secretary that they were issuing their promulgation.

Mr. STAGGERS. Who is Mr. Wolfe?

Mr. O'NEILL. He is the chief negotiator for the railroads.

Mr. STAGGERS. What is his official capacity otherwise?

Mr. O'NEILL. He is chairman of the National Railway Labor Conference.

Mr. STAGGERS. Appointed by the carriers. You don't know whether all carriers were in agreement, except by what he said?

Mr. O'NEILL. We have learned to rely on what Mr. Wolfe tells us.

Mr. STAGGERS. I would assume you would; that is true. Just one other thing about this matter of the shutdown. It takes two sides. There are two sides and one says we will do certain things, and the other side says if you do certain things we will do this. I am a little like Mr. Springer. I don't believe unless both sides change that we are going to accomplish anything by this legislation. We are just putting it off. That is my view. I wanted to ask one other question. The Washington agreements that you spoke of a few minutes ago incorporated in 5(2)(f).

Secretary WIRTZ. Yes.

Mr. STAGGERS. Would they be incorporated under this if there were any agreements by the ICC? Would those agreements be incorporated in any decision?

Secretary WIRTZ. Would the agreements of the parties be incorporated?

Mr. STAGGERS. No; the Washington agreements.

Secretary WIRTZ. To the extent that it is in 5(2)(f) and in the language that is in this resolution it would be.

Mr. STAGGERS. That is all at the present time, Mr. Chairman.

The CHAIRMAN. Mr. Schenck.

Mr. SCHENCK. Thank you, Mr. Chairman.

Mr. Wirtz, I want to commend you on your very fluent statement. I am sure we all understand exactly where you stand. I have two questions. Do you feel that the Interstate Commerce Commission with all its many duties in other fields within its authority and jurisdicition has the time and facilities to consider all of these questions judiciously, promptly, and thoroughly and still take care of their other duties?

Secretary WIRTZ. Yes; I don't think there is a matter of larger importance to the country. The resolution provides that these matters would be given priority. It would be presumptuous of me to answer your question fully because that is really a matter that depends on a fuller knowledge than I have, of the ICC workload. I assume they are very busy. I have to answer "Yes."

Mr. SCHENCK. Of course, you will agree that the Interstate Commerce Commission does have rather extensive duties in many areas.

Secretary WIRTZ. You won't like my answer, Mr. Schenck, but so have I, as Secretary of Labor, and I have hardly had a chance to spend a minute on anything else since June 4. I appreciate the gravity of the situation. I don't like what it causes. But yes, I think given the gravity of the situation the ICC could do that.

Mr. SCHENCK. Mr. Secretary, there have been rumors reported in the press and elsewhere of the possibility of a nationwide trucking strike by Mr. Hoffa and his unions. No doubt such a strike would be even more catastrophic because it would involve many communities not served by the railroads. Would the administration and your department immediately refer such a trucking strike to the Interstate Commerce Commission, or would you take action similar to that which was taken by the administration in the pricing of still some months ago?

Secretary WIRTZ. The answer is we would not refer it to the Interstate Commerce Commission if that should develop. I am not sure about the point of your other question. The trucking industry would be subject to the Taft-Hartley Act rather than the Railway Labor Act. So it would be a wholly different pattern.

Mr. SCHENCK. It would be a rather paralyzing situation.

Secretary WIRTZ. If it would happen. If I may on my time, Mr. Chairman, I have been looking at this mural all morning. The mural shows the railroads, the highways, the maritime industry, and the airlines. Those are the industries with respect to which we are having very real problems in collective bargaining in all four areas. Everybody except the angels at the top. Sometimes I have wondered whose side they are on. But it is true that in the transportation industry because of the circumstances of one sort or another we have real problems with respect to this matter.

If it were not for them we would not have. My point and the legal answer is, that they present different questions. The Railway Labor Act does cover the airline up there and the railroad at the bottom. If this problem came up in connection with either we would treat it this way. I would say the CAB has done the same kind of thing that the ICC has done under 5(2)(f). So those two would be the same.

The trucking situation would not.

Mr. SCHENCK. Mr. Secretary, may I join in expressing the hope that the angels and the Man upstairs are interested in the best public interest and will so guide both the Congress and the administration. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Secretary, with regard to the items which are at issue here and to which you addressed yourself and referred, I believe, on page 14 of the Document No. 142.

Secretary WIRTZ. Yes, sir.

Mr. ROGERS of Texas. Let us presume that this resolution is passed, and other work rules are changed subsequently and the controversy comes up between the carriers and the rail unions carrying us right up to the point that we are now in this situation, would you then need to come back to the Congress with a similar resolution as to those new work rules?

Secretary WIRTZ. Falling entirely outside of this case.

Mr. ROGERS of Texas. Yes.

Secretary WIRTZ. Mr. Rogers, we have not had to since 1946. I would hope it would be at least as long an interval before we would again. We have had a lot of these problems in a lot of other cases. We have sweated them out.

They meant strikes once or twice. The Northwestern was shut down a year ago. We didn't have to get that up here a year ago. The parties finally worked that out. It is a fair answer to your question that as history would inform us this is the first case since 1946 and only the second since 1916 and I would hope that the interval would be as long again.

Mr. ROGERS of Texas. You feel if we could reach some resolution with regard to the crew consist and the firemen that this whole matter would be settled?

Secretary WIRTZ. I do have that feeling.

Mr. ROGERS of Texas. And that all other matters having to do with controversy on the work rule pattern could be settled with the machinery that we have available for that purpose downtown?

Secretary WIRTZ. I do. In fact, I think the parties will do it themselves.

Mr. ROGERS of Texas. With regard to the 2-year situation that is involved here, I understand that regardless of the judicial review or request for judicial review that whatever decision is made by the Interstate Commerce Commission, that decision goes into effect and stays in effect until either the parties reach an agreement by collective bargaining or the 2-year period expires?

Secretary WIRTZ. That is right.

Mr. ROGERS of Texas. At the end of the 2-year period, Mr. Secretary, if we assume that these two issues, crew consist and the firemen

matter, have not been settled, do you anticipate a request for an extension of the authority proposed in this resolution?

Secretary WIRTZ. If nothing has happened at the end of that period. Incidentally, this would be the period after which the rule had been operative for 2 years—the interim rule—if we reached that point we would face exactly the situation we do here. May I take one moment to say that this would be the first industry, this would be the first pair of parties in the history of collective bargaining in this country in which it had been impossible to reach that agreement. In spite of my respect for Mr. Staggers' and Mr. Springer's reaction to the case, I don't rate it that way. I think these parties will in this period for very strong self-interest reasons work it out. I don't mean to fuzzy up my answer to your question. If I am that wrong that 4 years from now they are apart, the answer would be that we would be back here. I would hope not.

Mr. ROGERS of Texas. Do you think this legislation will be helpful to the parties in getting some kind of settlement before the expiration date?

Secretary WIRTZ. Yes, sir.

Mr. ROGERS of Texas. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman. I think you have issued a very fine statement, Mr. Secretary, and I only wish you had written the message which I think is a very fuzzy message. One of the reasons that Congress is blamed so much for inactivity, and I checked with the clerk yesterday, is that we have received 56 messages this session and in comparison we have had only 55 yea-and-nay votes in the House. I am sure that these continued 5,000-word messages do not add clarity to the problems that we are confronted with.

The question I want to ask you now is, Was this solution presented at any time during the negotiations to either side of the contest?

Secretary WIRTZ. It was not.

Mr. YOUNGER. You mean to say that knowing that this background for the solution was on the books, as you say, for 23 years as a part of our system and during 4 years of negotiations, it was never mentioned at all in the course of the negotiations?

Secretary WIRTZ. I am not suggesting, Mr. Younger, that the legislation as it stands covers this case because it does not. The legislation as it stands covers the coordination and consolidations. The legislation which is here proposed is necessary to extend that procedure to these other comparable situations.

Mr. YOUNGER. That is what I mean. In your statement you said it has been in the law for 23 years.

Secretary WIRTZ. I said the procedure for handling comparable situations has been.

Mr. YOUNGER. But all during the 4-year negotiations, on their difficulties, this particular solution depending on section 5 of the Commerce Act was never injected into the talks?

Secretary WIRTZ. That is right.

Mr. YOUNGER. Whose brainchild is this?

Secretary WIRTZ. It comes as a recommendation to the Congress from the President of the United States reflecting the firmest possible conviction about the proper solution to a most dangerous situation and a most important problem. I hope that is an answer to the question.

Mr. YOUNGER. That is not a direct answer. It came out of somebody's mind. I think we all know who presented it. I would like to have your word on it if you could.

Secretary WIRTZ. You will respect the——

Mr. YOUNGER. All right. In the 4 years this solution was never suggested, and had it appeared in the negotiations you may have had a solution. However, you say, and I quote, "That this will meet with a degree of finality." Yet later on you say you admit there is no finality in it. Then it only postpones the solution and gives time for a period of negotiations between the parties. How do you reconcile those two statements?

Secretary WIRTZ. I don't think it places any strain on the English language at all. I don't have anything mysterious in mind in saying what this does is provide an answer which will be operative for 2 years and which the parties will have to accept for a 2-year period unless they agree on something else in the meantime. As nearly as I can remove all polarization from the words that is what it does. I don't believe there is anything complicated about that.

Mr. YOUNGER. If I get your statement right, Mr. Secretary, neither party will have to agree because they can go to the courts and the courts could set the ICC order aside and there would be no solution for the period of the court trial?

Secretary WIRTZ. I would hope there was no misunderstanding here about this. I think it is true on the basis of a lot of thought that any law which Congress has to pass to meet this situation will consistently with precedents of which we are all very proud be subject to judicial review. There would be no other action.

Mr. YOUNGER. You can't say with finality that this will operate for 2 years?

Secretary WIRTZ. That we can.

Mr. YOUNGER. That it will operate for 2 years with finality?

Secretary WIRTZ. I think we understand. I accept that statement. I don't believe it is any different.

Mr. YOUNGER. One other question. This resolution proposes a new organization to be set up for job training, is that right?

Secretary WIRTZ. No, sir; there is a reference in the President's message to the possibility that those who lose their jobs on the railroads and would have to be retrained for some other work either elsewhere or on the railroad, and that is the particular reference here, might be brought into the Manpower Development and Training Act for training for another job.

Mr. YOUNGER. I thought it sets up an organization for that purpose?

Secretary WIRTZ. No; this is an established procedure.

The President also recommended or also announced his intention to set up a Commission on Automation but that is to study the problem. That is to study additional aspects of it. That is separate and apart from the matter to which you referred.

Mr. YOUNGER. We have three already set up, job training organizations. The fourth was in the area redevelopment which the Congress turned down.

Secretary WIRTZ. I am not sure which ones you have in mind.

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

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Secretary, I want to commend you on your forceful statement.

Secretary WIRTZ. Thank you.

Mr. FRIEDEL. There are a few questions I wish to ask. Am I correct in understanding that all the employees who have worked for 10 years or more will not be affected?

Secretary WIRTZ. The recommendation of both the Presidential Railroad Commission and the Emergency Board is as you have described it. Any employee with more than 10 years seniority shall retain his job subject only to attrition. The carriers have accepted that.

Mr. FRIEDEL. I understand that. I want to make sure it is not only the firemen. It is all employees of the railroads.

Secretary WIRTZ. No; we are talking here about the firemen issue and there is not a comparable recommendation, I think, in connection with any of the other issues. On the crew consist issue, and it is hard for me to distinguish between the various recommendations, I think there the attrition principle has been adopted in effect, if not in detail, by both parties without any limitation. So the answer is really yes, more broadly, on the other issues.

Mr. FRIEDEL. It is not limited just to the firemen?

Secretary WIRTZ. The specific 10 years which is related just to the firemen. With respect to the other issue which has been committed it could go beyond that. I don't want to commit either party, but there has been a pretty good acceptance of that attrition principle.

Mr. FRIEDEL. Do you have any figures as to how many employees might be laid off?

Secretary WIRTZ. On the fireman issue?

Mr. FRIEDEL. And the overall picture?

Secretary WIRTZ. Mr. Reynolds has that more specifically in mind.

Mr. REYNOLDS. There are a total of approximately 36,500 firemen in the midmonth count a few months ago when we asked for it. Theoretically every one of those firemen could ultimately be affected. The area of negotiation has been narrowed down to a formula which might contemplate a 2-year handling of this problem which conceivably could narrow the number of jobs which might be affected down to something considerably less than that and something in the neighborhood of possibly in a broad figure of 5,000 and possibly even less.

Mr. FRIEDEL. That would be by attrition.

Mr. REYNOLDS. That would be the total number of jobs by one form or another among firemen positions which might conceivably be blanked out.

There is a distinction here, Congressman, between the job and the man. There might be a job conceivably which would be concluded was not necessary nor the removal of the firemen from which would endanger safety or create an undue burden.

The individual on that job may possibly be one of your long service people. He, himself, as a human being would not be affected. He would have his job guaranteed to him for as long as any other employee of long service in the employ of the railroad.

So there is a distinction between the position and the man.

If you are talking of human beings among the firemen, the admonition of the Presidential Railroad Commission and the Emergency Board in general terms are that no man with 10 years of service shall

be touched and any man with less than 10 years of service would receive comparable employment in another position if it were necessary to remove him from his job.

Mr. FRIEDEL. I understand that. What about the brakemen? You have other employees of the railroad. How many of those would be affected?

Mr. REYNOLDS. The direct question you asked is how many people would be affected?

Mr. FRIEDEL. Yes.

Mr. REYNOLDS. The reason that it is difficult to answer is that there have been varying estimates of this. In the proceedings before the Presidential Railroad Commission the carriers at one time said that the reduction of crew consist which they sought could affect as many as 19,000 jobs.

Mr. ROBERTS (presiding). The gentleman's time has expired. Could the answer be supplied for the record?

(The following information was later submitted for the record:)

NUMBER OF EMPLOYEES WHO WOULD BE AFFECTED BY "BRAKEMEN'S RULE"

The "brakemen's rule" embodies the recommendations of the Presidential Railroad Commission on the carrier proposal to give management the unrestricted right, under any and all circumstances, to determine the size of the crew to be used—principally road brakemen and yard helpers—in road and yard operations.

As stated by Assistant Secretary of Labor Reynolds to the committee, in the proceedings before the Presidential Railroad Commission, the carriers' evidence suggests that under their proposal, road and yard crews could be reduced by some 19,000 employees, which is approximately 22 percent of all trainmen and yard helpers (exclusive of conductors and yard foremen) in all classes of service, or an average of one-half man per crew. The Commission's Report (p. 105) states that this is a maximum estimate, and that variations exist in managerial judgment concerning the minimum crew consist required for safe and efficient operations, even under similar operating conditions.

Under the recommendation of the Presidential Commission to leave the question of crew consist in the area of collective bargaining with unresolved issues to be submitted to binding arbitration, estimates of the number of employees who would be affected are even more uncertain. State regulations on crew consist would be a factor in such determinations. The Commission recommended, however, its proposal receive nationwide application.

The Report of Emergency Board No. 154 to the President generally follows the Commission's proposal. It recommends that crew consist problems be negotiated with disputes to be resolved by submission to a special referee procedure.

Mr. ROBERTS. Mr. Glenn?

Mr. GLENN. Mr. Secretary, as I understand your testimony, after the making of the interim rules by the ICC, it seems to me they would remain effective for 2 years unless an agreement is entered into by the carriers and the brotherhoods.

Secretary WIRTZ. Yes, sir.

Mr. GLENN. Is that not in effect, a compulsory settlement for a 2-year period?

Secretary WIRTZ. I shall continue to insist if compulsory adds something to what I have said when I say that it will be binding on the parties, then it is not compulsory. It is binding on the parties subject to the time limitation and the collective bargaining limitation.

If compulsory in your mind, Mr. Glenn, adds something beyond that I would disagree. If it doesn't, then there is no difference.

Mr. GLENN. On page 6 of the bill down at the bottom of the page, it mentions that the President can extend his recommendation to the Congress for an extension of a resolution after the end of the 2-year period.

Secretary WIRTZ. That is correct.

Mr. GLENN. So, in effect, we are then working under the interim rules and they could be extended by another resolution, could they not?

Secretary WIRTZ. There would be that possibility.

Mr. GLENN. If we have that possibility then it is possible that this could continue indefinitely as a way of life so that these interim rules could, in effect, be permanent rules, is that not so?

Secretary WIRTZ. As a matter of logic or as a matter of practical prospect. As a matter of logic; yes, sir.

Mr. GLENN. That is all. Thank you very much.

Mr. ROBERTS. The gentleman from Massachusetts.

Mr. MACDONALD. I have just one question, Mr. Secretary, and I want to compliment you on your obvious dedication and grasp of this very difficult problem.

We in the committee know how difficult the problem is since we have gotten wrapped up in details in trying to administer just the mere retirement fund of the railroads.

There is one question that I would like to ask I think mainly to put to rest a bugaboo that has been thrown about, that if this resolution was passed, it might tend to disrupt the ordinary bargaining positions between labor and management.

It is my direct question to you, sir, if in your very expert knowledge you think that this type of legislation would change the traditional pattern of collective bargaining in the United States?

In other words, would more and more collective bargaining arguments end up before the Congress?

Secretary WIRTZ. I appreciate the question, Congressman. It seems to me to go right to the heart of the most serious aspect of it from my standpoint. It requires the candor of this answer: That any legislation about any particular dispute is bound to have some weakening effect.

This recommendation, in my judgment, has infinitely less possibility of that effect than any other conceivable approach because it would be limited to the particular case which is already there.

It would handle it through a particular statutory procedure which is available for this kind of case only and could not be extended to the broad area of collective bargaining. I don't mean to blink the implication of Congress having to act one way or another on any dispute. But given the gravity of that situation, it is my considered judgment that this procedure far beyond any other is insulated against any possible application to the broad area of collective bargaining.

Mr. MACDONALD. Thank you very much, Mr. Chairman.

Mr. ROBERTS. The gentleman from Minnesota.

Mr. NELSEN. Mr. Secretary, our chairman, Mr. Harris, has suggested a 30-day delay to give the Congress adequate time, and I think he is justified in his request. But Mr. Loomis has indicated that such a delay would have damaging effect on the railroads.

I notice on page 3 when items in dispute are referred to the ICC that they are instructed to give priority to the problem, and they have

as some guidelines the hearings and the findings of the Presidential Commission on which to proceed. They are given 120 days to settle something and we, the Congress, have been asked to come up with an answer in 5 days.

With all the time that has been spent on this why should that be 120 days in view of the fact that 30 days is important? It seems to me that it is too long a time. Further than that you give them also the additional leeway of as much time thereafter as is practicable.

Could that 120 days not be cut down?

Secretary WIRTZ. This is a matter which you will probably be in a much better position to evaluate after you have heard from the ICC representatives. I think this is a very practicable figure. I am not sure whether it could be cut down or not.

I think the circumstances are such, especially in view of some misunderstanding which has developed, that we should think about whether the additional as soon thereafter as is practicable, is necessary or not. I am not sure it is.

I think it will probably take this period of time. I should like to say this in addition: In the discussions of this matter which have taken place informally, I think there is an assumption on both sides that at whatever point decisions—even interim decisions—are to be made about a matter of this gravity, they should not be made abruptly or quickly. They should be made with a careful consideration of their implications.

They are not easy issues. I should have answered more shortly. I think the 120 days is the right period.

Mr. NELSEN. One more question. If this dispute is tossed to the ICC, and it has been implied at the end of a 2-year period by attrition the group involved will be much less. That is on the assumption that the ICC adopts the rules of the Presidential Commission.

Suppose the ICC does not agree with the work rules that have been composed in these commissions, then at the end of a 2-year period, then what happens?

Secretary WIRTZ. The situation would require, again if we assume that the parties have fallen on their faces for another 2 to 4 years, which I am not willing to assume, then we face the necessity of doing something more about it here.

I just don't think there will be that failure of collective bargaining. But if there is——

Mr. NELSEN. I appreciate your optimism. I hope you are right.

That is all, Mr. Chairman.

Secretary WIRTZ. May I add in explanation of that? I repeat again what we are talking about is a procedure which would permit this industry doing what has been done in the steel industry so successfully and a number of other industries through the human relations approach.

I think if we get this problem out of the countdown at atmosphere in which every day is one day closer to a strike, and they start to think about the broader aspects of it, and the time that would here be available to them, I think they will settle it.

Mr. NELSEN. Mr. Chairman, I might ask which steel incident are you referring to? I think I know the answer.

Secretary WIRTZ. I am talking to the most recent ones.

Mr. ROBERTS. The gentleman from Pennsylvania.

Mr. RHODES. Mr. Secretary, first I want to join with members who have complimented you for a very fine, excellent and informative statement.

Secretary WIRTZ. Thank you.

Mr. RHODES. Your performance is added evidence to me that you have been a very good Secretary faced with an almost impossible task. No matter what you do there is going to be criticism. I would like to ask this question: If this legislation is adopted, how can we be assured that a railroad strike will be prevented?

Secretary WIRTZ. It would be prevented by application. By a strike I would like to use the boarder phrase of stoppage because it covers the action of either side. It would be prevented by the application of section 5 of the proposed resolution.

Mr. RHODES. If this resolution is approved ad a strike is averted, what will be the impact on railroad employees—the immediate impact—how many would be dismissed?

Secretary WIRTZ. That would depend on the ruling of the Commission about the individual cases before it. I cannot answer in precise numbers. I am not sure about the question about how many employees might be affected conceivably by rulings on the issues in dispute. There are 32,000 firemen's jobs today and about 36,000 or 37,000 firemen.

As Mr. Reynolds has indicated, there would be a question ultimately about the application of the new rules to all of them in a manner which would destroy the jobs.

However, if you talk about the job protective provisions of it, the elimination of any jobs would under the Commission's recommendation—the elimination of jobs would be dependent in part upon the rate of attrition among the group of employees.

The Presidential Board's recommendations would be permitting the elimination of those who have been hired since a reasonable hiring date. I am talking about firemen.

It would have termination action with respect to those who have been irregularly employed. It would permit immediate action—it would permit action of one kind or another—termination action, with respect to the low seniority group of firemen.

It would provide that a good many of them could be terminated only if they moved into other jobs on the railroads, and would prohibit any termination with respect to those with 10 years' seniority or more.

Your question could be refined to how many are in that first group. I would like this answer to be corrected for the record. But to give you some indication of it, evaluating the—I have to line up several recommendations—there would be the prospect of between 5,000 to 10,000, I think, who would be subject to immediate action of one sort or another.

But that, too, will be covered by protective conditions of one kind or another. That answer I would like to correct later and would ask that it not be relied on until there is an opportunity to check.

Mr. RHODES. Thank you, Mr. Secretary.

(Secretary Wirtz later submitted the following information for the record:)

ESTIMATE OF NUMBER OF FIREMEN JOBS WHICH WOULD BE SUBJECT TO IMMEDIATE ACTION UNDER EMERGENCY BOARD 154'S RECOMMENDATIONS

In response to a question from Congressman Rhodes on the number of railroad employees who would be dismissed if H.J. Res. 565 is approved, Secretary of Labor Wirtz narrowed the scope of the question to the number of firemen jobs which would be subject to immediate action of one sort or another if the Interstate Commerce Commission adopted the recommendations of Emergency Board 154.

The Board recommended that employment be terminated for those firemen who obtained jobs after some reasonable date when it might be assumed that they were on notice that their jobs might not be permanent. Those who have not been employed in recent times as firemen would also be subject to termination, and those employed on an irregular basis. The last group, however, would have severance pay and preferential hiring rights. Remaining employees with less than 10 years service would retain emploment unless and until offered another comparable job. Those with 10 years or more seniority would retain their jobs, unless they chose certain other alternatives.

In estimates developed by the staff of the Presidential Railroad Commission, it was calculated that there were approximately 13,000 with less than 10 years of service as firemen as of July 1962. It is not possible to determine how many of this group would fall into the categories subject to termiation—the irregularly employed, the not recently employed, or those employed after a reasonable notice date. Although it is not possible to establish the actual number, it appears that only a relatively small percentage of the workers currently looking to the railroads as a primary source of employment most of the time would actually be subject to job termination.

No date has been fixed as that upon which reasonable notice for new hires could be assumed. If it is a recent date, the number in the category would not be large. Likewise, there has been no recommendations for a date after which to establish recent employment.

The concept of irregular employment differs with various employers. We are informed that one large railroad employment agreement defines it in terms of being employed only 50 percent of the time in the last year, the last 6 months, or the last 3 months, whichever is pertinent to the particular employee. It is there fore not possible to know the number of employees who would fall into this category.

The CHAIRMAN (presiding). You mean all the rest that are actively employed now would continue in their jobs?

Secretary WIRTZ. That is correct.

The CHAIRMAN. I thought there were only 13,000. But less than 13,000 that would be involved and they would receive either retraining in other jobs or benefits of one kind or another?

Secretary WIRTZ. That is correct, every single one of them. Even down to the recently hired people under one of the recommendations, but not the other.

The CHAIRMAN. There are a good many members yet to be reached. Is there any member that cannot come back at 2 o'clock?

The committee will recess until 2 o'clock at which time you may return, Mr. Secretary.

(Whereupon, at 12:10 p.m. the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p.m., Hon. Oren Harris, chairman of the committee, presiding.)

The CHAIRMAN. The committee will be in order.

I would like to ask the indulgence of the members who have not yet been reached, with your permission to recognize Mr. Rogers of Florida because he has another commitment on another committee he has to go to.

Mr. ROGERS of Florida. Thank you, Mr. Chairman. I have just two or three questions.

First of all, Mr. Secretary, I too have certainly been impressed with your testimony and your thorough knowledge of the subject and your presentation of it for the committee.

STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR, ACCOMPANIED BY JAMES J. REYNOLDS, ASSISTANT SECRETARY AND FRANCIS A. O'NEILL, CHAIRMAN, NATIONAL MEDIATION BOARD—Resumed

Secretary WIRTZ. Thank you.

Mr. ROGERS of Florida. I wonder if a railroad we have in Florida, the Florida East Coast which has had a labor problem now for sometime, would be affected at all by this proposed legislative approach?

Secretary WIRTZ. I am going to ask Mr. O'Neill to respond to that if I may, because it involves a question of the coverage of the notices.

Mr. O'NEILL. The Florida East Coast did serve these notices that are referred to in this legislation.

If the bill included the carriers named in the executive orders which are referred to here, the Florida East Coast would be included, I would say.

Mr. ROGERS of Florida. So they would be covered under any resolution as proposed and would that have the effect now of a strike cessation and putting that controversy now in the jurisdiction of the ICC if this legislation were passed?

Mr. O'NEILL. The Florida East Coast, the strike there is called by the nonoperating employees, not the operating employees. Let me correct that.

There is a strike in effect by the nonoperating employees. There is also a strike by the operating employees because of the action of the carrier in putting these notices into effect. The notices referred to in this resolution.

Mr. ROGERS of Florida. So it would have some effect on certain employees but not on others, you are saying?

Mr. O'NEILL. That is correct. I think that the situation would return to status quo so far as the operating employees would be concerned. Then we would continue our efforts to settle the nonoperating problem.

(The following letter was later received from Secretary Wirtz:)

U.S. DEPARTMENT OF LABOR,
Washington, July 31, 1963.

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

DEAR MR. CHAIRMAN: During the course of my testimony before your committee on July 24, on House Joint Resolution 565, to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees, Mr. Rogers of Florida asked whether the resolution as proposed would cover the dispute with the Florida East Coast Railway Co.

As you may recall, Mr. Francis A. O'Neill, Chairman of the National Mediation Board, answered that he believed that since the Florida East Coast Railway Co. was a party to the notices of November 2, 1959, it would be covered by the proposed resolution, insofar as the operating employees are concerned. He noted, however, that there is also a strike in effect by the nonoperating employees but that these employees would not be covered by the resolution. The problem of the nonoperating employees is still under Railway Labor Act procedures.

Upon further consideration of this matter, we believe the statements of Mr. O'Neill, which appear on page 80 of the transcript, adequately dispose of the question.

The other information requested by your committee is being prepared and will be furnished as soon as possible.

Yours sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.

Mr. ROGERS of Florida. Thank you very much.

Now, Mr. Secretary, one more question.

Secretary WIRTZ. On that last my inclination is to check that we give you a definitive statement on the application of the Florida East Coast because it is covered by a combination of different provisions and we will supplement the record and with your permission, Mr. Chairman, to whatever extent seems helpful in that connection.

Mr. ROGERS of Florida. Thank you. I appreciate it. Now I understand that in the 2 years the ICC would have the right to settle the disagreements, allowing the parties to try to continue to get an agreement on these points of difference.

Secretary WIRTZ. Yes. Your question refers, I think, to the manning issues and to the standard procedures.

Mr. ROGERS of Florida. Yes.

Secretary WIRTZ. There would be not just the right but the obligation to issue interim orders.

Mr. ROGERS of Florida. At the end of a 2-year period, is a strike allowed?

Secretary WIRTZ. This would be 2 years after the order had become operative, and if there is no other action taken the answer would be "Yes."

Mr. ROGERS of Florida. So a strike could come about 2 years after the order had been operative?

Secretary WIRTZ. It could.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Secretary, I would like to say at the outset that I think your statement this morning is one of the finest I have ever heard before this committee, particularly since it was not from a prepared text.

It is obvious that you have been living with this subject, apparently all summer.

Secretary WIRTZ. Thank you.

Mr. DEVINE. In your statement I think you reiterated four or five times that in your opinion this proposal does not amount to compulsory arbitration.

Secretary WIRTZ. Yes, sir

Mr. DEVINE. I think there are a number of us that would honestly disagree with you in your concept of this. The fact is that many of

us, while waiting on the President's message earlied this week, read on the wire tickers that this was not compulsory arbitration about six times before we in the Congress got the message. Maybe somebody is trying to sell that. I am not sure.

After this is all said and done I think we have in mind the same objective. I think no one in the brotherhoods or labor, management, or your Department or the President want a strike. That is what we are trying to prevent.

You sincerely feel and believe that this legislation will do the job?

Secretary WIRTZ. Yes, sir; I do, Mr. Devine.

Mr. DEVINE. I would direct your attention, and you commented on this in your earlier remarks, section 5 of the bill as it appears on page 5, where you more or less incorporate by reference section 5, subsection 8, of the Interstate Commerce Act.

Secretary WIRTZ. Yes, sir.

Mr. DEVINE. I have not had a chance to study that particular act in conjunction with this because of the limited time, but I believe that in some way or another it relates to some 4-year provision.

Could you clarify that for me?

Secretary WIRTZ. The 4-year provision is a different point. The 4-year provision comes in under not section 5 and 5(8) but section 5(2)(f), which is referred to in the resolution on page 4, line 5.

Mr. DEVINE. 5(2)(f)?

Secretary WIRTZ. That is correct.

Mr. DEVINE. As I say, you have lived with this and you are fully knowledgeable on this overall subject.

Could this 4-year provision apply on top of the proposed 2-year limitation of this resolution?

Secretary WIRTZ. When you say on top of——

Mr. DEVINE. That would mean to extend it in effect to 6 years?

Secretary WIRTZ. No, it would not be applied in that way.

Mr. DEVINE. It would not?

Secretary WIRTZ. No, sir.

Mr. DEVINE. I believe you testified earlier in response——

Secretary WIRTZ. Let me be clear about the answer there. There are so many different possibilities. It is not intended and would not be intended by this legislation or it would not be expected that the Commission would in a particular case grant the protective conditions that are recommended by these boards and then add 4 years on top of those.

Mr. DEVINE. It is not expected or anticipated?

Secretary WIRTZ. That is correct.

Mr. BENNETT. But it could be, if the gentleman would yield.

Could they do it under this language?

Secretary WIRTZ. I would want to check through. My reaction to the question is flatly no. It would be that far outside of anticipation. But I want to check to be sure that is a firm answer.

Mr. DEVINE. I think all of us are going to have to study this very, very closely to come up with the proper answers. Assuming that could occur, and you know the volume of work before the Interstate Commerce Commission, and they have not been known particularly for expediting their procedures.

If this did occur, say the 4-year provision would apply on top of the 2 years in this resolution, coupled with the 4 years that has already been in negotiation we have, it looks like, a 10-year plan which ultimately can bring us back into the same situation as we are in now?

Secretary WIRTZ. No, they are two different matters. I did not make clear the answer to your first question.

There is a procedural period for the ruling by the Commission. That is the 2-year period. The 4-year reference has nothing to do with the procedure but only with the extent of the protection which is given an individual employee in terms of the time he has worked.

So there is no connection at all between those two periods.

With that clarification I should answer your other question just absolutely flatly there is no interplay or interrelation or intereffect or addition between those two periods.

Mr. DEVINE. This is in another line on the overall problem. I think some mention was made earlier of seniority provisions for firemen that had attained, I think, 10 years service?

Secretary WIRTZ. Yes, sir.

Mr. DEVINE. Has the statute in effect tolled during these negotiations? Say we are involved in this particular legislation and for a 2 to 3 or 5 years more and more firemen are gaining seniority rights as time goes on.

Secretary WIRTZ. Yes, sir.

Mr. DEVINE. If they stall long enough, if they do not hire any new ones, most of them would come under the seniority provisions.

Secretary WIRTZ. I don't believe so. I would have to answer with the reservation that this is still at the present point a matter for negotiation and bargaining between the parties.

I didn't mean to foreclose anybody's position on that.

Mr. DEVINE. I think my 5 minutes have expired.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Thank you, Mr. Chairman.

Mr. Secretary, I would like to join in the tribute to your very able testimony before the committee today.

Secretary WIRTZ. I wish I could have brought you a settlement instead of whatever articulateness is involved. Thank you.

Mr. JARMAN. I have at this time just one question to direct to you and ask for a comment from you for the record.

I have in mind particularly the provisions of section 2 on page 3. The first sentence reads:

> An application filed under section 1 shall be given priority over all other matters pending before the Commission and shall be acted upon within 120 days after it is filed or as soon thereafter as is practicable.

The concern I have is in terms of so many other important matters that are now pending before the ICC. An example would be the merger proposals that have been submitted that are highly controversial, some of them, but are of tremendous importance to those who are affected by the proposals.

Under this section 2, under the provision giving priority to other matters for a period of time perhaps not just of 120 days but of months to come, aren't we actually under this section 2 of the bill setting up

a 2-year period for the ICC in which there will be real danger the ICC may use this to push into the background decisions on some of these important but highly controversial questions?

Secretary WIRTZ. The Chairman of the Commission will, I am sure, be appearing before you and I would want to defer in any definitive answer to him on that point.

I would think probably it is true, Mr. Jarman, that it will be no harder to fit the case into the affairs of the Commission than it has been to fit into the affairs of the Labor Department.

I say that in all sympathy as far as the work is concerned. But after all, we face a situation in which both of these parties have been unable to resolve a dispute which has brought us to the crisis we now face. It is a crisis which involves the possibility of the Nation's economy shutting down.

It is a matter of regret, but I guess I would feel that it was entitled to that priority. I think I could add more constructively only that I don't believe that this matter will be an all-consuming matter for very long.

When the pieces start to fit into place, it will take a good deal of time to fit them into place but it is not an all-consuming 2-year job.

Mr. JARMAN. Mr. Secretary, did you not say yourself earlier that it has been an all-consuming matter for you for some time?

Secretary WIRTZ. Since June 4. I don't mean to dismiss the point. It is surely a disruptive factor as far as Government is concerned.

I don't mean to underestimate it at all, but I don't believe it would have the effect of stopping the operation of the Commission. But I would like to defer for a fuller answer to that to the Chairman of the Commission.

Mr. JARMAN. I will ask the Chairman of the ICC essentially the same question but I did want a statement for the record from you.

Thank you.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Thank you, Mr. Chairman. I, too, would like to join my colleagues to compliment you on the thought, time, and consideration you have given to the resolution of this problem. But it is a problem of wider implication than just the railroad industry.

We have had the same question before the Merchant Marine and Fisheries Committee with reference to shipping strikes which can under certain circumstances have the same adverse effect on our economy and our free enterprise system.

Once again there the problem has been concerned with workload. The packaging of shipments in bulk and the number of personnel that are required to handle them. It seems to me we have to get to the real core of automation and its impact on our free enterprise system in the bargaining process.

I wondered about the Lee Act and its approach to this problem. You did not mention that in your introductory remarks.

Secretary WIRTZ. I didn't and should have included the reference to that kind of possibility as a conceivable alternative to this kind of proposal. There have been before the Congress from time to time over the years proposals that this problem be met by the establishment of, in effect, work rules or the basis of work rules by the legislative process itself.

The Congress approached that answer in section 8(b)(6), I guess, of the Taft-Hartley Act. It had faced it more squarely in connection with the Hartley bill.

It did approach it in connection with the Taft-Hartley Act. My impression of the record is that every legislative attempt to meet this problem of reduced work force by specific provisions, commonly referred to as the featherbedding prohibitions has resulted in either legislative frustration as in the Lea Act, or in administrative frustration as in the Taft-Hartley Act.

I don't believe is it practicable for the Congress to legislate the specifics of rules of that kind.

Mr. KEITH. I think Congress did legislate in that area and the Supreme Court has held that reasonable men can conclude what is an unreasonable demand with reference to the manning problem.

I think the very presence of that legislation on the books has tended to eliminate it from the field of bargaining. They have leaned more to the solution of severance pay. They have sought relief by retraining and by unemployment compensation.

I know up in Massachusetts we had to go to the courts and to the legislature with a similar problem where a union insisted on two men in a moving picture projection booth because of the flammability of the film.

Years after the film was made nonflammable they still insisted upon the two men until a legislative and court solution was arrived at.

I think, with the possibility of strikes in other industries coming up that could adversely affect the health and safety of our country, we could get to a more fundamental approach and it would be better in the long run.

That is all.

Secretary WIRTZ. Would your question permit the comment that in addition to whatever problem might arise in connection with the number of jobs that are to be required, I think it is now clear that there would also have to be provisions for taking care of the individual employee interests which are affected by those jobs which was not attempted in the Lea or in the Hartley bills.

I am sorry not to have included that possibility as one of those which was considered and was in effect rejected in making this proposal.

Mr. KEITH. This part of your presentation was a new departure, providing by law for the recognition of those problems.

Secretary WIRTZ. No. Section 5(2)(f) has had those in it. The Interstate Commerce Act has had it since 1940.

Mr. KEITH. Could they not be incorporated in the Lea Act?

Secretary WIRTZ. They could in an approach of that kind.

Mr. KEITH. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. Thank you, Mr. Chairman.

Mr. Secretary, a moment ago you expressed a wish that you could have come here with a settlement instead of a request for legislation. Is it your considered judgment that every possible remedy at the executive level was exhausted before you turned to Congress for remedial action?

Secretary WIRTZ. Every attempt, it had been as of up to that time.

If your question includes the question of whether that possibility is still completely exhausted, I can only say to you that we will negotiate and mediate up to 9 o'clock Sunday night. We were at it again Monday morning before this came up. There were discussions yesterday. There will continue to be discussions every single day until this matter is settled one way or the other.

Mr. O'BRIEN. Again in your considered judgment from what you have observed of the negotiations so far, if Congress for one reason or another should refuse to pass this legislation or similar legislation, do you think that a strike would be inevitable?

Secretary WIRTZ. Everything I know would indicate that as of now subject to the requests that have been made by the chairman and by others if there is no legislation—I mean subject to the action on these requests—if nothing else happens it is my understanding that the rules would be put into effect as of midnight of the 29th and the strike would follow that.

Mr. O'BRIEN. I have read a statement that if that strike should be long and paralyzing, as many as 6 million jobs might be eliminated for nonspecified periods of time, is that right?

Secretary WIRTZ. Yes, it is. The statement is included in the President's message.

Mr. O'BRIEN. I have one final question. It has been recommended that firemen with over 10 years' seniority be retained with full job rights. I have heard it stated that a great many older men who have no experience in other fields who might have difficulty in being retrained and if retrained, rehired would be affected by this change. Would you say that a great majority of the older men in the category you have just mentioned would be protected under the 10-year seniority provision?

Secretary WIRTZ. Yes, I would. I think the question could relate only to those men who are older but who have less than 10-years seniority.

Mr. O'BRIEN. Is that a significant number?

Secretary WIRTZ. I would not know exactly what number it is. My strong feeling is that it is not. There would not be a serious problem of people with less than 10-year seniority who could not be fitted into something else with retraining.

Mr. O'BRIEN. One final question, and this is a matter of philosophy as much as anything else, there have been a great many strikes in which the public has been more or less inconvenienced, which have never come to this particular threshold. Is it your position that the public can stand just so much as the innocent bystander in a strike, and that a railroad strike would be in that category?

Secretary WIRTZ. Yes, it is.

Mr. O'BRIEN. Thank you, Mr. Chairman.

Secretary WIRTZ. Which would strengthen the feeling which the shortness of my answer would perhaps suggest.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Mr. Secretary, what role has the ICC played over the past 4 years during this controversy?

Secretary WIRTZ. I gather it would be better I defer to the chairman. The record that I have is not in detail with respect to the last 4 years.

There have been a number of cases, some of which have been the subject of litigation, some of which are currently the subject of litigation and may be the ones to which you refer. Over the long term that I have it in the cumulative form, there has been some 83 cases of record between 1940 and 1960, and there have been two or three times that many not of record. I will be glad to supply for the record the situation in the last 2 or 3 years.

Mr. SIBAL. I would appreciate that.

Secretary WIRTZ. I would be glad to.

(The information referred to follows:)

SECTION 5(2)(F), INTERSTATE COMMERCE ACT CASES REPORTED SUBSEQUENT TO NUMBER CITED BY SECRETARY WIRTZ

Secretary Wirtz stated that there had been some 83 cases of record involving labor matters under the Interstate Commerce Act between 1940 and 1960 and offered to supply the number since that time.

The attached list of cases includes those officially reported for fiscal 1961, 1962, and 1963. It also includes the 1959 *Seaboard Airline R. Co. Control* case, not included in the number cited by the Secretary.

The following are the report section 5 cases subsequent to fiscal 1960, and reported in the bound volumes of the ICC reports as of August 1, 1961:

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22-330—63——6

Finance Docket No.	Decided date	Title of case	Citation	Labor protest	Labor conditions	Reasons assigned for absence of conditions or for reservation of jurisdiction
22306	Feb. 28, 1963	Reading Co.—Purchase—Lehigh & S. R. System.	317 I.C.C. 633	Labor organization	Oklahoma	
21700	Dec. 18, 1962	Detroit T. & I. R. Co.—Control—Ann Arbor R. Co.	317 I.C.C. 619	do	New Orleans as modified by Southern Ry.	
21160	Dec. 17, 1962	Chesapeake & O. Ry. Co.—Control—Baltimore & O. R. Co.	317 I.C.C. 261	do	New Orleans as modified by Southern Ry. Co.—Control—Central of Georgia Ry. Co. 317 I.C.C. —.	
21400	Nov. 7, 1962	Southern Ry. Co.—Control—Central of Georgia Ry. Co.	317 I.C.C. 557	do	New Orleans as modified by Southern Ry.	
21532	Apr. 30, 1962	Chicago, M., St. P. & P. R. Co. Trackage Rights.	317 I.C.C. 14	do	New Orleans	
21369	Apr. 27, 1962	Chicago & N.W. Ry. Co. Trackage Rights	317 I.C.C. 350	do	Chicago, B. & Q. R. Co	
21498	Apr. 25, 1962	Seaboard Air Lines R. Co. Trackage Rights	312 I.C.C. 797	RLEA	New Orleans	
21979	Apr. 13, 1962	Kansas City Southern Industries, Inc.—Control—Chicago, M., St. P. & P. R. Co. Trackage Rights.	317 I.C.C. 1	None	None	Application dismissed.
21459	Apr. 4, 1962	Pennsylvania R. Co.—Control—Lehigh Valley R. Co.	317 I.C.C. 139	RLEA	New Orleans	
21261	Sept. 12, 1961	Southern Pacific Co. Merger	312 I.C.C. 598	Labor organizations	do	
20915	June 19, 1961	Chicago & Eastern Illinois R. Co. Merger	312 I.C.C. 564	RLEA	None	Application denied.
21257	May 16, 1961	Chicago, M., St. P. & P. R. Co. Control	312 I.C.C. 553	None	Oklahoma	
21206	Feb. 9, 1961	New York Central R. Co. (Delaware) Merger	312 I.C.C. 428	None	do	
21204	do	New York Central R. Co. (Delaware) Merger	312 I.C.C. 417	None	do	
21028	Jan. 13, 1961	Lehigh Valley R. Co. Trackage Rights	312 I.C.C. 389	Labor organizations	None	Do.
21243	Dec. 16, 1960	Edward Hines Lbr. Co. Merger	312 I.C.C. 364	No	Oklahoma	
12625	Dec. 15, 1960	Boston Term. Co. Reorganization	312 I.C.C. 373	No	do	
21108	Nov. 30, 1960	Duluth, S.S. & A. R. Co. Merger	312 I.C.C. 341	RLEA	Stipulated and Oklahoma	
21115	Oct. 13, 1960	Chicago & N.W. Ry. Co. Purchase, Minneapolis & St. L. Ry. Co.	312 I.C.C. 285	Labor organizations	Oklahoma	
20707	Sept. 13, 1960	Erie R. Co. Merger	312 I.C.C. 185	do	New Orleans	
20423	Mar. 17, 1959	Seaboard Air Line R. Co. Control	312 I.C.C. 803	RLEA	Stipulated conditions which included Washington job protection agreement May 21, 1936, modified, in part, by Oklahoma conditions.	Jurisdiction reserved.

Mr. SIBAL. You are familiar in general—I don't mean in detail—with the railroad loan guarantee laws which are administered by the ICC?

Secretary WIRTZ. Just in very general terms.

Mr. SIBAL. I am bothered by what I think is a very deep involvement in the financial affairs of the railroads by the ICC. As a matter of fact, they have been subject to some criticism by members of this committee for the way this particular law has been handled. I am very much concerned that they have such intimate policies and problems involved from their previous responsibilities that I am not at all sure they would be free of some attitudes which would affect their consideration of this because of their own responsibilities. Would you care to comment on that?

Secretary WIRTZ. Only to this extent and more would be presumptuous. I am sure that the President in making this recommendation would probably only from the assumption that there would be complete fairness and equity in the discharge of this responsibility by the Commission.

Mr. SIBAL. I am sure the Commission would want to perform its duties in that way. On the other hand, we are all very familiar with the very basic concept of our system of jurisprudence, and that is that a juror who has any interest at all or any attitude at all toward a case is automatically disqualified if this is disclosed in the examination of the jury panel. It is no reflection at all upon the juror's integrity or upon his approach to trying to be fair. I think we have this element very definitely here.

Secretary WIRTZ. Except as your question refers to the fact that I know there are pending cases in which the position of the Commission has been appealed from by one party or another to this. I would not think that would introduce the element to which you refer by way of disqualification.

Mr. SIBAL. I was thinking more of the loan guarantee provisions. I know in my own State the New Haven Railroad is operating today because of actions the ICC has taken in the past. In effect, guaranteeing loans to the New Haven which the New Haven had to have in order to continue operating. In this particular case some criticism has arisen. So they have had intimate relations with the financial affairs of management in this field. I am concerned as to whether or not this would have any effect even without them realizing it on their considerations of the issues.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Secretary, I want to join with my colleagues in commending you for a most excellent statement of the facts and the problems involved in this case. I might also add that I found the statement of the President to the Congress on Monday of equal clarity and information value. We are here where we are now because all of existing legal machinery has been exhausted; has it not?

Secretary WIRTZ. Yes, sir.

Mr. MOSS. And the alternative to further legislation is a strike?

Secretary WIRTZ. A stoppage; yes.

Mr. MOSS. Whether we go the route recommended here by you today or the alternatives discussed this morning in any instance additional legislation would be required.

Secretary WIRTZ. That is right.

Mr. Moss. Mr. Secretary, out in my State we have had, I believe since 1913, with amendments as recent as the past 2 years, a full crew law; what is the intended effect of an order issued in the event of enactment of this resolution by the ICC on those laws of some 17 States specifying requirements for railroad crews?

Secretary WIRTZ. This matter has been one of consideration in connection with the preparation of this proposal. The intention, Mr. Moss, would be that the State railroad full crew laws would not be affected. I am obviously not in a position to foreclose any question of interpretation which might arise but our investigation has gone to the extent of consideration of whatever case law might seem to bear most directly on that and wanting to observe the propriety of not foreclosing any question on that. I call attention to such statements as those of the *Missouri Railroad Company* v. *Norwood*, the Supreme Court case in 1930 in which the Court said, "In the absence of a clearly stated purpose so to do Congress will not be held to have intended to prevent the assertion of the police power of the States for the regulation of the number of men to be employed in such crews." It would be the intention reflected here that the issuance of an interim ruling, subject to termination in a time period or at the agreement of the parties, would not have the effect of affecting any State full crew law.

Mr. Moss. Thank you.

The CHAIRMAN. I don't want to overlook that because I want to talk about it a little later on, Mr. Secretary. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. Mr. Secretary, in section 2, line 12, the Commission may establish a special advisory panel to assist in the discharge of the functions conferred upon it by this joint resolution. Would you explain what you mean by that?

Secretary WIRTZ. Yes. The intention behind this was to suggest the review of the priority provisions made here and the urgency of expediting this matter and of bringing to the Commission's assistance the full record as it has been developed in these other proceedings. They might feel it would be helpful to have a special advisory panel to bring matters of that kind to their attention. I should say the matter came up in the Senate yesterday afternoon and there seemed to be the possibility of misunderstanding about it as suggesting the possibility of setting up some decision or even preliminary decisionmaking body and in connection with those questions we indicated that the elimination of that provisions would present no problem as far as we are concerned.

It is intended to be helpful but not to set up another body.

Mr. CUNNINGHAM. It is hard for me to accept this. I can visualize where you say that this legislation shall have priority over everything else and that the Commission might conceivably appoint a panel and whatever they decide the ICC might go ahead and approve.

Secretary WIRTZ. That is right. If there is any danger of this misunderstanding it would be better that it go out. It was not intended to have that effect.

Mr. CUNNINGHAM. Such a panel would be appointed by the ICC and it could be prejudiced and in favor of one side or the other. Of course, the panel need not have to be confirmed by the Senate or anybody else. I think that is a rather dangerous position personally.

Secretary WIRTZ. It was intended to anticipate the possibility of their wanting particular of help but if there is any possibility of misunderstanding it should go out, in our judgment.

Mr. CUNNINGHAM. And, sir, in section 5, no change in rules may be made except by agreement or procedures prescribed herein and any strike or lockout to accomplish this and so on shall be subject to the provisions of section 5(8)S, section 5(8)T injunctive provisions.

Secretary WIRTZ. It is; that is right.

Mr. CUNNINGHAM. If one party did put a rule into effect, then it would be subject to injunction by the courts?

Secretary WIRTZ. Yes. A question has been raised as to whether this says that plainly enough. That is the intention.

Mr. CUNNINGHAM. Mr. Secretary, I have read this bill over so many times that I feel I don't need to read it again, but it does seem to me that it possibly was rather hurriedly drawn. I know the Congress was in recess for several hours while this was being put together. Can you give us your interpretation of what you believe it to mean?

Many of the pieces of legislation with which I have been involved never seemed to have so many portions that seemed unclear. I am wondering now that 2 days have gone by if you have any suggestions to make or any clarification of this resolution that is before us. Do you feel that there is a need for any further clarification?

Secretary WIRTZ. No substantial nature at all. There was in these two or three what I would consider minor points of clarification. I would have no objection what so ever to that. But with respect to any of the substantial provisions we do not see at this point a reason for change.

Mr. CUNNINGHAM. You did mention on page 7, instead of reporting to the President it should be reported to the Congress?

Secretary WIRTZ. Surely there is a possible misunderstanding there.

Mr. CUNNINGHAM. You would feel it would be of no damage to remove that special advisory panel. I am not suggesting you ought to do that but you do feel it would do no damage to the resolution.

Secretary WIRTZ. None at all.

Mr. CUNNINGHAM. That you could see?

Secretary WIRTZ. That is right.

Mr. CUNNINGHAM. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Secretary, I assume there would be other administration witnesses who will appear here to testify in behalf of House Joint Resolution 565; will there not?

Secretary WIRTZ. I assume there will. That is our assumption subject to the committee's call.

Mr. DINGELL. I am sure you agree this is an extraordinary statute, and is probably the first time that the Congress has been asked to take this kind of action.

Secretary WIRTZ. I guess I would state it a little differently but in substance it is correct. Of course, in 1916 there was the specific dispute which resulted in the passage of the 8-hour law.

Mr. DINGELL. I am aware of this.

Secretary WIRTZ. There is the incorporation in 5(2) of the results of that Washington job protective agreement. In answer to your question, it is an extraordinary situation.

Mr. DINGELL. I assume that the administration, in addition to the excellent statement made by the President, when he sent this measure to the House is prepared to submit to this committee factual and statistical data with regard to the impact of a strike of any particular duration upon the economy, gross national product and employment?

Secretary WIRTZ. That information has been prepared and will be available at whatever point is desired.

Mr. DINGELL. For that reason I will forbear asking you that particular question. Mr. Secretary, I am particularly concerned with section 3 of the bill. I am most concerned with regard to the fact that there it purports to direct the ICC to consider the findings and recommendations of the Presidential Railroad Commission and Emergency Board 154; am I correct in that?

Secretary WIRTZ. That is right.

Mr. DINGELL. That would deal most specifically, I assume, with the measures which could be taken to alleviate the distress which would result from the elimination of jobs pursuant to other sections of the proposed statute, am I correct?

Secretary WIRTZ. It would cover both the matter of the reduction, if any, in jobs and the matter of employee protection.

Mr. DINGELL. I think, as you surmise, I am asking these questions to establish the legislative history; so as to make it abundantly plain to ICC or any administrative agency which would consider this that it is expected by the Congress and by yourself, speaking on behalf of the administration, that the findings and recommendations of the Presidential Railroad Commission and Emergency Board 154 be taken with regard to these specific points, with regard to maintenance of the tenure of senior employees and all of the other points which bear along the same general lines in the recommendations of these agencies; am I correct in this?

Secretary WIRTZ. You are correct, and in addition to that there is the specific reference to what has gone on in the negotiation.

Mr. DINGELL. Mr. Secretary, I want to join my colleagues in commending you for a very fine statement this morning. It is indeed a rare and pleasant experience for a Member of Congress to have any representative of any Government agency or trade association who can speak as clearly and forthrightly as you have.

I have noticed there has been a very visable sense of evasion, of reluctance to answer questions because of future imponderables and I want to express to you my very warm commendation for a very fine job.

Secretary WIRTZ. Thank you, Mr. Dingell.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Secretary, I, too, join my colleagues in complimenting you on your statement. I would like to get a little more clarification on section 6. Section 1 represent only work rules. Does section 6 deal with disputes on wages?

Secretary WIRTZ. It can be described best by this in terms of all other isues besides 5, Mr. Broyhill. You will appreciate the reason for that. It covers all of the things in these notices which occupy these numerous pages here except for 5, the firemen issue, the crew consist, interdivisional run, broad and yard, and self-propelled equipment.

Mr. BROYHILL. I think you have stated that this legislation covers only the present controversy. Would it be possible for new disputes between the two parties to arise and result in a shutdown despite this joint resolution or does section 6 prevent this?

Secretary WIRTZ. Section 6 does not prevent that. There is no setting aside of the procedures of the Railway Labor Act. There is only the provision that in the implementation of those procedures, really, as far as these two sets of proposals are concerned, they will come within this procedure.

Mr. BROYHILL. Then if a new dispute did arise, it would not be affected in any way by the legislation you are proposing?

Secretary WIRTZ. That is right.

Mr. BROYHILL. If the ICC gives an interim rule as contained under section 4, you indicated that the parties could go on bargaining; is that right?

Secretary WIRTZ. Yes; and beyond that at another point the resolution refers even to the duty that they have in this connection.

Mr. BROYHILL. Assume that the ICC gives this interim rule, would not then the party favored by this rule be reluctant to bargain so that you might say the doors of collective bargaining would then be closed?

Secretary WIRTZ. The rule would be for a 2-year period. The rule would cover only the manning issues that might be involved, unless there was a separate proceeding under the rest of it. I think the assumption that the Commission come out with a particular answer which might be completely satisfactory to one party or the other is much less likely than the factor the prospect of their coming out with a start toward what would be a fuller answer over the whole period of the future. If I seem to be evasive in that, I mean not to be, because I have in mind the kind of thing that came up in connection with our negotiations culminating in the recommendation of the Secretary of Labor of July 5 which was again a recommendation that this matter be worked out for a 2-year period with the parties then during that period taking advantage of that cumulative experience to work out their longer range answer to the future.

I would think that there is the possibility of that kind of thing. I should not have thought that would be stultifying if that were reached and I don't think the answer here would stultify it.

Mr. BROYHILL. Then, in effect, you are saying "No" to my question?

Secretary WIRTZ. I am. That is a better form. I don't think it would interfere with the collective bargaining.

Mr. BROYHILL. I want to get back to the question Mr. Springer and some of the others asked about the right of appeal. You said both parties have the right to court appeal?

Secretary WIRTZ. Yes.

Mr. BROYHILL. When does this right of appeal arise?

Secretary WIRTZ. Again I can be helpful only in connection with the generality of the thing, leaving the specifics to the better information of the Interstate Commerce Commission people. But the right of appeal would arise upon the issuance of the interim order.

Mr. BROYHILL. Can you give us your opinion as to why the parties to this dispute failed to reach agreement?

Secretary WIRTZ. I tried that yesterday, Mr. Broyhill, and ended up with the thought in mind—I think it is in Mark Twain's stories, in which he starts up the river from New Orleans on his first trip with Mr. Bixby and he reports on the life on the Mississippi. He said, "As we went above New Orleans, Mr. Bixby asked me: 'What is the first marking point above New Orleans?' and I was glad to be able to give him a quick, short, concise reply which was, 'I don't know.'" I don't mean to evade this question. It is an honest answer to your question.

Mr. BROYHILL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill.

Mr. HEMPHILL. Thank you, Mr. Chairman.

I want to join my colleagues in expressing appreciation for your testimony. Sir, I would like to get the procedure down. As I understand section 2 and section 7 of your bill and the application of section 5 of the Interstate Commerce Act, if we pass this legislation the first step to create any activity would be the filing with the Secretary of the Interstate Commerce Commission of an application in writing to put into effect one or more of the recommendations which are spelled out in the report of the Presidential Railroad Commission or some other, is that right?

Secretary WIRTZ. I think on most, but the latitude would be somewhat broader. They could file an application for approval of a rule which comes within the area covered by those original notices. I think in practical terms your statement is a fair assumption with respect to part of it. But obviously there could be application by either party for approval of a rule which would be different from that recommended by those bodies.

Mr. HEMPHILL. Yes. Upon receiving that——

Mr. SPRINGER. Would the gentleman yield upon that point?

Mr. HEMPHILL. I will be happy to. I hope it is short.

Mr. SPRINGER. The important thing, Mr. Secretary, is whether or not the Commission can install an order of its own not contained within the petition of either side. That is not clear.

Secretary WIRTZ. I would think it could not enter such a rule.

Mr. SPRINGER. Are you sure?

Secretary WIRTZ. I would be sure applying only the language here which would permit a modification of the rule.

Mr. SPRINGER. Someone yesterday who was an expert on our staff said he wondered about the question of germaneness, but he was not sure. He simply was not sure.

Secretary WIRTZ. I would be glad to inquire with him into the problem. We have not sensed such a problem if it is here.

Mr. SPRINGER. Thank you.

Mr. HEMPHILL. Sir, if I may proceed, as I understand it, the ICC under the section 2 provisions, if it is not amended, can either assign the matter to a hearing examiner or it can set up a special advisory panel to hear the matter; is that correct?

Secretary WIRTZ. I suggested if there is any possible misunderstanding that the suggestion about the special advisory panel refers to some other party ought to be attached that is not the intention.

With respect to hearing officer procedure, I assume that possibility is within the Commission's discretion.

Mr. HEMPHILL. You also provide in here that there should be included as part of the testimony the evidence already introduced before these various commissions and so on.

You make the provision on page 3 at line 11, "and shall not be required to receive evidence cumulative thereto." I am certain that you are not saying that any party will be denied a hearing.

It is contemplated that the ICC in its administrative capacity will give a hearing; is that right?

Secretary WIRTZ. Yes, sir. Let me answer tentatively, I assume that the nature of this case is such, and my understanding of the hearing requirements of the statute are that they are conditioned upon the degree of public concern and importance of the case. So I am making an assumption.

Mr. HEMPHILL. Then if the Commission makes a decision within 120 days or "as soon thereafter as is practical," which I will move to strike out of it because I think that leaves it too wide open, then as I understand it, the party which feels he is aggrieved may go to the U.S. courts either under the provisions of section 7 of your proposed legislation or under the provisions of section 5, subparagraph 8 of part 1 of the Interstate Commerce Act.

Secretary WIRTZ. I think in general that is right. I would want to be subject to check on it.

As I understand it, if either side wants to challenge, it goes directly to the three-judge district court.

Mr. HEMPHILL. In the court of appeals for the particular circuit.

Secretary WIRTZ. If there is a challenge, as I understand it, by either party of the Commission's ruling that challenge is made in a three-judge district court.

Mr. HEMPHILL. The reason I want to get that pretty clear, in section 1 of this proposed legislation you say it shall be had in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act, which section 5 includes some jurisdiction under section 8 on the district courts of the United States shall have jurisdiction upon complaint of the Commission alleging a violation.

So the Commission would have a right to go into the district court for the purpose of getting performance.

Secretary WIRTZ. That is correct. That would go to the court of appeals.

Mr. HEMPHILL. In case the aggrieved party wanted to appeal from the Commission, you are saying now that he does not go to district court. He goes to the U.S. circuit court of appeals for the particular circuit?

Secretary WIRTZ. If the party wants to protest.

Mr. HEMPHILL. Yes.

Secretary WIRTZ. No, I misunderstood you. It is my understanding that under section 2325 of the judicial code he would move for an interlocutory injunction in the three-judge district court.

Mr. HEMPHILL. Until that particular time as long as the matter is in litigation, the 2-year period does not begin to run until the final order of the final court of adjudication whether the circuit court of appeals if not appealed, or the U.S. court of appeals if you are not granted certiorari?

Secretary WIRTZ. The answer depends on what the court would do with respect to an application for a stay.

I assume what you suggest is about the way it would work out.

Mr. HEMPHILL. So that would actually toll the application of the statute in accordance with what Mr. Springer said earlier this morning possibly up to 5 years, would it not?

Secretary WIRTZ. I don't see how we would get up to 5 years even though Mr. Springer's listing indicated so. I suppose you could take an application at the end of the 2-year period under this resolution, if there were any point in that, and then you could add Mr. Springer's 3 years which is a different figure from what we have, you could theoretically get that.

Mr. HEMPHILL. Suppose the last court decision came down the day before the 2 years of jurisdiction expired?

Secretary WIRTZ. The order would continue in effect for 2 years.

Mr. HEMPHILL. Thank you very much.

Mr. SPRINGER. Would the gentleman yield for another question?

Mr. HEMPHILL. I have had my 5 minutes.

Mr. SPRINGER. Under your analysis, Mr. Secretary, it could be 7 years?

Secretary WIRTZ. Not under my analysis.

Mr. SPRINGER. Suppose in the 2 years it was entered in the last week. It goes in the three-man trial judge. It goes to the Supreme Court which takes 3 years.

If they entered the final order at the end of 3 years in the U.S. Supreme Court it would have 2 years to run. Isn't that 7?

Secretary WIRTZ. Those are your figures and not mine. I think they are completely unrealistic.

Mr. SPRINGER. What I am saying is that the law goes 2 years if they enter, if it goes into the Supreme Court that is 5 and then it stays in effect is 7. Are my figures right or wrong?

Secretary WIRTZ. I don't think your figures are right as a practical matter. If it is a question of simple addition I would confirm them. Beyond that I don't think any of those figures, except the 2-year figure for the effectiveness of the order, is a realistic figure.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. Since we are talking about numbers, Mr. Secretary, I would like to get into this numbers game for just a moment. Not just for the sake of argument but to try to understand the interrelationship of several provisions of this bill.

I call your attention first of all to section 2 and to the words "and shall be acted upon within 120 days after it is filed or as soon thereafter as is practicable."

The term "as soon thereafter as is practicable" is one for legalistic determination. I am sure you would agree on that.

Now if you turn to section 8 of the bill, it provides that this joint resolution shall expire 2 years from the date that it becomes effective.

Now to set up a time schedule, and I am only trying to test this to see how it would work, it would seem possible to me, that while I realize you have perhaps given some legislative intent to the 120 days, that it might be practicable for a variety of reasons that I can state hypothetically that the Interstate Commerce Commission would not enter its order until the 365th day of the second year.

If that should be a practical result and they did enter it at that particular time, then if I understand the plain meaning of the words contained in section 4, it provides that this order shall be for 2 years following the date the interim ruling went into effect.

So I think it is quite possible and not just conjectural that if the Interstate Commerce Commission did enter its order on the 365th day of the second year, 2 years would have elapsed from the time this resolution was passed.

Then if I understand correctly under the law as written, giving plain meaning to the words, that rule could operate prospectively for another 2 years.

Would that be a fair construction?

Secretary WIRTZ. That is correct.

Mr. BROTZMAN. So two plus two equals four. Then of course, you have the question of the time of appeals in there. So I think it is quite possible that rather than being a temporary type of situation we are dealing with, this could, I think with some degree of practicability, stretch on for a longer period than just the 2 years.

My question is this: You are an attorney, are you not?

Secretary WIRTZ. That is right.

Mr. BROTZMAN. The question I have is perhaps a little technical. Assume that the order was entered at the end of the 2-year period—this goes for 2 years—that the order was entered at the end of the 2-year period, I am wondering about the validity of the order entered after the basic enabling legislation had lapsed, so to speak.

Do you follow me?

Secretary WIRTZ. I will ask my lawyer.

I am advised that the order in that case would not be valid. It would be after the expiration of the period.

Mr. BROTZMAN. After this time lapsed, the order entered at that time would not be valid; is that correct?

Secretary WIRTZ. That is right.

Mr. BROTZMAN. So that actually any time the overlap of 2 years runs beyond this 2-year time period from the time of enactment, then that order is going to be invalid following that rationale?

Secretary WIRTZ. It would be invalid following that rationale. I don't mean to take your time but I would comment on this when you are through.

Mr. BROTZMAN. One other question and my time is running out very rapidly.

Referring to the unnumbered section 1 of this resolution, I find the language in here on lines 10 and 11, in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act.

From a quick perusal I understand that this section applies to mergers generally. I am wondering if you and your staff have checked for possible contradictions in the language we are in essence adopting by reference in this particular resolution?

Section 5, in other words, does not specifically apply to this problem except as we make it here?

Secretary WIRTZ. That is correct.

Mr. BROTZMAN. I wonder if there are other provisions in there in section 5 of the merger provision that might cause other contradictions to be a subject for future construction?

Secretary WIRTZ. We have checked. We do not think there are such conflicts.

Mr. BROTZMAN. Thank you, Mr. Chairman.

Secretary WIRTZ. Mr. Chairman, may I take just a moment lest there be any misunderstanding about my answers to Mr. Springer, on the matter of waiting for 2 years for one of these things to be filed.

These are orders these people have been wanting for a long time. They are rules they have been wanting for a long time. There is no reason to think they would wait until the end of the 2-year period.

The problem will be about the concentration at the beginning of the period. So this first 2 years is from anything I know about the case an impractical 2 years to adhere.

The period for review of 3 years in courts is a period which our investigation does not confirm. So I simply want to make it clear that without subtracting anything from the art meeting the prospect of waiting to the 365th day of the second year cuts across all the realities in the case.

Mr. BROTZMAN. May I say one thing?

You are talking about the application. I realize they will be filed.

Secretary WIRTZ. I misunderstood.

Mr. BROTZMAN. My understanding is that they shall be acted upon and I think this is a responsibility of the agency to which we are delegating this power. It is not the people who file the application. It says:

> It shall be acted upon within 120 days after it is filed or as soon thereafter as is practicable.

So I think that last clause applies to the time limit upon the Interstate Commerce Commission.

Secretary WIRTZ. May I add just one other thing?

It is basic in my thinking that the terminal point of all this is the parties' agreement. This is where this will end up.

Mr. ROSTENKOWSKI. Mr. Secretary, I would like to join my colleagues in congratulating you on a very informative statement. I would like your observations on what effect our national economy would suffer in a long- and short-term strike.

Let us suppose that this legislation was considered unfavorably and on a short-term basis that a strike went for a week and on a long-term basis that a strike went for a month, what effect would this have on our national economy?

Secretary WIRTZ. I would be glad to supply either by subsequent testimony or by statement a quite detailed impact study on this. Perhaps that is the safest way to do it. The situation would appear to be this in general terms. Our experience is limited because it happened just once before.

There was a 2-day railroad strike in 1946. That 2 days brought the country just to a point of chaos and confusion. Perhaps the appearance is going beyond the actual facts. But it brought a very large scale layoff within a very short period of time.

Within the 2-day period things had already been badly upset. The first thing began to get hit, the commuters, 40,000 a day, perhaps a matter of inconvenience. Defense supplies of one kind or another. Food supplies for New York City. Military shipments of one sort or another.

We worked this out so we can give you a complete picture on almost a day-by-day basis. It becomes sharply a cut in a very few days in terms of layoffs in other industries.

Within a 2-day strike in 1946, almost complete layoffs in the steel industry were announced and it was indicated there would be layoffs in the automobile industry. It moves toward a situation which is described in the President's message at the end of 30 days you would have between 6 million and 7 million people out of work, including railroad and nonrailroad workers.

You would have unemployment which would reach the 15-percent mark in that period. You would have the worst effect, on the GNP, of any experience that we have had.

I would be glad to supply the detailed cumulative effect of a strike, starting with the 1st day and going on to the 30th.

May I say in summary, after a study of that strike, frankly we reached the conclusion that there is no justification for the public being put to this cost in this situation.

Mr. SIBAL. If the gentleman will yield for one question, you referred to the effect on commuters. There seems to be some confusion what the brotherhoods indicated—whether they would strike the passenger trains.

For the record, what is your understanding?

Secretary WIRTZ. The brotherhoods have by formal letter communicated to the carriers their willingness to consider a procedure which would prevent interference with the commuting traffic, would prevent interference with the shipment of medical and I think some foodstuffs and military supplies, and have offered to work out an arrangement which would mean even the consideration of wages and of fares that would necessarily go to some charity or something of that sort.

To the best of my knowledge, there has been only by the carriers a public statement which deals with that suggestion quite in passing.

To the best of my knowledge, there has not been a formal reply by the carriers to that proposal.

Mr. SIBAL. Will you supply the committee with the material that you indicated you would? Can you give us both phases so we can consider that?

Secretary WIRTZ. Yes, we will.

Mr. SIBAL. Thank you.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Secretary, I would like to also commend you for a very fine statement here today. I will say that you are one of the finest witnesses I have ever seen before the committee.

Secretary WIRTZ. Thank you.

Mr. KORNEGAY. I would direct your attention to section 2, line 6, to that provision which has been referred to many times before, and that is, "or as soon thereafter as is practicable," and ask you, what objection, if any, would you have to the elimination of that phrase from the resolution?

Secretary WIRTZ. I could not in fairness answer that question definitively until after there had been an opportunity to talk with the Chairman of the Interstate Commerce Commission.

I can say this: that a careful evaluation of the degree to which the record is already completed in this case as the result of these other proceedings would prompt me to think that the matter could be han-

dled within a firm 120-day rule. But all that answer amounts to is that my knowledge of the case and of the administrative process in general would permit that and I would not presume to answer without reference to the ICC Chairman.

But from my own standpoint, I would think it was not essential. I want to reserve that answer, if I may.

Mr. KORNEGAY. I can appreciate the fact that you might feel it presumptuous to give us a definite answer on it.

Secretary WIRTZ. Surely.

Mr. KORNEGAY. I am thinking that you are one individual who has had tremendous experience in this field since June 4, as you pointed out, and would be in a positoin to give us a good estimation as to how long it would take the Commission to arrive at some good and definite answers on these problems.

Now let me ask you one other question, Mr. Secretary, and that is this: Based on the assumption that the Nation and the economy cannot endure a rail stoppage, and after a careful consideration of the various alternatives available to avoid such a stoppage, in your opinion, is this resolution and the law that it would enact the best and most palatable approach to the problem at hand?

Secretary WIRTZ. Yes, sir; it is.

Mr. KORNEGAY. Thank you very much. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Hull?

Mr. HULL. Thank you, Mr. Chairman.

Mr. Secretary, I too would like to compliment you on the excellence of your presentation here today. I believe you stated this morning that this bill would not provide for arbitrary or compulsory arbitration.

Secretary WIRTZ. Yes, sir.

Mr. HULL. If we were to pass this resolution, are we or are we not compelling the parties to this dispute, by statute, to accept the decisions of a third party, the ICC, as regards issues still in dispute and which they cannot voluntarily settle through collective bargaining?

Just exactly how does this differ from compulsory arbitration?

Secretary WIRTZ. The provisions of your statement would be that it is for a limited period and is subject to the parties' agreement.

My objection to using the other phrase is that I can see no use for the other phrase, the compulsory arbitration phrase, except to add something by way of implication to somebody else beyond the fact that it is intended that a binding decision subject to the 2-year and the collective bargaining rule be issued.

That is clear just as it has been. Clear under the previous administration of this section. So there is nothing timid about the point at all.

I simply have a concern about seeming to add another element by the use of that phrase to what is a clearly established statutory procedure and has never had that phrase applied to it before.

Mr. HULL. Thank you, sir. I would also like to follow up what Mr. Brotzman said in his questions concerning this section 8, which states that this joint resolution shall expire 2 years from the date it becomes effective. The question I would like to ask is: Can a procedure, put into effect under the provisions of a statute, remain in effect after the statute has expired?

Secretary WIRTZ. If there is specific authorization for it, it can. At least, that is the result of our investigation. You realize there is specific provision here that the enforcement sections of the act shall continue in effect.

Mr. HULL. Which will do that?

Secretary WIRTZ. That is correct.

Mr. HULL. Thank you very much, sir.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

I wish to add my oak leaf cluster to the medals that my colleagues have already pinned on you, Mr. Wirtz, even at the risk of compounding our embarrassment.

Secretary WIRTZ. Thank you.

Mr. VAN DEERLIN. I would like to check this with your thinking but as I see it, we have about three courses open to us.

One is to do nothing and risk the strike that nobody wants. The second is to pass Resolution 565, and if this is not done Congress might itself undertake to decide the work rules issue in the form of legislation.

Do you see any other alternatives open to the Congress?

Secretary WIRTZ. There would have been two others. One would have been seizure which you have eliminated and which we would. The other would have been compulsory arbitration by which I mean a procedure set up in an independent agency applicable to all labor disputes in the pattern in which it has been used in the laws of other States and in the discussion of the subject, those other two possibilities were considered and rejected. Otherwise, my answer to your question would be to confirm what you said.

Mr. VAN DEERLIN. It might be assumed that 5 or 6 days to undertake this task of legislating the work rules dispute would be an inadequate time.

Secretary WIRTZ. The President committed himself to make no further request for an extension of time through his own officers or any part of the administration, and I hope you would appreciate my not answering that question for that reason.

Mr. VAN DEERLIN. I was not suggesting that the administration would go back on its promise in that regard. But just as an offhand opinion, you would consider that 5½ or 6 days—this is assuming we work Saturday and Sunday, including Friday, and possibly Monday—would not be time enough to undertake so serious and comprehensive a piece of legislation.

Secretary WIRTZ. I can't reach that ultimate conclusion. I can certainly confirm the obvious difficulties. I don't mean to duck it but I am not in a position to pass judgment on the effectiveness or the expeditiousness of the legislative process.

Mr. VAN DEERLIN. Thank you, Mr. Wirtz.

Secretary WIRTZ. I am sorry.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Secretary, you have referred from time to time or deferred items from time to time to the Interstate Commerce Commission. Was the Commission or its staff consulted in the preparation of this proposal?

Secretary WIRTZ. Yes, sir; it was. The question was in several parts. There was no consultation to the best of my knowledge with the Commission as such.

The CHAIRMAN. You mean in arriving at the decision as to what to do?

Secretary WIRTZ. That is right.

The CHAIRMAN. But when the decision was arrived at, then was the Commission consulted in the formulation or the drafting of the bill?

Secretary WIRTZ. Not the Commission as such, Mr. Chairman, but representatives of the Commission. We did not meet with the 11-man Commission as such, but there were conversations with representatives of the Commission.

The CHAIRMAN. But you did, then, deal with the technical staff of the Commission in drafting the provisions?

Secretary WIRTZ. That is right.

The CHAIRMAN. I wanted that made clear because you indicated time after time that the Commission might appropriately undertake to answer certain questions. I wanted to be sure that the Commission is the appropriate one to answer the question that you apparently defer to. If the Commission or its staff had nothing to do with it then it seems to me it would be a different situation.

Secretary WIRTZ. There was rather extensive although hurried discussion with a number of the members of the staff of the Commission who worked together with our staff.

The CHAIRMAN. I just wanted to be sure that we didn't get the Commission and they say our people had nothing to do with it and we therefore do not know.

Secretary WIRTZ. I am sure they will not say that.

The CHAIRMAN. For that reason I wanted to make that clear. I was about to ask another question this morning on section 4 that Mr. Hull mentioned a moment ago. In section 4 the resolution provides that the interim rule approved by the Commission shall remain in effect for 2 years. In section 8 on page 6, it provides for the termination of the resolution in 2 years. The question is, if an interim rule is approved after the resolution is in effect for some time, then is it intended that the interim rule shall remain in effect for the full 2-year period notwithstanding the expiration of the resolution?

Secretary WIRTZ. Yes, sir; it is.

The CHAIRMAN. I thought that was your answer to what I thought was a similar question from Mr. Hull. In the document 142, the issues, as you outlined this morning, one through five, are proposed to be dealt with insofar as standards are concerned in section 3?

Secretary WIRTZ. Yes, sir.

The CHAIRMAN. Are those issues limited to manning requirements or practices in the industry?

Secretary WIRTZ. Manning practices and requirements and the employee protective provisions which go along with any changes in rules of that kind.

The CHAIRMAN. The additional three issues in document 142 were the advisory committee, which would be six, seven, and eight, are intended then to be dealt with in section 6?

Secretary WIRTZ. It would be perhaps more accurate to add in this enumeration No. 7 to the first five. It is a little hard to be sure

about the identification of that issue, as far as I am concerned, Mr. Chairman, because the bargaining agency has never gotten into the detail. In general the import of your question is that the answer should be yes.

The CHAIRMAN. Let us put it this way: The matters referred to here having to do with manning requirements or practices are dealt with in the first part of the legislation.

Secretary WIRTZ. That is right.

The CHAIRMAN. The other issues involved such as benefits on economic issues are dealt with in section 6?

Secretary WIRTZ. Yes, sir.

The CHAIRMAN. I have two questions on the first part. You propose standards in section 3, the Commission shall give you consideration, one, to the effect of the proposed rule, first on adequate and safe transportation services to the public, and second, upon the interest of the carriers and employees affected. That is singling out one standard that you expect the Commission to follow. Then disqualifying, by giving due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154. And two, the Commission shall give due consideration to the narrowing of the areas of agreement which has been accomplished by bargaining and mediation following the emergency board report. Now, as a condition of its approval of any interim rule, and following the reduction of existing manning requirements or practices, then that is a recognition that this problem of technology is facing the railroad industry and the country, and that it is contemplated there be a reduction in existing manning requirements?

Secretary WIRTZ. Yes, sir.

The CHAIRMAN. I want to make that clear. The Commission shall require a fair and equitable arrangement for the protection of the railroad employees protected as provided in section 5(2)(f), of the Interstate Commerce Act. Then you proceed to say, with due consideration to the recommendations, and so forth. I assume that it is intended here that insofar as practical the Commission should, No. 1, provide a fair and equitable arrangement to protect the interest of the employees, and follow the recommendation of the Board insofar as possible in doing so?

Secretary WIRTZ. That would be a fair reflection of the intentions, as I understand it.

The CHAIRMAN. Then suppose there is a conflict between the recommendations as contained in these various reports and 5(2)(f), which would prevail?

Secretary WIRTZ. If there were a conflict, I would think that 5(2)(f) would prevail because it is stated herein a somewhat different form.

The CHAIRMAN. Let us make it clear. Under 5(2)(f) job protection for employees is provided for 4 years or more. The act doesn't say more, but it says 4 years from the effective date. Under the *New Orleans* case that you referred to which went to the Supreme Court, remanded, the Court among other things stated—

we conclude therefore that the Commission while required to observe the provisions of the second sentence of 5(2)(f) as a minimum protection for employees personally affected is not confined to the 4-year protective period as a statutory maximum. The Commission has the power to require a fair and equitable ar-

rangement to protect the interests of the railroad employees beyond the 4 years from the effective date of the order approving the consolidation.

Now that means, that the Commission then on the remand went ahead and provided that more than 4 years would be permitted under the interpretation. In the recommendation of the Presidential Board—I don't have it now—there is some reference, I think on page 48 in which it is referred to 3 months or a certain period of time. It has to do with the fireman who is less than a 10-year man. It seems to me where they refer to 6 months and another period of time, there is a difference or conflict here to me, and if I am wrong I want to be corrected between that period of time and the 4 years as provided in the act and as construed by the Supreme Court. You would have in mind if that situation were to develop that the provisions of the act would prevail.

Secretary WIRTZ. Yes, sir, that is why the difference in form between the reference in line 4 on page 4 to the applicability of 5(2)(f) and the reference in lines 5 and 6 to the applicability of the recommendations, with the provisions that the Commission shall require a fair and equitable arrangement to protect the interests of the employees as provided in section 5(2)(f) of the Interstate Commerce Act, with due consideration to the recommendations. I would answer your question squarely that 5(2)(f) would control.

The CHAIRMAN. There would be no need to pursue the other recommendations in this report which would be applicable there because the answer would be the same.

Secretary WIRTZ. I should like to make it clear that my understanding is that 5(2)(f) applies as a base there. I have not meant by my answer to preclude the use by the Interstate Commerce Commission of recommendations which do go above that floor.

The CHAIRMAN. I understand that. Will any of these proposed changes or can they be made effective should this resolution be adopted without an application being filed and considered as passed upon by the Interstate Commerce Commission?

Secretary WIRTZ. Yes, sir, by agreement of the parties, but only by agreement of the parties.

The CHAIRMAN. In other words, if this resolution were to pass, and the parties did not have any agreement at all, and an application were not filed with the Commission, no work rules could be put in effect?

Secretary WIRTZ. None covered by this case.

The CHAIRMAN. Those included in the notice referred to of November 1959 and September 1960?

Secretary WIRTZ. That is right.

The CHAIRMAN. In other words, if nothing was done along the line of this resolution and no agreement was reached between the parties, there could be no changes put in effect.

Secretary WIRTZ. I am assuming the enactment of this resolution.

The CHAIRMAN. That is right.

Secretary WIRTZ. If I understand the question, there would be no changes in present terms and conditions that could be made.

The CHAIRMAN. And if the carriers attempted to put such changes in effect without complying the provisions, should it become law, then under regular judicial procedure, they could be prohibited?

Secretary WIRTZ. That is my understanding, under section 5 and 5(8)(f) of the Interstate Commerce Act.

The CHAIRMAN. Now, on page 5, if agreement—line 14—has not been reached within 60 days—that has to do with the other issues than manning requirements and practices—if agreement has not been reached within 60 days—that is by collective bargaining—with the assistance of the National Mediation Board, any party may submit its proposal to the Interstate Commerce Commission for disposition of such special procedures not confined to those set out specifically in the joint resolution, as the Commission deems appropriate. Doesn't that just take in everything that might exist later on where a dispute might arise?

Secretary WIRTZ. Your statement omitted reference to consultation with the parties which would be part of the key of my answer to your question. The answer to your question if it warrants and requires a single answer is yes. The answer to the question in its fuller form seems to me necessarily to take account of the fact that there has been virtually no collective bargaining about these issues. There has been virtually no attention paid to them in the advanced stages of the mediation of this case. It does seem to us advisable to leave the full arsenal of possibilities available with respect to these issues.

The CHAIRMAN. Even though they may not be included in the notice of November 1959 and September 1960?

Secretary WIRTZ. Only if they are included in those notices.

The CHAIRMAN. That is the point.

Secretary WIRTZ. I misunderstood you, Mr. Chairman. This covers only those matters which are covered by the original notice.

Mr. CHAIRMAN. Let us see if it does.

Secretary WIRTZ. It is so intended.

The CHAIRMAN. Not confined to those set out specifically in joint resolutions. That has to do with notices, doesn't it?

Secretary WIRTZ. No. It was intended to have to do with the procedures, and if there is any question about it that should be clarified. It is clear intention that this paragraph be limited only to matters covered by the original notice, and if there is confusion possible from that construction or from that form it should be corrected to make it clear that in line 18 the phrase, not confined to those set out specifically in this joint resolution modifies the word special procedures.

The CHAIRMAN. If the provisions in lines 10, 11, and 12 are tied in specifically with lines 18 and 19, it would seem to me that would be abundantly clear.

Secretary WIRTZ. It is so intended.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. Mr. Secretary, you have worked diligently and I know conscientiously night and day for weeks and weeks trying to resolve this serious problem using all of the powers at your command, and all of your well-trained staff, all of your experts, without success. I am not criticizing you because I am sure you have acted in completely good faith and have done your level best to try to get the parties together in a settlement. On the basis of that record, and on the basis of what happened previously to the time that you got into the case, when other experts in the labor field and labor negotiations were also dealing with this problem and doing their best to get it settled, I find it difficult to follow your belief or your optimism that throwing this in the lap of a commission that has no experience in the field of labor relations, and expressing the belief that somehow

or other they will get it settled in a short period of time. I mean I just can't follow or see the basis for your optimism.

Secretary WIRTZ. I was not sure whether you were inviting me to respond to it. I think the difference in viewpoint reflects primarily this, Mr. Bennett. I think that this case will proceed to its conclusion once the key element in it is resolved that they will proceed by collective bargaining. These other issues, important as they are, necessary as it is to take care of them with a provision like section 6, that are in the case, difficult as some of them will be on their merits, will all be picked up by the parties after they find either in their own bargaining or in an interim provision by the ICC, the answer to the one or two key issues.

I don't see this as a vast case involving a limitless amount of administrative endeavor. I think there is a case where there must be a pinpointing of that particular issue and an answer arrived or reached to it. I should like to add, however, and in a sense inconsistently with this, that some of the brotherhoods feel quite strongly that some of the other issues should be given independent treatment which they feel they have not been given.

Again I have a feeling that there is a legitimate basis for that question, and that again reaches the conclusion on one or two of those issues on this interim basis would start to unlock this case. There is a key to it. I think what we are looking for is the key to the drawer in which lie other keys. I think the number of keys in that drawer is relatively few.

Mr. BENNETT. The difficulty in following the logic of your argument lies in the fact that experts like yourself and your staff and the Railway Labor Board and others who have sought to find the key to this dispute have been unable to do so. Now your proposal is to hand this over to a group of amateurs in the field of labor relations, and you are hoping—in fact you are expressing the opinion—that these amateurs in this field will be able to find the key that the experts have not been able to find and they will be able to do it in a reasonably short period of time. I just can't share your optimism or see any logical basis for it.

Secretary WIRTZ. I should like to reconcile our views or at least identify the differences on this point. It would be in this, Mr. Bennett. I think there is a great tendency in the public mind to exaggerate the importance of the so-called experts or the third parties in this case. There is a suggestion in some people's minds of a mystique which some of us have and don't have. It is not that, the case will settle when the parties want enough to settle it and when the economic forces are brought to bear upon it in an appropriate way and when perhaps at this stage in this case the public voice with respect to this matter is exerted.

It is not a matter of the experts and the amateurs.

Mr. BENNETT. I don't think there will be any more incentive for them to want to settle this case because the Interstate Commerce Commission has it than would have been the case when you people had it. I am not criticizing it—the Interstate Commerce Commission as an agency. I think they are doing a good job in their field.

Secretary WIRTZ. This is their field. They have handled about 200 cases. I didn't mean to interrupt, sir.

Mr. BENNETT. I disagree with you that this is their field. If this is their field and has been their field there would not be any need for this kind of legislation. This is giving them some authority that they have never had before, as I see it.

Secretary WIRTZ. That is right.

Mr. BENNETT. It is getting them into an area in which they have had no experience and no knowledge and no expertise, certainly, and taking it out of the hands of the people, out of the Department of Labor which has been established for years and years and staffed by people who are well trained in this field, taken out of the hands of the Railway Labor Board and all of the established agencies that have had to do with labor disputes and labor negotiations and giving it to this agency and then coming here and telling Congress this is a real good solution for it. These fellows down there will get it settled real quick. I wish that would be true. If they can settle it satisfactorily to everyone concerned, I guess that is the way to do it. But I certainly can't share your optimism. I repeat again I can't see any basis for it.

Secretary WIRTZ. May I simply add that to whatever extent there is validity in the suggestion implied that there is a continuing utility of the mediation resources of the Mediation Board and the Department of Labor. They will continue to be brought to bear on this case right on through regardless of whatever happens.

Mr. BENNETT. But the decisionmaking is going to be in the hands of another agency. Is there anything further that the executive department can do to get this dispute settled wihout legislation?

Secretary WIRTZ. As I have just indicated we have stated repeatedly that we will, regardless of what happens, continue as we have every single day to see if there is any possibility of ever reaching agreement through those devices. Those meetings have gone on right straight through. There has not been a day missed and there won't be a day missed until the matter is settled.

Mr. BENNETT. I mean aside from the negotiations in the mediation, is there anything that your executive department can do to get this dispute settled without legislation?

Secretary WIRTZ. If there is I don't know what it is, Mr. Bennett.

Mr. BENNETT. Do you have any alternative proposals to submit to Congress or is this your final proposal to this problem?

Secretary WIRTZ. This is the best proposal that we have in mind. We think that it is greatly better than any of the alternatives. That does not mean to preclude consideration of any modifications which in the course of these hearings appear to the committee advantageous. But in general this we think is far and away the best answer.

Mr. BENNETT. Suppose the Congress rejects the proposal and the rules are put into effect and a strike ensues, what would be your recommendations then to the Congress?

Secretary WIRTZ. That this bill be passed.

Mr. BENNETT. If this bill is rejected, and a strike occurs, what would then be your legislative recommendations?

Secretary WIRTZ. I would not be prepared to say that. I think the difference between this proposal and any other is a very large difference. Any other would have the great disadvantage of affecting collective bargaining as a whole. This one does not. I don't know what the proposal would be at this point.

Mr. BENNETT. Have you thought of any other remedy besides this one proposal?

Secretary WIRTZ. We have thought of a number of others and I report to you in our judgment this is far the best one. I would not propose to suggest an alternative at this time.

Mr. BENNETT. The others you thought of were not worthy of congressional consideration?

Secretary WIRTZ. No, in our judgment they do not have those elements in which would prompt us to recommend them to you. I would be glad to enumerate again those which seem to me alternative possibilities, if that would be helpful in answer to your question. Those would include in my judgment the three I mentioned this morning. The one which Mr. Keith mentioned and very properly reminded me of this afternoon. Those which have received consideration in one form or another preparatory to the making of this recommendation to you, and without favorable reaction to any of them.

They would be: a proposal simply for mediation or something of that kind without any definitive answers being reached at all as one possibility; seizure in one form or another as another possibility; compulsory arbitration as another possibility; and the consideration of the kind of legislative enactment of specific terms and conditions as a fourth possibility. Having summarized them I would want to repeat again in our judgment all of those would be mistakes.

Mr. BENNETT. I am surprised to hear you say that with respect to compulsory arbitration because I feel very strongly what you have suggested here is tantamount to what would ordinarily be understood to be compulsory arbitration.

Secretary WIRTZ. May I illustrate the point I have on that?

Mr. MACDONALD. Before you do may I make a parliamentary inquiry, Mr. Chairman? What rules are we proceeding under now? This morning we proceeded under the 5-minute rule. By no means am I trying to limit anybody, especially my friend from Michigan, but I was wondering how long this questioning is going on by individual members?

The CHAIRMAN. Under the rules we have never set a limitation in this committee.

Mr. MACDONALD. We did this morning, Mr. Chairman, by unanimous consent requested by a Republican member from Illinois, Mr. Springer, we adopted the 5-minute rule. I was wondering if it was still operating?

Mr. BENNETT. That was the first round.

The CHAIRMAN. That followed the precedent which we heretofore established. If the committee wishes to establish a different rule the Chair would entertain a motion.

Mr. MACDONALD. Following the motion this morning I would make the same motion. The Secretary has been here a long time and many members here. It seems we are going back and forth over the same ground. I would like to follow the same precedent that was set by Mr. Springer this morning and say that we be limited in fairness to each other and to the witness to a 5-minute limitation.

Mr. SPRINGER. Mr. Chairman, may I say to my distinguished colleague from Massachusetts I will guarantee I will take no more than 5 minutes. However, in justice to the rest of the committee my 5-

minute motion was limited the first time around for a very good reason. I thought everyone was going to have a chance to ask questions today. I did limit the general speaking so that the committee would have a second round of questioning. I would not take more than 5 minutes.

The CHAIRMAN. I would say to the gentleman's parliamentary inquiry I believe it would not be in order at this time in view of the fact that during hearings we have not established the rules regarding the hearing. The Chair has raised the question at appropriate times on several occasions in the past and the committee has not taken any action on it. I think the Chair will do the best he can to proceed with the hearings in an effort to give everyone a fair opportunity to question this witness.

Mr. MACDONALD. Thank you, Mr. Chairman.

Mr. BENNETT. I would like to say, Mr. Chairman, that this is a highly important subject. I may have taken more time than has been justified under the circumstances and maybe the questions I have asked have not been as pertinent as some other members might believe them to be. But this——

The CHAIRMAN. The gentleman has been recognized. The Chair would suggest he proceed.

Mr. BENNETT. I will proceed. But I want to make this brief statement. I think this is a very perplexing subject. Certainly to some of us it is one that has been handed to us in the last day or so and it is entirely new not only to this committee but it is entirely new in congressional action.

All I am suggesting is that we go at it very carefully. I think any member of the committee ought to be permitted to ask certainly within reason any questions he has in mind. That is all I intend to do. Mr. Cunningham called attention to the advisory panel in section 2. That raises some doubt in my mind also would the creation of that panel be under one of the reorganization plans that we passed last year, giving you the right to appoint a panel? If I recall correctly, we passed a bill—I didn't vote for it but I think it passed—giving independent agencies the right to delegate their authority to panels of their employees or one or two members of the Commission as factfinders and then the Commission could either adopt or reject the findings that were made by the panel. I would like to know about the authority for this, and whether this is just set up here as an entirely new and subject to interpretation?

Secretary WIRTZ. It would not come within any such authority, Mr. Bennett. The anticipation was only that there be helpfulness to the Commission in view of the long history of this case to which you referred in making available to the Commission, through some such procedure as this, the most readily available forum of information about the whole case.

There was not any thought of delegation of any authority because there was no thought of any authority whatsoever in this panel. I would renew the suggestion that if it would avoid any misunderstanding on that its elimination would be a good thing.

Mr. BENNETT. You would not object to its being eliminated?

Secretary WIRTZ. Not at all.

Mr. BENNETT. I think it should be eliminated, Mr. Chairman. That is all at this time.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Secretary, I would like to get one thing clear in my mind. After the Interstate Commerce Commission gives its approval for an interim rule, am I correct in understanding that either side can file injunction proceedings?

Secretary WIRTZ. There is provision for appeal from rulings of the Interstate Commerce Commission. I think the answer to that is "Yes."

Mr. FRIEDEL. If there were injunction proceedings would that forestall any rule that they make?

Secretary WIRTZ. I am assuming a situation in which a party, from your question, or in which both parties would feel that their interests had been prejudiced or might feel that their interests had been prejudiced by the ruling of the Commission. In that case it would be my understanding that either party could in effect use the statutory procedures which are established in section 5(8) to require review. I am sure we are proceeding on the assumption that is a quite limited review, which it is my understanding it is. It does not involve a retrial of the whole issues. As I understand your question, Mr. Friedel, the answer is "Yes."

Mr. FRIEDEL. It would not go into effect until the courts decided the issue?

Secretary WIRTZ. It would depend on the action of the court whether they decided to grant a stay or not.

Mr. FRIEDEL. Thank you. I am very much interested to know what effect, in your opinion, it would have on the economy of the United States if there were any prolonged railroad strike. I understand you are going to submit that for the record. I think it would be very helpful for us to know that because that is one of the very important issues in this matter.

Secretary WIRTZ. We will be glad to be guided by the committee's request on that. I was not sure from the chairman's earlier statement whether he contemplated that by way of addition to the record on our part or by way of other witnesses. We will, of course, comply in either respect.

Mr. FRIEDEL. I don't care, but I would like to have the figures and know what effect a strike will have on the economy.

Secretary WIRTZ. I don't want to leave any misunderstanding. We cannot afford to take it and should not be required to do it from the standpoint of the public interest and it is a conclusion that is bolstered by the complete economic impact by the stoppage.

Mr. FRIEDEL. Thank you.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Secretary, I take it from the tenor of your testimony today that you are fairly optimistic that something will be done about this sometime soon?

Secretary WIRTZ. I would want to know more about what is implied by the question.

If the implication is that there is a basis for optimism, that this matter can be cleared up without this legislative action, my answer would be "No."

Mr. SPRINGER. But I understood you to say that you felt that you had some questions and if you could get some keys this thing could be locked up or unlocked. This is the tenor of your testimony.

Are you backing up on that now?

Secretary WIRTZ. No. By my quote you have reached a very different conclusion from any which was intended.

Mr. SPRINGER. I beg your pardon. I understood that. If that is true, why not limit this to 1 year?

Secretary WIRTZ. It is not true that this case lends itself to that simplicity of approach.

Mr. SPRINGER. Why the magic of 2 years?

Secretary WIRTZ. There is no magic in the particular period "1."

Mr. SPRINGER. How did you arrive at 2?

Secretary WIRTZ. It had emerged in the course of consideration. This is before the recommendation which was made July 5. It did emerge in the course of consideration of the matter with the parties as a reasonable period.

Mr. SPRINGER. Do you think this could be done in 1 year instead of 2?

Secretary WIRTZ. I would surely not preclude that possibility, if you are talking about a period which by agreement they could use as a basis for reaching a subsequent more permanent agreement.

I would not rule out 1 or 3. I think that 2 has no magic to it. It has a rather reasonable basis.

Mr. SPRINGER. Going to page 3, line 12:

the Commission may establish a special advisory panel to assist in the discharge of the functions conferred on it by this resolution.

Why was that sentence put in?

Secretary WIRTZ. The intention behind it was to permit the Commission to take advantage of the full history which has already been developed in this case and to facilitate its procedures by not requiring it to do all that over again or rather stating my answer more accurately, giving them the advantage of a group which could bring that previous experience to their attention.

It was not decided or it was not intended that this panel have any decisional authority at all. It was thought of as being more in the nature of a staff panel but I should like to repeat, Mr. Springer, that the possibility of any misunderstanding of that, Mr. Cunningham's suggestion and Mr. Bennett would prompt me to think that the best thing to do is to eliminate it.

Mr. SPRINGER. Do you have any objection to eliminating it?

Secretary WIRTZ. No, sir.

Mr. SPRINGER. I want to be sure on line 5 of the same page:

Within 120 days after it is filed or as soon thereafter as it is practicable.

Do you understand that language to be the maximum limit of 120 days in which to make a decision?

Secretary WIRTZ. No, sir.

Mr. SPRINGER. In other words, this can go on as long as the Commission down there decides that it shall go on?

Secretary WIRTZ. No, sir. I count the term "as soon thereafter as is practicable" a term which has a very realistic meaning.

Mr. SPRINGER. Who is going to enforce it?

Secretary WIRTZ. I don't think that the Commission's decision with respect to that matter would be reviewable in a court.

Mr. SPRINGER. I do not believe it would be either, Mr. Secretary, and that is what disturbs me. I am rather inclined at the present time if you are going to have this to have 120 days. I had an awful fight in this committee to put the same limitation in the food and drug law. But we finally did so they got going.

If you are going to get some expedition you will have to put some time limit on people who will make the decision. This thing has been reviewed three times. Once by the Supreme Court and two fact finding commissions.

Secretary WIRTZ. There have been two reviews by the Presidential Railroad Commission and the Emergency Board. The court did not go into the merits.

Mr. SPRINGER. That is right. It decided it was a negotiable matter. Don't you think there is some merit in setting a time limit?

Secretary WIRTZ. I indicated at an earlier time that from my knowledge of the case and the state of the record it would be my view that 120 days would not present any problem at all and that it could be made firm, but defer as I should like to defer in my answer to you to the judgment of the Chairman of the Commission who will be able to bring to that same question a fuller knowledge of his procedures.

Mr. SPRINGER. As far as you are concerned, do you have any objection to 120 days?

Secretary WIRTZ. None at all.

Mr. SPRINGER. On page 6, if you will, please, lines 24 and 25, beginning with the comma—

including his recommendation as to whether this joint resolution should be extended.

Have you been giving consideration to the fact that this resolution might be desirable to be extended at the end of the 2-year period?

Secretary WIRTZ. We recognize that possibility.

Mr. SPRINGER. I understood this legislation was going to be a one-shot deal.

Secretary WIRTZ. It is just a matter of the idea only. By one-shot if you mean as I have already said that it applies to this particular case and to no other. More specifically to the matters within the area of the notices of November 2, 1959, and September 7, 1960, the answer is "Yes."

This would not expand that. It would continue to apply only to this case.

Mr. SPRINGER. Mr. Secretary, unless I misunderstood your testimony here today, you fully believe this matter will be resolved in 2 years, do you not?

Secretary WIRTZ. By "fully believe," I don't like to sharpen the language, but the phrases—some of them apparently mean something different to me from what they do to you.

By "fully believe," you mean I am so completely confident that I would leave us unprotected against the possibility that I am wrong, I do not fully believe it? If by "fully believe" we mean as I intended it that is the fullest fair expression of my own best judgment about what will happen, I do fully believe it.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Macdonald?

Mr. ROGERS of Texas. Would you yield to me, Mr. Macdonald?

Mr. MACDONALD. I will.

Mr. ROGERS of Texas. Mr. Secretary, I do not want to criticize you, I want to commend you very highly on the manner in which you have addressed yourself to a very difficult problem.

I know there has been a great many problems associated with this difficulty. I wish it could have been settled, but if the time has come for this matter to be presented to the Congress I certainly am willing to assume my responsibility in regard to it and do whatever is necessary for the best interests of this Nation.

I do not think the problem can be solved by simply carping and criticizing people that have worked long and hard on it, whether it be the carriers, the unions, or the Government.

I sincerely hope it can be worked out and I think it will be.

I have one question, Mr. Secretary, with reference to 5(2)(f), of the Interstate Commerce Act. Is it intended, or is it your intention that 5(2)(f) of the Interstate Commerce Act would be applied literally insofar as this resolution is concerned?

Secretary WIRTZ. The only difficulty I have in answering that question is that my familiarity with 5(2)(f) which is limited, is sufficiently extensive to know that when you apply it literally you run into the question whether we talk Washington job protection, New Orleans, Northwestern; subject to that difficulty, the answer is "yes."

Mr. ROGERS of Texas. The reason I ask the question as I do is that I understand that 5(2)(f) as applied had relation to a particular type of situation which would be different from the situations that could arise under this case.

Secretary WIRTZ. Only to this extent, Mr. Rogers: It is true that 5(2)(f) applies not only to the consolidation type of case, and it is clearly the intention of this joint resolution proposal to extend it to the case where the same thing happens as the result of technological development. But there is that extension, unquestionably that extension.

Mr. ROGERS of Texas. Thank you very much.

Thank you, Mr. Macdonald.

Mr. MACDONALD. You are very welcome, Mr. Rogers.

Mr. Secretary, two things intrique me in your testimony this afternoon. One was the statement that much of this has not been ever a subject of real collective bargaining.

Am I unfair in saying you have said that?

Secretary WIRTZ. That is correct. I will be glad to expand a little on it because in that naked form the statement might be misleading.

Mr. MACDONALD. If it never had been bargained upon, would that not be open to the criticism that neither side had heard about what was going to be encompassed in this bill?

Secretary WIRTZ. No, sir. The whole matter was the subject of very extensive investigation before the Presidential Railroad Commission and a complete record—there was a hearing and that kind of thing—and the recommendations cover all those issued.

With respect to your point about notice, it could not in my judgment be fairly suggested that there is a disposition of any matter here which could take anyone unaware.

Mr. MACDONALD. They have not actually bargained?

Secretary WIRTZ. There are issues in the case about which there has been no bargaining.

Mr. MACDONALD. Do you think that even if this bill is passed that thereafter the question could be raised that there had not been collective bargaining about thoes points?

Secretary WIRTZ. No, I don't believe so at all.

Mr. MACDONALD. Not to sound philosophical but you were talking about the fact that this thing would be resolved, as I remember your testimony, when economic forces would be brought to bear. I did not quite understand that.

Secretary WIRTZ. I don't think it was a very precise statement. It was rather a statement of discounting in general the suggestion that the solution of these cases depends upon some finding of dispute disposition.

I don't think it is that. I think it is rather in general——

Mr. MACDONALD. Mr. Secretary, you are more learned than I am.

Secretary WIRTZ. Just some keeper of the keys, some private set of keys. I don't think it is that as far as negotiators and mediators are concerned. It was almost at the philosophical level I was suggesting that I think cases in general settle when for reasons other than just the presence of the right third person at the time forces are brought to bear, economic forces or forces of one kind or another, self-interest forces of one kind or another.

I didn't mean to be more broad. A more precise answer to Mr. Bennett's question and to yours would be that I don't think the answer to the case lies in finding the right honest broker.

Mr. MACDONALD. I do not know whether there is such a thing as a really honest broker, but I will leave that aside and address myself to Mr. Bennett and in saying to him that we should limit ourselves, because he was asking very pertinent questions.

But the one question I would clear up on this record, it is not true that the ICC are amateurs because it appears in the record that the ICC seem to be amateurs in this area.

It strikes me that this is very complicated, a very delicate field and that the ICC are well equipped to handle the various problems that have been presented to this industry.

Perhaps I was wrong but I thought you agreed with Mr. Bennett when he pointed out that they were amateurs. They collect salaries and all that.

Mr. BENNETT. I said they were amateurs in this field.

Mr. MACDONALD. Yes, but the running of the railroad—we know the old expression that this is a heck of a way to run a railroad—it seems to me that the ICC has done a good job in handling many railroads.

I would not like to have the record appear that they were amateurs in this field. It seems to me they are very well qualified to do the job that this resolution would give them to do.

I was just wondering what your opinion about that was.

Secretary WIRTZ. I appreciate you putting it in the form of a question which was previously put in the form of what I thought did not make a reply from me appropriate.

My answer would of course be that with respect to the matter of the whole of the railroad industry and with respect to specifically the matters which are covered in the first two sections especially of this resolu-

tion, there is the largest experience in the Interstate Commerce Commission that there is any place in the Government, and that I have every reason to assume that there is the fullest measure of competence and ability in that Commission.

I don't want to protest too much because it would not be becoming of me to do so. But I do feel that this is a matter with respect to which their knowledge can be brought to bear more effectively than any other office of the Government or any other independent agencies anyplace.

If the record was left in a form which left me seeming to subscribe to the distinction between amateurs and professionals, the record would also show that I was trying at that point to dismiss the idea that there are any professionals as far as this thing is concerned.

Mr. MACDONALD. Thank you very much.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Secretary, as I understand this bill, if passed, and the carriers made an application to the ICC in regard to their work rules, and the ICC after due deliberation said they believed the work rules should be enforced and issued such an order, under that condition those who were displaced would be somewhat or fully taken care of in various ways.

There are provisions here for that. Is that true?

Secretary WIRTZ. That is my understanding of the recommendations of all the Boards and it would be the intention of this proposal.

Mr. YOUNGER. If the ICC should say, "No, the work rules are not right," you cannot enforce them, and the so-called payments for work not performed continue, I find nothing in here to protect the carrier, which is provided for the employee.

Secretary WIRTZ. I am not sure I understand, Mr. Younger, because if I do the parallel would be between saying that there is no protection—no, I think I do understand.

The point would be, as I understand it, if the work rules were changed with the result that someone lost his job or would have his job changed, there would be protection given.

Mr. YOUNGER. To the worker.

Secretary WIRTZ. That is right. If the work rule was decided it should not be changed, I assume it would be decided it should not be changed on the basis there was no justification for changing it.

Mr. YOUNGER. That is right.

Secretary WIRTZ. There I would see no comparable situation to the other one.

Mr. YOUNGER. You would have the additional expense on the carriers which they are trying to releive themselves of. You have referred several times to the *Adamson* case which the Congress passed. In the Adamson Act this provision was put in—

> that an official body be created to observe during a reasonable time the operation of the legislation and that an explicit assurance be given that if the result of such observation established such an increased cost to the employers as justified and increased rate, the power would be given to the Interstate Commerce Commission to authorize it.

In the *Adamson* case they said, "All right, you have an 8-hour day, but if the 8-hour day becomes a burden to the carriers for

expense, then they will be entitled to some protection in the way of higher rates."

Was this idea considered at all in your various ramifications of this problem over the last few months?

Secretary WIRTZ. It was not, because the Adamson law, the 8-hour law, represented a congressional decision as to what the term and conditions should be.

It would seem to me in that case it was entirely appropriate to set up that kind of review provision. Here it is simply a matter of conferring upon the administrative agency the responsibility for making a decision with respect to what these work rules should be subject to the collective bargaining of the parties.

I don't believe there is a parallel situation.

Mr. YOUNGER. If I understand you, Mr. Secretary, you say that fairness can be had if you have a legislative process, but you have unfairness if you have an executive process.

Secretary WIRTZ. Then I missed your point, Mr. Younger. I though you were inquiring as to whether there had been consideration given to this matter of establishing a standby review group to see how it would work.

Mr. YOUNGER. Yes; to see whether or not the additional expense to the carriers would justify either higher rates or some protection for the carriers.

Secretary WIRTZ. It did seem to me a distinguishing characteristic that there was in that case a specific legislative enactment which the Congress then wanted to have reviewed.

I don't believe that there is anything in the approach you suggested that would give me any trouble if there is the desirability of establishing some kind of study or review procedure to see how this thing works.

So far as I know there would be no objection at all to that.

Mr. YOUNGER. If it is a disadvantage to the carriers they could be compensated in some way.

Secretary WIRTZ. I think it works both ways. Of course the whole provision for review of the railroad rate structure would seem to me to apply to the situation you raised there.

If there was an application on their part for a reduction of crews which was turned down and that seemed to them to put them in a position of economic disadvantage, I would assume that the Commission's established rate review procedures would permit an opportunity to review that problem.

Mr. YOUNGER. Thank you.

Now as to the treatment of the key question of opening up this bureau, if I understood you correctly, if you could get a correct treatment to one question, or a series of questions, that may unlock the rest of them. Is that your statement?

Secretary WIRTZ. I think if you can get the key to one, that will start the unlocking procedure. I don't mean to exaggerate it to say that once there is an agreement on one issue all the others will fall into place, because I know that is not true.

I suspect there is a substantial period of bargaining about the others. I think the key gives this. I don't think that once the key issue is resolved there will be the emergency elements about the others. I think they can be resolved in much more traditional forms.

Mr. YOUNGER. It seems to me, then, if we follow your argument to its ultimate conclusion what you are saying is that if you can get a compulsory treatment to one question, then that may unlock all the rest of them?

Secretary WIRTZ. I am not sure what the word "compulsory" adds. If you get a treatment of one of them.

Mr. YOUNGER. The only way you can get the treatment under this act is to have the ICC treat that question and decide it by order. Is that not right?

Secretary WIRTZ. In the terms of the proposal it would be, my firm answer would be affirming.

If you get an interim ruling with respect to the manning issues the rest may be expected to work out.

Mr. YOUNGER. So if you get a compulsory treatment to the proper key, then the rest of it would work out. I do not want to put words in your mouth.

Secretary WIRTZ. If compulsory means something more than that question would mean without compulsory I don't understand it.

Mr. YOUNGER. We will leave that. I have one other question.

Do you feel that if the carrier grants a 30-day extension of the enforcement of the work rules which our chairman has asked for, would that in your opinion tend more or less to aid in the adoption of the legislation?

Secretary WIRTZ. I have asked to be excused from answering that question for two reasons, both matters of form and propriety. One is that the President has indicated that there would be no request for an extension from the administration.

The other is that it would put me in the position, Mr. Younger, of seeming to pass upon the effectiveness of the legislative process and I don't believe I can add much to the committee's understanding on that point.

Mr. YOUNGER. Thank you, Mr. Secretary.

Mr. RHODES. Mr. Chairman, I yield to the gentleman from Massachusetts.

Mr. MACDONALD. We just had a quorum call.

The CHAIRMAN. The gentleman from Massachusetts.

Mr. MACDONALD. Mr. Secretary, I led up to a question and let the punchline go and I apologize to you. You said some things were not bargained for at all in good faith.

Is it your understanding or your aids, perhaps, that there was good faith bargaining within the meaning of the Taft-Hartley Act which I know your assistant, Mr. Reynolds knows about, or within the Railway Act during all of these negotiations?

Was there good faith bargaining?

Secretary WIRTZ. Yes.

My answer would be that there has been good faith bargaining.

Mr. YOUNGER. That is the official position?

Mr. O'NEILL. It depends, as the Secretary has indicated, on just what feature of the case you are referring to. The Secretary has indicated repeatedly you have some key issues and they have not been resolved with the result that there are many, many issues contained in these notices that have not been fully discussed or bargained over.

Mr. MACDONALD. Excluding the ones that the Secretary included and which I asked questions about, the ones that were discussed, in

your judgment, and you are an experienced negotiator, was there full and good faith bargaining on the matters which were discussed?

Mr. O'NEILL. I would say so; yes.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Glenn had a brief question.

Mr. GLENN. I have two questions.

Mr. MACDONALD. I yield back to Mr. Rhodes.

Mr. RHODES. Mr. Chairman, if there is to be continuation I would like to ask a question, too. I yield to Mr. Glenn.

The CHAIRMAN. We can't continue unless there are just one or two questions that will take only a minute or so.

Mr. RHODES. I yield to Mr. Glenn.

Mr. GLENN. Following the line of questioning by Mr. Springer as to your 2-year limitation, was the November 1964 election considered as a factor in the insertion of this 2-year limitation?

Secretary WIRTZ. No, sir.

Mr. GLENN. Then I have one more question.

In order to expedite a settlement would you have any objection of changing the expiration date from 2 years to 1 year?

Secretary WIRTZ. I think it would be a mistake.

Mr. GLENN. Thank you.

The CHAIRMAN. The committee will answer the vote call. We will come back because we want to conclude with you today. I am sorry for the interruption.

(A brief recess was taken.)

The CHAIRMAN. The committee will come to order.

Mr. Rhodes, do you have any questions?

Mr. RHODES. Mr. Secretary, I don't think anyone can envy you for the position that you are in. You will be criticized for any proposal you make to prevent a strike. You will be criticized if the strike occurs and you will be denounced for every suggestion you make to end it if it occurs.

Do you believe, Mr. Wirtz, that if the effort to prevent a strike fails, it will eventually lead to some form of compulsion?

Secretary WIRTZ. I guess there is a very real possibility.

Mr. RHODES. I want to again commend you, Mr. Wirtz. I don't believe that there is anyone who would be more successful than you are in your efforts to end this dispute. I have not yet heard a single proposal from this committee or anywhere else that offers a reasonable proposal to end this controversy and settle this dispute.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Secretary, I imagine that you are tired, after having been on this witness stand all day long, and I won't belabor this, although I am sure a number of questions will occur.

I would ask you, Mr. Secretary, in your consideration of the proposed solution to this very knotty problem, whether consideration was given to lifting a portion of the Taft-Hartley law over into the Railway Labor Act, such as the 80-day provision, and possibly declaring featherbedding as an unfair labor practice, and making that apply under the terms of the Railway Labor Act.

Secretary WIRTZ. When you say "was consideration given," those possibilities had already become a matter of public suggestion in con-

nection with the introduction of legislation which had appeared in one or the other of the Houses, and those proposals were subject to the consideration of the administration.

Mr. DEVINE. And rejected as not being as desirable as the proposed legislation?

Secretary WIRTZ. That is right.

Mr. DEVINE. I think I know the answers to this, but I think it should be made clear in the record. Say all of the gymnastics provided in this bill are gone through and the procedures are followed and the Interstate Commerce Commission makes recommendations, and let us say the brotherhoods in this instance would again not go along with the recommendations.

Would they then be free to strike?

Secretary WIRTZ. After the interim rule had been in effect for the 2-year period, then assuming there is no agreement, the situation would be that they would be at that point unless there was further action taken by the Congress.

Mr. DEVINE. Now, if they invoke the provisions of 5(a)(8) of the Interstate Commerce Act, could they?

Secretary WIRTZ. I was assuming that your question, or the situation referred to, would arise after the end of the 2-year effective period of the rule; is that correct?

Mr. DEVINE. No. During the 2 years provided by this bill. Let us say that the Interstate Commerce Commission did make a finding that the work rules were such that should be put into effect, and so ordered. Would the brotherhoods be in a position at that point to reject this?

Secretary WIRTZ. Not at that point they would not.

Mr. DEVINE. What would prevent it—the injunction proceedings?

Secretary WIRTZ. The terms of section 5(f) of the resolution.

Mr. DEVINE. That was my impression and I wanted that clear for the record.

Secretary WIRTZ. I am sorry; I misunderstood your question. They would not be permitted to do it.

Mr. DEVINE. Perhaps you are not in a position to answer this, Mr. Secretary, but did you reach any conclusions in your own mind—I wouldn't say personally, but as Secretary of Labor—as to why throughout this entire transaction, the last 3½ years, that the operating brotherhoods have rejected the recommendations of the various Presidential Commissions and court decisions on this, while on the other hand management seems to accept or yield to all of these decisions?

Have you reached any conclusion why that situation exists?

Secretary WIRTZ. I could state the answer in terms, but I don't think it would be very helpful. There is one specific that has gone through the rejections, the pattern of rejection by the brotherhoods, and that is their rejection of the reference of this issue to a settlement process other than collective bargaining.

Mr. DEVINE. By a third party?

Secretary WIRTZ. That is correct. Besides that, there would be only the legitimate generalization that there has been a feeling that the various recommendations—and I am not weighing the value of this reaction—but there is the feeling that the various recommenda-

tions did result in a larger degree of job reduction than was in their view consistent with any of the several factors which would include the safety factor, the burden on other employees, and there are factors beyond that, and I can only guess as to what they would be.

Mr. DEVINE. Well, it is surprising to me, and, of course, I am not in agreement with the position of management, particularly, when they put this ad in the paper, "What is wrong with compulsory arbitration?" I can think of a number of things that I feel are wrong with it, and I think maybe you can, too, although you don't claim this is compulsory arbitration in this bill.

But I was wondering possibly whether their willingness to accept the recommendations of both the Presidential Boards, the finding of the court, and even agree to have Justice Goldberg arbitrate this matter—do you think this may in some way relate to the financial condition of the railroads, that they couldn't stand a strike for a week or more?

Secretary WIRTZ. I have never at any stage of this case been called upon to go into the matter of the financial condition one way or another, and I think I would not be qualified to answer that question, but I would like to say that I have tried to answer frankly a good many of these questions, or I have tried to answer practically all of them, and there have been a good many of them, and I think probably anything I might say of a very worthwhile nature along this line would, if anything, handicap any continued efforts I might be making to try to work the matter out. I therefore would be reluctant about making as forthright answers on this as I have on some others.

Mr. DEVINE. I think you have made an effort to be forthright throughout, and I wouldn't suggest that you have done anything else. The thing I am trying to bring out is that it seems surprising to me that the so-called financial crisis that is facing the various railroads that are involved here has not been the subject of at least some discussion in the overall negotiations.

You know there have been a lot of ads in the papers by some people demanding that the Congress conduct an investigation to determine what they describe as the true financial status of railroads, and yet on the other hand, through perhaps unreliable or unofficial sources, I have heard that there are at least some railroads involved here that financially couldn't stand a strike, and they are operating on perhaps just a day-to-day basis. If they were tied up for as much as a week, they would probably have to march down to the courts and file receivership.

I was wondering whether any of this has entered into consideration?

Secretary WIRTZ. It has not at any point. Part of the reason for that, I think, lies in that body of law which indicates that at whatever point the claim is made of ability to pay, there is the opening up of a whole set of sequences and consequences, and I assume that is part of the reason it has not come in here.

Mr. DEVINE. Of course, the economic factors do enter into the overall proposal that the work rules be changed.

Secretary WIRTZ. I am sure it is very close to the thinking on both sides of the matter.

Mr. O'BRIEN. Mr. Secretary, I know you have had a long day, and I don't want to prolong it any more than possible, but I think there

is some confusion over the colloquy between yourself and Mr. Bennett, regarding the reason for your optimism regarding a settlement if this resolution should go through.

Isn't it a fact that the so-called experts—and he used the word—did not have the power in dealing with this problem that the so-called amateurs, the ICC, would have if this resolution becomes law?

Secretary WIRTZ. Yes, but could I divorce myself, as Mr. Macdonald was so helpful in divorcing myself in the colloquy between the experts and the amateurs. The point is surely well taken that there is an authority involved in the process which is contemplated here, which has not been existing in any earlier stages.

Mr. O'BRIEN. That to a great degree accounts for your optimism in this matter: is that right?

Secretary WIRTZ. I think that the exertion of that authority, if it can't be settled in the meantime, is necessary to the opening up of some of the key issues; yes.

Mr. O'BRIEN. I think if we ever had a bill before us which should not become involved in politics, it is this particular resolution, and I certainly would not be the one to inject politics into this discussion, but you were asked a question if you proposed the 2 years because you wanted to get this out of the next presidential election.

Now, my recollection was that you categorically denied it. Wouldn't you think it would be equally unfair if I or anyone else were to suggest that anyone proposing a 1-year provision would be doing it in order to create a crisis during a presidential election?

You don't have to answer that, Mr. Wirtz.

Secretary WIRTZ. I appreciate this opportunity to just add this: The shortness of my previous answer was the best way I know of to reflect my great regret that the question was asked. I would like to add this: that 2 years has a very specific history. It came from the recommendation of July 5, when after consideration of the matter with representatives of both sides, it seemed to me that that was the period during which a rule could be worked out at that point by agreement, with the parties taking advantage of their experience during that time to work out the rest of it.

It was a period which came entirely from the history of collective bargaining and came into this case in connection with that recommendation.

Mr. O'BRIEN. Thank you, Mr. Secretary. Thank you for your testimony.

Mr. NELSEN. I have already been given my 5 minutes, Mr. Chairman.

The CHAIRMAN. This is the second round.

Mr. NELSEN. Thank you Mr. Chairman.

At this point I would say to the Secretary that I think he has been very thorough and been very forthright in his answers to our many questions.

I might point out to my friend from New York that I was one of those who asked a question this morning about the 2-year period, and also about the 120 days. I had the feeling that 120 days was a little long to wait for the Commission to effect a ruling or come up with a decision that would apply for the 2-year period.

Mr. O'BRIEN. Would the gentleman yield?

The gentleman was not involved in this at all.

Mr. NELSEN. I understand, but I asked the same question about the 2-year period and you were very kind to me, thank you, and Mr. Secretary, thanks very much.

I have no further questions.

Mr. Moss. Mr. Chairman, I believe that with the cooperation of my colleagues, all of the questions I had have been answered, and I would not impose further upon the Secretary this afternoon.

Secretary WIRTZ. It is no imposition. I am grateful for the opportunity to try to make it as clear as possible, Mr. Chairman and members of the committee, the importance, as we see it, of this matter.

Mr. KEITH. I have this question which I suspect Mr. Moss will join in. On page 5 of the bill, lines 18 and 19, the Commission is authorized to establish special procedures not confined to those set out specifically in this joint resolution for the settlement of certain issues.

Now, it would appear that the Commission could require compulsory arbitration under this language.

Secretary WIRTZ. As a logical possibility, there is orientation upon the suggestions here. As a practical possibility, that would seem to me remote and past the point of practical possibility for this reason, Mr. Keith: There parties both have felt traditionally the disadvantages of that type of approach. One group of them feels at this point that with respect to the manning issues, something of that sort, as indicated in the editorial to which there has been reference, is necessary.

I am sure that it would be the view of both parties with respect to the type of issues which are covered by section 6, that that would be disadvantageous and there would be other much better ways of settling it and it was that kind of procedure which is contemplated in section 6.

It was that kind of an approach to the working out of the procedure.

Mr. KEITH. You used the word "procedures" and what special procedures do you have in mind?

Secretary WIRTZ. The most obvious one would be—or first, this contemplates a period of 60 days of negotiation between the parties. The most obvious possibility would be with respect to recommendations of one kind or another, or of strengthening mediation of that kind. There would be all of the possibilities with respect to these cases which have been used in the whole experience of collective bargaining and have not yet been applied to these issues.

I say the most obvious ones are the bargaining itself, the mediation, recommendations of one kind or another, and it includes the possibility that if none of those work, because the stakes would still be as high there as they are here, you would have to use the same kind of procedure. But it also assumes as a practical matter that that is most unlikely.

Mr. HEMPHILL. I have one question.

Are you certain, Mr. Secretary, that this legislation has defined the authority of the Interstate Commerce Commission and confined the authority to those issues proposed by the carriers, on November 2, 1959, or by the labor organizations in notices of September 7, 1960?

Secretary WIRTZ. Yes. The answer is "Yes," subject to the clarification that it says "changes in work rules, which changes come within the area of those proposed by the parties," and what I understand to

be the spirit of your question, any new and different issues would not be covered by this procedure at all.

Mr. HEMPHILL. No new and different issues?

Secretary WIRTZ. That is correct.

Mr. HEMPHILL. Does that include safety?

Secretary WIRTZ. Safety as it is part of the issue in the manning items in this case would be covered here.

Mr. HEMPHILL. Thank you very much.

Mr. FRIEDEL. Mr. Secretary, you spoke of an agreement between labor and management. Could they consider any new proposals?

Secretary WIRTZ. There would always be that possibility, and they could.

Mr. SIBAL. Mr. Secretary, you may have gone into this, and if you have, I apologize both because of the time of day and the long period you have given us, but we were out of the room, many of us, at different times, and I would like to touch on this point:

Do I understand that it is your position that this bill would not supersede the States full-crew laws?

Secretary WIRTZ. Yes, sir.

Mr. SIBAL. And has a thorough job of legal research been done on this?

Secretary WIRTZ. I indicated in my answer to a similar question earlier that the answer to the question of whether there is thorough research, the answer is "No."

Mr. SIBAL. So it is possible that there may be aspects of this which we had better look into?

Secretary WIRTZ. I would not be entitled to foreclose the judgment of the committee on that, but that is our clear view of the intention here.

The CHAIRMAN. I asked about that myself, Mr. Secretary. Is there anything in the Interstate Commerce Act which gives recognition to full-crew laws of the various States?

Secretary WIRTZ. I would want to answer subject to check, but I think not.

The CHAIRMAN. It is my impression that there is not, but the courts have upheld full-crew laws in the various States.

Secretary WIRTZ. That is correct.

The CHAIRMAN. That being true, I wish that you, if your counsel is with you, would point out to me anywhere in this resolution in which this would not supersede the full-crew laws or any other matters involved with work rules as contained in these notices.

Secretary WIRTZ. I think to the best of our knowledge, there would not be anything specifically that had that result.

The CHAIRMAN. I agree with Mr. Sibal, then, that research would be necessary, because it would seem to me the logical conclusion is that this gives the Interstate Commerce Commission authority to supersede these laws.

Secretary WIRTZ. I would respect your views, sir, completely on it.

The CHAIRMAN. I would respect yours, too, but I would like for us all to look into it.

Secretary WIRTZ. I think we should supply for the record the fullest possible exploration of that point.

(The following information was submitted for the record:)

EFFECT OF AN ORDER ISSUED BY THE ICC UNDER SENATE JOINT RESOLUTION 102 (RE RAILROAD WORK RULES DISPUTE) ON STATE "FULL-CREW" LAWS

THE PROBLEM

Section 1 of the proposed joint resolution provides that work-rules changes *"involving the manning of train or engine crews and the protection of the interests of employees affected thereby"* shall become effective upon application to and approval or modification by the ICC *"in accordance with the procedures [and provisions]* of section 5"[1] of the Interstate Commerce Act.

Section 5(11) of the Interstate Commerce Commission Act provides that—

"The authority conferred by this section shall be exclusive and plenary . . . and any carriers or other corporations, and their officers and employees and any other persons, participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal, *insofar as may be necessary to enable them to carry into effetc the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission. . . .* [*Italic added.*]

The question presented is whether an order issued by the ICC determining the question of "crew consists," pursuant to section 1 of the joint resolution would, under the Federal "premption" doctrine, require the invalidation of State "full-crew" laws[2] which conflict with the ICC order, particularly in light of section 5(11) of the Interstate Commerce Act.

THE CONCLUSION

Section 5(11) of the Interstate Commerce Act and pertinent court decisions, support the conclusion that an ICC determination under section 1 would not automatically invalidate State full crew laws, but that instead such invalidation would take place only to the extent that the ICC order so required. Section 5(11) would thus appear to authorize the ICC to approve an interim work rule subject to the condition that it would not be applicable in any State where the law required otherwise. This conclusion appears valid whether or not a joint resolution is considered to adopt section 5 of the Interstate Commerce Act for procedural purposes only.

ANALYSIS

Section 1 of the joint resolution authorizes certain work rules changes which shall become effective on approval or modification by the ICC "in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act."

There are at least two arguments which can be advanced for the proposition that State "full-crew" laws would not be automatically preempted.[3]

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[1] As introduced, this provision of the joint resolution also included the words "and provisions." For purposes of this memorandum, it will be assumed that section 5 is adopted for procedural purposes only. However, even if it were not, and the term "and provisions" remained in the resolution, the memorandum's conclusion, it is believed, would still be valid. House Joint Resolution 565 is identical with Senate Joint Resolution 102: "To provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees."

[2] State "full-crew" laws impose minimum crew requirements on trains operating within the State. Typically, they require an engineer, fireman, conductor and brakeman on each train.

[3] The Federal Constitution confers upon the Federal Government the exclusive power to regulate interstate and foreign commerce (art. 1, sec. 8, clause 3). The Supreme Court has, in a long line of decisions, held, however, that until Congress legislates on a subject relating to interstate commerce, the States have the power to establish such reasonable regulations as are appropriate for the health, lives, and safety of their citizens. The fact that interstate commerce is materially affected by the State's action does not in itself render the action invalid. So long as the State's regulation does not unduly obstruct or burden the flow of interstate commerce, its action in an area not regulated by Federal law is considered proper.

The enactment of State "full-crews" laws has been held to come within this category of lawful State activity. In a series of cases between 1911 and 1930, the U.S. Supreme Court has upheld the constitutionality of the State "full-crew" laws, ruling that they are not a deprivation of property without due process of law or an undue burden on interstate commerce. (*St. Louis, Iron Mountain & Southern Ry. Co.* v. *Arkansas*, 240 U.S. 518 (1916); *Chicago, Rock Island & Pacific Ry. Co.* v. *Arkansas*, 219 U.S. 453 (1911); and *Missouri Pacific R.R. Co.* v. *Norwood*, 283 U.S. 249 (1930)).

The first is that in incorporating section 5 of Interstate Commerce Act reference, the joint resolution merely adopts the procedural provisions of the section and not the substantive provisions.

This view is supported by the fact that the Congress found it necessary, in section 3 of the joint resolution to provide that the "Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provided in section 5(2)(f)" of the Interstate Commerce Act.

If the substantive authority, as well as the procedural requirements of the Interstate Commerce Act were encompassed in the joint resolution there would appear to be no need to refer to section 5(2)(f) or any other provision in section 5.[4]

Secondly, it appears reasonable to conclude that Congress, in enacting section 5(11) of the Interstate Commerce Act, had no intention of foreclosing the possible operation of State law, even where the ICC had acted.

If Congress had intended that section 5(11) would preempt any State law it would simply have provided that the authority conferred by the section was "exclusive and plenary" without qualification.[5]

On the contrary, the section provides that carriers shall be relieved from the operation of State law only "insofar as may be necessary to enable them to carry into effect the transaction so approved or provided for in accordance with the terms and conditions, if any, imposed by the Commission." Obviously, if it was intended that the Federal law, or any action taken by the ICC pursuant thereto, was to preempt State law, there was no need to insert the quoted language.

Since Congress did insert this language in section 5(11) it can only be construed as a desire that ICC orders issued pursuant to section 5 would not preempt State laws automatically. Only "insofar as may be necessary to enable them [the carriers] to carry into effect the transaction so approved or provided for in accordance with the terms and considerations imposed by the Commission" would such a result obtain.

Thus, the Supreme Court has held that section 5(11) "reposes power in the Commission to exempt railroads * * * from State laws which bar them from operating in the State or impose conditions upon such operation" (*Seabord Air Line Railroad Co.* 1. *Daniel*, 333 U.S. 118 (1948)).

The CHAIRMAN. I think it is true, and I have discussed this with some of our own staff, that if guidance is given or some direction to the Interstate Commerce Commission, it could so recognize the various State laws.

Secretary WIRTZ. My understanding is that that is correct, Mr. Chairman.

Mr. SIBAL. I understand, too, that some comment has been injected in the discussion or the questioning involving the poltical aspects of this legislation, and I want to say to you I have been one of the few members who haven't congratulated you on your appearance here today, but I now join them. I want to say to you that your testimony and your approach and your candor has done much, I think, to eliminate any political considerations which normally would pop up in questions like this, and I would say to you that it would be most helpful if some of your colleagues in the administration had the same attitude when they came before congressional committees, and if they did I think a lot of the politics could be eliminated.

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[4] On the other hand, it should be noted that section 1 of the joint resolution refers to "the procedures and provisions of section 5." To interpret the resolution as incorporating only the procedures of section 5 ignores the words "and provisions" and is contrary to the well-settled rule of statutory construction that effect must be given, if possible, to every word, clause, and sentence of a statute. Sutherland, Statutes and Statutory Construction, § 4705 (2d ed. 1943).

[5] In rejecting the argument in the *Norwood* case, *supra*, that Congress had preempted this field fram State regulation by the enactment of the Interstate Commerce Act, the Court stated:

"In the absence of a clearly expressed purpose so to do Congress will not be held to have intended to prevent the exertion of the police power of the States for the regulation of the number of men to be employed in such crews."

I do want to call your attention to the fact that as a minority party, the party in opposition, so to speak, we have responsibilities to see to it that these decisions are not made on a political basis if we can. Such diverse publications as the New York Times and the Wall Street Journal, both very eminent and very respectable and very distinguished but usually not in total agreement, have raised this issue, and not those of us on the committee.

Secretary WIRTZ. May I respond to that just to this extent, Mr. Chairman, that I think all of those who are working in the field of labor relations have come to the conclusion that there are built-in elements of partisanship in the labor-management question which almost make it necessary for us to just preclude any partisan considerations in connection with the handling of a labor case. I think it is true that in the handling of this whole case there has been no element of partisan issues.

Mr. SIBAL. I am sure this is true, and on the other hand, a message and a drafting of a bill usually requires many approaches, including perhaps not from your department or your staff, but from other places, a political approach.

Secretary WIRTZ. Thank you.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. During the course of the day, Mr. Secretary, there has been a great deal of discussion and talk about the various time elements contained in this bill. Is it your feeling and thinking at the moment that if this resolution becomes law, that an application would be filed almost immediately?

Secretary WIRTZ. Yes, it is; that would be my expectation, that one or more would be, and perhaps several.

Mr. KORNEGAY. And then, of course, after the expiration of just a few more than the 120 days, the parties would pretty well know where they stood; is that true?

Secretary WIRTZ. Yes; I think it is.

Mr. KORNEGAY. You would get a decision from the ICC, in other words?

Secretary WIRTZ. That is correct.

Mr. KORNEGAY. Is it also your feeling that any of the applications that would be filed pursuant to this resolution would bring into play all of the work rules that are disputed or about which there is controversy?

Secretary WIRTZ. I don't know. I would be more inclined to think a more limited application.

Mr. KORNEGAY. I am just trying to see from a practical standpoint how long it would be before these issues could be decided by the Commission.

Secretary WIRTZ. They could all be brought to quite quick answer on that basis. My own guess would be that there would be more of an inclination to submit key issues as part of this approach which I have reflected, that if those issues are worked out, the rest can be.

Mr. KORNEGAY. And continue collective bargaining on the minor issues?

Secretary WIRTZ. I don't think collective bargaining is going to stop for a single day on this case, from this time right on straight through.

Mr. KORNEGAY. There would be a continuation of the conscientious effort to settle many of these issues?

Secretary WIRTZ. Yes, sir.

Mr. KORNEGAY. Thank you very much.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Mr. Secretary, reading again from section 5 to clarify something:

> No change in rules except by agreement or by the procedures described here, in any strike or lockout, shall be subject to the procedures of section 5(8) of the Interstate Commerce Act.

Now, this brings into play the injunctive process.

Secretary WIRTZ. Yes, sir.

Mr. CUNNINGHAM. In other words, as to a strike, for example, if a rule is adopted by the Commission which one party doesn't like, they could seek an injunction to break the strike, is that so?

Secretary WIRTZ. They could seek to review the decision, and I think that there are two different things here, Mr. Cunningham. A party not liking it could follow either of two courses, in theory. He could either appeal it as I would assume would be more likely, and that would be under a particular procedure to the three-judge court, or he could follow the process of self-help, flaunting the rule, at which point he would be subject to the injunctive enforcement procedures.

Mr. CUNNINGHAM. Now, at the present time, without this legislation, if these work rules were adopted and a strike took place, you could not use the injunctive procedure.

Secretary WIRTZ. That is correct.

Mr. CUNNINGHAM. Then, in other words, you could possibly be prohibiting a strike under this language, which is the one weapon labor has, the one tool it can use to protect itself.

Secretary WIRTZ. There could be a prohibition of a strike.

Mr. CUNNINGHAM. Not at the present time.

Secretary WIRTZ. No.

Mr. CUNNINGHAM. Under this language, there can be a prohibition of a strike.

Secretary WIRTZ. Yes.

Mr. CUNNINGHAM. This is a new section here that can mean that labor, for example, will be denied the right to strike.

Secretary WIRTZ. That is the gravity of the mores.

Mr. CUNNINGHAM. I have just one final question, Mr. Secretary: We know, or we have been told, that this is temporary legislation, and these problems do arise from time to time. In 1946, 1948, and 1950 the railroads were seized, and so on. You have been so busy, I don't know if you would have an answer to this question, but does your Department feel that there needs to be a review of the Railway Labor Act to give rise to permanent legislation that might handle these critical situations in the future instead of dealing with them in a crisis or on a crisis bass, as has happened so often in the past and is happening now?

Secretary WIRTZ. I think that any experience of this kind is bound to have a sobering effect which would prompt—that was about to be a long answer, and a long answer is not necessary. I realize the implications of any suggestion of a complete review of a whole body of legislation, but I think most people would agree that there

are some aspects of the Railway Labor Act and the emergency dispute provisions in general, and the Taft-Hartley Act, which at some early date ought to be the subject of review by the administration and the legislature.

There has been a great deal of talk about that, and I think that that is probably right.

Mr. CUNNINGHAM. Thank you, sir.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. I believe a question was asked by Mr. Keith this morning concerning the same thing that Mr. Cunningham was talking about, and that was concerning the antifeatherbedding provisions under Taft-Hartley and also under the Lea Act.

I think that you indicated that these provisions have not worked or have not been practicable. Maybe you could expound on that a little for me.

Secretary WIRTZ. I have in mind the history, clearest in mind the history of the Taft-Hartley Act, which involved with respect to this particular point the provision in the Hartley bill in the House of quite specific prohibitions upon what is identified as featherbedding practices.

My recollection is that the bill reported out of the House had that provision in it. My recollection, subject to correction, is that the matter come up in connection with the conference disposition of the point, and I have most clearly in mind Senator Taft's statement in the debate about, I believe, the conference report, which explain why the Hartley bill provisions had been left out, and it was to this effect: that the problem which is involved here arises inevitably in such complexity and detail that any kind of specific legislation is almost beyond the pretensions or accomplishment of the legislative process, and that, therefore, the conferees had agreed upon the very broad terms which were included in section 8(b)(6) finally of Taft-Hartley, as enacted.

That section 8(b)(6) has been applied to a limited extent, has gone to the court, as you would know, twice or in two companion cases, one involving activities in the printing industry and the other activities in the musical industry, and the court found it inapt to those two particular situations by 5-to-4 decisions.

It is my impression, in answer to your question, under the license you have given me to spell it out in some detail, that that experience has been generally recognized as one illustrating the fatality of the specific legislative approach to the problem. The history of the Lea Act is somewhat different.

The Lea Act, or called the anti-Petrillo Act, was adopted by the Congress and it did apply to a specific situation. I don't remember the words in detail, but it provided, in effect, that there should not in the industry involved be any requirement of the use of more people than are necessary for a particular job, and that there should be no strike for the purpose of getting somebody to employ more people than were necessary.

A particular case came up in the district court in the Northern District of Illinois with Judge Lebie finding that the act was not sound because it didn't say who was to make the decision as to who was necessary. It went to the Supreme Court and it was remanded by the Supreme Court on the ground that decision could be made.

There was another decision of the district court which went back to the Supreme Court, which upheld, by an opinion of Mr. Justice Black, the constitutionality and the propriety of the act. It went down again to the district court, Northern District of Illinois, and I don't know what happened at that stage of the case.

My impression is that there has been virtually, or very little, at least, subsequent application of that act. I drew from this history, Mr. Broyhill, which I hope has not been too detailed, the conclusion that the adoption of specific rules covering the problem which is generally referred to as featherbedding, as part of the legislative process itself, has not proven successful.

Mr. BROYHILL. Then you have answered my next question. I have one other question.

I know this has been referred to several times, but it is still not clear in my own mind, on page 5, lines 17, 18, 19, and 20, does this mean that section 4 could actually apply if need be?

Secretary WIRTZ. It could, if need be. I would couple that only with the statement I made before, that I think that there is no practical prospect of that, but it could be.

Mr. BROYHILL. Could this be termed compulsory arbitration, then?

Secretary WIRTZ. This could not, and your question was to the application of the procedures that you have here, to that kind of a case, and my judgment with respect to which I recognize there is some disagreement, it could not come under that.

Mr. BROYHILL. I have no other questions.

The CHAIRMAN. Brotzman, do you have any questions?

Mr. BROTZMAN. Earlier I was somewhat concerned, Mr. Secretary, about the interrelationship between the resolution and the statutes that are referred to in the resolution. To direct your attention a little more quickly, this is a merger provision under section 5 generally and we are pulling certain parts of this, it seems to me out of that law to make it applicable to this specific situation.

Now, under the unnumbered section 1, the general idea is to have the Interstate Commerce Commission make interim orders relative to the two specific notices that were set forth in that section, as I understand it, within a certain period of time.

Now, as a condition of that, section 3 is brought into play, and section 3 alludes to the rules. They have to give due consideration to the recommendations of the Presidential Railroad Commission in Emergency Board 154 and so forth, and then it goes:

> As a condition of its approval of any interim rule involving directly or indirectly the reduction of existing manning requirements or practices, the Commission shall require a fair and equitable arrangement to protect the instance of the railroad employees affected as provided in section 5(2)F of the Interstate Commerce Act.

And again it says:

> With due consideration to the recommendations of the Presidential Railroad Commission in Emergency Board 154, and so forth.

Now, my question is in this area, and I have just pulled out this provision, and I want to find out how much the Interstate Commerce Commission is bound by the law or by the resolution in their determination in this area. For example, this 5(2)(f) says:

> As condition of its approval under this paragraph of any transaction involving a carrier or carriers by railroad subject to the provisions of this part, the Com-

mission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected.

Now, this is one sentence but it seems to give them a rather carte blanche authority in this area, depending upon the testimony that they have taken including the finding of the Presidential Commission.

Now, it is so good up to that point. But the next provisions say in its order of approval, "the Commission shall include terms and conditions providing that during the 4 years from the effective date," and so forth. Now, the question I am asking really is this: Is the Commission bound to put in its order the exact provisions contained there in the second sentence relating to 4 years, or conversely, can the Commission take testimony as to what there will be fair and equitable to the various employees, be it more limited or more generous, and could they include that in their order? This is the alternative and is it mandatory to follow that express finding for a period of 4 years, or could they make a determination that might be more generous or more restrictive according to their own wisdom?

Secretary WIRTZ. I would add only one amendment to my understanding of your question. It would not always be 4 years but you mean 4 years maximum and it might be less.

Mr. BROTZMAN. With that proviso?

Secretary WIRTZ. I do understand your question. I understand it to be like the question which was addressed to me by the chairman and my answer would be that as far as the provisions of 5(2)(f) are concerned the direction by the Congress to the Interstate Commerce Commission in this situation would be the same as its direction in 5(2)(f) and that requirement would be required under this provision, that the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provided in section 5(2)(f) of the Interstate Commerce Act.

Mr. BROTZMAN. I might not have listened carefully enough.

Secretary WIRTZ. My answer to your question is in terms of the alternatives you gave me, if I remember them correctly, and that there is a requirement intended by this provision that that 4-year or modified 4-year rule be applied by the Commission.

Mr. BROTZMAN. So that that would be mandatory, that that provision be put in the order?

Secretary WIRTZ. Where it is applicable.

Mr. BROTZMAN. If they enter the order?

Secretary WIRTZ. If my words "where it is applicable" seems confusing, I don't mean——

Mr. BROTZMAN. This is a delicate area, and I just want to be sure I understand you.

Secretary WIRTZ. It is an important area, and "where it is applicable," by that I mean on the same basis as in the original section 5(2)(f).

Mr. BROTZMAN. Let me try one more time to be sure. I don't think that you are failing any more than I am, or perhaps I am not asking the question clearly enough or not understanding you well. Now, specifically it says that—

the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provided in section 5(2)(f) of the Interstate Commerce Act, with due consideration to the recommendations of the Presidential Board.

Now, is it mandatory upon the Interstate Commerce Commission that they take the 4-year provision out of an—out of 5(2)(f) and inject that into their order? When I say the 4-year rule as with the proviso on it that you have mentioned, do they have to put this in the order or do they have power, or do they have delegated authority in your opinion to make a determination that is either more restrictive or more generous?

Secretary WIRTZ. I think that they are required to apply the provisions of 5(2)(f), period. Now, in explanation of that, there are several situations that we would except. There could be an agreement to the contrary, and I take it that the agreement would clearly have precedence.

Mr. BROTZMAN. That is the last sentence and that takes it all out.

Secretary WIRTZ. That is correct.

Mr. BROTZMAN. I understand that.

Secretary WIRTZ. And there would be other situations in which 5(2)(f) would not be applicable to the merger situations which are involved there, but I don't mean to clutter it up. I know the point you have in mind, and I think that the clear intention here is that that provision of 5(2)(f) gives a different significance from the provisions or from the recommendations of the Presidential Railroad Commission and the Emergency Board.

Mr. BROTZMAN. All right, thank you.

The CHAIRMAN. You mentioned earlier in the day the Washington agreement of May 1963. That was a voluntary agreement between the parties.

Secretary WIRTZ. Yes, sir.

The CHAIRMAN. Now, that agreement was incorporated in specific cases since then, is that not true?

Secretary WIRTZ. That is correct.

The CHAIRMAN. And on that question it was carried to the courts and the courts sustained the Commission on it?

Secretary WIRTZ. That is correct.

The CHAIRMAN. I believe it would be helpful at this point, or at the appropriate place in the record, to include the Washington agreement and the cases involving the Chicago, Burlington, & Quincy Railroad Co., which is an Interstate Commerce Commission case, and the case involving Oklahoma. I have it, and then the cases involving the *New Orleans* case, which was the case that the Commission decided and went to the courts and was remanded by the courts with instructions that it be carried out in conformity with the opinion.

And then in order to have a full record on it, there is the recent case having to do with the Central of Georgia Railroad.

Without objection, in order to make the record complete for Members of the Congress, we will insert these in the record.

(The documents to be furnished follow:)

AGREEMENT OF MAY, 1936, WASHINGTON, D. C.

This agreement is entered into between the carriers listed and defined in Appendices "A", "B" and "C" attached hereto and made a part hereof, represented by the duly authorized Joint Conference Committee signatory hereto, as party of the first part, and the employes of said carriers, represented by the organizations signatory hereto by their respective duly authorized executives, as party of the second part, and, so far as necessary to carry out the provisions hereof, is also to be construed as a separate agreement by and between and in behalf of each of said carriers and its employes who are now or may hereafter be represented by any of said organizations which now has (or may hereafter have during the life of this agreement) an agreement with such carrier concerning rates of pay, rules or working conditions.

The signatories hereto, having been respectively duly authorized as aforesaid to negotiate to a conclusion certain pending issues concerning the treatment of employes who may be affected by coordination as hereinafter defined, hereby agree:

Section 1. That the fundamental scope and purpose of this agreement is to provide for allowances to defined employees affected by coordination as hereinafter defined, and it is the intent that the provisions of this agreement are to be restricted to those changes in employment in the Railroad Industry solely due to and resulting from such coordination. Therefore, the parties hereto understand and agree that fluctuations, rises and falls and changes in volume or character of employment brought about solely by other causes are not within the contemplation of the parties hereto, or covered by or intended to be covered by this agreement.

Section 2 (a). The term "coordination" as used herein means joint action by two or more carriers whereby they unify, consolidate, merge or pool in whole or in part their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities.

(b) The term "carrier" as used herein when it refers to other than parties to this agreement means any carrier subject to the provisions of Part I of the Interstate Commerce Act; when it refers to a party to this agreement it means any company or system listed and described in Appendices "A", "B" or "C" as a single carrier party to this agreement.

(c) The term "time of coordination" as used herein includes the period following the effective date of a coordination during which changes consequent upon coordination are being made effective; as applying to a particular employee it means the date in said period when that employee is first adversely affected as a result of said coordination.

Section 3 (a). The provisions of this agreement shall be effective and shall be applied whenever two or more carriers parties hereto undertake a coordination; and it is understood that if a carrier or carriers parties hereto undertake a coordination with a carrier or carriers not parties hereto, such coordination will be made only upon the basis of an agreement approved by all of the carriers parties thereto and all of the organizations of employees involved (parties hereto) of all of the carriers concerned. No coordination involving classes of employees not represented by any of the organizations parties hereto shall be undertaken

by the carriers parties hereto except in accord with the provisions of this agreement or agreements arising hereunder.

(b) Each carrier listed and established as a separate carrier for the purposes of this agreement, as provided in Appendices "A", "B" and "C", shall be regarded as a separate carrier for the purposes hereof during the life of this agreement; provided, however, that in the case of any coordination involving two or more railroad carriers which also involves the Railway Express Agency, Inc., the latter company shall be treated as a separate carrier with respect to its operations on each of the railroads involved.

(c) It is definitely understood that the action of the parties hereto in listing and establishing as a single carrier any system which comprises more than one operating company is taken solely for the purposes of this agreement and shall not be construed or used by either party hereto to limit or affect the rights of the other with respect to matters not falling within the scope and terms of this agreement.

Section 4. Each carrier contemplating a coordination shall give at least ninety (90) days written notice of such intended coordination by posting a notice on bulletin boards convenient to the interested employes of each such carrier and by sending registered mail notice to the representatives of such interested employes. Such notice shall contain a full and adequate statement of the proposed changes to be effected by such coordination, including an estimate of the number of employes of each class affected by the intended changes. The date and place of a conference between representatives of all the parties interested in such intended changes for the purpose of reaching agreements with respect to the application thereto of the terms and conditions of this agreement, shall be agreed upon within ten (10) days after the receipt of said notice, and conference shall commence within thirty (30) days from the date of such notice.

Section 5. Each plan of coordination which results in the displacement of employes or rearrangement of forces shall provide for the selection of forces from the employes of all the carriers involved on bases accepted as appropriate for application in the particular case; and any assignment of employes made necessary by a coordination shall be made on the basis of an agreement between the carriers and the organizations of the employes affected, parties hereto. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with Section 13.

Section 6 (a). No employee of any of the carriers involved in a particular coordination who is continued in service shall, for a period not exceeding five years following the effective date of such coordination, be placed, as a result of such coordination, in a worse position with respect to compensation and rules governing working conditions than he occupied at the time of such coordination so long as he is unable in the normal exercise of his seniority rights under existing agreements, rules and practices to obtain a position producing compensation equal to or exceeding the compensation of the position held by him at the time of the particular coordination, except however, that if he fails to exercise his seniority rights to secure another available position, which does not require a change in residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position

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which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position which he elects to decline.

(b) The protection afforded by the foregoing paragraph shall be made effective whenever appropriate through what is hereby designated as a "displacement allowance" which shall be determined in each instance in the manner hereinafter described. Any employee entitled to such an allowance is hereinafter referred to as a "displaced" employee.

(c) Each displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee and his total time paid for during the last twelve (12) months in which he performed service immediately preceding the date of his displacement (such twelve (12) months being hereinafter referred to as the "test period") and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and average monthly time paid for, which shall be the minimum amounts used to guarantee the displaced employee, and if his compensation in his current position is less in any month in which he performs work than the aforesaid average compensation he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but he shall be compensated in addition thereto at the rate of the position filled for any time worked in excess of the average monthly time paid for during the test period.

Section 7 (a). Any employee of any of the carriers participating in a particular coordination who is deprived of employment as a result of said coordination shall be accorded an allowance (hereinafter termed a coordination allowance), based on length of service, which (except in the case of an employee with less than one year of service) shall be a monthly allowance equivalent in each instance to sixty per cent (60%) of the average monthly compensation of the employee in question during the last twelve months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the coordination. This coordination allowance will be made to each eligible employee while unemployed by his home road or in the coordinated operation during a period beginning at the date he is first deprived of employment as a result of the coordination and extending in each instance for a length of time determined and limited by the following schedule:

Length of Service	*Period of Payment*
1 yr. and less than 2 yrs.	6 months
2 yrs. " " " 3 "	12 "
3 yrs. " " " 5 "	18 "
5 yrs. " " " 10 "	36 "
10 yrs. " " " 15 "	48 "
15 yrs. and over	60 "

In the case of an employee with less than one year of service, the total coordination allowance shall be a lump sum payment in an amount equivalent to sixty (60) days pay at the straight time daily rate of the last position held by him at the time he is deprived of employment as a result of the coordination.

(b) For the purposes of this agreement the length of service of the employee shall be determined from the date he last acquired an employment status with the employing carrier and he shall be given credit for one month's service for each month in which he performed any service (in any capacity whatsoever) and twelve such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization he will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(c) An employee shall be regarded as deprived of his employment and entitled to a coordination allowance in the following cases:

1. When the position which he holds on his home road is abolished as result of coordination and he is unable to obtain by the exercise of his seniority rights another position on his home road or a position in the coordinated operation, or
2. When the position he holds on his home road is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of said coordination, or by other employees, brought about as a proximate consequence of the coordination, and if he is unable by the exercise of his seniority rights to secure another position on his home road or a position in the coordinated operation.

(d) An employee shall not be regarded as deprived of employment in case of his resignation, death, retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally, dismissal for justifiable cause in accordance with the rules, or furloughed because of reduction in forces due to seasonal requirements of the service; nor shall any employee be regarded as deprived of employment as the result of a particular coordination who is not deprived of his employment within three years from the effective date of said coordination.

(e) Each employee receiving a coordination allowance shall keep the employer informed of his address and the name and address of any other person by whom he may be regularly employed.

(f) The coordination allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished while he is absent from service, he will be entitled to the coordination allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a coordination allowance on the basis of said position until the regular employee is available for service and thereafter shall revert to his previous status and will be given a coordination allowance accordingly if any is due.

(g) An employee receiving a coordination allowance shall be subject to call to return to service after being notified in accordance with the working agreement, and such employee may be required to return to the service of the employing carrier for other reasonably comparable employment for which he is physically and mentally qualified and which does not require a change in his

place of residence, if his return does not infringe upon the employment rights of other employees under the working agreement.

(h) If an employee who is receiving a coordination allowance returns to service the coordination allowance shall cease while he is so reemployed and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a coordination allowance. During the time of such reemployment however he shall be entitled to protection in accordance with the provisions of Section 6.

(i) If an employee who is receiving a coordination allowance obtains railroad employment (other than with his home road or in the coordinated operation) his coordination allowance shall be reduced to the extent that the sum total of his earnings in such employment and his allowance exceeds the amount upon which his coordination allowance is based; provided that this shall not apply to employees with less than one year's service.

(j) A coordination allowance shall cease prior to the expiration of its prescribed period in the event of:

1. Failure without good cause to return to service in accordance with working agreement after being notified of position for which he is eligible and as provided in paragraphs (g) and (h).
2. Resignation.
3. Death.
4. Retirement on pension or on account of age or disability in accordance with the current rules and practices applicable to employees generally.
5. Dismissal for justifiable cause.

Section 8. An employee affected by a particular coordination shall not be deprived of benefits attaching to his previous employment, such as free transportation, pensions, hospitalization, relief, etc., under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

Section 9. Any employee eligible to receive a coordination allowance under section 7 hereof may, at his option at the time of coordination, resign and (in lieu of all other benefits and protections provided in this agreement) accept in a lump sum a separation allowance determined in accordance with the following schedule:

Length of Service	*Separation Allowance*
1 year & less than 2 years	3 months' pay
2 years " " 3 "	6 " "
3 " " " " 5 "	9 " "
5 " " " " 10 "	12 " "
10 " " " " 15 "	12 " "
15 years and over	12 " "

In the case of employees with less than one year's service, five days' pay, at the rate of the position last occupied, for each month in which they performed service will be paid as the lump sum.

(a) Length of service shall be computed as provided in Section 7.

(b) One month's pay shall be computed by multiplying by 30 the daily rate of pay received by the employee in the position last occupied prior to time of coordination.

Section 10 (a). Any employee who is retained in the service of any carrier involved in a particular coordination (or who is later restored to service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as result of such coordination and is therefore required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects and for the traveling expenses of himself and members of his family, including living expenses for himself and his family and his own actual wage loss during the time necessary for such transfer, and for a reasonable time thereafter, (not to exceed two working days), used in securing a place of residence in his new location. The exact extent of the responsibility of the carrier under this provision and the ways and means of transportation shall be agreed upon in advance between the carrier responsible and the organization of the employee affected. No claim for expenses under this Section shall be allowed unless they are incurred within three years from the date of coordination and the claim must be submitted within ninety (90) days after the expenses are incurred.

(b) If any such employee is furloughed within three years after changing his point of employment as a result of coordination and elects to move his place of residence back to his original point of employment, the carrier shall assume the expense of moving his household and other personal effects under the conditions imposed in paragraph (a) of this section.

(c) Except to the extent provided in paragraph (b) changes in place of residence subsequent to the initial changes caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this section.

Section 11 (a). The following provisions shall apply, to the extent they are applicable in each instance, to any employee who is retained in the service of any of the carriers involved in a particular coordination (or who is later restored to such service from the group of employees entitled to receive a coordination allowance) who is required to change the point of his employment as a result of such coordination and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the coordination to be unaffected thereby. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other party.
2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligations under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancellation of his said lease.

(b) Changes in place of residence subsequent to the initial change caused by coordination and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this Section.

(c) No claim for loss shall be paid under the provisions of this section which is not presented within three years after the effective date of the coordination.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively; these two shall endeavor by agreement within ten days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser, and in the event of failure to agree then the Chairman of the Interstate Commerce Commission shall be requested to appoint the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the salary of the appraiser selected by such party.

Section 12. If any carrier shall rearrange or adjust its forces in anticipation of a coordination, with the purpose or effect of depriving an employee of benefits to which he should be entitled under this agreement as an employee immediately affected by a coordination, this agreement shall apply to such an employee as of the date when he is so affected.

Section 13. In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as its representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is

unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

Section 14. Any carrier not initially a party to this agreement may become a party by serving notice of its desire to do so by mail upon the members of the Committee established by Section 13 hereof. It shall become a party as of the date of the service of such notice or upon such later date as may be specified therein.

Section 15. This agreement shall be effective June 18, 1936, and be in full force and effect for a period of five years from that date and continue in effect thereafter with the privilege that any carrier or organization party hereto may then withdraw from the agreement after one year from having served notice of its intention so to withdraw; provided, however, that any rights of the parties hereto or of individuals established and fixed during the term of this agreement shall continue in full force and effect, notwithstanding the expiration of the agreement or the exercise by a carrier or an organization of the right to withdraw therefrom.

This agreement shall be subject to revision by mutual agreement of the parties hereto at any time, but only after the serving of a sixty (60) days notice by either party upon the other.

For the participating carriers listed in Appendix A:

H. A. Enoch Geo. D. Walton Wm. White

For the participating carriers listed in Appendix B:

L. A. Clements E. J. Cannon C. M. Jenkins

For the participating carriers listed in Appendix C:

H. A. Benton W. J. Jenkins J. B. Lanier

For the participating carriers:

H. A. Enoch

Chairman, Joint Conference Committee.

For the participating organizations of employees:

A. Johnston. by W. J. B.

Grand Chief Engineer, Brotherhood of Locomotive Engineers.

D B Robertson

President, Brotherhood of Locomotive Firemen and Enginemen.

J A Phillips

President, Order of Railway Conductors of America.

H W Whitney

President, Brotherhood of Railroad Trainmen.

T C Cashen

President, Switchmen's Union of North America.

E J Manion

President, Order of Railroad Telegraphers.

H Jackson

President, American Train Dispatchers' Association.

Wm Johnston

President, International Association of Machinists.

J A Franklin

President, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.

Ray Hamm

President, International Brotherhood of Blacksmiths, Drop Forgers and Helpers.

John J. Hynes

President, Sheet Metal Workers' International Association.

C J McGlogan

Vice-President, International Brotherhood of Electrical Workers.

Felix H. Knight

President, Brotherhood Railway Carmen of America.

J. F. McNamara.

President, International Brotherhood of Firemen and Oilers.

P. H. Bjozdal

President, Brotherhood of Maintenance of Way Employes.

Geo. M. Harrison

President, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

A. O. Lyon

Acting President, Brotherhood of Railroad Signalmen of America.

M S Warfield

President, Order of Sleeping Car Conductors.

James J. Delaney

President, National Organization Masters, Mates & Pilots of America.

Wm. L. Brown

President, National Marine Engineers' Beneficial Association.

International Longshoremen's Association.

Geo. M Harrison

Chairman, Railway Labor Executives' Association.

Signed at Washington, D. C.
May 21, 1936.

APPENDIX A
LIST OF CARRIERS IN EASTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Ann Arbor Baltimore & Ohio Bessemer & Lake Erie Boston & Maine Boston Terminal Central R. R. of N. J. Cincinnati Union Terminal Co. Chicago, Indianapolis & Louisville Chicago River and Indiana Cleveland Union Terminals Co. Dayton Union Delaware, Lackawanna & Western Detroit & Toledo Shore Line Detroit Terminal Detroit, Toledo & Ironton	
Erie	Chicago & Erie; New Jersey & New York; New York, Susquehanna & Western
Indianapolis Union Indiana Harbor Belt Lehigh & Hudson River Lehigh & New England Lehigh Valley Long Island Maine Central Monongahela	
The New York Central Railroad Company	All leased lines
New York, Chicago & St. Louis New York, New Haven & Hartford	
Pennsylvania	Waynesburg & Washington; Balto. & Eastern
Penna.-Reading Seashore Lines Pere Marquette	
Pittsburgh & Lake Erie	Lake Erie and Eastern
Portland Terminal Co. Railway Express Agency, Inc. Reading Rutland Staten Island Rapid Transit Washington Terminal Western Maryland	
Wheeling & Lake Erie	Lorain & West Virginia

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

APPENDIX B
LIST OF CARRIERS IN WESTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Alameda Belt Line Alton & Southern R. R. Alton Railroad Co., The	
Atchison, Topeka & Santa Fe Ry. Co., The	Gulf, Colorado & Santa Fe Ry. Co., Panhandle & Santa Fe Ry. Co.
Atchison Union Railway & Depot Co. Baltimore & Ohio Chicago Terminal R. R. Co., The Belt Railway Company of Chicago Burlington-Rock Island R. R. Co. Camas Prairie R. R. Co. Chicago & Eastern Illinois Ry. Co. Chicago & Illinois Midland Ry. Co. Chicago & North Western Ry. Co. Chicago & Western Indiana R. R. Co.	
Chicago, Burlington & Quincy R. R. Co.	Quincy, Omaha & Kansas City R. R.
Chicago, Milwaukee, St. Paul & Pacific R. R. Co.	Chicago, Terre Haute & Southeastern Ry. Co.
Chicago, Rock Island & Pacific Ry. Co., The	Chicago, Rock Island & Gulf Ry. Co., Peoria Terminal Co.
Chicago, St. Paul, Minneapolis & Omaha Ry. Co. Chicago Union Station Co. Colorado & Southern Ry. Co. Davenport, Rock Island & Northwestern Ry. Co. Denver & Rio Grande Western R. R. Co., The Denver & Salt Lake Ry. Co., The Denver Union Terminal Ry. Co., The	
Des Moines Union Ry. Co.	Iowa Railway Transfer Co.
Duluth, Missabe & Northern Ry.	Duluth & Iron Range R. R.
Duluth, South Shore & Atlantic Ry. Co.	Mineral Range R. R. Co.
East Portland Freight Terminal East St. Louis Junction R. R. Elgin, Joliet & Eastern Ry. Co. Fort Smith & Western Ry.	
Fort Worth & Denver City Ry. Co.	Wichita Valley Ry. Co., The

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

APPENDIX B (Continued)
LIST OF CARRIERS IN WESTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Fort Worth Belt Ry. Co. Galveston, Houston & Henderson R. R. Great Northern Ry. Co. Green Bay & Western R. R. Co.	
Gulf Coast Lines	New Orleans, Texas & Mexico Ry. Co., St. Louis, Brownsville & Mexico Ry. Co., Beaumont, Sour Lake & Western Ry. Co., Houston & Brazos Valley Ry. Co., San Antonio, Uvalde & Gulf R. R. Co., Sugar Land Ry. Co., Rio Grande City Ry. Co., Asherton & Gulf Ry. Co., Asphalt Belt Ry. Co., San Antonio Southern Ry. Co., San Benito & Rio Grande Valley Ry. Co., Orange & Northwestern R. R. Co., New Iberia & Northern R. R. Co., Iberia, St. Mary & Eastern R. R. Co.
Houston Belt & Terminal Ry. Co. International-Great Northern R. R. Kansas City Terminal Ry. Co. Kansas, Oklahoma & Gulf Ry. Co. Lake Superior & Ishpeming R. R. Co. Litchfield & Madison Ry. Co. Manufacturers Ry. Co. (St. Louis) Midland Valley R. R. Co. Minneapolis, St. Paul & Saulte Ste. Marie Ry. Co.	
Minneapolis & St. Louis R. R. Co., The	Railway Transfer Co. of the City of Minneapolis
Minnesota Transfer Railway Co., The	
Minnesota & International Ry. Co.	Big Fork & International Falls Ry. Co.
Missouri-Illinois R. R. Co.	
Missouri-Kansas-Texas R. R. Co.	Missouri-Kansas-Texas R. R. Co. of Texas, Texas Central R. R. Co., The Wichita Falls Ry. Co., The Wichita Falls & Northwestern Ry. of Texas, Wichita Falls & Wellington Ry. Co. of Texas, Beaver, Meade & Englewood R. R.
Missouri Pacific R. R. Co.	Missouri Pacific R. R. Corporation in Nebraska, Fort Smith Suburban Ry., Natchez & Southern Ry., Natchez & Louisiana Ry. Transfer Co. (Boat), The Chester & Mt. Vernon R. R., Booneville, St. Louis & Southern Ry. Co., Cairo & Thebes R. R. Co., Marion & Eastern R. R. Co.
Northern Pacific Ry. Co. Northern Pacific Terminal Co. of Oregon, The Northwestern Pacific R. R. Co. Ogden Union Ry. & Depot Co.	

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

APPENDIX B (Continued)
LIST OF CARRIERS IN WESTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Oklahoma City-Ada-Atoka Ry. Co. Oregon, California & Eastern Ry. Co. Peoria & Pekin Union Ry. Co. Port Terminal Railroad Association (Houston) Pueblo Union Depot & Railroad Co., The Railway Express Agency, Inc. Rock Island-Frisco Terminal Ry. Co. St. Joseph Terminal R. R. Co. St. Joseph Union Depot Co. St. Paul Union Depot Co., The St. Louis & O'Fallon Ry. Co.	
St. Louis-San Francisco Ry. Co.	St. Louis-San Francisco & Texas Ry., Ft. Worth & Rio Grande Ry., Birmingham Belt R. R. Co.
St. Louis Southwestern Ry. Co.	St. Louis Southwestern Ry. Co. of Texas, Dallas Terminal Ry. & Union Depot Co.
Salt Lake City Union Depot & R. R. Co., The San Diego & Arizona Eastern Ry. Co. Sioux City Terminal Ry. Co. South Omaha Terminal Ry. Co. Southern Pacific Company-Pacific Lines	
Spokane, Portland & Seattle Ry. Co.	Oregon Trunk Ry., Oregon Electric Ry. Co., United Railways Co.
Spokane, Couer d'Alene & Palouse Ry. Co. Spokane International Ry.	
Terminal Railroad Ass'n of St. Louis	St. Louis Merchants Bridge Terminal Ry., East St. Louis Connecting Ry., St. Louis Transfer Ry.
Texas & Pacific Ry., The	Weatherford, Mineral Wells & Northwestern Ry. Co., The, Texas-New Mexico Ry. Co., Abilene & Southern Ry. Co., Texas Short Line Ry., Pecos Valley Southern Ry. Co., The, Cisco & Northeastern Ry. Co.
Texas Pacific-Missouri Pacific Terminal R. R. of New Orleans	
Texas & New Orleans R. R. Co.	Galveston, Harrisburg & San Antonio Ry. Co., The, Texas & New Orleans R. R. Co., Louisiana Western R. R. Co., Morgan's Louisiana & Texas R. R. & S. S. Co., Iberia & Vermillion R. R. Co., Houston & Texas Central R. R. Co., The, Texas Midland R. R., Galveston, Harrisburg & San Antonio Ry. Co., The (Austin Div.), Houston, East & West Texas R. R. Co., The, Houston & Shreveport R. R. Co.

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

APPENDIX B (Continued)
LIST OF CARRIERS IN WESTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Tidewater Southern Ry. Co. Tulsa Union Depot Co. Union Railway Co. (Memphis, Tenn.)	
Union Pacific R. R.	Eastern District, Central District, Northwestern District, Southwestern District.
Union Terminal Co. (Dallas, Tex.) Union Terminal Ry. Co. (St. Joseph, Mo.) Wabash Ry. Co. Western Pacific R. R. Co., The Wichita Union Terminal Ry. Co., The	

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

APPENDIX C
LIST OF CARRIERS IN SOUTHEASTERN TERRITORY PARTIES TO AGREEMENT

Carrier (1)	Properties and Operations included in the authorization as part of, and to be considered as part of, the carrier listed in Column 1. (2)
Central of Georgia Railway	
Chesapeake & Ohio Railway	
Columbus & Greenville	
Illinois Central System	
Macon, Dublin and Savannah	
Norfolk & Western Railway Company	
Norfolk Southern Railway Company	
Railway Express Agency, Inc.	
Richmond, Fredericksburg & Potomac	
Seaboard Air Line Railway	
Travares and Gulf	
Virginian	

NOTE: Agreement subject to approval of court with respect to lines in hands of Receivers or Trustees.

Carriers which have become parties to the "Agreement of May, 1936, Washington, D. C." by service of notice in accordance with Section 14.

Appendix A—Eastern Territory	*Effective Date*
Akron, Canton & Youngstown Railway Co.	6-16-36
Bangor & Aroostook Railroad Co.	6- 1-48
Buffalo Creek Railroad	6- 1-36
Central Vermont Railway	3-11-37
Detroit & Mackinac Railway Co.	11-15-47
Fort Street Union Depot Co., The	12- 6-48
Grand Trunk Western R. R. Co.	11- 5-36
Manistee and Northeastern Railway Co	12- 6-48
New York Connecting Railroad Co.	5- 1-48
Pittsburgh & West Virginia Railway	6- 8-36
Toledo Terminal R. R. Co.	9- 9-44
Troy Union Railroad Co., The	11-15-40
Union Belt of Detroit	12-21-48
Union Depot Co., Columbus, Ohio	5-26-36
Union Freight Railroad Co. (Boston)	5- 1-48
Youngstown and Northern Railroad Co.	5- 5-49
Appendix B—Western Territory	
Ashley, Drew & Northern Railway Co.	11-17-48
Chicago, Great Western Railway Co.	1- 1-42
Chicago, South Shore & South Bend R. R.	7-15-42
Colorado & Wyoming Railway Co.	4-18-49
Duluth, Winnipeg & Pacific Railway Co.	12-11-36
El Paso Union Passenger Depot Co.	12-26-47
Harbor Belt Line Railroad	9-27-49
Illinois Terminal Railroad Co.	2- 6-47
Kansas City Southern Railway Co.	1-11-39
Kewaunee, Green Bay & Western R. R. Co.	7-29-48
Lake Superior Terminal & Transfer Ry. Co.	5-18-48
Louisiana & Arkansas Railway Co.	1-11-39
Louisiana, Arkansas & Texas Railway Co.	1-11-39
Minneapolis, Northfield & Southern Railway	9- 4-36
Minnesota Western Railway Co.	9- 4-36
Oakland Terminal Railway	6-12-48
Pacific Coast Railroad Co.	6- 7-48
Pacific Electric Railway Co.	8-13-42
Sacramento Northern Railway	4-29-40
Sand Springs Railway Co.	1- 1-48
Spokane Union Station	5- 8-48
Texarkana Union Station Trust	1-17-48
Toledo, Peoria & Western Railroad	11-19-47

Appendix C—Southeastern Territory	*Effective Date*
Albany Passenger Terminal Co	4- 1-49
Atlanta, Birmingham & Coast Railroad Co	4-24-44
Atlanta Joint Terminals	11- 1-41
Atlanta Terminal Company	11- 4-48
Atlanta & West Point R. R. Co.-Western Ry. of Alabama	7- 7-44
Atlantic Coast Line Railroad Co	7- 8-39
Augusta Union Station Co	7- 7-44
Birmingham Terminal Company	2-11-49
Blue Ridge Railway Company	11-20-48
Carolina and Northwestern Railway Co	11-20-48
Charleston & Western Carolina Railway Co	11-24-39
Chattanooga Station Company	2-11-49
Chattanooga Traction Co	11-20-48
Clinchfield Railroad Co	10- 1-39
Columbia Union Station Co	2-11-49
Danville and Western Railway Co	11-20-48
Durham Union Station Co	2-11-49
Florida East Coast Railway	10- 1-39
Georgia Railroad	7- 7-44
Goldsboro Union Station Company	5-24-49
Gulf, Mobile & Northern Railroad Co	1-30-39
Gulf, Mobile & Ohio Railroad Co	1-30-39
High Point, Randleman, Asheboro and Southern R. R. Co	11-20-48
Jacksonville Terminal Company	4-26-49
Kentucky & Indiana Terminal Railroad Co	7-30-46
Macon Terminal Company	4- 1-49
Memphis Union Station Company	12-22-48
Meridian Terminal Company	2-11-49
Nashville, Chattanooga & St. Louis Railway	8- 8-46
New Orleans Public Belt Railroad	11-25-40
Norfolk Terminal Railway Co	11- 1-47
Richmond Terminal Railway Co	10- 7-47
Savannah & Atlanta Railway Company	12- 6-48
Southern Railway System	3- 1-40
Tampa Union Station Company	11-30-48
Winston-Salem Terminal Company	2-11-49
Yadkin Railroad Co	11-20-48

The above list of additional carriers is as of November 15, 1949 when this printing of the agreement was prepared.

FINANCE DOCKET NO. 14426

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ABANDONMENT

Submitted September 20, 1944. Decided November 1, 1944

Certificate issued permitting abandonment by the Chicago, Burlington & Quincy Railroad Company of a line of railroad in Ringgold County, Iowa, and Worth County, Mo. Conditions prescribed.

Eldon Martin, *C. W. Krohl*, and *J. A. Lydick* for applicant.

James A. Lucas, *Robert G. Janss*, *W. H. Jeffries*, *C. G. Brandow*, *Charles E. Stoner*, *Frank F. Wilson*, *John P. Randolph*, *B. R. Gillespie*, and *E. C. Bassett* for protestants.

Frank L. Mulholland for Railway Labor Executives Association.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS MAHAFFIE, MILLER, AND ROGERS

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed and the case has been argued orally.

The Chicago, Burlington & Quincy Railroad Company, hereinafter sometimes called the Burlington, on December 3, 1943, applied for permission to abandon a line of railroad extending southwesterly from a point at or near Mount Ayr, in Ringgold County, Iowa, to a point at or near Grant City, in Worth County, Mo., approximately 21.8 miles. Protests were filed and a hearing was held. Among the protestants herein are the Iowa State Commerce Commission, the Missouri Public Service Commission, and certain railway labor organizations, all of which were represented by counsel at the hearing.

The Burlington owns and operates a line of railroad, hereinafter called the St. Joseph line, extending southwesterly from a connection with its Chicago-Omaha main line at or near Chariton, Iowa, through Giles, Iowa, and Albany Junction, Mo., to St. Joseph, Mo., a distance of approximately 145 miles. The portion of the St. Joseph line between Giles and Albany Junction follows a circuitous course to the east and is roughly paralleled by another line of the Burlington, hereinafter called the west line, which follows a circuitous course to the west between the same point and passes through Lamoni, Kellerton, and Mount Ayr, Iowa, and Grant City, Worth, and Gentry, Mo.

The proposal herein contemplates abandonment of the central portion of the west line between Mount Ayr and Grant City, thus leaving

those points as the termini of so-called stub lines leading from the St. Joseph line.

The west line, approximately 66 miles long, was constructed in 1880 and has been operated by the Burlington since that time. The portion sought to be abandoned, hereinafter called the segment, traverses a rolling territory devoted chiefly to farming. Practically all the agricultural produce is consumed on the farms. The only communities on the segment between its termini are Delphos and Redding, having about 100 and 250 inhabitants, respectively. Both are nonagency stations located not more than 6 miles by highway from stations on the Chicago Great Western Railway, hereinafter called the Great Western. The applicant estimates that the territory served by the segment embraces an area of 144 square miles and contains about 2,500 inhabitants.

Approximately 19 miles of the segment is laid with 66-pound rail and the remainder with 90-pound rail. The track is ballasted with cinders, and the record indicates that it is in good condition for the services required of it. Expenditures for maintenance of way and structures have averaged slightly over $500 a track-mile during each of the past 3 years, but the applicant believes that it will be necessary to expend an average of about $750 a mile for the next several years.

The net salvage value of the segment is estimated by the applicant to be $84,141.

Service on the segment is afforded by a mixed train which operates northerly on Monday, Wednesday, and Friday of each week, and southerly on succeeding days. In the event of the proposed abandonment, Grant City and Mount Ayr would be served with the same frequency by trains making side trips from the St. Joseph line and the applicant is even considering the possibility of affording additional service to Mount Ayr.

The business handled over the segment is chiefly carload freight traffic. Passenger and express traffic is negligible. Practically all the interline freight traffic is in-bound, consisting chiefly of coal, grain, lumber, cement, and feed. The total number of carloads handled to and from the 2 stations on the segment was 26 in 1941, 53 in 1942, and 39 in 1943. During those years, the business at Redding averaged 30 carloads in-bound and 2 carloads out-bound, and the business at Delphos averaged 9 carloads in-bound and 1 carload out-bound, annually. Less-than-carload freight traffic, practically all of which was in-bound, averaged about 80 tons a year.

Most of the business handled over the segment is bridge traffic destined to Grant City, or to Mount Ayr and stations on the west line north of that point. The total number of carloads of bridge traffic was 403 in 1941, 436 in 1942, and 453 in 1943. The applicant shows that, in the event of the proposed abandonment, such traffic could be

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handled over the St. Joseph line without any disadvantage to the shippers, but the length of the haul in some instances would be from 20 to 28 miles longer, and the additional cost of transportation would be from $928 to $1,790, annually, based on the volume of overhead business handled over the segment during the past 3 years.

According to computations made from statements submitted in evidence by the applicant, the financial results of operation of the segment for the years 1941–43, in order, were as follows: Revenues assigned to the segment, local $15, $18, and $45, interline freight $139, $320, and $226, overhead freight $3,919, $4,270, and $4,184; gross revenues according to the applicant from the interline freight traffic handled over its system lines to and from the segment, excluding the portion thereof assigned to the segment $2,456, $3,733, and $2,854; rents received, credit, $16, $16, and $16; expenses charged to the segment, maintenance of way and structures $8,376, $10,544, $14,505, maintenance of equipment, $1,384, $1,260, and $1,287, transportation $6,471, $6,939, and $5,314; pay-roll taxes $641, $818 and $983; property taxes $11,132, $9,811, and $11,253; cost of handling the interline freight traffic over system lines of the applicant, determined on the basis of 50 percent of the remainder of the gross revenues after deducting the portion thereof assigned to the segment, $1,228, $1,866, and $1,427; credit to the segment covering additional expense of moving trains under the proposed new operating arrangement, $366, $1,532, and $3,010; and loss from the standpoint of the applicant's system as a whole $22,321, $21,349, and $24,434.

In arriving at the foregoing figures, the segment was credited with all revenues from local traffic. Revenues derived from the interline freight traffic and the overhead freight traffic were assigned on a mileage prorate basis. Expenses for maintenance of way and structures were ascertained from records covering the cost of material, including labor, used by two section crews engaged on the segment and on other parts of the west-side line. Such records do not specifically show the amounts expended on the segment, but the evidence is that each mile of track on which the crews worked received about the same amount of maintenance and for that reason the portion of such expenses applicable to the segment was allocated on a mileage prorate basis. Expenses for maintenance of equipment and transportation were determined largely on the basis of train-miles, locomotive-miles, or car-miles. The applicant alleges that the segment was charged with nothing but out-of-pocket expenses such as would be saved if operation were discontinued. Pay-roll taxes represent 3 percent of the labor charges. Property taxes were determined by applying the local tax rates to valuations in the taxing districts in which the segment is located. The record affords some doubt that the proposed

abandonment would effect savings in taxes on railroad property in the State of Iowa to the extent anticipated by the applicant. However, the operating results of the segment would show losses of $11,189, $11,538, and $13,181 for the years in question if the property taxes were eliminated entirely. Other figures presented by the applicant purport to show that if the segment had been abandoned the net savings resulting therefrom would have been $25,312 in 1941, $24,197 in 1942, and $26,828 in 1943. A detailed analysis of such figures is deemed unnecessary for the purpose of this record.

As previously indicated, the only intermediate stations on the segment are Redding and Delphos. The protestants offered no testimony pertaining to the rail-transportation needs of shippers in either of those communities except that of an individual who has been engaged in the business of retailing gasoline and feed at Redding for the past 18 years. He has made no use of the segment for the past 2 years except for the in-bound movement of oil in less-than-carload lots. The volume of such traffic is not shown. The gasoline necessary to supply the needs of his business at Redding is hauled approximately 25 miles by his own trucks from a point called Diagonal, on the Great Western, where he has a large bulk gasoline station. His trucking equipment consists of two gasoline trucks, one having a capacity of 450 gallons and the other 500 gallons.

A representative of a concern which owns a lumberyard at Mount Ayr and another at Grant City testified that neither yard would be deprived of rail-transportation facilities in the event of the proposed abandonment but he fears the loss of certain stopping-in-transit privileges which now permit the unloading of part of a carload of lumber or other commodities at one yard and the remainder at another yard, for a small additional freight charge. The volume of traffic handled over the segment for either yard is not shown.

The gist of the testimony of other witnesses for the protestants is that the highways in the territory tributary to the segment are not adaptable to heavy trucking, especially after heavy rainfalls, and that the trucking situation is deplorable. The record shows that practically all the livestock produced in the territory has been moved out by truck for several years and that heavy trucks continue to haul other commodities to and from the territory despite the poor condition of the highways alleged by the protestants.

The record affords no definite means of ascertaining the number of employees who would be affected as a result of the proposed abandonment. However, a witness for the applicant testified that a section foreman and perhaps three or four section hands would be displaced, but he believes that they would be absorbed readily on other lines of the applicant's system. Counsel for the Railway Labor Executives

Association and other railway labor organizations urge that if the application be granted we prescribe conditions for the protection of the interests of employees for a period of 4 years, similar to the conditions set forth in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I. C. C. 177, decided May 17, 1944.

Obviously the effect of any abandonment upon employees cannot be determined definitely until the abandonment is actually accomplished. It is our judgment that in cases of the character herein involved, protection should be afforded employees adversely affected, and that the carriers and the employees should be advised of our views with respect to the measure of such protection. Accordingly, our certificate herein will be issued upon the following conditions:

1. If, as a result of the abandonment permitted herein, any employee of the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the carrier, is displaced, that is, placed in a worse position with respect to his compensation and rules governing his work conditions, and so long thereafter as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced. The latter compensation is to be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of this abandonment (thereby producing average monthly compensation and average monthly time paid for in the test period). If his compensation in his retained position in any month is less than the aforesaid average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee; provided, further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance, and provided, further, that no allowance shall be paid to any employee who fails to accept employment, with seniority rights

in a position, the duties of which he is qualified to perform. The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our certificate herein; provided, however, that such protection shall not continue for a longer period following the effective date of our certificate herein than the period during which such employee was in the employ of the carrier prior to the effective date of our certificate.

2. If, as a result of the abandonment herein permitted, any employee, hereinafter referred to as a dismissed employee, of the carrier is deprived of employment with said carrier because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as result of the abandonment herein permitted, he shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this abandonment. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any employee who fails to accept employment, with seniority rights, in a position, the duties of which he is qualified to perform.

The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carrier, should agree upon a procedure by which the carrier shall be currently informed of the wages earned by such employee in employment other than with the carrier, and the benefits received.

The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carrier of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

3. No employee affected by the abandonment permitted herein shall be deprived during the protective period of benefits attached to his provious employment, such as free transportation, pensions, hospitalization, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough, as the case may be,

to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

4. Any employee retained in the services of the carrier involved in the abandonment herein permitted, or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of the carrier to be agreed upon in advance by the said carrier and the employees affected; provided, however, that changes in place of residence, subsequent to the initial change caused by the abandonment, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

5. In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing conditions Nos. 1, 2, 3, and 4, which cannot be settled by the carrier and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, et cetera, shall be agreed upon by the carrier and the employee, or his duly authorized representatives.

6 (*a*) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of the carrier (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the abandonment herein permitted, and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the carrier for any loss suffered in the sale of his home for less than its fair value. In each case, the fair value of the home in question shall be determined as of a date sufficiently prior to December 3, 1943, to be unaffected by the filing of the application herein. The carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

2. If the employee is under a contract to purchase his home, the carrier shall protect him against loss to the extent of the fair value

of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the carrier shall protect him from all loss and cost in securing the cancelation of his said lease.

(*b*) Changes in place of residence subsequent to the initial change caused by the consummation of the abandonment herein permitted and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(*c*) No claim for loss shall be paid under the provisions of this condition which is not presented within 1 year after the date employee is required to move.

(*d*) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier, and in the event they are unable to agree, the dispute may be referred by either party to a board of three competent real-estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively, and these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

Counsel for the protestants argues that the losses from operation of the segment, as shown by the applicant, are too high. By use of so-called round figures, he endeavors to show that the west line, in its entirety, is operated at an annual loss of about $9,500, of which a loss of about $2,500 is applicable to the segment on a mileage basis. Emphasizing the poor condition of the highways in the territory tributary to the segment and the growing inadequacy of truck transportation, he contends that the public need for rail-transportation service outweighs the losses that would accrue to the applicant from continued operation of the segment. His contentions, however, are not supported by the evidence. Only one actual shipper on the segment testified as to the inconvenience of handling traffic by truck to

and from points on other lines of railroad. Other witnesses for the protestants testified at length concerning the inability of trucks to handle the traffic 5 or 6 miles farther to and from the Great Western but none of them patronize the segment or would be directly affected by the proposed abandonment. The shipper above referred to has no difficulty in operating heavy trucks over the highways in order to carry on his gasoline business at Redding, and all his carload traffic is handled by the Great Western in preference to the applicant's railroad.

The evidence in this case warrants the conclusion that the application should be granted. It is clear that neither the present nor prospective volume of traffic on the segment is sufficient to warrant its retention, and that continued operation thereof would impose an undue and unnecessary burden upon the applicant and upon interstate commerce.

We find that the present and future public convenience and necessity permit abandonment by the Chicago, Burlington & Quincy Railroad Company of the line of railroad in Ringgold County, Iowa, and Worth County, Mo., described herein.

Subject to the foregoing conditions, and on the understanding that, before recording in its books the related journal entries to show the retirement of the segment from service, the applicant shall first submit the entries for our approval, an appropriate certificate will be issued effective from and after 40 days from its date in which suitable provision will be made for the cancelation of tariffs.

Excerpt from Interstate Commerce Commission decision of May 17, 1944, in Finance Docket No. 14221, Oklahoma Railway Company Trustees Abandonment of Operation, etc., and Finance Docket No. 14229, Atchison, Topeka & Santa Fe Railway Company et al. Purchases, etc., 257 I.C.C. 177, 197 - 202:

* * *

Subject to the reservation of jurisdiction to impose additional conditions for the protection of employees, heretofore stated, and with the understanding that nothing herein is to be constructed as granting approval of the future exercise of the so-called purchase options, or as an expression as to the possible abandonment of any portion of the North lines between Bethany and the Belle Isle power plant, or the Grand Boulevard line, the applications in Finance Dockets Nos. 14221 and 14229 will be granted, upon the following conditions:

1. That the Santa Fe and the Rock Island, or either of them, when filing any tariff applicable to the Oklahoma properties purchased by them under the authority herein granted, or applicable to Santa Fe Team Track No. 52, at the same time shall serve notices thereof upon their Oklahoma City connections and the Corporation Commission of the State of Oklahoma.

2. That the present neutrality of handling traffic in-bound and out-bound, and switching, by the Oklahoma Railway Company on the portions of its properties purchased by the Santa Fe and Rock Island under the authorization herein granted, and upon Santa Fe Team Track No. 52, shall be continued so as to permit equal service to and from all lines of railroad directly or indirectly connecting with the purchased portion of the properties of the Oklahoma Railway Company and with Santa Fe Team Track No. 52, without discrimination in the arrangement of schedules, or otherwise, and unless otherwise agreed to by the St. Louis-San Francisco Railway Company, without change of that company's places of interchange.

3. That the present traffic and operating relationships effective as to the said Oklahoma properties and Santa Fe Team Track No. 52, except as otherwise agreed upon, shall be continued insofar as such matters are within the control of the Santa Fe and the Rock Island.

4. If, as a result of the abandonment of operation herein permitted and the purchases et cetera, herein authorized, hereinafter referred to as the transaction, any employee of Robert K. Johnston and A. C. DeBolt, trustees of the Oklahoma Railway Company, of The Atchison, Topeka and Santa Fe Railway Company, or of Joseph B. Fleming and Aaron Colnon, trustees of The Chicago, Rock Island and Pacific Railway Company, hereinafter respectively referred to as the

Oklahoma, the Santa Fe, and the Rock Island, and collectively as the carriers, is displaced, that is, placed in a worse position with respect to his compensation and rules governing his work conditions, and so long thereafter as he is unable, in the exercise of his seniority rights under existing agreements, rules, and practice, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced. The latter compensation is to be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of this transaction (thereby producing average monthly compensation and average monthly time paid for in the test period). If his compensation in his retained position in any month is less than the aforesaid average compensation in the test period, he shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his retained or current position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position; provided, however, that nothing herein shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee; provided, further, that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance, and provided, further, that no allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Okla., with the Santa Fe or Rock Island if either of said two last-named carriers offers him a position, the duties of which he is qualified to perform. The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order.

5. If, as a result of the transaction herein approved, any employee, hereinafter referred to as a dismissed employee, of the carriers is deprived of employment with said carriers because of the abolition

of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as result of the transaction herein approved, he shall be accorded a monthly dismissal allowance equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of this transaction. This allowance shall be made during the protective period to each dismissed employee while unemployed, provided, however, that no such allowance shall be paid to any Oklahoma employee who fails to accept employment, with seniority rights in Oklahoma City, Okla., with the Santa Fe or Rock Island, if either of said two last-named carriers offers him a position, the duties of which he is qualified to perform.

The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carriers, should agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carriers of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

6. No employee affected by the transaction approved herein shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, pensions, hospitalization, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough, as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

7. Any employee retained in the services of the carriers involved in the transaction herein approved, or who is later restored to service after being entitled to receive a dismissal allowance, and required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other

personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of the carriers to be agreed upon in advance by the said carriers and the employees affected; provided, however, that changes in place of residence, subsequent to the initial change caused by the transaction, which result from the exercise by the employee of his seniority rights shall not be considered as within the foregoing provision.

8. In the event that any dispute or controversy arises with respect to the protection afforded by the foregoing conditions Nos. 4, 5, 6, and 7, which cannot be settled by the carriers and the employee, or his authorized representatives, within 30 days after the controversy arises, it may be referred, by either party, to an arbitration committee for consideration and determination, the formation of which committee, its duties, procedure, expenses, et cetera, shall be agreed upon by the carriers and the employee, or his duly authorized representatives.

9. (*a*) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of any of the carriers (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the transaction herein approved and is therefore required to move his place of residence:

1. If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to May 17, 1943, to be unaffected by the filing of the applications herein. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

2. If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

3. If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all loss and cost in securing the cancelation of his said lease.

(*b*) Changes in place of residence subsequent to the initial change caused by the consummation of the transaction herein approved and which grow out of the normal exercise of seniority in accordance

with working agreements are not comprehended within the provisions of this condition.

(*c*) No claim for loss shall be paid under the provisions of this condition which is not presented within 1 year after the date employee is required to move.

(*d*) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute may be referred by either part to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and the carrier, respectively, and these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser, or to select some person authorized to name the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

Subject to the foregoing conditions, we find (1) that the present and future public convenience and necessity permit abandonment of operation in interstate and foreign commerce by Robert K. Johnston and A. C. DeBolt, trustees of the Oklahoma Railway Company of the portions of lines in Oklahoma, Canadian, Logan, and Cleveland Counties, Okla., hereinabove described, but not prior to the commencement of operations by the Santa Fe and the Rock Island of the lines involved in Finance Docket No. 14229, and (2) that the joint purchase of portions of the lines of the Oklahoma Railway Company in and around Oklahoma City, Okla., by The Atchison, Topeka and Santa Fe Railway Company, referred to as the Santa Fe, and Joseph B. Fleming and Aaron Colnon, trustees of The Chicago, Rock Island and Pacific Railway Company, referred to as the Rock Island, the joint purchase by the Santa Fe and Rock Island of the rights of the Oklahoma Railway Company under the latter's agreement with the Oklahoma City Junction Railway Company, the joint acquisition of trackage rights over a portion of the Oklahoma Railway Company's Walker Street line, the acquisition by the Santa Fe and the Rock Island of trackage rights over portions of the lines of each

other in Oklahoma City, the purchase by the Santa Fe of 1.1 miles of line in Guthrie, Okla., and the purchase by the Rock Island of 0.28 mile of track in El Reno, Okla., and approximately 1 mile of Olie Street and East Yard tracks in Oklahoma City, all as herein described, are transactions within the scope of section 5 (2) of the Interstate Commerce Act, as amended, that the terms and conditions proposed, as modified herein, are just and reasonable, and that the transactions will be consistent with the public interest.

An appropriate certificate and order will be issued.

F-8879

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 15920

NEW ORLEANS UNION PASSENGER TERMINAL CASE

Submitted December 20, 1951. Decided January 16, 1952

Order entered providing that the employees adversely affected by the transaction in this proceeding, consistent with the circumstances therein and in conformity with the decision of the Supreme Court of the United States in *Railway Labor Executives' Assn.* v. *United States*, 339 U. S. 142, shall be afforded the protection of the Washington agreement of May 21, 1936, subject to certain limitations or restrictions. Previous reports, 267 I. C. C. 760 and 763.

Appearances as in previous reports and, in addition, *W. S. Macgill* and *Henry B. Curtis* for applicants, and *Edward J. Hickey, Jr.*, for intervening railway employee organizations.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

No exceptions to the report proposed by the examiner were filed.

Division 4, on April 7, 1948, issued its report, certificate, and order herein, 267 I. C. C. 763, among other things, authorizing construction and acquisition of lines of railroad, permitting abandonment or abandonment of operation of lines of railroad, and authorizing and approving joint use or joint ownership of lines of railroad in Orleans and Jefferson Parishes, La., by the city of New Orleans, the Chicago, St. Louis & New Orleans Railroad Company, the Gulf, Mobile & Ohio Railroad Company, the Illinois Central Railroad Company, the Louisiana & Arkansas Railway Company, the Louisville & Nashville Railroad Company, Guy A. Thompson, trustee of the Missouri Pacific Railroad Company, the New Orleans & Northeastern Railroad Company, the New Orleans Terminal Company, the Texas & New Orleans Railroad Company, the Texas & Pacific Railway Company, and the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, incident to the construction and operation of a union passenger terminal in New Orleans, La. Consideration therein was given to the adverse effect on employees which probably would result from a consummation of the transaction and the requirements of section 5 (2) (f) of the Interstate Commerce Act, as amended, in connection therewith, which provides:

As a condition of its approval, under this paragraph (2), of any transaction involving a carrier or carriers by railroad subject to the provisions of this part,

the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected. In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period, following the effective date of such order, than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order. Notwithstanding any other provisions of this Act, an agreement pertaining to the protection of the interests of said employees may hereafter be entered into by any carrier or carriers by railroad and the duly authorized representative or representatives of its or their employees.

Upon consideration of such problem adverse effect and of the foregoing provisions, division 4 said:

As the record shows definitely that employees will be affected adversely by the applicants' proposals, it is appropriate in this case that we require a fair and equitable arrangement to protect the interests of employees so affected. We think that the benefit of such an arrangement necessarily must extend to all of the railroad employees affected by exercise of the authorizations herein granted. But we also think that the fair and equitable arrangement contemplated by section 5 (2) (f) is measured by the specification therein of a protective period of 4 years from the effective date of our order approving a transaction within the scope of section 5 (2). As was decided in *Chicago, M., St. P. & P. R. Co. Trustees Construction, supra*, we have no authority to prescribe any other period.

We are of the opinion that a fair and equitable arrangement for protecting the interests of employees adversely affected by the applicants' proposals here will be provided by conditions similar to conditions (4) to (9), inclusive, imposed by us in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I. C. C. 177 (197–201) which are similar to those prescribed in *Chicago, B. & Q. R. Co., Abandonment, supra*, and our approval and authorization herein will be granted subject to those conditions.

Condition 4 in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I. C. C. 177, 197–198, in part provides:

The period during which this protection is to be given, hereinafter called the protective period, shall extend from the date on which the employee was displaced to the expiration of 4 years from the effective date of our order herein; provided, however, that such protection shall not continue for a longer period following the effective date of our order herein than the period during which such employee was in the employ of the carriers prior to the effective date of our order.

The displaced employees referred to in this condition are those employees retained in the carrier's service but placed in a worse position with respect to their compensation or working conditions. However, the protective period indicated therein also applies to dismissed employees, that is, employees who lose their employment with the car-

rier involved, and who are afforded protection under condition 5 of the foregoing proceeding.

After service of the report and order of division 4 herein, a petition was filed by the Railway Labor Executives' Association, protestant, hereinafter sometimes called the labor association, on behalf of the employees involved, requesting reopening, reconsideration, and modification of so much of the report and order as found and provided that the period of protection for the employees adversely affected by the transaction was limited to 4 years from the effective date of the order, the modification sought being that such protective period for each employee continue for a period of 4 years from and after the date when he is affected by the transaction. With the applicants' consent the case was reopened for the limited purposes stated and thereafter, on reconsideration, by order of July 6, 1948, we denied the petition.

Failing to secure a modification of the order by us, the labor association sued the United States and this Commission in the United States District Court for the District of Columbia and asked that the objectionable portion of the order, as previously indicated, be set aside. The city of New Orleans and the various railroads involved were permitted to intervene as defendants. The case was heard by a three judge statutory court which granted the defendants' motions for summary judgment and dismissed the complaint. *Railway Labor Executives' Assn.* v. *United States*, 84 Fed. Supp. 178. An appeal was taken to the Supreme Court of the United States. That Court reversed the judgment of the district court and remanded the case to the latter with instructions to remand it to this Commission for further proceedings in conformity with the opinion. *Railway Labor Executives' Assn.* v. *United States*, 339 U. S. 142. The Court, among other things, stated:

> We conclude, therefore, that the Commission, while required to observe the provisions of the second sentence of § 5 (2) (f) as a minimum protection for employees adversely affected, is not confined to the four-year protective period as a statutory maximum. The Commission has the power to require a fair and equitable arrangement to protect the interests of railroad employees beyond four years from the effective date of the order approving the consolidation. [Page 155.]

In compliance with the instructions, the district court on May 26, 1950, remanded the case to us and ordered set aside as contrary to law that part of our report and order holding that we had no statutory power under section 5 (2) (f) of the act to provide employee protection beyond 4 years from the date of the order authorizing the transaction; and we were directed to take such further action in the proceeding as, in our discretion, will provide a fair and equitable arrangement for

employee protection consistent with the circumstances of the New Orleans passenger terminal project and in conformity with the opinion of the Supreme Court.

By order of June 29, 1950, we reopened the proceeding for reconsideration and such further action as would permit us to comply with the mandate, and assigned the proceeding for hearing on an unspecified date on the specific issues involved. The assignment of a date for the hearing was deferred upon request of the labor association, appellant in the court case, to permit an opportunity for negotiations with the railroad defendants for the purpose of reaching an agreement and entering a stipulation with respect to the protection to be provided employees, which would obviate the necessity for a hearing and permit the termination of the proceeding. The record shows that conferences were held on the matter. However, on May 18, 1951, the labor association advised us that negotiations had failed. Thereafter a hearing was held, at which the Brotherhood of Locomotive Firemen and Enginemen, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors were permitted to intervene in support of the position of the labor association.

The problem now presented is to determine what, if any, protective conditions in addition to those prescribed in the previous report are necessary to provide a fair and equitable arrangement for the employees who have been or will be adversely affected by the transaction consistent with the circumstances of the terminal project and in conformity with the opinion of the court. It is the position of the applicants that the conditions imposed by the original order effective May 17, 1948, are fair and equitable and in compliance with the statute, and that there has been no substantial change since that time requiring a modification thereof. They argue that the Supreme Court did not decide whether the arrangement prescribed by us was fair and equitable, inasmuch as the sole question for determination related to our statutory power under section 5 (2) (f) of the act. The position of the employee groups is that the conditions contained in the so-called Washington Job Protection Agreement of May 21, 1936, should be imposed as a fair and equitable arrangement for employee protection in this case, and that at the same time we should carry out the minimum requirements of section 5 (2) (f) of the act without affording any employee the right to receive duplicate compensation or benefits. To achieve this result they suggest that the so-called Oklahoma conditions contained in the original order of this Commission be retained and that a new provision be added that—

Any employee adversely affected prior to May 17, 1952, who has failed to receive, under the Oklahoma conditions, dismissal or displacement compensation equal

to that prescribed by the Washington Agreement, shall continue to receive compensation under the terms of the Washington Agreement until the compensatory benefits therein provided for his particular period of service have been paid.

On May 21, 1936, most of the railroads of the United States, including all but one of the operating carriers involved herein, entered into an agreement, commonly known as the Washington agreement, which provided specific protection for employees thereafter adversely affected by any "joint action by two or more carriers whereby they unify, consolidate, merge, or pool, in whole or in part, their separate railroad facilities or any of the operations or services previously performed by them through such separate facilities." As to displaced employees such protection applies from the date of adverse effect. These employees are those who lose their positions but are continued in service in other positions. They are guaranteed against loss in average monthly compensation, based on the last 12 months in which they perform service prior to their displacement, for a total period not exceeding 5 years. A coordination allowance is provided for dismissed employees from the date they are adversely affected, which must be within 3 years after the effective date of the coordination. This allowance is predicated on the employee's average monthly compensation during the last 12 months in which he earned compensation prior to his loss of employment, and upon his length of service. An employee with 1 year and less than 2 years' service is given 60 percent of his average monthly salary on the basis indicated for a period of 6 months, which allowance progressively increases until an employee with an excess of 15 years' service receives 60 percent of his average monthly salary for a period of 60 months or 5 years. A provision for lump-sum payment is contained with respect to employees with less than a year's service. The Oklahoma conditions differ in that they prescribe 100-percent protection for a maximum period of 4 years from the effective date of the Commission's order. If the actual consummation of the transaction authorized is delayed or postponed for all or any portion of the 4-year period following the effective date of the Commission's order, the period of protection after actual loss of employment is correspondingly diminished.

The employee groups point out that the Washington agreement by stipulation has been accepted by railroad carriers as a fair and equitable arrangement for the protection of employees in more than 30 cases in which section 5 (2) authorization was required. They are of the opinion that under the agreement the carriers signatory thereto are bound to afford the protection prescribed therein as a minimum, in the event that the protection prescribed under the statute should be less than that amount. The applicants argue that the Washington agreement was superseded by the enactment of section 5 (2) (f), and no

longer is applicable to transactions requiring approval by us under section 5 (2) of the act. As stated in the previous report, it is not our function to decide that controversy. Our duty is limited to the requirements of the statute.

Originally it was estimated, as shown by the previous report, that upon completion of the terminal project, 1,022 employees would be dismissed from their present positions, and that 680 employees would be required to operate and maintain the new passenger terminal. Of those dismissed, it was estimated that there would be 9 bridge tenders and 108 crossing watchmen. Later estimates as to the effect on employees based on employment levels as of April 16, 1951, were submitted by the applicants at the further hearing. They now estimate that the project will result in the elimination of 1,043 positions, including the positions of 7 bridge tenders and 10 crossing watchmen already eliminated. The completion date for the entire terminal project is scheduled for some time in the first quarter of 1953. During 1952 there will be 19 additional crossing watchmen dismissed. It is not anticipated that any of the remaining 1,007 positions will be abolished prior to the completion date of the project. The new terminal company is to recruit its employees from those employees dismissed on account of the project. At present it is estimated by the applicants that there will be 718 positions to be filled. However, not all the employees displaced will be eligible for new positions because some of the latter will not correspond to any old position, and in particular categories, such as clerks and policemen, more jobs will be created than will be abolished. After all the new positions are filled by the terminal company, it is estimated that there will be 372 employees who will have lost their positions, divided as follows: Enginemen 2, yardmen 14, machinists 7, sheet-metal workers 9, electrician 1, carmen 37, painters 3, unskilled labor 174, and crossing watchmen 125.

Based on the assumption that employment levels and labor turnover will continue as at present, the applicants estimate that upon completion date only 88 of the employees who will be without railroad jobs will have had service with the applicants prior to the Commission's certificate of approval of May 17, 1948. These will consist of 3 sheet-metal workers, 11 unskilled laborers, and 74 crossing watchmen. The applicants state that 195 of the employees who will be displaced entered the service between May 17, 1948, and April 16, 1951, and that the remaining 89 will be men hired between the latter date and completion date.

Estimates of cost have been submitted by the applicants based on various assumptions as to the conditions which may be prescribed. The Washington agreement applied without limitation or restriction

to all employees dismissed, would require total payments of $913,198, or an average of $183,750 annually. Consideration was given neither to possible credits from earnings in other railroad employment nor to cost to the carriers where an employee might be retained at a lower rate of pay. To what extent such factors would affect the estimate cannot be determined. It should be pointed out that the employees heretofore dismissed have found other employment and have claimed no compensation. If it be assumed that the 19 employees to be dismissed during 1952 should receive compensation under the present Oklahoma conditions, they would have received on May 17, 1952, when the protection thereunder ends, an amount considerably less than they would be entitled to receive under the Washington agreement. Accordingly, it seems reasonable to assume that the total cost under the Washington agreement would not be increased by applying the Oklahoma conditions on the basis originally prescribed as a minimum with respect to employees affected within 4 years from the effective date of the order or prior to May 17, 1952.

Should the present Oklahoma conditions be extended beyond the completion date of the project and the period of protection for individual employees limited to the length of their service prior to the date of the Commission's order of approval, the cost would amount to $216,552 for 1 year and to $681,474 for 4 years beyond the completion date. Should the Oklahoma conditions be extended beyond the completion date and the period of protection made contingent upon the time worked prior to such date, the cost during the first year would amount to $949,766, and for a full 4-year protective period would amount to $2,645,000. A witness for the applicants stated that, prior to the hearing, it had been assumed that the interveners would request that the Oklahoma conditions be prescribed for the full protective period computed from the date the employee is adversely affected. The date of adverse effect might be before, on, or after the completion date.

The applicants point out that the cost of the entire passenger-terminal project was originally estimated to be $37,000,000, whereas the estimated cost now is $43,000,000. In view of such increased costs, the applicants argue that to place a further financial liability upon them where not clearly necessary to provide a fair and equitable arrangement to protect the employees involved would be unduly burdensome, and inimical to the public interest. However, the cost of the project is being borne almost entirely by the city of New Orleans except to the extent that the other applicants will pay as rent for use of the new station the interest and principal on the portion of the total cost reflected in the bonds issued. The applicants

whose employees are involved have not shown that they will be required to bear the increased cost of the terminal project.

The applicants contend that we must relate any conditions which we may prescribe under the first sentence of section 5 (2) (f) to the period of employment prior to the effective date of the order authorizing the transaction; that otherwise such conditions will be unlawful and will have the effect of rendering meaningless the exception written into the statute by Congress as a standard which we are required to include in our order of approval. After referring to the clause which limits the protective period to the length of employment prior to the effective date of the order approving the transaction, the Supreme Court said:

> This clause emphasized the separability of the second sentence, for it provided that "the protection afforded to any employee pursuant *to this sentence* shall not be *required* to continue for a longer period * * * " than that prescribed.
>
> The second sentence thus gave a limited scope to the Harrington Amendment and made it workable by putting a time limit upon its otherwise prohibitory effect. There was no comparable need for such a restriction upon the first sentence. We find, therefore, that the time limit in the second sentence now applies to it and to it alone. As thus limited, that sentence adds a new guaranty of protection for the interests of employees, without restricting the Commission's power to require greater protection as part of a fair and equitable arrangement. This serves the purpose of the sentence to increase, rather than to decrease, the protective effect of the paragraph.

From the foregoing, it is concluded that the Court holds that the second sentence of section 5 (2) (f) is entirely separable from the first sentence thereof, and that the former imposes no limitation upon this Commission, except as a minimum, in prescribing a fair and equitable arrangement under the latter. The language of the Court is plain and unambiguous. In spite of this separability of the first and second sentences of section 5 (2) (f) as found by the Court, the applicants still would have the second sentence provide a maximum insofar as protection to certain employees is concerned, even though the Court held that its only effect was to impose a minimum. In conformity with the decision, we may within our discretion impose conditions under section 5 (2) (f) without regarding as a maximum either the 4-year period, or the time worked by the employee prior to the effective date of the order. Previous cases cited by the applicants in which we have prescribed conditions pursuant to section 5 (2) (f) containing limitations either as to the 4-year period from the effective date of the order or as to time worked prior to such date were based upon an understanding of the law which the court has held erroneous.

In the applicants' opinion the Washington agreement would not provide a fair and equitable arrangement because (*a*) it would pro-

vide compensatory benefits for employees hired after May 17, 1948, and an unreasonably long period of protection for those in service prior to that time, (*b*) would provide no deduction for earnings in other employment except railroad employment, and (*c*) would be unreasonable and unfair. They attempt to differentiate *United States* v. *Lowden*, 308 U. S. 225, where the Supreme Court held proper conditions imposed by us [1] for the protection of employees which were substantially the same as the Washington agreement, on the ground (1) that the project there involved was to be consummated promptly, and (2) was prior to the enactment of section 5 (2) (f) setting up the standards that the arrangement be fair and equitable and not extend beyond the period of the individual's service prior to the effective date of the order. The latter contention already has been discussed and shown to be invalid. As to the first, it is argued that the employees here have had long notice that their positions were in jeopardy or, if hired since the effective date of the order, were placed on notice at that time that such positions were in jeopardy. However, it is not shown that all new employees have been so advised.

The employee groups contend that the foregoing argument is unrealistic inasmuch as, with the exception of the crossing watchmen, none of the employees could have determined with certainty that their particular position would be in jeopardy and that if they had so assumed and sought other work many would have needlessly sacrificed valuable seniority rights, retirement benefits, and a good job; and that the impact of job loss is as acute to an employee of short service as it is to one of longer service, even though it is recognized that a longer period of protection is justified for employees of longer service because of their more restricted job opportunities. It is also true that had all the employees involved become concerned over their jobs and secured employment elsewhere, the efficiency of existing operations might have been seriously impaired. Aside from such factors, the employee groups point out that the contention that notice of job loss is protection within the meaning of section 5 (2) (f) was expressly rejected by the Supreme Court. In this connection the Court said:

> Under the Commission's order in the instant case, employees displaced through the early elimination of grade crossings or otherwise may receive compensatory protection up to May 17, 1952, but employees displaced after that date will receive none. They will have had long notice that, by 1954, they may be displaced. But that much "protection" against the adverse effects of the consolidation would have been available to them without sec. 5(2)(f). *Neither such discrimination nor such insubstantial "protection" is consistent with the purpose or the history of the provision.* [Page 154.] [Italics supplied.]

The Supreme Court, in substance, has found that the Oklahoma conditions, as restricted with respect to the protective period insofar

[1] *Chicago, R. I. & G. Ry. Co. Trustees Lease*, 230 I. C. C. 181.

as the facts in this case are concerned, provide insubstantial protection, are discriminatory, and not consistent with the purpose and history of the provision requiring a fair and equitable arrangement. Accordingly, a finding herein that the Oklahoma conditions alone with the time limit therein prescribed, having in mind not only the 4-year maximum but also the limitation as to time worked prior to the effective date of our order, would provide a fair and equitable arrangement, would not be consistent with the circumstances in this case nor in conformity with the decision of the Supreme Court of the United States. It then is necessary to decide what type of conditions are necessary to meet the requirements of the statute. The employee groups suggest that a simple solution is to prescribe the terms of the Washington agreement which has been approved in principle by most of the major railroads of the country for use in just this type of proceeding, observing, of course, the protection under the present Oklahoma conditions as a minimum. The cost under this plan has been estimated by the applicants to be $913,198, as compared with a cost of $945,766 for the first year alone, should the present Oklahoma conditions be extended for 1 year and the completion date of the project substituted for the effective date of the original order. Such estimates are on the assumption that all the employees dismissed will be compensated. However, none of these dismissed thus far has claimed compensation. It is possible that the cost of applying the Washington agreement might be much less than indicated, and the limitation later discussed should further reduce payments thereunder.

Based on testimony given before the Senate committee, which considered the legislation from which section 5(2)(f) evolved, by a member of the committee of six who had been appointed by the President to study the transportation problem and recommend legislation,[2] the statement of a member of the House committee which handled the legislation in debate on the floor,[3] and the recommendation of this Commission with respect thereto,[4] a conclusion is warranted that it was the general understanding and intention at the time the legislation was pending that employees would be protected by some plan embodying the basic provisions of the Washington agreement. The Supreme Court has made it clear that the second sentence of section 5(2)(f) which was substituted for the Harrington Amendment did not serve as a limitation on the purpose of the first sentence. From the beginning, we have patterned the conditions which we prescribed after the Washington agreement. Since the enactment of section 5(2)(f), the conditions prescribed by us differed from that

[2] Testimony George M. Harrison, hearings before Senate Committee on Interstate Commerce on S. 1310, 2016, 1869, and 2009, 76th Cong., 1st sess. 34 (1938).

[3] Seventy-sixth Cong. Rec., part 9, 76th Cong., 3rd sess., page 10,178, Representative Wolverton.

[4] Interstate Commerce Commission report on S. 2009, Omnibus Transportation Legislation, p. 67 (76th Cong., 3rd sess., House Committee Print) transmitted January 29, 1940.

agreement as to when the protection afforded was to begin, the duration thereof, and the amount of the annual allowance to be made because all such matters were regarded as being fixed by the statute. Under the circumstances here present, some additional protection for the employees involved must be afforded. In our opinion the Washington agreement, subject to the limitations later shown, would provide the fair and equitable arrangement contemplated by the statute.

One provision of the Washington agreement, to which specific objection has been raised by the applicants, has never had our approval. It provides, in effect, that the coordination allowance to which an employee is entitled in case of dismissal will be reduced by the amount of compensation he receives from other railroad employment, but not otherwise. We have consistently required that there be appropriate deductions for earnings in all outside employment. See *Chicago, R. I. & G. Ry. Co. Trustees Lease*, *supra*, *Texas & P. Ry. Co. Operation*, 247 I. C. C. 285, *Chicago, M., St. P. & P. R. Co. Trustees Construction*, 252 I. C. C. 49 and 287, *Chicago & N. W. Ry. Co. Trustee Abandonment*, 254 I. C. C. 820 (not printed in full), *Oklahoma Ry. Co. Trustees Abandonment*, *supra*, and *Chicago, B. & Q. R. Co. Abandonment*, 257 I. C. C. 700. Accordingly, all earnings from outside employment should be included in computing any employee allowances which may be provided herein. Condition No. 5 of *Oklahoma Ry. Co. Trustees Abandonment*, *supra*, which relates to compensation for dismissed employees contains the following pertinent provision:

> The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based.

The dismissal allowance, as used in the foregoing, has the same meaning as coordination allowance, as used in the Washington agreement.

Based upon the conclusions stated herein and consistent with the circumstances in this proceeding and in conformity with the decision of the Supreme Court of the United States in *Railway Labor Executives' Assn.* v. *United States*, *supra*, we find that a fair and equitable arrangement for protecting the interests of the employees adversely affected by the transaction herein will be provided by applying the terms of the Washington agreement of May 21, 1936, subject to the following limitations or restrictions:

(*a*) That employees adversely affected within 4 years from the effective date of the order approving the transaction shall receive as a minimum the protection afforded by conditions 4 to 9, inclusive, in *Oklahoma Ry. Co. Trustees Abandonment*, 257 I. C. C. 177 (197–201),

as prescribed in the report and order approving the transaction, for the period they are adversely affected prior to May 17, 1952 (4 years from the effective date of the order of approval), and any such employee so adversely affected who has received under such conditions total dismissal or displacement compensation less than that which he would receive by applying the Washington agreement, as limited, for the full protective period therein provided from the time he is first adversely affected, shall continue to receive benefits under the terms of the Washington agreement, as limited, until the total compensatory benefits provided therein for his particular period of service have been paid.

(*b*) That in applying the Washington agreement the coordination allowance provided therein for dismissed employees shall be reduced with respect to any employee who is otherwise employed to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his coordination allowance, exceed the amount upon which his coordination allowance is based; such employee or his representative, and the carriers, to agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

The intent and effect of the foregoing findings are that all employees adversely affected by the transaction involved should receive the protection afforded by the Washington agreement, reduced as to dismissed employees to the extent that they receive compensation in other employment or under unemployment insurance laws; and that employees adversely affected prior to May 17, 1952 (4 years from the effective date of the order of approval) are to receive as a minimum the protection afforded by the Oklahoma conditions as prescribed in the previous report for the period they are adversely affected prior to May 17, 1952, but if the total amount of such compensation is less than they would receive under the Washington agreement, as limited, applied from the date of adverse effect, then they are entitled to the remaining benefits they would have enjoyed under the latter. While it is unlikely under the existing circumstances that the situation will arise, should the amount of compensation to which an employee is entitled under the original Oklahoma conditions applied to May 17, 1952, equal or exceed the amount to which he would be entitled under the Washington agreement, as limited, then he would be entitled to nothing under the latter.

An appropriate order will be entered.

Commissioner Cross did not participate in the disposition of this proceeding.

BUREAU OF FINANCE, INTERSTATE COMMERCE COMMISSION

CONDITIONS FOR THE BENEFIT OF EMPLOYEES OF CARRIERS

Set forth below are the conditions for the benefit of employees of carriers imposed by the Commission in *Southern Ry. Co.—Control—Central of Georgia Ry. Co.*, 317 ICC 557.

The conditions set forth in article I are imposed in proceedings under section 1(18)–(20) of the Interstate Commerce Act which relates to the abandonment, construction, extension, operations, and acquisition of lines of railroad and in cases arising under section 5(2) of the act which includes all types of unifications as well as trackage rights.

The conditions set forth in articles I and II are imposed for the specific purpose of giving protection to those employees who knowingly are not to be adversely affected in their employment until several years after the date of the order authorizing the transaction.

ARTICLE I

1. *Definitions.*—Whenever used in this article, unless the context requires otherwise, the words and phrases defined in this paragraph shall be deemed and construed to have the meanings herein set forth.

(*a*) "Transaction" means the transaction or transactions approved by the report of which this appendix is a part.

(*b*) "Carrier" means the railroad or railroads which are involved in the transaction, as defined or described in the said report.

(*c*) "Displaced employee" means an employee of a carrier who is placed in a worse position with respect to his compensation and rules governing his working conditions as a result of the transaction.

(*d*) "Dismissed employee" means an employee of a carrier who, as a result of the transaction, is deprived of employment with the carrier because of the abolition of his job or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of the transaction.

(*e*) "Protective period" means that period of time from the date on which an employee is displaced or dismissed to the expiration of 4 years from the effective date of the order authorizing the transaction: *Provided, however,* That the protective period for any particular employee shall not continue for a longer period following the effective date of said order than the period during which such employee was in the employ of the carrier prior to the effective date of the order.

2. *Displacement allowances.*—(*a*) So long after his displacement as he is unable, in the exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, during the protective period a displaced employee shall be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the monthly compensation received by him in the position from which he was displaced; *provided, however,* that if any employee elects not to exercise his seniority rights he shall be entitled to no allowance.

(*b*) Each displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction, thereby producing average monthly compensation and average monthly time paid for in the test period.

(*c*) If his compensation in his retained position in any month is less than the aforesaid average compensation, the displaced employee shall be paid the difference, less compensation at the rate of the position from which he was displaced for time lost on account of his voluntary absences in his current or retained position, but if in his retained position he works in any month in excess of the average monthly time paid for in the test period, he shall be compensated for the excess time at the rate of pay of the retained position.

(*d*) Nothing herein contained shall operate to affect in any respect the retirement on pension or annuity rights and privileges in respect of any employee.

3. *Dismissal allowances.*—(*a*) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing

during the protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction.

(*b*) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the carriers, shall agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and of the benefits received.

(*c*) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service after being notified by the carriers of a position, the duties of which he is qualified to perform and for which he is eligible, or in the event of his resignation, death, retirement on pension, or dismissal for good cause.

4. *Fringe benefits.*—No employee of the carrier who is affected by the transaction shall be deprived during the protective period of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, relief, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees on his home road, in active service or on furlough, as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

5. *Moving expenses.*—Any employee retained in the service of the carrier or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and within the protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses of himself and his immediate family, and for his own actual wage loss, not to exceed 2 days, the exact extent of the responsibility of the carrier to be agreed upon in advance by the carrier and the employee affected: *Provided, however,* that changes in place of residence which are not a direct result of the transaction, made subsequent to the initial change and which grow out of the normal exercise of seniority, shall not be considered within the purview of this paragraph.

6. *Arbitration of disputes.*—In the event any dispute or controversy arises with respect to the protection afforded by these conditions or with respect to their interpretation, application or enforcement, which cannot be settled by the carriers and the employee or his authorized representatives within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a third, or neutral, member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate the third member, which designation when made will be binding upon the parties. The decision of the majority of the arbitration committee shall be final, binding, and conclusive. The salaries and expenses of the third member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

7. *Losses from home removal.*—(*a*) The following condition shall apply, to the extent it is applicable in each instance, to any employee who is retained in the service of any of the carriers (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his employment within the protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by his employing carrier for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of filing of the application or applications here

involved so as to be unaffected by such filing. The employing carrier shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the employing carrier shall protect him against loss to the extent of the fair value of any equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shal protect him from all loss and cost in securing the cancellation of his said lease.

(*b*) Changes in place of residence subsequent to an initial change caused by the consummation of the transaction and which grow out of the normal exercise of seniority in accordance with working agreements are not comprehended within the provisions of this condition.

(*c*) No claim for loss shall be paid under the provisions of this condition which is not presented within 1 year after the date the employee is required to move.

(*d*) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss, and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the representatives of the employees and the carrier on whose line the controversy arises and in the event they are unable to agree, the dispute or controversy may be referred by either party to a board of three competent real estate appraisers, selected in the following manner: One to be selected by the representatives of the employees and one by the carrier, and these two shall endeavor by agreement within 10 days after their appointment to select the third appraiser. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee adversely affected as a result of the transaction, within 4 years from the effective date of the order approving the transaction, shall receive as a minimum the protection afforded by article I hereof for the period he is adversely affected prior to the expiration of 4 years from the effective date of the order of approval, and any such employee so adversely affected who has received under such conditions total dismissal or displacement compensation less than that which he would receive by applying the Washington agreement of May 21, 1936, as limited by paragraph 2 of this article, for the full protective period therein provided from the time he is first adversely affected, shall continue to receive benefits under the terms of the Washington agreement, as limited, until the total compensatory benefits provided therein for the particular period of service have been paid.

2. In applying the Washington agreement the coordination allowance provided therein for dismissed employees shall be reduced with respect to any employee who is otherwise employed to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his coordination allowance, exceed the amount upon which his coordination allowance is based; such employee or his representative, and the carriers, to agree upon a procedure by which the carriers shall be currently informed of the wages earned by such employee in employment other than with the carriers, and the benefits received.

3. Any dispute or controversy which may arise with respect to the additional benefits provided by this article II shall be settled in the same manner as provided in paragraph 6 of article I hereof in relation to disputes arising under the latter article.

The CHAIRMAN. On behalf of the committee, I want to thank you for your very fine presentation here today. You have been very forceful in pointing up the seriousness of this problem and what, in your judgment, needs to be done.

Now, as to the matter of the welfare of the Nation, if we come to the point where there would be a national stoppage or strike in this

railroad industry, I appreciate the time and the effort as well as the energy that you and your organization and all of those with you have given to it.

Mr. Sibal mentioned a moment ago the importance of this matter being resolved without political implications, and I think your reply was appropriate.

I might say at a meeting at the White House with various people concerned with this problem, which you attended, not only people from your organization and from your Department, there were people at the White House and Members from Congress and the top leadership of both the House and Senate and some of the lesser ones of us that might have some responsibility in a leadership position over the development of this program.

I would like to reiterate that I saw not only the President, but others there, including the minority leader of the Senate and the minority leader of the House, and Members of the Senate and Members of the House, and I detected no political implications whatsoever in a sincere desire to seek a solution of this problem. That does not mean that I in any way feel that the parties involved here who have special interests, they are human beings, have not had an equal desire for a resolution. They simply have not come to it.

So out of all of this consideration, this proposal has been presented and we have had a full disclosure of purposes and intent here today. I personally can see that it presents a real challenge. There are those who have indicated probably that maybe it is not the best solution. I suppose if this is not the best solution, it is up to us to find out what the best solution is—whether it is to do nothing or to do something. And if we don't do it now, as Members of Congress, in my judgment, the onus is going to be on the Congress.

So I think that we have all got to proceed, the way I see it, using our very best efforts toward some appropriate resolution to it.

Now, when I asked management to give us 30 days to resolve this thing this morning, I had no intention of indicating that there was magic in the term of 30 days. But I did feel then, and I feel now that it was a reasonable length of time. It has been brought to my attention since then that maybe it was not sufficient time on the part of some, and on the part of others it was too much time. From my experience here in Congress, it requires several weeks if we are going to legislate on a highly important subject to have hearings, to have them printed and to have executive sessions, and to act and to report it and go to the Rules Committee and get a rule and go to the House and then go to conference, if necessary.

Those things are not accomplished in just a few days, especially in a problem of this kind. For that reason, I gave the very best estimate that I had. I suggested 30 days, and I meant without a full time but what I think should be sufficient time for the Congress to act responsibly. I still hope that we will get something like that in order to give us time to act promptly.

I feel that that is sufficient time in which to act upon it, and it will not be my intention if we can't settle the matter one way or the oher to ask for any further time. So I want to make it perfectly clear that there is no intention on my part to indicate that we are not going to pursue this matter just as expeditiously as we can toward whatever decision is finally determined one way or the other.

I think that you have helped us a lot today in the way you have presented to us this matter going back from the inception when you were charged with some part and some responsibility in it. I think you have opened the thing wide open and we should be able to get some valuable information from both the railroad representatives and the brotherhood representatives as they come on following your testimony.

So with the thanks of the committee, the committee will adjourn until 10 o'clock in the morning, at which time we will expect the representatives of the railroads to present their testimony.

The committee will adjourn until 10 o'clock.

(The following information was submitted for the record:)

THE PAY RECOMMENDATIONS OF EMERGENCY BOARD 154 ON THE RAILROAD DISPUTE

Emergency Board No. 154 recognized that the pay system was one of great complexity and agreed with the parties that it was in need of modernization. The Board in recommending specific changes in rates to modernize, further recognized that any such restructuring would necessarily result in raising the compensation of some jobs and reducing the compensation of other jobs. Thus some incumbents would have their pay reduced unless special attention were given to them. To avoid this result the Board devoted special attention to this problem and made two suggestions specifically "designed to insure that individual, incumbent employees will not be unduly affected by the structural changes." The Board suggested, for example, that "very long service employees" might be permitted to elect to remain on the old pay structure for the duration of their employment. Thus such employees would personally be unaffected by any changes which might be made. The Board also suggested that "a monthly or other periodic guarantee be developed assuring an opportunity for the appropriately covered employees to approximate current earnings, provided they are not the result of unduly long hours."

These suggestions, which were designed to protect the earning opportunities of the present incumbent employees, would of course cost money to implement and the Emergency Board, therefore, recommended that the carriers' total payroll for its operating employees be increased by a full 2 percent in order to protect current incumbents as well as to achieve the other adjustments it recommended.

The precise numbers involved in each of these aspects of the matter depend, of course, upon what the parties negotiate.

(Whereupon, at 6 p.m. the committee recessed, to reconvene at 10 a.m., Thursday, July 25, 1963.)

RAILROAD WORK RULES DISPUTE

THURSDAY, JULY 25, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

We regret that there is not more room in the committee room and we are sorry that some of you are inconvenienced by not having a place to sit. The Chair would like to ask your indulgence of the committee and cooperation so far as possible so we will not be interrupted.

This morning the witnesses on behalf of the railroad and industry are the Honorable Daniel P. Loomis, president of the Association of American Railroads and the Honorable J. E. Wolfe, National Railway Labor Conference chairman.

I assume it is the intention that you are to represent the entire railroad industry or will there be other witnesses?

STATEMENTS OF DANIEL P. LOOMIS, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND J. E. WOLFE, CHAIRMAN, NATIONAL RAILWAY LABOR CONFERENCE

Mr. LOOMIS. No, we will be the only witnesses, Mr. Chairman, and I will make a very brief opening statement and then defer to Mr. Wolfe for the main statement.

The CHAIRMAN. Very well, you may proceed, Mr. Loomis.

Mr. LOOMIS. Mr. Chairman, in response to the request of the chairmen of the House and Senate committees, and in order to cooperate with the Congress of the United States, the American railroads have agreed to a 30-day extension to 12:01 a.m. on August 29, 1963.

The CHAIRMAN. The Chair observes the audience has been hastily reduced and perhaps there are more seats available for those standing. Mr. Loomis, on behalf of the committee and the Congress I want to express our sincere thanks for the consideration given by you and your industry on the request which was made both by me as chairman of this committee and Senator Pastore, acting chairman of the Senate committee.

This, in my judgment, should give plenty of time for the Congress to take whatever action, if any, it will under normal circumstances, which as you know, is the better way to legislate without extreme pressure in considering this problem. I personally want to thank you for

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what I think is a wise decision and one that is made in the interest of the entire public of the United States.

Mr. LOOMIS. Thank you, Mr. Chairman. I have a very brief opening statement, and I would like to state the position of the railroad industry with respect to the President's message and the joint resolution that is before you.

The Association of American Railroads at a special meeting of its board of directors on Tuesday of this week considered the President's message and the joint resolution proposed by the President and unanimously voted to support the President's message and the joint resolution.

There are two matters in connection with the joint resolution which we think should be brought to the attention of the committee and certain changes made. The first is on page 3, lines 6 and 7, and I believe this was discussed with Secretary Wirtz when he was on the stand yesterday. It is our view that the words, or as soon thereafter as is practicable, should be omitted. It seems to us that 120 days is ample time in which to permit the Interstate Commerce Commission to reach a decision. The second matter is a serious one to us and it involves the language on page 4, and I will not read all of the language but I will refer to the language running from line 2 down to line 8—

> the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provieded in section 5(2)(f) of the Interstate Commerce Act, and with due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154 relating to—

and there follows quite a long list of items that the Commission is directed to give consideration to.

In referring to section 5(2)(f) of the Interstate Commerce Act, the first sentence reads:

> As a condition of its approval under this paragraph 2 of any transaction involved a carrier or carriers by railroad subject to the provisions of this part, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected.

That sentence is entirely consistent with the intent of the joint resolution and with the phrase

> due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154.

The second sentence of section 5(2)(f), however, contains this provision:

> In its order of approval the Commission shall include terms and conditions providing that during the period of four years from the effective date of such order such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that protection afforded to any employee pursuant to this sentence shall not be required to continue for a longer period following the effective date of such order than the period during which such employee was in the employ of such carrier or carriers prior to the effective date of such order.

The application of that sentence seems to us to be entirely inconsistent with the intent of the joint resolution and with the language giving due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154 relating to the items enumerated as follows:

For example, with respect to the firemen issue, the Presidential Railroad Commission at pages 48 and 49 set out in detail the protection which they recommended for the junior men who might be removed from service under its recommendation. The Emergency Board 154 also made certain recommendations with respect to protective provisions. However, the application of the second sentence of section 5(2)(f) would be entirely inconsistent with the direction contained on page 4 to give due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154.

We believe that should be clarified by making the second sentence of section 5(2)(f) inapplicable to this particular proceeding.

That completes my statement, Mr. Chairman, and I will defer to Mr. Wolfe, following questions.

Mr. STAGGERS (presiding). Thank you very kindly, Mr. Loomis. I am sure, as the chairman said, the committee appreciates your announcement this morning of the 30-day extension.

At this time, Mr. Springer, could you have any questions you would like to ask?

Mr. SPRINGER. I just want to be sure that I understand you correctly. Did you hear the testimony of the Secretary yesterday? He was asked directly by the Chairman of this Commission what those lines meant. Do you recall that testimony?

Mr. LOOMIS. Yes, I do, Mr. Springer.

Mr. SPRINGER. I believe he said that in case there was a conflict between 5(2)(f) of the Interstate Commerce Act and the recommendations of the Presidential Railroad Commission and Emergency Board 154, that 5(2)(f) of the Interstate Commerce Act would prevail. Are you and he in agreement on what this language means as it is in the bill?

Mr. LOOMIS. As it is in the bill I think we are agreed as to what the language means. It is totally in conflict, however, with giving any consideration to the Presidential Railroad Commission or Emergency Board 154. I might say also that if I recall correctly during the Senate hearing on the previous day the Secretary was uncertain as to what the proper interpretation was in the application of section 5(2)(f). I also heard his statement here yesterday.

Mr. SPRINGER. What you are in effect saying is that this conflict is irreconcilable that this must be straightened as to which does apply?

Mr. LOOMIS. That is right.

Mr. SPRINGER. There is one further question. Would your association have any objection to put in the limitation of this legislation as 1 year instead of 2 years?

Mr. LOOMIS. Yes, Mr. Springer, I think we would. We think that the 2 years is a reasonable time and probably a necessary time to make a real test of an application of whatever action the Commission might take in preparing for the future.

Mr. SPRINGER. Mr. Loomis, you understand I am talking about the legislation itself, not the order?

Mr. LOOMIS. The legislation itself I do not believe we would have so much interest in. The test of whatever the Commission might prescribe is what I was really referring to.

Mr. SPRINGER. Are you as optimistic as the Secretary was yesterday that this matter can be settled within a short time?

Mr. LOOMIS. I don't know that I am quite as optimistic as you state the Secretary's position. I do believe that a 2-year test should shed a great deal of light on the proper solution of these problems, and that it should lead to a settlement on a permanent basis before the end of the 2 years.

Mr. SPRINGER. Do you believe that if this legislation goes into effect that you can collectively bargain within the 2-year period to settle these matters?

Mr. LOOMIS. Yes, sir.

Mr. SPRINGER. That is your belief now?

Mr. LOOMIS. Yes, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. As I understand, Mr. Loomis, the procedure was that you were going to make a short statement and Mr. Wolfe is going to present the main statement?

Mr. LOOMIS. That is correct.

The CHAIRMAN. I think it would be better for you both to make your presentation before we enter into questions by the committee and then the committee would have the benefit of your full presentation.

Mr. LOOMIS. May I say, Mr. Chairman, so you will understand I am sure I will be back before Mr. Wolfe finishes, but Senator Pastore has requested me to come over and see him.

Will it be all right if I did so while Mr. Wolfe is making his statement?

The CHAIRMAN. With the permission of the committee we will excuse you while Mr. Wolfe makes his statement. You will be back?

Mr. LOOMIS. Yes. sir. I should be back within half an hour.

The CHAIRMAN. I am sure members will want to ask you further questions about the resolution itself.

Mr. LOOMIS. I will be back within a half hour, Mr. Chairman, and I am sure Mr. Wolfe will take at least that long.

The CHAIRMAN. I think I have a comment on that as I have seen his statement. Mr. Wolfe, I understand you are suffering from a case of laryngitis today and that you have a statement in the matter which you wish to include in the record, and then a summary statement which you wish to finish. You ask that one of your associates read the statement for you?

Mr. WOLFE. That is right, Mr. Chairman.

The CHAIRMAN. It wil be perfectly all right. Who do you want to do this?

Mr. WOLFE. Mr. Hallmann.

The CHAIRMAN. Your full statement will be inserted. Mr. Hallmann, what document will you read from? We have two or three before us. We want to know which one to refer to.

Mr. HALLMANN. From oral statement which I understand you do not have. You do have part of what I intend to read and when we come to that part I will indicate so you and the members of your committee may follow along with what you do have.

I will identify the document accordingly.

The CHAIRMAN. Very well, you may proceed.

Mr. HALLMANN (for Mr. Wolfe). My name is James E. Wolfe. I am chairman of the National Railway Labor Conference. As chairman of the National Railway Labor Conference, I give consideration on a national level to relations between the members of the conference and their employees relating to rates of pay, rules, and working conditions, and coordinate the work in the field of railroad labor relations in the eastern, southern, and western territories.

In this connection I act as chairman of and spokesman for the Joint Carriers Conference Committees of the eastern, western, and southern districts, and am responsible for the dissemination of such public information as may be appropriate in any given case or situation.

Approximately 90 percent of all railway operations conducted in the United States are conducted by members of the National Railway Labor Conference.

I entered service in the Burlington Railroad in the spring of 1918 when I was 16 years old as a coal chute laborer in Hannibal, Mo. In June 1957, I became vice president in charge of personnel which position I held until November 1961, when I became chairman of the Committee on Labor Relations of the Association of Western Railways and chairman of the Western Carriers Conference Committees.

From 1952 until my appointment to my present position I served as a member of all Western Carriers Conference Committees handling concerted national and regional wage and rules movements.

I have also served on several national arbitration boards and on December 22, 1960, I was appointed by the President of the United States as a member of the Presidential Railroad Commission. I served as a member of that Commission and as spokesman for the carrier members of the Commission until it completed its work and was dissolved pursuant to the order of its creation on March 26, 1962.

The general subject matter of my written statement is indicated by its table of contents. Perhaps for your present purpose, some parts of this statement are more pertinent than others.

However, my purpose was to give you at least some information with respect to most of the aspects of this dispute that I thought might be of interest to your committee.

The appendix to the statement contains copies of supporting documents and supplemental detail with respect to the matters referred to in the text of the statement. This dispute involves the proposals of 195 railroad operating companies and 5 railway labor organizations representing engine, train, and yard service employees to revise rules and agreements governing the wage structure and working conditions of such employees.

The carriers operate 92 percent of the railroad mileage in the United States, on 95 percent of the total net investment in railroad plants and equipment, and employ 94 percent of the industry's employees, 27 percent of whom are operating employees.

The railroads and their employees involved in this dispute and the representatives of these parties for purposes of collective bargaining are shown on pages 1 to 10 of the appendix to my written statement.

The carriers' proposals which were served pursuant to the provisions of section 6 of the Railway Labor Act on November 2, 1959, are shown on pages 16 to 28 of the appendix.

The first proposal of the organizations dated September 7, 1960, appears on page 29 of the appendix. This proposal was supplemented by detailed so-called implementing proposals which were presented by the organizations to the Presidential Railroad Commission on April 6, 1961, and which are attached to the report of the Commission and are shown on pages 294 to 304 of appendix B to the report.

The substance and purposes of the proposals of both the carriers and the organizations are summarized on pages 5 to 12 of my written statement. Disputes involving proposed changes in the rules and agreements governing the wage structure and working conditions of railroad operating employees have been the subject of almost continuous concerted national handling under the provisions of the Railway Labor Act since 1937, except during World War II and agreed 3-year moratorium period ending November 1, 1959.

Many of these agreements date from the last two decades of the 19th and the first two decades of the 20th centuries, and many of the rules involved have not been changed since they were standardized and made effective on an industrywide basis by the unilateral action of the Director General of Railroads during World War I.

Both the carriers and the organizations recognize that these rules and agreements should be revised in the light of the substantial technological changes that have since occurred in the railroad industry, and accompanying changes in the nature and requirements of railroad service, changes in operating methods and social and economic change in the American economy. But it is conceded that little, if anything, of significance has been accomplished along these lines.

In February 1959, the carriers proposed that the organizations join with them in requesting the President of the United States to appoint a commission to investigate and report its findings and recommendations for the revision of such rules and agreements—

> to protect the welfare of our country, the solvency of our industry, and the security of our workers.

The basis of this proposal was that—

> drawing up sound new work standards for the railroad industry has become so complex and challenging that the machinery providing for settling ordinary disputes appears hopelessly inadequate to cope with this task.

The organization opposed this proposal on grounds that the revision of the rules and agreements in question should be handled pursuant to the provisions of the Railway Labor Act, and in September 1959 President Eisenhower refused to appoint such a commission.

On November 2 of that year, pursuant to section 6 of the Railway Labor Act, the carriers served on the organizations proposals to eliminate rules and agreements requiring the use of firemen on other than steam locomotives in freight and yard service.

To revise rules governing the assignment of road and yard employees, and the basis of pay of such employees when used in through freight and passenger service, and to eliminate rules requiring the use of a stipulated number of employees in train, yard, and work crews. No agreements were reached on the individual railroads with respect to those proposed changes, and in June 1960 the carriers requested concerted national handling of their proposals by national bargaining committees designated by the parties involved. Meetings

of such national bargaining committees were held during the months of July through October 17, 1960.

During such national conferences, the organizations contended that the ordinary processes of the Railway Labor Act were not suited to handling the carriers' proposals and now urged that the parties agree to refer the carriers' proposals and such other proposals as either of the parties might desire to submit to a special commission.

On September 7, 1960, the organizations served notices on the carriers proposing changes in the existing wage structure, revision of rules and practices relating to the number of men in crews and their qualifications and training, financial and other protection for employees affected by mergers, consolidations, abandonments, technological changes in operations and changes in working conditions and provision for the stabilization of employment.

On October 17, 1960, at the insistence of the organizations a memorandum of agreement was entered into between the carriers and the organizations under the auspices of Secretary of Labor James P. Mitchell providing for the creation of a Presidential Railroad Commission to investigate the facts and report its findings and recommendations with respect to the proposals of the parties thereto.

The organizations thereafter expressed their entire satisfaction with the arrangements stipulated in this agreement and reasserted their position "that the work rules problem is too difficult to be resolved under the regular procedures of the Railway Labor Act" and "that the public through public members of the Commission will have a strong voice in this study."

The Commission requested by the parties was created by Executive Order No. 10891, dated November 1, 1960, and its report and recommendations were delivered to the President on February 28, 1962.

The carriers accepted the report and recommendations of the Commission, but its report and recommendations were rejected by the organizations and national conferences between the parties were resumed on April 2, 1962.

No agreement having been reached, the organizations on May 21, made application for the mediation services of the National Mediation Board pursuant to section 5 of the Railway Labor Act.

Between May 25 and June 22, approximately 32 meetings were held by the organizations and the carriers under the auspices of the Chairman of that Board, but no agreement was reached.

On June 26, 1962, the Board requested and urged the parties to enter into an agreement to submit the controversy to arbitration under section 7 of the Railway Labor Act. The carriers accepted this proffer of arbitration but the organizations rejected it.

On July 16, 1962, the Board advised the parties that in its judgment all practical efforts provided for its adjusting this dispute had been exhausted without effecting a settlement and that the Board had that day terminated its services under the provisions of the Railway Labor Act.

On the following day, the carriers served notice on the organizations that as of August 16, 1962, the rules changes recommended by the Presidential Railroad Commission would be placed into effect.

On July 26, 1962, the organizations brought suit in the District Court of the United States for the Northern District of Illinois seek-

ing a judgment that the proposed rules changes would violate the Railway Labor Act.

On August 6 the carriers with leave of the court and without objection from the organizations, withdrew their July 17, 1962, notices and substituted therefor the notices which had been served on November 2, 1959, to become effective August 16, 1962.

The organizations' complaint was then amended to seek similar relief against those notices. The district court dismissed the organization suit for failure to state a cause of action and the judgment of the district court was thereafter affirmed both by the Court of Appeals for the Seventh Circuit and by the Supreme Court of the United States.

The Supreme Court in its opinion dated March 4, 1963, stated that—

> the court of appeals concluded, as had the district court, that the Railway Labor Act procedures had been exhausted and that therefore the section 6 notices served by the carriers were proper.

The court of appeals correctly rejected the contentions of the organizations that the standards contained in the notices themselves violated the Railway Labor Act. Both parties having exhausted all of the statutory procedures are relegated to self-help in adjusting this dispute subject only to the invocation of the provisions of section 10 providing for the creation of an emergency board.

On March 13, 1963, at the suggestion of the carriers representatives of the parties met in Chicago for further conferences. The carriers again offered to accept the recommendations of the President Railroad Commission in disposition of this. This offer was rejected by the organizations. The organizations orally submitted a proposal relating to the use of firemen on diesel locomotives which was unacceptable to the carriers and no agreement was reached.

On April 2, the carriers announced that their second promulgation of rules and rule changes would become effective on April 8, 1963. On April 3, the President of the United States by Executive Order No. 11101 created Emergency Board No. 154 to investigate the dispute and to report its findings.

The report and recommendations of Emergency Board No. 154 dated May 3, 1963, were accepted by the carriers. The organizations announced that they would neither accept nor reject the Board's recommendations, that they were willing to use the report of the Board as a basis for further negotiations. The positions subsequently taken by the organizations on the issues involved constitute an unqualified rejection of the Emergency Board's recommendations. Conferences between the carriers and the organizations were resumed in Washington, D.C., on May 20, 1963, and continued through June 1, 1963.

On the afternoon of June 1, the Secretary of Labor was advised by representatives of the party that no agreement had been reached and there was then no prospect of the parties reaching an agreement without assistance. The Secretary of Labor thereupon tendered his services and those of Assistant Secretary James J. Reynolds, and the National Mediation Board to aid the parties in their efforts to resolve the dispute, and at the request of the parties assumed general supervision and direction of their negotiations.

From June 4 to July 10, 1963, approximately 100 meetings were held by the Secretary of Labor and his assistants with some or all of the parties to the dispute. Meetings were also arranged between representatives of the carriers and representatives of the organizations which were not attended by the Secretary or his assistants but no agreement was reached.

On or about June 15, 1963, the Secretary reported to the President that no progress had been made toward bringing the parties into agreement, and on that day the President requested the parties to make one last major effort to resolve the dispute and to proceed immediately to the hardest kind of bargaining with the assistance of the Secretary of Labor, Assistant Secretary Reynolds, and the National Mediation Board. At the President's request the parties agreed to maintain the status quo through July 10 to permit the completion of this procedure.

On June 19, the Secretary of Labor prepared and submitted to the parties for their consideration a draft of a memorandum of agreement for the settlement of the dispute relating to the consist of train and yard crews. While the carriers pointed out that the provisions of his memorandum were in some respects inadequate to dispose of the problems involved, they accepted the principles upon which the memorandum was based and offered to negotiate with the organizations for the settlement of the consist of crew issue within the framework of its terms.

The organizations rejected the memorandum as a basis for negotiation. On July 3, the carriers notified the organizations that the carriers proposed revised work rules would be put into effect at 12:01 a.m. on Thursday, July 11. The organizations announced that an industrywide strike of the employees represented by such organizations would become effective at the same hour and date. On July 5, 1963, the Secretary of Labor submitted to the parties his statement and proposal for the disposition of the entire dispute. Specific proposals for the settlement of the firemen's helper issue and the crew consist issue were submitted.

The Secretary stated to the parties that if these specific proposals were accepted, companion proposals and recommendations would be made for the expeditious settlement of the other disputed issues. The Secretary urged acceptance of his proposals. The carriers accepted the proposals and recommendations of the Secretary without qualification. The organizations rejected them. On July 19, 1963, the President of the United States proposed to the parties that they submit or that they agree to submit all issues in dispute between them for final settlement to Associate Justice of the Supreme Court Arthur J. Goldberg.

The carriers accepted this proposal of the President but it was rejected by the organizations.

On July 10 the President of the United States created a special six-man subcommittee of the Labor-Management Advisory Committee to undertake immedately a comprehensive review and report limited to the facts and issues in this case and the respective positions of the parties, and the carriers and the organizations agreed to withhold any rules changes or strike notice until July 29 to permit appropriate con-

sideration of this matter by the special subcommittee and it is not true that there has been no bona fide collective bargaining in this dispute, at least as far as the carriers are concerned.

The history of 4½ years of collective bargaining on the issues involved in this dispute has been as follows:

A. From February to August 1959, the carriers attempted to induce the organizations to join with them in requesting the President to appoint a commission to investigate and make recommendations for revising the rules governing the compensation and working conditions of railroad operating employees.

The organizations rejected the carriers' proposals and opposed the creation of a commission. But the carriers at least were then engaged in bona fide collective bargaining in an effort to dispose of the issues involved in this dispute.

B. From July to October 1960, there were meetings of the national bargaining committees representing the respective parties to this controversy. During such meetings the carriers urged the organizations to give consideration to the carriers' proposals of November 2, 1959, but the organizations then urged the carriers to agree to the creation of a Presidential Commission to consider the carriers' proposals and such proposals as the organizations might desire to submit and to assist the parties in reaching agreement. The carriers accepted the organizations' proposals.

Again the carriers, and presumably the organizations, were engaged in bona fide collective bargaining.

C. From February, 1962, the Presidential Railroad Commission attempted to bring the parties into agreement and made numerous proposals and suggestions for the settlement of this dispute. The carriers accepted each and every one of the proposals and suggestions of the Commission, but all such proposals and suggestions with respect to this were rejected by the organizations.

At least the carriers were engaged in bona fide collective bargaining.

D. From April to May 1962, meetings were again held by and between the national bargaining committees representing the parties. During these meetings the carriers accepted the recommendations of the Presidential Railroad Commission and urged the organizations to do so, but the organizations refused even to accept the Commission's report as a basis for negotiation. Again, at least the carriers were engaged in bona fide collective bargaining.

E. In May, June, and July, 1962, approximately 32 meetings were held between the representatives of the carriers and the organizations under the auspices of the Chairman of the National Mediation Board. Again the carriers urged the organizations to settle this dispute on the basis of the recommendations of the Presidential Railroad Commission and again the organizations refused to do so The National Mediation Board requested and urged the parties to submit the controversy to arbitration.

The carriers accepted and the organizations rejected this proffer of arbitration. Obviously at least the carriers were engaged in bona fide collective bargaining.

From August 10, 1962, until April 8, 1963, the carriers were enjoined by an order of the District Court of the United States for the Northern District of Illinois from making effective the recommendations of the Presidential Commission as well as the rules changes

proposed in their formal notice of November 2, 1959, while the Court of Appeals for the Seventh Circuit and the Supreme Court of the United States passed upon the legality of the carriers' section 6 notice of November 2, 1959.

During this period there was very little collective bargaining between the parties. However, the carriers did repeatedly offer to negotiate a settlement of the dispute within the framework of the Commission's recommendations. The carriers also offered to settle the dispute by the adoption of rules changes expressed in contract language which they proposed to make effective the recommendations of the Commission. These proposed rules appear on pages 125 to 157 of the appendix to my written statement.

These offers of the carriers were rejected by the organizations. Only one proposal was submitted by the organizations during this period. This was a proposal relating to the use of firemen on diesel locomotives which involved no meaningful departure from their original demand of the organizations of April 6, 1961, that firemen be employed in crews in all classes of engine services.

This proposal of the organization is discussed on pages 52 and 53 of my written statement.

F. On April 3, 1963, the President of the United States created Emergency Board No. 154 to investigate and report on this dispute. The Board made its report to the President on May 13, 1963. During this period the Board made numerous proposals and suggestions for the settlement of this dispute. The carriers accepted all of these suggestions and proposals. The organizations rejected all of them. During this period at least the carriers were engaged in bona fide collective bargaining.

G. Negotiations between the parties were resumed on May 20 and continued through June 1, 1963. During these negotiations, the carriers accepted the recommendations of Emergency Board No. 154 for the settlement of this dispute and urged the organizations to do so, but the organizations rejected the Board's recommendations. At least the carriers were engaged in bona fide collective bargaining.

H. From June 4 to July 8, 1963, approximately 100 meetings were held by the Secretary of Labor, by the Assistant Secretary, and by the National Mediation Board, with some or all the parties of this dispute. During the course of these meetings, the Secretary and the Assistant Secretary made suggestions for the settlement of all of the issues involved in the dispute and urged the parties to accept such suggestions. The carriers accepted all of the suggestions made by the Secretary and the Assistant Secretary, but the organizations rejected all such suggestions. At least the carriers were engaged in bona fide collective bargaining.

I. On July 9, the President of the United States requested the parties to accept his proposal for the settlement of this dispute. The carriers accepted the President's proposal. The organizations rejected it. At least the carriers were engaged in bona fide collective bargaining. During the last 4½ years the carriers have accepted each and every proposal of the President of the United States, of the Secretary of Labor, of the Assistant Secretary of Labor, of the National Mediation Board, of the Presidential Railroad Commission and of Emergency Board No. 154 for the settlement of this dispute.

The carriers also accepted the proposal of the organizations for the creation of the Presidential Railroad Commission.

It is respectfully submitted that such is bona fide collective bargaining.

The organizations have rejected each and every proposal, whatever its source, that has been made by anyone and everyone for the settlement of this dispute.

Mr. WOLFE. Mr. Hallmann will discuss on my behalf a selected portion of the statement which has been presented to you. He will start at page 49.

Mr. HALLMANN. While the carriers have accepted the recommendations of the Presidential Railroad Commission, the recommendations of Emergency Board No. 154, and all of the suggestions of the President of the United States and of the Secretary of Labor that have been made for the settlement of this dispute, it is the position of the carriers that the rules and rules changes proposed by them in their notices of November 2, 1959, are fair and reasonable and entirely justified by the circumstances and conditions to which such proposals are directed.

The carriers were deeply disappointed with many of the recommendations contained in the report of the Presidential Railroad Commission. Their acceptance of those recommendations was motivated by consideration of public interest and an effort to effect a peaceful resolution of this dispute. The extent to which this action on the part of the carriers involved concession and sacrifice is illustrated by the fact that while the adoption of the original proposals of the carriers would have resulted in an estimated savings of over $600 million per year in operating expense for the class I line haul railroads, the rules and rules changes recommended by the Commission would probably result in a temporary increase in current operating costs.

The carriers were also disappointed with the recommendations of Emergency Board 154. However, the urgent need for the modernization of the rules governing the use, compensation, and assignments of railroad operating employees, and the public interest and the interest of all elements of the railroad industry in reaching a prompt and peaceful solution of this dispute, in the opinion of the carriers, left them no alternative other than to accept the compromise and concessions to which reference has been made.

The representatives of the organizations have not expressed any willingness to consider any meaningful changes in or departures from their proposals of April 6, 1961.

The major issues in the dispute and the present posture of the dispute as it involves each such issue are briefly summarized on the following pages of this statement.

USE OF FIREMEN ON OTHER THAN STEAM POWER

In their notices of November 2, 1959, the carriers propose that railway managements be given the right to determine if and when firemen will be used on other than steam freight and yard locomotives as each carrier may find to be appropriate for the safe, efficient, and economical operation of its services. No change is proposed in the rule requiring the use of firemen on all passenger trains.

The organization proposed that:

> Crews in all classes of engine service shall consist of not less than one (1) engineer (motorman) and one (1) firemen (helper) and such additional employees as are required to assure maximum safety.

The Presidential Railroad Commission found that:

> * * * firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels. * * * It is, of course, impossible to say of the railroad systems operating under an almost infinite variety of conditions that nowhere in the United States is there in operation a single run which requires the services of a firemen-helper to render it safe and efficient. However, both the testimony which we have heard and the observations which we have made in the field are convincing that such runs are rare. We can find no basis for recommending an appropriate national rule covering these unique situations (report, pp. 45–46).

To this may be added the statement of Judge Rifkind, Chairman of the Presidential Railroad Commission, during his press conference on February 26, 1963, that:

> Every freight diesel engine today carries a complement of three men, a driver, called an engineer, a fireman, called a fireman-helper, and a head brakeman. And of this I am certain, because we saw it with our own eyes, and we heard the evidence with our own ears, and we studied it until we knew that we had reached a correct result.
>
> The fireman on board that engine does not serve a useful enough purpose to warrant his retention there. In short, the national diesel rule which was adopted in 1937 was a mistake. Had that mistake not been made in 1937, then in the slow process of dieselization, the problem would have been solved, and we would not have that problem today. But because that mistake was made, we have something like 40,000 firemen on our hands, today, who are condemned to a life of doing something which doesn't have to be done, and that does not contribute to the human personality (app., p. 91).

Emergency Board No. 154 recommended that organizations in interest be given an opportunity to protest the discontinuance of a fireman position on the grounds that the discontinuance of the position "would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibility performed by the firemen," and that unresolved disputes be referred to a special referee, with the burden of proof there resting on the organizations (Rept., p. 5). The carriers accepted these recommendations of the Emergency Board but they were rejected by the organizations.

Following the report of Emergency Board No. 154 the organizations resubmitted an earlier proposal that after natural attrition had exhausted rosters of furloughed and extra firemen and retired the incumbents of certain selected daylight yard and daylight branch line positions, requests of a carrier to discontinue any such daylight position would be made the subject of collective bargaining. The proposal specified numerous and detailed conditions under which a carrier would be required to hire new firemen to fill such positions when vacated by natural attrition. The organizations estimated that their proposal would eventually apply to approximately 5,500 of the 32,500 firemen positions in freight and yard service. A study made by the carriers indicated that the organization's proposal would actually apply only to a few hundred positions, and, because of the conditions attached to the proposal, it was improbable that any of such few hundred positions could ever be discontinued.

It is the position of the carriers that firemen make no needed or useful contribution to the safety or efficiency of freight or yard operations, and that the railroad industry should not be required to maintain redundant positions for such employees at a cost to it and to the Nation of more than $275 million each year.

Existing rules which require the employment of firemen on all diesel locomotives have been imposed upon the carriers by the Brotherhood of Locomotive Firemen and Enginemen, by resort to strikes, threats of strikes, and other forms of economic and political duress.

The organizations have contended that considerations of safety require the use of firemen in the cabs of all locomotives to observe signals and to perform other lookout functions, and that firemen are required in the enginerooms of such locomotives to perform mechanical duties. However, the Presidential Railroad Commission, two emergency boards, and one arbitration board, created under the provisions of the Railway Labor Act (Boards Nos. 70, 154, and 140, respectively), two Canadian Boards of Conciliation and a Canadian Royal Commission, have all in substance and in fact found, that the work traditionally performed by firemen has almost entirely disappeared and that maintaining the left side outlook, communicating signals to the engineer and detecting and correcting locomotive malfunctions have always been shared with other employees who would do little more than they have always been required to do if the position of fireman is abolished.

The following indisputable facts, none of which may be conclusive standing alone, when taken in combination, leave no reasonable doubt as to the redundancy of the position of fireman in freight and yard service.

1. The first diesel powered passenger trains were operated for many hundreds of thousands of miles without firemen. Such trains included the Pioneer, Twin, and Mark Twain Zephyrs (operated by the Burlington); the Flying Yankee (operated by the Boston & Maine and Maine Central); the Rebel trains (operated by the Gulf, Mobile & Ohio); and others. Firemen were assigned to the Zephyrs and the Flying Yankee (and to the Comet, operated by the New Haven) under threats of strike, but the Rebel trains continued to operate without firemen until 1954.

2. Multiple unit electric and rail motor car trains, in units of up to 16 cars, are operated safely and efficiently with only an engineer or motorman in the operating cabs of such trains. Such trains have been extensively so operated, both in intercity and in commutation service, since the first decade of this century.

3. Diesel freight and yard locomotives were operated without firemen by many railroads for many years after the first diesel switching locomotives were placed in service in 1925, and in 1937 a considerable number of carriers agreed to assign firemen to such locomotives that weighed more than 90,000 pounds on their driving wheels. Other carriers became parties to substituted regional agreements made in 1943 and 1944; however, diesel locomotives are still operated without firemen by 37 small line-haul railroads and switching and terminal companies.

4. Industries (other than railroads) and the armed services use diesel locomotives without firemen in their operation of at least 678 installa-

tions, some of which are of size and complexity comparable to many of those of the rail common carriers.

5. Only two men are used in the cabs of passenger trains; but three men ride in the cabs of freight trains—an engineer, a fireman, and a brakeman. The duties performed by the engineer and brakeman are substantially the same in nature (if not in degree) as were performed by such employees on steam locomotives. But as stated by Arbitration Board No. 140, "the change from steam to diesel power left little or nothing for the fireman to do." (Report p. 30.) Such service as are now performed by firemen in freight service are also performed by and are the historic and traditional duties of the engineer and brakeman.

6. On hooded type locomotives, used exclusively in yard service and extensively in road service by all rail carriers, the diesel engines and other machinery which propel the locomotives is enclosed in a hood comparable to the hood covering the engine of a truck or automobile, on such locomotives inspection of and adjustments to the machinery of the locomotive can be made only when the locomotive is stopped or moving at very slow rates of speed.

7. High speed, main line through passenger trains have been safely and efficiently operated since 1943 under a rule which does not permit the fireman to enter or perform any service in the engine rooms while the trains are in motion.

8. In yard service where train and engine movements are slow, the movements of the locomotive are controlled by signals from the ground crew. The engineer moves the locomotive only when he has a signal from the ground crew, and must be prepared to stop short of any obstruction. Mechanical forces are usually available to make repairs and adjustments.

9. Switching locomotives weighing less than 90,000 pounds on drivers have always been operated and are now operated by many carriers without firemen.

10. The organizations were unable to produce evidence of or direct attention to any operation of any railroad, in either freight or yard service, where the circumstances were such as to convince the Presidential Railroad Commission or Emergency Board No. 154 that the presence of the fireman made any material contribution to the safety or efficiency of such operation.

11. Firemen are not used on other than steam power in most foreign countries.

12. In 1956, 1957, and 1958, two Canadian boards of conciliation (comparable to emergency boards created under section 10 of the Railway Labor Act) and the Canadian (Kellock) Royal Commission (a commission created by an Order in Privy Council, whose duties and procedures were comparable to those of the Presidential Railroad Commission) found that firemen are not required on diesel locomotives either in freight or yard service on the Canadian Pacific or the Canadian national railway systems. Agreements were subsequently made by the Brotherhood of Locomotive Firemen and Enginemen with the Canadian operating companies implementing the findings of these boards and commission.

PROTECTIVE PROVISION FOR FIREMEN

The Presidential Railroad Commission recommended that all firemen with 10 or more years of seniority on July 1, 1962, shall retain their rights to work as firemen until removed from the working list by natural attrition. The Commission also recommended elaborate financial and other transitional protection for firemen with less than 10 years of seniority on July 1, 1962, as appears on pages 48 to 50 of its Report to the President. The carriers accepted the recommendations of the Commission. The rules proposed by the carriers to make such recommendations effective appear in the appendix to this statement.

Emergency Board No. 154 recommended that firemen who obtained employment after some reasonable date when it may be presumed that they were on notice that their jobs might not be permanent, and firemen who have not been employed in recent times may have their employment terminated; that firemen who have been employed on an irregular basis may have their rights terminated with severance allowances or may choose to remain on the seniority lists with preferential hiring rights; that firemen with 10 or more years of seniority should retain their rights to firemen's employment until removed from the working lists by natural attrition; and that all other firemen should retain their rights to firemen employment unless and until offered another comparable job for which they are or can become qualified, with "displacement allowance * * * against loss of earnings not to exceed 5 years." (Report, pp. 6, 7.)

The carriers accepted these recommendations. (See also pp. 7 and 8 supra.)

The organizations proposed an elaborate program of financial and other protection for employees including limiting reductions in numbers of employees, 5 years' income protection in the form of a monthly "displacement allowance," and reimbursement for all expenses of moving households, traveling to new job locations, wage loss during transfer, and loss of home value; and 12 months guaranteed annual employment for employees with compensated service in 8 or more months during the preceding calendar year, and in any of the 5 preceding 10 calendar years. (See pp. 301 to 304 of the Report of the Presidential Railroad Commission.) The carriers have been informed by the Secretary of Labor that—

> the employee representatives advised the Emergency Board that in the interests of reaching an accord, if satisfactory settlement could be reached on all other matters in dispute, this proposal would be withdrawn.

The carriers do not interpret this advice as intended to mean that the organizations will not demand protective provision for displaced firemen; however, the organizations have refused to discuss this subject with the carriers, although repeatedly requested to do so.

CONSIST OF TRAIN AND YARD CREWS (OTHER THAN ENGINE SERVICE)

Most train and yard crews consist of one conductor and two trainmen or helpers; however, under existing laws, rules and practices, the number of trainmen or helpers varies from one to five or more.

In their notices of November 2, 1959, the carriers proposed that railway managements be given the right to determine the number of trainmen, brakemen and helpers that shall be used in road and yard

crews, as each carrier may find to be appropriate for the safe, efficient and economical operation of its service. The organizations propose that each train and yard crew consist of not less than one conductor and two trainmen, brakemen, or helpers—

and such additional employees as are required to assure maximum safety. (Cf. supra, pp. 5 and 11.)

The Presidential Railroad Commission recommended (see pp. 53 to 60 of its report) that the consist of road and yard crews be made the subject of joint negotiation, that in the absence of agreement, issues involving safety of operations and workload be submitted to arbitration, and that employees furloughed as a result of reductions in the consist of crews be paid supplemental unemployment benefits equal in amounts to the unemployment insurance benefits received by such employees under the Railroad Unemployment Insurance Act.

The carriers accepted the recommendations of the Presidential Railroad Commission, and the rules proposed by the carriers to make effective those recommendations appear in the appendix to this statement. The organizations rejected the Commission's recommendations.

The recommendations of Emergency Board No. 154 dealing with this issue do not differ materially from those of the Presidential Railroad Commission, as appears from the analysis of this part of the report of the board appearing on page 43, supra. Nevertheless, the carriers accepted and the organizations rejected the recommendations of that board.

The carriers also accepted and the organizations rejected the proposal of the Secretary of Labor for the settlement of this issue which appears on pages 181 to 185 of the appendix to this statement. The carriers also accepted and the organizations rejected the July 5 recommendation of the Secretary for the settlement of the issue, which appears on page 191 and 192 of the appendix.

Representatives of the organizations have stated that they agree in principle to the procedure that was recommended by the Secretary for handling the problem, provided its application is limited to proposed changes in crew consist where the consist sought to be changed deviates from the prevalent pattern of one conductor and two brakemen. This modification of the Secretary's proposal, insofar as road service is concerned, might be acceptable to the carriers if it did not apply to branch lines, secondary main lines, and main lines on which newly developed or automated control equipment has been or may in the future be installed, irrespective of the number of brakemen employed. As to yard service, it is the carriers' position that the Secretary's proposal should be accepted without modification.

Although the carriers have accepted the recommendations of the Presidential Railroad Commission and of Emergency Board No. 154, and each of the recommendations of the Secretary of Labor for the settlement of this dispute, the facts involved and the history of the crew consist controversy compel the conclusion that the public interest would be best served by eliminating all agreements, rules, regulations and practices governing their consist of crews as proposed by the carriers in their notices of November 2, 1959. The carriers' proposal will be found on pages 26 and 27 of the appendix to this statement.

The history of the controversy between the parties involving this subject matter also demonstrates the urgency of the need for changes

in existing rules and regulations. Studies made on 9 major railroads of their respective crew consist needs, as compared with the actual consist of their crews as required by existing rules, laws, and regulations, disclose that the railroad industry is now required to employ approximately 19,000 road trainmen and yard switchmen who are not necessary or needed for the safe and efficient operation of the service. These unneeded and unwanted employees are costing the Nation and the industry approximately $150 million each year.

Many of the excess trainmen and switchmen on the carriers' payrolls are employed because of compulsion imposed by State crew consist laws and regulations. Most of this legislation was enacted prior to 1920.

The other of such unneeded trainmen and switchmen are employed as a result of rules or interpretations placed upon rules and practices, most of which were established more than 50 years ago when operating conditions, operating methods and the requirements of the service were far different from what they are today.

The ludicrous effect of crew consist rules and regulations was aptly described by Judge Rifkind, Chairman of the Presidential Railroad Commission, during his press conference on February 26, 1962, as follows:

> In the train service, you find these extraordinary conditions. You find a train running along, and it is served by a conductor and two brakemen, which is in most cases the normal crew for trains. It comes to a State boundary and the train slows down, it doesn't quite stop, and another brakeman jumps aboard. He rides a short distance, maybe 20, 30, 40, 50 miles, until he comes to the other boundary of that State, at which point the train slows down and he gently drops to the side of the train. He hasn't done any work on that train. Why is he there? Because the legislation of that State requires an extra brakeman for every train that passes through that State. It doesn't contribute to a man's self-respect to be assigned to that kind of a job (appendix, pp. 91 and 92).

The carriers have repeatedly attempted through collective bargaining with the organizations, pursuant to the provisions of the Railway Labor Act, to bring the consist of crews in line with the requirements of the service; however, the organizations have defeated all concerted efforts of the carriers of this kind by resort to tactics similar to those that have been employed to date in the current dispute. And even at this time the organizations are sponsoring legislation that would require the employment of additional unneeded men.

It is obvious that the public interest requires that discretion to determine the size and consist of road and yard crews required for safe and efficient operations must be vested in management, as is the practice in many other industries. The supposed apprehension of the organizations that such discretion might be abused is clearly a tactical contrivance. Before the Presidential Railroad Commission, the organizations were unable to identify a single undermanned crew on any American railroad, although they were repeatedly asked to do so.

The railroads, like the organizations, are interested in the safety of operations; but the railroads are also interested in the efficiency of operations. And an unsafe operation is not an efficient operation.

MANNING MOTORCARS AND SELF-PROPELLED MACHINES

Existing rules, practices, and agreements now require the assignment of nearly 575 engineers, firemen, conductors, and brakemen to operations where shop and maintenance of way forces use motorcars and self-propelled cranes, weed burners, clamshells, rail detector cars, and other such machines in inspection, repair and maintenance, and construction work. None of these operating employees perform any useful service. The machines are operated by and the work is all done by maintenance or shop forces. Existing rules requiring the assignment of operating employees to these work and inspection crews are largely the result of ridiculous decisions of the National Railroad Adjustment Act during its confused and incompetent infancy.

As pointed out by the Presidential Railroad Commission:

> The issue of the employment of operating craft personnel on motorcars or other self-propelled machines has been considered by two emergency boards. Each board, while characterizing the situation as "intolerable" or "deplorable" treated the matter as beyond its province on the ground that it was, essentially, a "jurisdictional" controversy between the operating and nonoperating crafts. (Rep. p. 63.)

The Commission found that:

> * * * there is no justification, in general, for the employment of personnel of the operating crafts on or in connection with the operation of the self-propelled vehicles or machines in question, and that, in general, the carriers should have discretion to determine whether or not to use such personnel.

The carriers have repeatedly attempted, through collective bargaining, to abolish or revise the rules which produce the "intolerable" and "deplorable" situation described the emergency boards. The organizations have not only refused to consider the carriers' proposals but have at the same time attempted to secure the assignment of additional unneeded men to this equipment by urging strained and unnatural interpretation of existing rules on the National Railroad Adjustment Board, and by seeking legislation designed to require the use of operating employees in maintenance, construction and inspection work.

The Presidential Commission recommended the elimination of all rules, agreements, and practices which require the use of operating employees:

> On or in connection with the operation of or use of any motorcar or self-propelled vehicle, or machine used in maintenance, repair, construction, or inspection work except where such vehicle or machine is used to provide motive power to move or switch other cars, vehicles, or machines (other than a maximum of two such other cars or vehicles used exclusively in hauling material to be used in connection with the work to which the vehicle or self-propelled machine is assigned.) (Report, p. 63).

The carriers accepted the recommendations of the Presidential Railroad Commission. Rules proposed by the carriers to make such recommendations effective appear on page 136 of the appendix to this statement. The recommendation of Emergency Board No. 154 were the same as those there of the Presidential Railroad Commission, except that the board recommended "adequate protection such as those discussed elsewhere in this report should be provided" for employees

adversely affected under the new rule. The carriers accepted this supplement to the recommendation of the Presidential Railroad Commission and submitted to the organizations a proposal that employees adversely affected would receive the schedule of allowances set forth in section 7(a) of the Washington Agreement of May 21, 1936, or the option of choosing the lump-sum separation allowance set forth in section 9 of that agreement.

The organizations rejected both the recommendations of the emergency board and the carriers' proposal, and submitted proposals which would require the carriers to hire additional unneeded men on or in connection with the operation and use of the equipment here involved.

BASIS OF PAY—WAGE STRUCTURE

The rules governing the basis of pay and wage structure of railroad operating employees have been derived from three major sources as follows:

1. Agreements entered into between the carriers and the organizations representing operating employees during the last two decades of the 19th century—some of which were voluntarily made, and some of which were imposed upon the carriers by strikes or threats of strikes and other forms of economic duress.
2. Awards of arbitration boards in cases of national significance during the first two decades of the 20th century and
3. Rules imposed upon the industry by the Director General of Railroads by his unilateral action when the operations and properties of the carriers were in the hands of the Government during World War I.

As stated by the Presidential Railroad Commission on page 3 of its report to the Presdient:

> An elaborate system of rules, practices, and decisions, developed over a period of more than 100 years, governs the manning of American railroad engines, and trains, the assignment of railroad operating employees to their daily tasks, and the intricate formulas under which they are paid. The system derived from long-established practices and habits, from collective-bargained agreements, from decisions of courts and arbitration tribunals, from Federal and State legislation, and from actions taken by the U.S. Director General of Railroads during and immediately after World War I when the railroads were under national control.
>
> By World War I the system had substantially matured into its present form. Directives of the Director General of Railroads codified and standardized the evolving practices. Further evolution has continued, but essentially in the same mold.

As illustrative of the ancient vintage of some of the more significant of these rules, it may be noted that the current rules that 100 miles or less shall constitute a day's work for which engines and freight train service employees shall receive a day's pay appeared in an agreement between the New York Central and Hudson River Railroad and the Brotherhood of Locomotive Engineers, dated January 26, 1875. (See app., p. 198.)

In their notices of November 2, 1959, the carriers proposed to increase the number of miles of service constituting a day's work, for which road service employees receive a day's pay, from 100 to 160 miles in through freight service and passenger engine service and from 150 to 225 miles in passenger train service, to reflect increases in the

speeds of trains that have occurred since the rules governing this subject matter (the basic day rules) were standardized throughout the railroad industry by the Director General of Railroads during World War I; to abolish rules requiring duplicate time payments or arbitraries and special allowances which conflict with the payment of single time in miles or hours from the time called for duty until released from duty, and to abolish earnings guarantees (other than minimum earnings guarantees for each trip or tour of duty), and higher than standard rates of pay (app., pp. 17 to 21).

In their so-called implementing proposals of April 6, 1961, the organizations proposed a 4-hour day in passenger service, a 6-hour day in through freight and passenger train service, and a 7-hour day in local freight and yard service—all without any reduction in daily, weekly, or monthly take home pay; increases in the hourly and basic daily rate component of the dual basis of pay; overtime at 1½ times the applicable hourly or mileage rate, whichever is greater; additional half time for all in excess of 10 hours between the time combination of assignments (*a*) in intercity road service having more intervals of release of less than 10 hours within or between assignments and (*b*) in commutation passenger service with an interval of release of more than 1 hour; weekly or monthly earnings guarantees (or both) exclusive of overtime and other compensation, and for all classes of employees in all grades of service; and the retention of all duplicate time payments, and upward adjustments in all arbitrary payments and special allowances on a time equivalent basis. (See pp. 294 to 300 of the Report of the Presidential Railroad Commission, and pp. 9 to 11 supra.)

The Presidential Railroad Commission recommended reductions in permissible hours on continuous duty, and weekly or monthly hours limitations; but recommended the retention of a 5-hour day in passenger engine service, a 7½-hour day in passenger train service, and an 8-hour day in freight and yard service; recommended that the mileage basis of pay be eliminated in short turnaround or commutation passenger service and on local freight runs of up to 100 or 110 miles; recommended that an additive basis of pay be substituted for the dual basis of pay in freight and intercity passenger service; recommended substantial increases in the rates of pay of yard service employees and road service employees not covered by the additive basis of pay, and substantial increases in overtime benefits; recommended that employees in regularly assigned service paid on a daily basis, who do not lay off of their own accord, receive a weekly guarantee of 5 days, and that the parties review all other earnings guarantees in the light of the proposed changes in the wage structure and other pay rules to develop a more consistent system of guarantees among classes of service and occupations; and recommended that duplicate time payments for initial and final terminal switching and intermediate yard switching be eliminated in local freight service paid on a daily basis, and that the parties review the continued application of initial and final terminal delay rules and other duplicate time payments in freight service (report, pp. 134 to 139: cf. pp. 15 and 16 supra).

The carriers accepted the recommendations of the Presidential Railroad Commission. The rules proposed by the carriers to make such recommendations effective appear in the appendix to this statement.

The organizations rejected the recommendations of the Presidential Railroad Commission.

Emergency Board 154 proposed two modifications in the Commission's recommendations; namely, (1) "that a full 2 percent be used in working out the adjustments in this case" (presumably referring to a 2-percent increase in average compensation), and (2) that if employees in through freight and passenger service are unable to maintain reasonable current earnings with normal hours of work under the proposed revised basis of pay, then some form of earnings guarantees should be provided so that—

incumbent employees will not be duly affected by structural changes (report, pp. 9, 10).

I will skip to the bottom of page 80.

The carriers and the majority of the organizations have agreed that any proposed modifications of the recommendations of the Commission and the Emergency Board cannot be the subject of further meaningful discussion until other issues involved in the dispute have been disposed of.

HOLIDAYS WITH PAY

The organizations demand for all employees holiday pay equivalent to 1 day's pay for each of nine specified holidays and, in addition, time and one-half for all services performed on such holidays with a minimum of 1½ days' pay.

The Presidential Railroad Commission recommended seven specified holidays with pay and time and one-half for service performed on such holidays for regularly assigned employees paid on a daily basis (report, p. 148).

Emergency Board No. 154 suggested no change in the Commission's recommendation.

The carriers accepted the recommendations of the Commission. The rule proposed by the carriers to make such recommendations effective will be found on p. 145 to 147 of the appendixe to this statement.

The organizations rejected both the recommendations of the Commission and the carriers' proposed rule.

DIFFERENTIAL FOR NIGHT WORK

The organizations propose a nightwork differential of 10 percent of the applicable hourly rate for all time on duty between the hours of 6 p.m. and 6 a.m., in addition to all other compensation; but the Presidential Railroad Commission recommended against the adoption of such a rule (report, pp. 148, 151).

Emergency Board No. 154 suggested no change in the recommendation of the Commission.

The organizations rejected the Commission's recommendation.

AWAY FROM HOME TERMINAL EXPENSE

The organizations are demanding allowances during layover periods at points other than home terminals of 1 hour's pay for layovers of 4 hours or less, 1 hour's pay for the next 4 hours or less, 2 hour's pay for the next 5 hours or less—such allowances to be cumulative, be repeated for each 24-hour period of any layover, and be in addition to all other compensation.

The Commission recommended a national rule requiring each carrier to provide suitable lodging or equivalent allowance for road service crews (other than short turnaround) when they are required to be at a terminal other than their home terminal for 5 hours or more.

The organizations' proposal and the considerations involved are discussed on pages 151 to 153 of the Commission's report. Emergency Board No. 154 suggested no change in the recommendation of the Commission.

The carriers accepted the recommendation of the Commission. The rule proposed by the carriers to take such recommendation effective is shown in the appendix to this statement.

The organizations have rejected both the recommendation of the Commission and the carriers' proposed rule.

INTERDIVISIONAL RUNS—ROAD TRAIN AND ENGINE SERVICE ASSIGNMENTS

On most railroads the length of runs and the location of terminals are "frozen" by the seniority and a variety of other rules.

In their notices of November 2, 1959, the carriers proposed a rule which would permit rail management to extend the length of runs, establish interseniority district runs, and move or abolish crew terminals with provision for an equitable distribution of earnings opportunities between the affected employees and the negotiation and arbitration of protective conditions, all as appears more fully by the proposal which will be found on pages 21 to 23 of the appendix to this statement.

The Presidential Railroad Commission recommended adoption of the carriers' proposal subject to further conditions protecting the employees affected against burdensome or onerous working conditions, unduly frequent relocation of homes, loss from sale of homes, moving expenses, and wage loss directly attributable to the time involved in relocation.

The carriers accepted the recommendations of the Commission (report, pp. 163 to 165); and proposed rules to make such recommendations effective (app., pp. 147 to 150).

The organizations rejected both the recommendations of the Commission and the carriers' proposed rules. Emergency Board No. 154 suggested no material change in the recommendations of the Commission (report, pp. 8, 9), and some or all of the organizations state that nothing can be accomplished by further discussion of the issue until agreement is reached with respect to basis of pay and wage structure changes.

I will skip to page 89.

COMBINATION OF ROAD AND YARD SERVICE

Existing rules preventing the carriers from combining so-called road service with so-called yard service in a single assignment result in a ridiculous and unjustifiable waste of manpower, money, and equipment.

Road and yard crews are each fully qualified to perform all of the services involved; however, frequently during the course of a single operation, first a road crew then a yard crew stands by in idleness while the other crew performs work to which it claims jurisdictional and seniority rights.

In their notices of November 2, 1959, the carriers proposed to eliminate restrictions on the combination of road and yard service in the assignments of freight and yard crews and further proposed that passenger crews be permitted to perform so-called yard work in connection with movements of the trains to which they are assigned. (Appendix, pp. 23 to 25.)

The April 6, 1961, proposals of the organizations contained the provision that "further combination of road and yard service shall be prohibited and nothing in these proposals shall be otherwise construed." (Commission report, p. 301.)

The Presidential Railroad Commission recommended that all road crews should be permitted to perform certain specified switching services or yard work in connection with the movements of their trains subject to conditions designed to protect what the Commission supposed to be the interests of the employees involved.

The Commission also recommended that when the last remaining yard assignment on any shift performs less than 4 hours yard work during its 8-hour tour of duty, such last remaining assignment may be abolished; but that when yard service requirements increase to the extent that there is more than 4 hours of yard work available to be performed in such assignment, the assignment shall be reestablished. (Report, pp. 179, 180.)

The carriers accepted the recommendations of the Commission. The rules proposed by the carriers to make such recommendations effective are set forth on pages 151 to 153 of the appendix to this statement.

The organizations rejected both the recommendations of the Commission and the carriers' proposed rules.

It does not appear that Emergency Board No. 154 suggested any material changes in the recommendations of the Presidential Railroad Commission. (Report, p. 9.)

I will skip to page 95.

HISTORICAL BACKGROUND

The problem of rules revision, the positions of the parties in this dispute, and the present posture of the dispute can be fully understood and evaluated only in the light of their historical background.

Of particular importance is the history of prior movements initiated by the carriers to modernize the wage structure and work rules, and the role that has been played by arbitration boards in the handling of disputes between the carriers and the organizations representing their operating employees.

PRIOR RULES MOVEMENTS

The origins of most of the rules governing the compensation and assignments of railroad operating employees are summarized on pages 71 and 72 supra. As was stated by the Presidential Railroad Commission:

> By World War I the system had substantially matured into its present form. Directives of the Director General of Railroads codified and standardized the evolving practices. Further evolution has continued, but essentially in the same mold. (Report, p. 3)

I will skip to page 106.

All of the organizations representing operating employees have made innumerable agreements, both before and after the enactment of the Railway Labor Act, with individual carriers and with groups of carriers, referring local disputes concerning rates of pay, rules and working conditions and disputes involving the interpretation and application of national, regional and system agreements to arbitration or to the finality of decision provided by various types of referee procedures.

It is clear that the organizations' supposed traditional opposition to arbitration neither is real nor does it explain the refusal of the organizations to submit any part of this dispute to any form of referee procedure for final determination.

(The complete statement follows:)

S T A T E M E N T

in the matter of

A DISPUTE BETWEEN CERTAIN RAIL CARRIERS
AND FIVE RAILWAY LABOR ORGANIZATIONS

involving

Rules and Practices Governing
the Use, Compensation and Assignments
of Railroad Operating Employees

(197)

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THE PARTIES AND THE DISPUTE

The Parties to the Dispute

The parties to this dispute are 195 line-haul railroads and terminal and switching companies, and approximately 200,000 of their employees classified by the Interstate Commerce Commission for reporting purposes as road and yard engineers and motormen, road and yard firemen and helpers, road conductors, assistant road passenger conductors and ticket collectors, road passenger baggagemen, road brakemen and flagmen, yard conductors and foremen, yard brakemen and helpers, switchtenders, and hostlers.

The line-haul railroads and terminal and switching companies, hereinafter referred to as the "carriers," are represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and by James E. Wolfe, Chairman of the National Railway Labor Conference and of the Joint Carriers' Conference Committees. These carriers operate 92 percent of the total railroad mileage in the United States, employ 94 percent of the industry's employees, and own 95 percent of the total net investment in railroad plant and equipment in this country.

The employees involved in this dispute are the "operating employees," of the carriers. Such employees are represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, hereinafter referred to as the "organizations." These operating employees constitute 27 percent of all of the employees of the carriers that are parties to this dispute. They receive 34 percent of the total compensation paid to all such employees, including executives and officers. Thirty-nine percent of such operating employees are engine service employees (engineers, firemen and hostlers) and 61 percent are train and yard service employees (road conductors and trainmen and yard foremen, helpers and switchtenders).*

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* The representatives of the carriers involved in this dispute are named on pages 1 and 2 of the appendix to this statement. The names of the carriers appear on pages 3 to 10. Pages 3 to 10 of the appendix also show the scope of representation and the authority of the Regional Carriers' Conference Committees and representation rights held by the organizations among the operating employees of each of the carriers with respect to the subject matter involved in the dispute.

The Subject Matter of the Dispute

The dispute between the carriers and their operating employees involves proposed changes in the rules, agreements, interpretations and practices governing the use, compensation and assignments of such employees. By agreement of the parties, these proposals were referred to and considered by a Presidential Commission established by Executive Order No. 10891, dated November 1, 1960. The Commission presented its report on the dispute, and its recommendations for its settlement, to the President of the United States on February 26, 1962. The carriers accepted the recommendations of the Commission, but its recommendations were rejected by the organizations. The work done by the Commission, its report and recommendations, and the continuing offer of the carriers to accept its recommendations in settlement of this dispute have materially changed the posture and dimensions of the dispute and the complexion of the positions of the parties involved in the dispute.

The proposals of the parties and the report and recommendations of the Presidential Railroad Commission*

* Copies of the official printed Report of the Presidential Railroad Commission to the President of the United States are submitted with this statement.

which considered such proposals deal with issues relating to the manning of engines and trains, the structure of the compensation system for railroad operating employees, the rules governing the assignments of such employees, and provisions for employee security. The proposals of the parties, many of which are interrelated, are detailed and complex, and expressed in technical language. Only their general purport and intent will be summarized in this statement.*

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* The agreement between the representatives of the carriers and their operating employees, pursuant to which this dispute was referred to the Presidential Railroad Commission appears on pages 11 to 29 of the appendix to this statement. Exhibits A, B and C, which were attached to the agreement (omitted from the appendix), were and are substantially the same as the exhibits similarly lettered shown on pages 3 to 10 of the appendix. The proposals of the parties which were referred to the Commission are on pages 16 to 29. On April 6, 1961, the organizations filed supplemental or so-called implementing proposals with the Presidential Railroad Commission which are hereinafter described and which are set forth on pages 294 to 304 of the official printed report of the Commission to the President of the United States. The Executive Order of the President establishing the Presidential Railroad Commission is shown on pages 71 and 72 of the appendix.

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The Carriers' Proposals

The carriers' proposals, appearing on pages 16 to 28 of the appendix to this statement, were served on representatives of their employees pursuant to the provisions of Section 6 of the Railway Labor Act, on November 2, 1959. These proposed changes in existing agreements contemplate the following:

1. The elimination of existing rules and agreements requiring the use of firemen on other than steam locomotives when used in yard and freight service

2. The revision of rules governing the basis of pay and assignments of road and yard employees

3. The elimination of rules requiring the use of a stipulated number of trainmen in road train crews and a stipulated number of brakemen (helpers) in yard ground crews

4. The elimination of rules requiring the use of operating employees on motor cars and self propelled work machines used in inspection, construction, repair and maintenance work

The purpose and intent of the carriers' proposals relating to the consist of train and engine crews is to give railway managements the right to determine when and if firemen will be used on other than steam power in freight and yard service, and the number of trainmen and brakemen that shall be used in road and yard crews, as each carrier may find to be appropriate for the safe, efficient and economical operation

of its service. The purpose of the proposals relating to basis of pay and assignments is

1. to increase the number of miles of service constituting a day's work, for which road service employees receive a day's pay, from 100 miles to 160 miles in through freight service and passenger engine service, and from 150 miles to 225 miles in passenger train service, to reflect increases in the speeds of trains that have occurred since the rules governing this subject matter (the basic day rules) were standardized throughout the railroad industry by the Director General of Railroads during World War I;

2. to abolish rules and interpretations which have prevented the carriers from significantly increasing the length of runs or the miles of service included in road assignments during the last 40 years;

3. to eliminate so-called craft or jurisdictional distinctions between "road work" and "yard work" which prevent the carriers from including both in a single assignment;

4. to abolish rules requiring duplicate time payments or arbitraries and special allowances which conflict with the payment of single time in miles or hours from the time called for duty until released from duty, and

5. to abolish earnings guarantees (other than minimum earnings guarantees for each trip or tour of duty), and higher than standard rates of pay.

The agreements, rules and practices which the carriers propose to eliminate, change or revise (together with the so-called crew consist laws of several of the states) are costing the railroad industry more

than 600 millions of dollars annually in wages and payroll taxes for unneeded employees, unearned compensation for time not worked and services not performed, and the cost of owning and maintaining equipment and facilities that would not be required or used apart from the restraints imposed upon the efficiency of operations by such rules, practices and regulations. A summary table of the carriers' estimates of the number and wage costs of unneeded employees of the Class I line-haul railroads, which such railroads were required to employ during the year 1961, by the rules, regulations and agreements complained of by the carriers, is submitted on page 30 of the appendix to this statement.

The carriers' proposals of November 2, 1959, did not contain specific provision for dealing with such financial and other transitional problems of individual employees as might result from the abolishment of positions occupied by such employees under the rules proposed by the carriers in their notices of November 2, 1959. However, the carriers did recognize the importance of and the necessity for appropriate provision of this kind. On the same day that the carriers' proposals were served on the representatives of their employees, a letter was addressed

to Mr. H. E. Gilbert, President of the Brotherhood of Locomotive Firemen and Enginemen, in which the carriers stated that

> "We recognize that our proposals will have an effect on the employees you represent. Consequently we will be glad to give full consideration to these problems and any proposals your organization may have in connection therewith, provided they are bargainable subjects under the Railway Labor Act. If such proposals are served you may rest assured that the carriers will agree to handle them on a concerted basis concurrently with the carriers' proposals herein referred to."

The full text of this letter is set forth on page 45 of the appendix to this statement. When no reply was received from Mr. Gilbert, a second letter, dated June 9, 1960, was addressed to him containing similar language. (Appendix, p. 47)

The carriers' offer to give consideration to financial and other protection for displaced employees was renewed in national conferences and before the Presidential Railroad Commission; and the carriers have accepted all of the recommendations of both the Presidential Railroad Commission and of Emergency Board No. 154, to which this dispute was later referred (see pages 41, et seq., infra) dealing with this subject.

The Proposals of the Organizations

The organizations' proposal appearing on page 29 of the appendix to this statement was served on the carriers on September 7, 1960.* Their so-called implementing proposals, appearing on pages 294 to 304 of the Report of the Presidential Railroad Commission, were presented to the Commission on April 6, 1961.

The organizations propose to establish or amend rules, regulations and agreements to provide

(1) a 6-hour day and a 26-day work month in through freight service, a 4-hour day and a 26-day work month in intercity passenger engine service, a 6-hour day and a 26-day work month in intercity passenger train service; and a 7-hour day and a 5-day work week in local freight and yard service, including belt line, transfer and hostler service -- all without any reduction in daily, weekly or monthly take-home pay; **

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* See pages 58 to 60 of the appendix to this statement for further detail as to the circumstances under which this proposal was presented.

** The basic day and overtime rules governing the compensation of railroad operating employees were standardized throughout the railroad industry by the Director General of Railroads during World War I. These rules provide that in yard service 8 hours or less shall constitute a day's work for which yard service employees shall receive a day's pay, and that all time worked in excess of 8 hours' continuous service in a 24-hour period shall be paid for as overtime at one and one-half times the hourly rate.

A dual basis of pay is provided for road service employees: Pay for miles or hours, whichever produces the greater compensation. In all classes of road service except passenger service, 100 miles or less, 8 hours or less, constitute a day's work for which road service employees receive a

(2) overtime at one and one-half times the applicable hourly or mileage rate, whichever is greater;

(3) earnings guarantees "exclusive of overtime and other compensation," of 26 days' pay per month in through freight and intercity passenger service, 5 days' pay per week and 22 days' pay per month in commutation passenger service, 5 days' pay per week and 22 days' pay per month in all other classes of road engine service; 22 days' pay per month in all other classes of road train service; and 5 days' pay per week and 22 days' pay per month in yard, belt line and hostler service;

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day's pay. Miles in excess of 100 are paid for at the pro rata mileage rate. On runs of 100 miles or less overtime begins at the expiration of 8 hours; on runs of over 100 miles overtime begins when the time on duty exceeds the miles run divided by 12½. Overtime is paid for at an hourly rate of three-sixteenths of the daily rate.

In road passenger engine service 100 miles or less, 5 hours or less, constitute a day's work for which road passenger engine service employees receive a day's pay. In road passenger train service 150 miles or less constitute a day's work for which passenger train service employees receive a day's pay. In both grades of passenger service miles in excess of the miles comprehended by a day's pay are paid for at pro rata mileage rates. On other than short turnaround (commutation) passenger runs overtime is paid for on a speed basis of 20 miles per hour at an hourly rate of one-eighth of the daily rate, except that when the minimum day is paid for the service performed, overtime does not accrue until the expiration of 5 hours from the time of first reporting for duty in passenger engine service and 7 hours and 30 minutes from the time of first reporting for duty in passenger train service.

The carriers' proposals would not affect the hourly rates of pay of railroad operating employees, but would reduce mileage rates by 37.5 percent in through freight and passenger engine service and by 33.3 percent in passenger train service.

The organizations' proposals would not change mileage rates of pay, but the proposed reductions in the hours of the basic day, and in the work week or work month in each class of service without any reduction in daily, weekly or monthly take-home pay would have the effect of increasing the hourly and basic daily rate component of the dual basis of pay.

(4) "additional half time," in addition to all other compensation, for all time in excess of 10 hours between the time of first reporting for duty and final release in any assignment or combination of assignments (a) in intercity road service having one or more intervals of release of less than 10 hours within or between assignments, and (b) in commutation passenger service with an interval of release of more than one hour;

(5) a night-work differential of 10 percent of the applicable hourly rate for all time on duty between the hours of 6 p.m. and 6 a.m., in addition to all other compensation;

(6) holiday pay equivalent to one day's pay for each of 9 specified holidays and, in addition, time and one-half for all services performed on such holidays with a minimum of one and one-half days' pay;

(7) allowances during layover periods at points other than home terminals of 1 hour's pay for layovers of 4 hours or less, 1 hour's pay for the next 4 hours or less, 2 hours' pay for the next 5 hours or less -- such allowances to be cumulative, be repeated for each 24-hour period of any layover, and be in addition to all other compensation;

(8) Minimum crews to consist of not less than 1 engineer, 1 fireman, 1 conductor and 2 trainmen or brakemen "and such additional employees as are required to insure maximum safety;"

(9) a uniform, 4-year compensated training program for engine service employees;

(10) prohibitions against further combinations of road and yard service;

(11) financial and other protection for employees including limiting reductions in numbers of employees, five years' income protection in the form of a monthly "displacement allowance," and reimbursement for all expenses of moving households, traveling to new job locations, wage loss during transfer, and loss of home value; and

(12) twelve months guaranteed annual employment for employees with compensated service in 8 or more months during the preceding calendar year, and in any 5 of the preceding 10 calendar years.

The purposes of these proposals were stated before the Presidential Railroad Commission, by the representative of the organization who first presented them, as follows:

> "The general purpose of these proposals is to modernize the wage structure and the other conditions and rules governing the work of these operating employees." (Tr. 2739)

> "With respect to each of these kinds of conditions, within each of these areas, the proposals being made by the organizations here are designed to modernize the conditions under which the employees work, to modernize them, to bring them in step from the employees' standpoint, not just with the changes in machinery and the changes in steel and the changes in rail or the changes in other mechanical and physical features of the industry, but to bring them in step with the human progress that has been made . . . throughout American industry at a time when these rules have been virtually stagnant." (Tr. 2752)

The Recommendations of the Presidential Railroad Commission

The Presidential Railroad Commission recommended that some of the proposals of the carriers be accepted, at least in part, and that some be withdrawn or rejected. Likewise, the Commission recommended that proposals of the organizations be accepted in part and rejected in part. Nevertheless, there is relatively little in the recommendations of the Commission for the settlement of this dispute that was specifically proposed either by the carriers or by the organizations. Rather, the Commission's recommendations reflect its own thinking, its own analysis of the problems before it, and its own judgment as to such changes in existing rules and agreements as would be fair and equitable to the parties involved and in the public interest.

The more significant of the Commission's recommendations may be summarized as follows:

1. The Commission recommended that the carriers should not be required to hire new firemen to man road freight and yard diesels after July 1, 1962, but the Commission's recommendations would preserve the jobs of firemen who, on July 1, 1962, had 10 or more years of seniority until such men are removed from the working lists through natural attrition. The Commission further recommended that firemen with less than 10 years of seniority on July 1, 1962, if and when separated

from the service or furloughed, receive the displacement or separation allowances provided in Sections 7 and 9 of the Washington Agreement of 1936,* and retraining of the type provided under the Veterans Readjustment Assistance Act of 1952, with the carrier paying 75 percent of the tuition costs, and be placed on a national hiring pool roster entitling them to preferred hiring consideration.

2. The Commission rejected the carriers' proposal to eliminate crew consist rules and restrictions. It recommended that the consist of road and yard crews be made the subject of joint negotiations between the carriers and the representatives of the employees involved; that in the absence of agreement, issues involving safety of operations and work load be submitted to arbitration; that aggregate reductions in crew consist by any carrier in any seniority district during any yearly period should not exceed some small percentage of all the employees directly affected, and that employees furloughed as a result of reductions in the consist of crews be paid supplemental unemployment benefits equal in amounts to the unemployment insurance benefits received by such employees under the Railroad Unemployment Insurance Act.

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* The Washington Agreement, insofar as applicable here, provides a monthly allowance equivalent to 60 percent of the average monthly compensation of the employee in question during the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment for periods ranging from 6 to 36 months, depending upon length of service; or, in the alternative, separation allowances in amounts ranging from 3 to 12 months' pay, also depending upon length of service.

3. The Commission recommended that every employee deprived of employment as a consequence of technological change receive the displacement or separation allowances provided in the Washington Agreement of 1936, and the other benefits recommended for displaced firemen.

4. It recommended reductions in permissible hours on continuous duty, and weekly or monthly hours limitations.

5. With respect to basis of pay, the Commission rejected the carriers' proposal to increase the number of miles constituting a day's work for which employees receive a day's pay; recommended that the mileage basis of pay be eliminated in short turnaround or commutation passenger service and on local freight runs of up to 100 or 110 miles; recommended that an additive basis of pay be substituted for the dual basis of pay in freight and intercity passenger service; recommended substantial increases in the rates of pay of yard service employees and road service employees not covered by the additive basis of pay, and substantial increases in overtime benefits. The Commission estimated that its proposed revisions in the pay rules would yield increases in earnings for approximately 75 percent of all operating employees, and that the net effect of its proposals would increase earnings approximately 2 percent in freight and yard service.

6. The Commission rejected the carriers' proposal to eliminate earnings guarantees, and recommended the elimination of only a small part of the duplicate time payments complained of by the carriers.

7. As to fringe benefits, the Commission recommended holidays with pay and punitive rates for services performed on holidays for employees that would not be covered by the additive basis of pay; rejected the organizations' proposal of a night work differential, and recommended a national rule requiring each carrier to provide suitable lodging or equivalent allowance for road service crews when they are required to be at a terminal other than their home terminal for 5 hours or more.

8. The Commission rejected the carriers' proposals relating to road train and engine service assignments. It recommended that the establishment of interdivisional runs be made the subject of collective bargaining, and that when no agreement is reached with respect to the establishment of such runs, such unsettled disputes involving matters in which the employees have a legitimate interest be determined by arbitration.

9. The Commission also rejected the carriers' proposal for the combination of road and yard service, but recommended some relaxation of the limitations imposed by

existing rules and practices, including a recommendation that when the last remaining yard assignment on any shift performs less than 4 hours yard work during its 8-hour tour of duty, such last remaining assignment may be abolished. It further recommended that when yard service requirements increase to the extent that there is more than 4 hours of yard work available to be performed in such assignment, the assignment shall be reestablished.

The carriers accepted these and all of the other recommendations of the Presidential Railroad Commission and have at all times been willing, and are now willing, to negotiate a settlement of this dispute based upon the recommendations of the Commission.*

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* Included in or appended to the report of the Commission are the statements and dissents of the carrier and organization commissioners. The Statement of the Carrier Commissioners, appearing on pages 273 and 274 of the official printed report, concludes as follows:

> "In the absence of voluntary agreement between the parties, the Commission, at the insistence of the participating unions, was created to make its recommendations in what it considers to be the interest of the general public. Notwithstanding what we consider the deficiencies of this report, as it pertains to the denial of the revisions suggested by management and the increased cost involved without regard to the ability of this industry to pay those costs, we are convinced that basically these recommendations are designed to serve the public interest.
>
> "Consequently, the public interest being paramount, we are accepting the full report and will affix our signatures thereto."

THE HISTORY OF THE DISPUTE

Events Preceding the Report of the Presidential Railroad Commission

In December of 1957, more than 200 cooperating railroad companies participated in the establishment of a committee of six railway executive officers to investigate and report upon the manner in and the degree to which agreements, rules, regulations, interpretations and practices governing the employment and working conditions of railroad employees were affecting the financial condition and competitive position of the railroad industry, the efficiency of railroad operations, the character of railroad service and the national interest; and to make recommendations as to what procedures should be followed to correct such abuses and inequities as were found to exist.

This committee, with the aid of a staff of economists and technicians selected both from within and outside the railroad industry, devoted more than 13 months to a study of the scope and effect of such agreements, rules, regulations, interpretations and practices; and concluded and reported to its principals that the rules and practices governing the use, compensation and assignments of railroad operating employees were then costing the railroad industry at least 500 million dollars annually in wage costs of unneeded employees occupying redundant positions,

pay for time not worked, compensation that was not commensurate with the value of the services rendered, and the cost of owning and maintaining equipment and facilities that would not be required apart from the restrictions on the efficiency of operations imposed by such rules and practices.

The committee also found that these rules and practices were adversely affecting the financial condition and competitive position of the railroad industry, employee job security and the public welfare; and recommended that the President of the United States be requested to create a special board or commission to investigate and report on the effect of such rules and practices, and to assist the parties in making such revisions and changes therein as might be desirable and in the public interest.

Pursuant to the recommendations of the committee, Mr. Daniel P. Loomis, President of the Association of American Railroads, in a letter dated February 10, 1959, invited the chief executives of the five organizations representing railroad operating employees "to join with rail management in seeking the appointment of a presidential commission to study the impact of our present rules on the public welfare." *

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* A copy of Mr. Loomis' letter will be found on page 31 of the appendix to this statement.

Correspondence and consultations between Mr. Loomis and the chief executives of the organizations followed, but were terminated by a letter dated June 4, 1959, in which the proposal was rejected by the organizations. On the same day the organizations addressed a letter to Secretary of Labor James P. Mitchell, soliciting his support in opposition to the appointment of such a commission.*

On August 17, 1959, Mr. Loomis formally requested the President to establish a commission "charged with the responsibility of studying the effect upon the public of our outmoded work rules in the railroad industry and of recommending essential changes." **

On August 24, 1959, the organizations wrote to the President, opposing his appointment of a commission and urging a policy of non-governmental intervention.

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* See pages 31 to 38 of the appendix to this statement for correspondence describing developments during the period February 10 to June 4, 1959. The letter of the organizations to Mr. Loomis dated June 4 is on pages 35 to 37. Their letter to Secretary Mitchell is shown on page 38.

** Mr. Loomis' letter to the President will be found on pages 39 to 41 of the appendix. The United States Court of Appeals for the Seventh Circuit found in its opinion in Cause No. 13876, Brotherhood of Locomotive Engineers v. The Baltimore & Ohio Railroad Co., that "Testimony at the trial supports the factual allegations" contained in this letter. See appendix, pages 160 and 161.

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It was the position of the organizations that any rules changes proposed by the carriers should be handled pursuant to the procedures provided by the Railway Labor Act. (See pages 42 and 43 of the appendix to this statement.)

The President, by a letter dated September 9, 1959, refused to appoint a commission. The President's letter to Mr. Loomis contains the following:

> "...The appointment of a Commission at this time could interfere with normal collective bargaining processes, and such a result would, in my judgment, not be in the public interest. Accordingly, without expressing any opinion on the merits of your proposal, I cannot consider it at this time." (Appendix, p. 44)

On November 2, 1959, the carriers served on the representatives of their operating employees, pursuant to the provisions of Section 6 of the Railway Labor Act, their notices of proposed changes in agreements governing the use, compensation and assignments of railroad operating employees that are involved in this dispute.*

Following service of the carriers' notices, the proposals therein contained were the subject of conferences on individual railroads, but no agreements were reached. On June 9, 1960, the carriers requested concerted

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* These proposals appear on pages 16 to 28 of the appendix to this statement and on pages 287 to 293 of the Report of the Presidential Railroad Commission.

national handling of their proposals by national bargaining committees designated by the carriers and the organizations. Meetings of such national bargaining committees were begun on June 9, 1960, and extended through October 17, 1960. During such national conferences the representatives of the organizations contended that the ordinary processes of the Railway Labor Act were not suited to handling the carriers' proposals, and now urged that the parties agree to refer the carriers' proposals and such other proposals as either party might desire to submit to "a special wage study commission." *

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* Correspondence evidencing these developments appears on pages 46 to 66 of the appendix. Attention is directed to the letter signed by the chief executives of the organizations which appears on pages 48 to 53. Toward the bottom of page 48 is the following statement:

> "Your proposal necessarily involves a comprehensive review of the entire wage structure, to which the ordinary processes of the Railway Labor Act are not suited. We believe that such a review, if it is to be made, calls for the creation of a special wage structure study commission. We accordingly propose that you join with us in the creation of such a commission, to be established and to function in general conformity with the recommendations of Emergency Board No. 109 on this subject. We further propose that this study commission be authorized to consider changes requested in your notices of November 2, 1959, and such other proposals as either party may desire to submit."

Further correspondence and consultations between the parties ensued.*

On August 26, 1960, the representatives of the organizations wrote a letter to the Secretary of Labor soliciting his assistance in securing the creation of a commission. In this letter the organizations stated, with reference to the carriers' proposals, that:

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* The position of the carriers was stated in a letter, directed to the chief executives of the organizations, dated July 21, 1960, containing the following:

> "The proposition you presented at the July 6th conference was for a so-called study commission which would be invited to dissipate its attention on matters not even remotely affecting work or pay rules. You estimated that its studies would consume at least two years, following which it would be necessary for us to go into collective bargaining, so that we would not then be any closer to solution of our problem than we are now.
>
> "We pointed out to you that we would give favorable consideration to submitting the rules issues to arbitration, and would even consider the formation and functioning of a study commission, provided that its findings would be final and binding upon the parties. Such handling could include not only the railroad proposals of November 2, 1959, but also such related bargainable issues as you feel should be made the subject of concurrent handling. Your rejection of this approach makes it necessary for us to proceed under the Railway Labor Act." (Appendix, p. 55)

> "These issues are of such breadth and scope and their investigation necessarily so extensive, that we believe consideration of them can best be given by procedures that will permit full study outside of the usual pattern of collective bargaining in the railway industry. (Appendix, p. 56)

On September 7, 1960, the organizations served notices on the carriers proposing changes in existing agreements, referred to supra, page 9 and note. A copy of this proposal, together with covering letters, are reproduced on pages 58 to 60 inclusive of the appendix to this statement.

On October 4, 1960, the organizations submitted a "Draft of Agreement to Establish a Commission" to Secretary Mitchell (Appendix, pp. 61 to 66); and on October 17, 1960, a Memorandum of Agreement was entered into between the carriers and the organizations, under the auspices of the Secretary of Labor, providing for the creation of a Presidential Railroad Commission to investigate the facts and report its findings and recommendations to the President with respect to the controversy between the parties -- substantially as proposed by the organizations. (Appendix, pp. 11 to 29; cf. note, p. 4 supra.)

This Memorandum of Agreement provided that the "controversy between the parties" involved the proposals of the carriers contained in their Section 6 notices of

November 2, 1959, and proposals of the organizations served on the carriers on September 7, 1960 (both of which were attached to the memorandum) "including any implementing proposal or proposals that may be submitted to the Commission." The agreement also contained, among others, the following provisions:

> "2. * * * The Commission may recommend that any proposal or implementing proposal or any part of any such proposal should be rejected in whole or in part or accepted in whole or in part, or should be accepted as amended or revised by the Commission, as it finds under the evidence to be justified.
>
> "4. * * * The Commission shall also be authorized to use its best efforts, by mediation, to bring about an amicable settlement and agreement between the parties with respect to any issue concerning which the evidence has been heard.
>
> "5. It is the intent of the parties that the proceedings of the Commission, including its mediatory efforts and its report shall be considered and accepted as in lieu of the mediation and emergency board procedures provided by Sections 5 and 10 of the Railway Labor Act.
>
> "National conferences between the parties under the Railway Labor Act shall be resumed and expedited, provided no settlement is sooner reached, immediately following the report of the Commission.
>
> "In the event the National Mediation Board shall proffer its services, or the Board's services be invoked, the parties will jointly request the Board to expedite mediation and as promptly as feasible terminate the Board's services under the Act."

The organizations thereafter expressed their entire satisfaction with the arrangements stipulated in the agreement, and reasserted their contention "that the work rules problem is 'too difficult' to be resolved under the regular procedures of the Railway Labor Act"*; and on November 1, 1960, the Presidential Commission requested by the parties was duly created by Executive Order No. 10891.**

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* Mr. William P. Kennedy, President of the Brotherhood of Railroad Trainmen, made an oral statement during a press conference on October 18, 1960, which appears at the bottom of pages 68 and 69 of the appendix to this statement. On the same day the chief executives of the organizations issued a written press release which is reproduced on page 70 of the appendix. Both in Mr. Kennedy's statement and in the written press release, emphasis is placed upon the fact "that the public, through public members of the Commission, will have a strong voice" in the work of the Commission. The press release contains the statement that:

> "We have been in agreement for many months now with Secretary of Labor James P. Mitchell that the work rules problem is 'too difficult' to be resolved under the regular procedures of the Railway Labor Act.
>
> "We entered into the present discussions with the Secretary of Labor and railroad representatives in the sincere hope that a study Commission was the way to avoid a national transportation crissis."

** The Executive Order of the President, No. 10891, dated November 1, 1960, establishing the Presidential Railroad Commission, appears on pages 71 and 72 of the appendix; and the documents that follow through page 78 have to do with the appointment of the members of the Commission.

The Members of The Presidential Railroad Commission

The members of the Presidential Railroad Commission were appointed by President Eisenhower on December 22, 1960. Five of the members of the Commission were appointed from nominations submitted by the organizations, five members from nominations submitted by the carriers, and five public members were appointed without nominations from the parties. Secretary of Labor James P. Mitchell, who was appointed Chairman of the Commission, later resigned to become a candidate for governor of the state of New Jersey; and on March 5, 1961, Judge Simon F. Rifkind of New York was selected by President Kennedy as his successor. (Appendix, pp. 73 to 78)

The other public members of the Commission were John T. Dunlop, Professor of Economics, Harvard University; Charles A. Myers, Professor of Industrial Relations, Massachusetts Institute of Technology; Francis J. Robertson, Washington attorney and arbitrator, and Russell A. Smith,. Associate Dean, University of Michigan Law School.

The public members of the Commission were eminently qualified to perform the duties and services required of them. Judge Rifkind was and is the senior partner of the law firm of Paul, Weiss, Rifkind, Wharton and Garrison and a former judge of the United States District Court for the Southern District of New York. Prior to his appointment to

the Commission he had served as a Special Master for the Supreme Court of the United States in the Colorado River litigation. Both the work of the Commission and its report to the President unmistakably bear the imprint of his thinking and direction and of the importance which he attributed to the public interest in the Commission's approach to the problems that were before it.

John T. Dunlop, who is one of the leading economists in America today, was soon to become Chairman of the Department of Economics of Harvard University. No other economist has had more or broader experience in the field of labor relations in American industry. The recommendations contained in his report to the President, as a member of Emergency Board No. 109, were cited and relied upon by the parties to this dispute and adopted by them as a guide in their negotiations and in drafting the Memorandum of Agreement of October 17, 1960, culminating in their request for the creation of the Commission.

Charles A. Myers was a member of the staff of Massachusetts Institute of Technology and a recognized authority on industrial relations. His activities in that field had included work and studies done not only in the United States but in several foreign countries. He had also had extensive experience as an arbitrator and consultant.

Francis J. Robertson has had more experience than any other living person as a referee and arbitrator in the railroad industry, and as a member of emergency boards and special boards of adjustment created under the provisions of the Railway Labor Act. The work of no other referee had met with greater success or received more uniform approval of both labor and management in this industry.

Russell Andrew Smith is a lawyer and a teacher with extensive experience as an arbitrator and in the fields of mathematics, sociology and industrial relations. At the time he was appointed to the Commission he was a Professor of Law and Associate Dean of the Law School of the University of Michigan, and a member of various public commissions and other bodies engaged in various phases of public service, including the Atomic Energy Labor-Management Panel and other agencies engaged in social research, both inside and outside the field of industrial relations.

The public stature, ability and wide attainments of these public members of the Commission were such as to assure that its approach to the problems before it and its work, findings, conclusions and recommendations would be impartially just and motivated by the highest considerations of public interest.

The Nature and Scope of The Commission's Work

The nature and scope of the Commission's work and the methods that it used in conducting its investigations and deliberations are briefly stated in Chapter 2 of its Report, pages 13 to 20. Some supplementation of this modest summary is essential to a full appreciation of the skill, care and thoroughness with which it performed its services.

The formal public hearings of the Commission, at which the parties presented their evidence and arguments, were begun on Monday, February 6, 1961 and were concluded on Tuesday, November 14. These proceedings, which were interrupted from time to time by other work of the Commission, occupied 96½ days. Forty-three and one-half days were devoted to receiving the carriers' evidence, and 53 days to hearing witnesses and counsel for the organizations.

The stenographic transcript of these hearings consists of 15,506 pages, of which 6,844 were used to transcribe the presentation for the carriers, and 8,662 pages for the presentation of the organizations. The carriers called 36 witnesses who testified orally before the Commission and the organizations called 43 witnesses.

A considerable part of the testimony offered by both the carriers and the organizations was presented in

written form, and does not appear in the stenographic transcript of the proceedings. The carriers presented the written statements of 54 witnesses, and the organizations presented written statements of 103 witnesses. The carriers filed 195 exhibits with the Commission; the organizations filed 146. The carriers presented 8 documents for the Commission's consideration which were not marked as exhibits. The organizations presented 69 unmarked exhibits. Extensive use was made by both representatives of the carriers and representatives of the organizations of moving pictures, projection slides, models and other visual material. Both the carriers and the organizations were given an opportunity to present all of the evidence that they deemed essential in order to enable the Commission properly to evaluate and determine the issues that were before it.

During the course of the formal hearings before the Commission, its public members made numerous field inspection trips to observe operations that were in dispute. Many of these observations were made during weekends in order to conserve the time of the Commission; but on August 10, the Commission recessed its hearing for a period of 18 days to enable its public members to make more extensive and detailed observations in the light of the evidence that

had been introduced by the parties. During these 18 days the public members (individually, in groups, and as a single body) studied engine, train and yard operations in all classes of service, under widely varying conditions, throughout a greater part of the United States. Many operations that had been the subject of oral testimony and dispute during the hearings were observed and studied.

The Commission was assisted in its work by a staff of 32 professional, administrative, clerical and research technicians, whose names appear on page iii of the Commission's report. The members of this staff were able, skilled, experienced and industrious people, and their contribution to the Commission's work was and is of great value and importance.

The duties of the staff included not only a critical examination and appraisal of the evidence offered by the parties that appeared before the Commission, but also extensive independent research in all of the areas involved in the Commission's work. These projects were conducted with the cooperation of other agencies of the Government, notably the Bureau of Labor Statistics, the Railroad Retirement Board, the Interstate Commerce Commission and a number of outside experts who were retained to undertake specific

tasks. The studies program embraced a wide area of subject matter covering, as it did, all of the specific proposals for study which were submitted to the Commission's Technical Subcommittee by representatives of the organizations.

The scope of the work done by the staff is indicated by the contents of the four appendix volumes to the Report of the Commission, containing over 1100 double columned pages of text and tables.

While the Commission was engaged in hearing the evidence presented by the parties, in making its field inspection trips, and in supervising the work of its staff, it also held regular executive sessions to discuss the proposals of the parties, the issues raised by the proposals, the evidence offered by the representatives of the parties, the studies made by the Commission's staff, and the views of the individual commissioners with respect to these matters. The public members also consulted with other key individuals of management and labor having first-hand knowledge of railroad operations and of many of the more subtle considerations which lay behind the positions of the parties.

Following the fact gathering phase of its work the Commission devoted many days to executive and special sessions at which extensive consideration was given to the evidence and

other materials assembled by the members of the Commission and its staff. Efforts were made to narrow the issues, and to bring the carrier and organization members of the Commission into unanimous agreement as to how such issues should be resolved. Mediatory efforts of the public members of the Commission are described on pages 19 and 20 of its report. Its executive sessions continued until the Commission filed its report with the President on February 26, 1962.

Further information as to the work of the Commission is supplied in the transcript of Chairman Rifkind's press conference of February 26, 1962, which is reproduced on pages 79 to 116 of the appendix to this statement.

There is no aspect of this dispute that was not fully, thoroughly and competently explored and considered by the Commission. As stated on page 10 of its report,

> "Never in American history have railroad labor relations been more thoroughly examined or more fully ventilated than during this past year. The effort has entailed the expenditure of much time, exertion, and money. The minds of many informed persons have been brought to bear upon the problems involved."

Developments Following the Report of the Presidential Railroad Commission

When the report and recommendations of the Commission were delivered to the President on February 28, 1962, the President requested the parties to enter into immediate and expeditious collective bargaining over the issues which remained in dispute.* National conferences were resumed on April 2, 1962, and continued through May 17, 1962. The carriers accepted the report and recommendations of the Presidential Commission but its report and recommendations were rejected by the organizations, and no agreement was reached.**

On May 21, 1962, the organizations made application for the mediation services of the National Mediation Board under Section 5 of the Railway Labor Act (45 U.S.C. 155), and during the period May 25 to June 22, 1962, approximately 32 meetings were held with the representatives of the carriers and the organizations under the auspices of the Chairman of that Board. But the National Mediation Board

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* The President's statement is on pages 117 and 118 of the appendix.

** These and subsequent developments are summarized in the opinions of the Supreme Court of the United States and of the Court of Appeals for the Seventh Circuit in the case of Brotherhood of Locomotive Engineers v. The Baltimore & Ohio Railroad Co., which are supplied on pages 158 to 183 of the appendix.

was unable to bring the parties into agreement.

On June 26, 1962, the National Mediation Board requested and urged that the carriers and the organizations enter into an agreement to submit the controversy to arbitration under Section 7 of the Railway Labor Act (45 U.S.C. 157). The carriers accepted this proffer of arbitration but the organizations rejected it.

On July 16, 1962, the National Mediation Board advised the parties that in its judgment all practical methods provided for its adjusting the dispute had been exhausted without effecting a settlement, and that the Board had that day terminated its services under the provisions of the Railway Labor Act. (Appendix, pp. 119 to 124)

On July 17, 1962, the carriers served notice on the organizations that effective August 16, 1962, the carriers would place in effect the changes in rates of pay, rules and working conditions which had been recommended by the Presidential Railroad Commission. This notice to the organizations will be found on pages 125 to 157 of the appendix to this statement. It contains the rules proposed by the carriers to make effective the recommendations of the Commission. Insofar as it was possible to do so, the precise language appearing in the Commission's recommendations was used in drafting these rules.

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In examining this promulgation it will be noted that the rules changes here proposed by the carriers were not the same as the rules changes proposed by them in their Section 6 notices dated November 2, 1959. The rules and rules changes proposed by the carriers on July 17, 1962, to become effective August 16, 1962, were the rules and rules changes recommended by the Presidential Railroad Commission, and are described in the promulgation as

> "the rules proposed in the carriers' Section 6 Notices of November 2, 1959, and the rules proposed by the organizations with which you are associated, as our respective Notices were modified by the recommendations of the Presidential Railroad Commission."

On July 26, 1962, the organizations filed a complaint in the District Court of the United States, for the Northern District of Illinois, in which they alleged that the carriers' promulgation of rules to make effective the recommendations of the Commission violated the Railway Labor Act: First, because the promulgation embodied provisions which had not been presented to the organizations in the

form of a notice pursuant to Section 6 of the Railway Labor Act; second, because certain provisions of the promulgation would require the organizations to submit to compulsory arbitration in violation of Section 7 of the Act, and third, because other provisions of the promulgation would impose illegal restrictions on the rights of the employees represented by the organizations to bargain collectively through representatives of their own choosing. The organizations asked that the carriers be "restrained and enjoined from putting into effect the promulgation of July 17, 1962."

On August 6, 1962, with leave of court and without objection from the organizations, the carriers withdrew their promulgation of rules changes, dated July 17, 1962, and served upon the organizations a second promulgation of rules changes, dated August 6, 1962, in which the organizations were given notice that effective August 16, 1962, the carriers would place in effect the rules changes proposed in their notices served under Section 6 of the Railway Labor Act on November 2, 1959. The District Court and the representatives of the organizations were informed that, although the carriers were willing to settle the dispute on the basis of the Commission's recommendations, the rules proposed for making those recommendations effective were withdrawn and

the rules changes proposed by the carriers in their Section 6 notices dated November 2, 1959, were substituted in lieu thereof (in the carriers' second promulgation) in order to avoid litigation or any other development that might delay revision of the provisions of existing agreements that were costing the carriers $1,600,000 each day in unnecessary and unjustifiable operating expense.

With leave of court the organizations then filed amendments to their complaint attacking the legality of the carriers' second promulgation. It was alleged in such amendments that

> "Said second Promulgation is in violation of Section 2, First of the Railway Labor Act in that it announces that effective August 16, 1962 there will be no rules concerning the assignment of employees of the carriers represented by the defendants in the crafts and classes represented by plaintiffs, the minimum number of such assignments to a train or engine, and the classification of such assignments, except in road passenger service, notwithstanding that for many years it has been the custom, practice, and usage for the collective bargaining agreements between the plaintiffs and the carriers represented by the defendants to contain such rules and notwithstanding the explicit duty imposed by Section 2, First of the Railway Labor Act upon the plaintiffs and the carriers represented by the defendants to make and maintain agreements concerning such rules."

The prayer for injunction was renewed.

The District Court found that the carriers' proposed rules changes were lawful, that both parties had exhausted all of the procedures available under the Railway Labor Act, and that they were therefore free to resort to self-help, restricted only by the possibility of the appointment of an Emergency Board by the President under the provisions of Section 10 of the Railway Labor Act. It therefore dismissed the complaint, as amended, for failure to state a cause of action. The Court of Appeals for the Seventh Circuit affirmed.

On petition for writ of certiorari, the Supreme Court of the United States granted the writ and affirmed the judgment of the Court of Appeals. In its opinion the Supreme Court said:

> "The Court of Appeals concluded, as had the District Court, that the Railway Labor Act procedures had been exhausted, and that therefore the § 6 notices served by the Carriers were proper. The Court of Appeals correctly rejected the contention of the Organizations that the standards contained in the notices themselves violated the Railway Labor Act." (Appendix, p. 178)

Thus, the District Court for the Northern District of Illinois, the Court of Appeals for the Seventh Circuit, and the United States Supreme Court have all held that the carriers have the right to make effective the rules changes proposed in their notices dated November 2, 1959.

The opinion and decision of the Supreme Court was released on March 4, 1963. On March 13, 1963, at the suggestion of the carriers, representatives of the parties met in Chicago in a further attempt to settle their differences, but no agreement was reached.

On March 29, 1963, a certified copy of the judgment of the Supreme Court was mailed to the District Court and the case was remanded to that court. On April 2, the carriers announced that their second promulgation of rules and rules changes would become effective on April 8, 1963. On April 3, 1963, the President of the United States signed Executive Order No. 11101 creating Emergency Board No. 154 to investigate the dispute and report its findings.

Emergency Board No. 154

Emergency Board No. 154 began its investigation of this dispute with public hearings in Washington, D. C., on April 11, 1963. Its report was submitted to the President of the United States on May 13, 1963.

The recommendations of Emergency Board No. 154 for the settlement of this dispute were and are substantially the same in principle as those of the Presidential Railroad Commission. The more significant of the variations of the recommendations of the Board from those of the Commission are the following:

1. The Emergency Board recommended that organizations in interest be given an opportunity to protest the discontinuance of a fireman-position on the grounds that the discontinuance of the position "would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibility performed by the firemen"; and that unresolved disputes be referred to a special referee, with the burden of proof resting on the organization.*

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* Copies of the report of Emergency Board No. 154 are submitted with this statement. References are to the pages of the official printed report. The recommendation referred to above appears on page 5 of the report.

The Presidential Railroad Commission recommended that "new firemen-helpers need not be hired to man road freight and yard diesels," stating that

> "... we conclude that firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on such diesels ... It is, of course, impossible to say of the railroad systems operating under an almost infinite variety of conditions that nowhere in the United States is there in operation a single run which requires the services of a fireman-helper to render it safe and efficient. However, both the testimony which we have heard and the observations which we have made in the field are convincing that such runs are rare. We can find no basis for recommending an appropriate national rule covering these unique situations." (Rep., pp. 45, 46, 48)

2. Emergency Board No. 154 recommended that no force reduction should be made in the consist of road and yard crews (other than in engine service) "except by natural attrition." (Rep., p. 8) The Presidential Railroad Commission recommended that aggregate reductions in crews during any yearly period should "not exceed some small percentage of all of the directly affected operating employees actively employed by the carrier at the beginning of the year in such seniority district." (Rep., p. 60)

3. Emergency Board No. 154 recommended that if employees in through freight and passenger service are unable to maintain reasonable current earnings with normal

hours of work under the proposed revised basis of pay, then some form of earnings guarantee should be provided so that the "incumbent employees will not be unduly affected by the structural changes." (Rep., p. 10)

4. The Emergency Board recommended that

> "Disputes such as those concerning firemen, crew consist, interdivisional runs, combination of road and yard service, and pay structure should be the subject of negotiations. If these negotiations do not result in reasonably prompt resolution, the disputes should be quickly and definitively resolved by submission to a special referee procedure." (Rep., p. 20)

After receiving the report of the Emergency Board, the President issued a statement, dated May 14, 1963, containing the following:

> "I hope it will be possible for all parties concerned to accept the recommendations of Emergency Board 154. If there are remaining differences surely they can be worked out by the exercise of the parties' responsibilities, consistent with the demands of this situation.
>
> "The Government stands ready to provide assistance if it is needed to help the parties reach a just and equitable settlement but the ultimate dependence must be upon their own efforts."

The report and recommendations of the Emergency Board were accepted by the carriers. The organizations announced that they would neither accept or reject the Board's recommendations, but that they were willing to use the report of the Board as a basis for further negotiations.

Conferences between the carriers and organizations were resumed, at the request of the carriers, in Washington, D. C., on May 20, 1963, and continued through June 1, 1963. During these meetings, the carriers offered to negotiate an agreement making effective the recommendations of the Emergency Board; but the position taken by the organizations on the issues involved constituted an unqualified rejection of the Emergency Board's recommendations, and no agreement was reached.

On the afternoon of June 1, 1963, the Secretary of Labor was advised by representatives of the parties that there was then no prospect of the parties reaching an agreement without assistance such as had been offered by the President in his statement of May 14. The Secretary of Labor thereupon tendered his services, and those of Assistant Secretary James J. Reynolds and the National Mediation Board, to aid the parties in their efforts to resolve the dispute; and, at the request of the parties, assumed general supervision and direction of their negotiations.

Mediation Under the Auspices of the United States Department of Labor

From June 4 to July 10, 1963, approximately 100 meetings were held by the Secretary of Labor and his assistants with some or all of the parties to the dispute. Meetings were also arranged between representatives of the carriers and representatives of the organizations which were not attended by the Secretary or his assistants; but no agreement was reached.

On or about June 15, 1963, the Secretary reported to the President that no progress had been made toward bringing the parties into agreement; and on that day the President requested the parties to make one last major effort to resolve the dispute, and to proceed immediately to the hardest kind of bargaining with the assistance of the Secretary of Labor, Assistant Secretary Reynolds, and the National Mediation Board. At the President's request the parties agreed to maintain the status quo through July 10 to permit the completion of this procedure.

On June 19 the Secretary of Labor prepared and submitted to the parties for their consideration a draft of Memorandum of Agreement for the settlement of the dispute relating to the consist of train and yard crews. While the carriers pointed out that the provisions of this Memorandum were in some respects inadequate to dispose of the problems

involved, they accepted the principles upon which the Memorandum was based and offered to negotiate with the organizations for the settlement of the consist of crew issue within the framework of its terms. The organizations rejected the memorandum as a basis for negotiation.*

On July 3 the carriers notified the organizations that the carriers' proposed revised work rules would be put into effect at 12:01 a.m. on Thursday, July 11. The organizations announced that an industry-wide strike of the employees represented by such organizations would become effective at the same hour and date.

On July 5, 1963, the Secretary of Labor submitted to the parties his statement and proposal for the disposition of the entire dispute. Specific proposals for the settlement of the fireman-helper issue and the crew consist issue were submitted. The Secretary stated to the parties that if these specific proposals were accepted, companion proposals and recommendations would be made for the expeditious settlement of the other disputed issues.**

The Secretary urged acceptance of his proposals.

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* The draft of Memorandum of Agreement prepared by the Secretary of Labor will be found on pages 181 to 185 of the appendix.

** The statement of the Secretary and the proposals submitted on July 5, 1963, appear on pages 186 to 192 of the appendix.

The carriers accepted the proposals and recommendations of the Secretary without qualification. The organizations rejected them.

On July 9, 1963, the President of the United States proposed to the parties that they agree to submit all issues in dispute between them for final settlement to Associate Justice of the Supreme Court Arthur J. Goldberg.* The carriers accepted this proposal of the President but it was rejected by the organizations.

On July 10 the President of the United States created a special six-man subcommittee of the Labor-Management Advisory Committee to undertake immediately a comprehensive review and report limited to the facts and issues in this case and the respective positions of the parties; and the carriers and the organizations agreed to withhold any rules changes or strike notice until July 29 to permit appropriate consideration of this matter by the special subcommittee.**

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* A copy of the President's statement of July 9, 1963, is submitted on pages 193 and 194 of the appendix.

** A copy of the President's statement of July 10, 1963, is on page 195 of the appendix.

THE ISSUES AND THE POSTURE OF THE DISPUTE

General Statement of Position

While the carriers have accepted the recommendations of the Presidential Railroad Commission, the recommendations of Emergency Board No. 154, and all of the suggestions of the President of the United States and of the Secretary of Labor that have been made for the settlement of this dispute, it is the position of the carriers that the rules and rules changes proposed by them in their notices of November 2, 1959, are fair and reasonable and entirely justified by the circumstances and conditions to which such proposals are directed.

The carriers were deeply disappointed with many of the recommendations contained in the Report of the Presidential Railroad Commission.* Their acceptance of those recommendations was motivated by considerations of public interest and an effort to effect a peaceful resolution of this dispute. The extent to which this action on the part of the carriers involved concession and sacrifice is illustrated by the fact that while the adoption of the original proposals of the

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* The carriers' position with respect to the report and recommendations of the Commission is summarized in the Statement of the Carrier Commissioners appearing on pages 273 and 274 of the Commission's report.

carriers would have resulted in an estimated savings of over $600 million per year in operating expense for the Class I line-haul railroads, the rules and rules changes recommended by the Commission would probably result in a temporary increase in current operating costs.

The carriers were also disappointed with the recommendations of Emergency Board No. 154. However, the urgent need for the modernization of the rules governing the use, compensation and assignments of railroad operating employees, and the public interest and the interest of all elements of the railroad industry in reaching a prompt and peaceful solution of this dispute, in the opinion of the carriers, left them no alternative other than to accept the compromise and concessions to which reference has been made.

The representatives of the organizations have not expressed any willingness to consider any meaningful changes in or departures from their proposals of April 6, 1961.

The major issues in the dispute and the present posture of the dispute as it involves each such issue are briefly summarized on the following pages of this statement.*

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* The November 2, 1959 proposals of the carriers, the April 6, 1961, proposals of the organizations and the recommendations of the Presidential Railroad Commission are summarized on pages 5 to 17 supra. The recommendations of Emergency Board No. 154 are summarized on pages 42 to 44 supra.

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Use of Firemen on Other Than Steam Power

In their notices of November 2, 1959, the carriers propose that railway managements be given the right to determine if and when firemen will be used on other than steam freight and yard locomotives as each carrier may find to be appropriate for the safe, efficient and economical operation of its services. No change is proposed in the rule requiring the use of firemen on all passenger trains.

The organizations proposed that

> "Crews in all classes of engine service shall consist of not less than one (1) engineer (motorman) and one (1) fireman (helper) and such additional employees as are required to assure maximum safety."

The Presidential Railroad Commission found that

> "... firemen-helpers are not so essential for the safe and efficient operation of road freight and yard diesels that there should continue to be either a national rule or local rules requiring their assignment on all such diesels... It is, of course, impossible to say of the railroad systems operating under an almost infinite variety of conditions that nowhere in the United States is there in operation a single run which requires the services of a fireman-helper to render it safe and efficient. However, both the testimony which we have heard and the observations which we have made in the field are convincing that such runs are rare. We can find no basis for recommending an appropriate national rule covering these unique situations." (Rep., pp. 45, 46)

To this may be added the statement of Judge Rifkind, Chairman

of the Presidential Railroad Commission, during his press conference on February 26, 1962, that

> "Every freight diesel engine today carries a complement of three men, a driver, called an engineer, a fireman, called a fireman-helper, and a head brakeman. And of this I am certain, because we saw it with our own eyes, and we heard the evidence with our own ears, and we studied it until we knew that we had reached a correct result.
>
> "The fireman on board that engine does not serve a useful enough purpose to warrant his retention there. In short, the national diesel rule which was adopted in 1937 was a mistake. Had that mistake not been made in 1937, then in the slow process of dieselization, the problem would have been solved, and we would not have that problem today. But because that mistake was made, we have something like 40,000 firemen on our hands, today, who are condemned to a life of doing something which doesn't have to be done, and that does not contribute to the human personality." (Appendix, p. 91)

Emergency Board No. 154 recommended that organizations in interest be given an opportunity to protest the discontinuance of a fireman-position on the grounds that the discontinuance of the position "would unduly endanger safety or unduly burden other employees who would have to take on some of the responsibility performed by the firemen"; and that unresolved disputes be referred to a special referee, with the burden of proof resting on the organization. (Report, p. 5) The carriers accepted these recommendations of the emergency board but they were rejected by the organizations.

Following the report of Emergency Board No. 154 the organizations resubmitted an earlier proposal that

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after natural attrition had exhausted rosters of furloughed and extra firemen and retired the incumbents of certain selected daylight yard and daylight branch line positions, requests of a carrier to discontinue any such daylight position would be made the subject of collective bargaining. The proposal specified numerous and detailed conditions under which a carrier would be required to hire new firemen to fill such positions when vacated by natural attrition. The organizations estimated that their proposal would eventually apply to approximately 5,500 of the 32,500 firemen positions in freight and yard service. A study made by the carriers indicated that the organizations' proposal would actually apply only to a few hundred positions, and, because of the conditions attached to the proposal, it was improbable that any of such few hundred positions could ever be discontinued.

It is the position of the carriers that firemen make no needed or useful contribution to the safety or efficiency of freight or yard operations; and that the railroad industry should not be required to maintain redundant positions for such employees at a cost to it and to the nation of more than $275 million each year.

Existing rules which require the employment of firemen on all diesel locomotives have been imposed upon the

carriers by the Brotherhood of Locomotive Firemen and Enginemen by resort to strikes, threats of strikes, and other forms of economic and political duress.

The organizations have contended that considerations of safety require the use of firemen in the cabs of all locomotives to observe signals and to perform other lookout functions, and that firemen are required in the engine rooms of such locomotives to perform mechanical duties. However, the Presidential Railroad Commission, two emergency boards and one arbitration board, created under the provisions of the Railway Labor Act (Boards Nos. 70, 154 and 140, respectively), two Canadian Boards of Conciliation and a Canadian Royal Commission, have all in substance and in fact found, that the work traditionally performed by firemen has almost entirely disappeared and that maintaining the left side outlook, communicating signals to the engineer and detecting and correcting locomotive malfunctions have always been shared with other employees who would do little more than they have always been required to do if the position of fireman is abolished.

The following indisputable facts, none of which may be conclusive standing alone, when taken in combination, leave no reasonable doubt as to the redundancy of the position of fireman in freight and yard service.

1. The first diesel powered passenger trains were operated for many hundreds of thousands of miles without firemen. Such trains included the Pioneer, Twin, and Mark Twain Zephyrs (operated by the Burlington); the Flying Yankee (operated by the Boston & Maine and Maine Central); the Rebel trains (operated by the Gulf, Mobile & Ohio); and others. Firemen were assigned to the Zephyrs and the Flying Yankee (and to the Comet, operated by the New Haven) under threats of strike; but the Rebel trains continued to operate without firemen until 1954.

2. Multiple unit electric and rail motor car trains, in units of up to 16 cars, are operated safely and efficiently with only an engineer or motorman in the operating cabs of such trains. Such trains have been extensively so operated, both in intercity and in commutation service, since the first decade of this century.

3. Diesel freight and yard locomotives were operated without firemen by many railroads for many years after the first diesel switching locomotive was placed in service in 1925. In 1937 a considerable number of carriers agreed to assign firemen to such locomotives that weighed more than 90,000 pounds on their driving wheels. Other

carriers became parties to substituted regional agreements made in 1943 and 1944; however, diesel locomotives are still operated without firemen by 37 small line-haul railroads and switching and terminal companies.

4. Industries (other than railroads) and the armed services use diesel locomotives without firemen in their operation of at least 678 installations, some of which are of size and complexity comparable to many of those of the rail common carriers.

5. Only two men are used in the cabs of passenger trains; but three men ride in the cabs of freight trains -- an engineer, a fireman and a brakeman. The duties performed by the engineer and brakeman are substantially the same in nature (if not in degree) as were performed by such employees on steam locomotives. But as stated by Arbitration Board No. 140, "the change from steam to diesel power left little or nothing for the fireman to do." (Rep., p. 30) Such services as are now performed by firemen in freight service are also performed by and are the historic and traditional duties of the engineer and brakeman.

6. On hooded-type locomotives, used exclusively in yard service and extensively in road service by all rail carriers, the diesel engines and other machinery which propel

the locomotives is enclosed in a hood comparable to the hood covering the engine of a truck or automobile. On such locomotives inspections of and adjustments to the machinery of the locomotive can be made only when the locomotive is stopped or moving at very slow rates of speed.

7. High speed, main line through passenger trains have been safely and efficiently operated since 1943 under a rule which does not permit the fireman to enter or perform any service in the engine rooms while the trains are in motion.

8. In yard service where train and engine movements are slow, the movements of the locomotive are controlled by signals from the ground crew. The engineer moves the locomotive only when he has a signal from the ground crew, and must be prepared to stop short of any obstruction. Mechanical forces are usually available to make repairs and adjustments.

9. Switching locomotives weighing less than 90,000 pounds on drivers have always been operated and are now operated by many carriers without firemen.

10. The organizations were unable to produce evidence of or direct attention to any operation of any railroad, in either freight or yard service, where the

circumstances were such as to convince the Presidential Railroad Commission or Emergency Board No. 154 that the presence of the fireman made any material contribution to the safety or efficiency of such operation.

11. Firemen are not used on other than steam power in most foreign countries.

12. In 1956, 1957 and 1958, two Canadian boards of conciliation (comparable to emergency boards created under Section 10 of the Railway Labor Act) and the Canadian (Kellock) Royal Commission (a commission created by an Order in Privy Council, whose duties and procedures were comparable to those of the Presidential Railroad Commission) found that firemen are not required on diesel locomotives either in freight or yard service on the Canadian Pacific or the Canadian National railway systems. Agreements were subsequently made by the Brotherhood of Locomotive Firemen and Enginemen with the Canadian operating companies implementing the findings of these boards and commission.

Protective Provision for Firemen

The Presidential Railroad Commission recommended that all firemen with 10 or more years of seniority on July 1, 1962, shall retain their rights to work as firemen until removed from the working lists by natural attrition. The Commission also recommended elaborate financial and other transitional protection for firemen with less than 10 years of seniority on July 1, 1962, as appears on pages 48 to 50 of its report to the President. The carriers accepted the recommendations of the Commission. The rules proposed by the carriers to make such recommendations effective appear on pages 128 to 132 of the appendix to this statement.

Emergency Board No. 154 recommended that firemen who obtained employment after some reasonable date when it may be presumed that they were on notice that their jobs might not be permanent, and firemen who have not been employed in recent times may have their employment terminated; that firemen who have been employed on an irregular basis may have their rights terminated with severance allowances or may choose to remain on the seniority lists with preferential hiring rights; that firemen with 10 or

more years of seniority should retain their rights to firemen's employment until removed from the working lists by natural attrition; and that all other firemen should retain their rights to firemen employment unless and until offered another comparable job for which they are or can become qualified, with "displacement allowance ... against loss of earnings not to exceed five years." (Report, pp. 6, 7)

The carriers accepted these recommendations. (See also pages 7 and 8 supra.)

The organizations proposed an elaborate program of financial and other protection for employees including limiting reductions in numbers of employees, five years' income protection in the form of a monthly "displacement allowance," and reimbursement for all expenses of moving households, traveling to new job locations, wage loss during transfer, and loss of home value; and twelve months guaranteed annual employment for employees with compensated service in 8 or more months during the preceding calendar year, and in any 5 of the preceding 10 calendar years. (See pages 301 to 304 of the Report of the Presidential Railroad Commission.) The carriers have been informed by the Secretary of Labor that "the employee representatives

advised the Emergency Board that in the interests of reaching an accord, if satisfactory settlement could be reached on all other matters in dispute, this proposal would be withdrawn." The carriers do not interpret this advice as intended to mean that the organizations will not demand protective provision for displaced firemen; however, the organizations have refused to discuss this subject with the carriers, although repeatedly requested to do so.

Training of Engine Service Employees

The organizations are demanding an elaborate four-year apprenticeship-type program for firemen, with specified hours of off-the-job classroom training in a number of subjects, at the expense of the carriers.

The Presidential Railroad Commission recommended that a joint committee be established to consider the development of a training program that would adequately meet the long run need for future trained engineers. (Report, pp. 151, 152) The carriers accepted the recommendations of the Presidential Railroad Commission. (See appendix, page 155.)

Consist of Train and Yard Crews
(Other Than Engine Service)

Most train and yard crews consist of one conductor and two trainmen or helpers; however, under existing laws, rules and practices the number of trainmen or helpers varies from one to five or more.

In their notices of November 2, 1959, the carriers proposed that railway managements be given the right to determine the number of trainmen, brakemen and helpers that shall be used in road and yard crews, as each carrier may find to be appropriate for the safe, efficient and economical operation of its service. The organizations propose that each train and yard crew consist of not less than one conductor and two trainmen, brakemen or helpers, "and such additional employees as are required to assure maximum safety." (Cf. supra, pp. 5 and 11.)

The Presidential Railroad Commission recommended (see pages 53 to 60 of its report) that the consist of road and yard crews be made the subject of joint negotiations; that in the absence of agreement, issues involving safety of operations and work load be submitted to arbitration, and that employees furloughed as a result of reductions in the consist of crews be paid supplemental unemployment benefits equal in amounts to the unemployment insurance

benefits received by such employees under the Railroad Unemployment Insurance Act.

The carriers accepted the recommendations of the Presidential Railroad Commission. The rules proposed by the carriers to make effective those recommendations appear on pages 133 to 136 of the appendix to this statement. The organizations rejected the Commission's recommendations.

The recommendations of Emergency Board No. 154 dealing with this issue do not differ materially from those of the Presidential Railroad Commission, as appears from the analysis of this part of the report of the board appearing on page 43 supra. Nevertheless, the carriers accepted and the organizations rejected the recommendations of that board.

The carriers also accepted and the organizations rejected the proposal of the Secretary of Labor for the settlement of this issue which appears on pages 181 to 185 of the appendix to this statement. The carriers also accepted and the organizations rejected the July 5 recommendation of the Secretary for the settlement of the issue, which appears on pages 191 and 192 of the appendix.

Representatives of the organizations have stated that they agree in principle to the procedure that was

recommended by the Secretary for handling the problem, provided its application is limited to proposed changes in crew consist where the consist sought to be changed deviates from the prevalent pattern of one conductor and two brakemen. This modification of the Secretary's proposal, insofar as road service is concerned, might be acceptable to the carriers if it did not apply to branch lines, secondary main lines, and main lines on which newly-developed or automated control equipment has been or may in the future be installed, irrespective of the number of brakemen employed. As to yard service, it is the carriers' position that the Secretary's proposal should be accepted without modification.

Although the carriers have accepted the recommendations of the Presidential Railroad Commission and of Emergency Board No. 154, and each of the recommendations of the Secretary of Labor for the settlement of this dispute, the facts involved and the history of the crew consist controversy compel the conclusion that the public interest would be best served by eliminating all agreements, rules, regulations and practices governing the consist of crews as proposed by the carriers in their notices of November 2, 1959. The carriers' proposal will be found on pages 26 and 27 of the appendix to this statement.

The history of the controversy between the parties involving this subject matter also demonstrates the urgency of the need for changes in existing rules and regulations. Studies made on 9 major railroads of their respective crew consist needs, as compared with the actual consist of their crews as required by existing rules, laws and regulations, disclose that the railroad industry is now required to employ approximately 19,000 road trainmen and yard switchmen who are not necessary or needed for the safe and efficient operation of the service.* These unneeded and unwanted employees are costing the nation and the industry approximately $150 million each year.

Many of the excess trainmen and switchmen on the carriers' payrolls are employed because of compulsion imposed by state crew consist laws and regulations. Most of this legislation was enacted prior to 1920. (Cf., Report of the Presidential Railroad Commission, pp. 63, 64.) The other of such unneeeded trainmen and switchmen are employed as a result of rules or interpretations placed upon rules and practices, most of which were established more

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* The lines of road of the nine carriers participating in this study blanket the greater part of the United States. These railroads employ 27.7 percent of the total employees of the Class I line-haul railroads and receive approximately 27 percent of the total operating revenues of such carriers. Each of the nine carriers made a crew-by-crew and man-by-man study of all its operations. Representatives of each carrier testified before the Presidential Railroad Commission that safety of operations was placed above all other considerations in determining the number of employees needed in each crew in each operation.

than 50 years ago when operating conditions, operating methods and the requirements of the service were far different from what they are today.

The ludicrous effect of crew consist rules and regulations was aptly described by Judge Rifkind, Chairman of the Presidential Railroad Commission, during his press conference on February 26, 1962, as follows:

> "In the train service, you find these extraordinary conditions. You find a train running along, and it is served by a conductor and two brakemen, which is in most cases the normal crew for trains. It comes to a state boundary and the train slows down, it doesn't quite stop, and another brakeman jumps aboard. He rides a short distance, maybe 20, 30, 40, 50 miles, until he comes to the other boundary of that state, at which point the train slows down and he gently drops to the side of the train. He hasn't done any work on that train. Why is he there? Because the legislature of that state requires an extra brakeman for every train that passes through that state. It doesn't contribute to a man's self-respect to be assigned to that kind of a job. (Appendix, pp. 91 and 92)

The carriers have repeatedly attempted through collective bargaining with the organizations, pursuant to the provisions of the Railway Labor Act, to bring the consist of crews in line with the requirements of the service; however, the organizations have defeated all concerted efforts of the carriers of this kind by resort to tactics similar to those that have been employed to date in the current dispute. And even at this time the organizations are sponsoring legislation that would require the employment of additional unneeded men.

It is obvious that the public interest requires that discretion to determine the size and consist of road and yard crews required for safe and efficient operations must be vested in management, as is the practice in many other industries. The supposed apprehension of the organizations that such discretion might be abused is clearly a tactical contrivance. Before the Presidential Railroad Commission, the organizations were unable to identify a single undermanned crew on any American railroad, although they were repeatedly asked to do so.

The railroads, like the organizations, are interested in the safety of operations; but the railroads are also interested in the efficiency of operations. And an unsafe operation is not an efficient operation.

Manning Motor Cars and
Self-Propelled Machines

Existing rules, practices and agreements now require the assignment of nearly 575 engineers, firemen, conductors and brakemen to operations where shop and maintenance of way forces use motor cars and self-propelled cranes, weed burners, clam shells, rail detector cars and other such machines in inspection, repair, maintenance and construction work. None of these operating employees perform any useful service. The machines are operated by and the work is all done by maintenance or shop forces. Existing rules requiring the assignment of operating employees to these work and inspection crews are largely the result of ridiculous decisions of the National Railroad Adjustment Board during its confused and incompetent infancy.

As pointed out by the Presidential Railroad Commission,

> "The issue of the employment of operating craft personnel on motor cars or other self-propelled machines has been considered by two emergency boards. Each board, while characterizing the situation as 'intolerable' or 'deplorable', treated the matter as beyond its province on the ground that it was, essentially, a 'jurisdictional' controversy between the operating and nonoperating crafts." (Rep., p. 63)

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The Commission found that

> "... there is no justification, in general, for the employment of personnel of the operating crafts on or in connection with the operation of the self-propelled vehicles or machines in question, and that, in general, the Carriers should have discretion to determine whether or not to use such personnel."

The carriers have repeatedly attempted, through collective bargaining, to abolish or revise the rules which produce the "intolerable" and "deplorable" situation described the emergency boards. The organizations have not only refused to consider the carriers' proposals but have at the same time attempted to secure the assignment of additional unneeded men to this equipment by urging strained and unnatural interpretations of existing rules on the National Railroad Adjustment Board, and by seeking legislation designed to require the use of operating employees in maintenance, construction and inspection work.

The Presidential Commission recommended the elimination of all rules, agreements and practices which require the use of operating employees

> "on or in connection with the operation or use of any motor car or self-propelled vehicle, or machine used in maintenance, repair, construction, or inspection work except where such vehicle or machine is used to provide motive power to move or switch other cars, vehicles, or machines (other than a maximum of two such other cars or vehicles used exclusively in hauling material to be used in connection with the work to which the vehicle or self-propelled machine is assigned)." (Report, p. 63)

The carriers accepted the recommendations of the Presidential Railroad Commission. Rules proposed by the carriers to make such recommendations effective appear on page 136 of the appendix to this statement. The recommendations of Emergency Board No. 154 were the same as those of the Presidential Railroad Commission, except that the board recommended "adequate protection such as those discussed elsewhere in this report should be provided" for employees adversely affected under the new rule. The carriers accepted this supplement to the recommendation of the Presidential Railroad Commission and submitted to the organizations a proposal that employees adversely affected would receive the schedule of allowances set forth in Section 7(a) of the Washington Agreement of May 21, 1936, or the option of choosing the lump sum separation allowance set forth in Section 9 of that agreement.

The organizations rejected both the recommendations of the emergency board and the carriers' proposal, and submitted proposals which would require the carriers to hire additional unneeded men on or in connection with the operation and use of the equipment here involved.

Basis of Pay -- Wage Structure

The rules governing the basis of pay and wage structure of railroad operating employees have been derived from three major sources, as follows:

> 1. Agreements entered into between the carriers and the organizations representing operating employees during the last two decades of the Ninteenth Century -- some of which were voluntarily made, and some of which were imposed upon the carriers by strikes or threats of strikes and other forms of economic duress
>
> 2. Awards of arbitration boards in cases of national significance during the first two decades of the Twentieth Century, and
>
> 3. Rules imposed upon the industry by the Director General of Railroads by his unilateral action when the operations and properties of the carriers were in the hands of the Government during World War I.

As stated by the Presidential Railroad Commission on page 3 of its Report to the President,

> "An elaborate system of rules, practices, and decisions, developed over a period of more than 100 years, governs the manning of American railroad engines and trains, the assignment of railroad operating employees to their daily tasks, and the intricate formulas under which they are paid. This system derived from long-established practices and habits, from collectively bargained agreements, from decisions of courts and arbitration tribunals, from Federal and State legislation, and from actions taken by the United States Director General of Railroads during and immediately after World War I when the railroads were under national control.
>
> "By World War I the system had substantially matured into its present form. Directives of the Director General of Railroads

> codified and standardized the evolving practices. Further evolution has continued, but essentially in the same mold."

As illustrative of the ancient vintage of some of the more significant of these rules, it may be noted that the current rule that 100 miles or less shall constitute a day's work for which engine and freight train service employees shall receive a day's pay appeared in an agreement between the New York Central & Hudson River Railroad and the Brotherhood of Locomotive Engineers, dated January 26, 1875. See appendix, page 198.

The need for revision and modernization of the rules governing the basis of pay and wage structure of railroad operating employees has been recognized by all competent and impartial authority. As has been pointed out by such authority, rules derived from practices established when the railroad industry was virtually in its infancy are now obsolete and inequitable in their operation and effect, injurious to employee morale, destructive of the financial condition of the industry and of its competitive position in the American economy, and deleterious to the public welfare.

In most through freight and intercity passenger service assignments the hours worked for a day's pay no longer bear any relation to a fair day's work, and compensation received per hour worked bears little relation to the value of the work performed.

The Pay Structure Study, made under the direction of the Presidential Railroad Commission, which appears in Appendix Volume II to the Commission's report, discloses that twenty percent of all intercity passenger engine service employees now receive a day's pay, or more, for less than three hours of service. Fifty-five percent of these employees receive a day's pay, or more, for less than four hours of service. Four percent of all through freight service employees receive a day's pay, or more, for less than 3 hours time on duty; and 20 percent earn a day's pay, or more, in less than 4 hours. (P. 10)

In 1961, the average straight time worked by all intercity passenger engine service employees for a day's pay (comprehending 5 hours of service) was 2 hours and 57 minutes. The average straight time worked by all through freight service employees for a day's pay (comprehending 8 hours of service) was 4 hours and 27 minutes. The hourly earnings of employees performing service of comparable value to the industry and to the general public range from $2.72 to $16.00 per service hour (as for passenger engineers), and hours of service required to earn a day's pay range from 2 to 8 hours (as in freight service).

These and other anomalies, inequities and disparities produced by the rules governing the basis of pay and wage structure of railroad operating employees were characterized by the Presidential Railroad Commission as follows:

> "The conclusion is that the present disparity in hours on duty -- some unduly short and others excessively long -- is unconscionable; the speed basis of overtime is an anachronism involving inconsistencies among types of runs; the dual basis of pay contains widespread anomalies and inequities; the wage differentials among classes of service and occupations within each class of service contain serious inequities; the mileage basis of pay has limitations as an incentive system of pay; it has produced differential earnings and hours on duty among groups of employees which in turn have created further wage and hour disputes: the pay rules are complex, and with many components to compensation, they contribute to disputes. In short, the word which best describes the compensation structure is a mess." (Rep., pp. 129, 130)

The rules most offensive to common sense and equity include the following:

1. Rules that provide that 100 miles of service shall constitute a day's work for which employees shall receive a day's pay in freight service and passenger engine service, and that 150 miles of service shall constitute a day's work for which employees shall receive a day's pay in passenger train service.

2. Rules that provide duplicate time payments for a single service.

3. Rules which require the carriers to make so-called earnings guarantee payments to employees under various and varying conditions without regard

to the total compensation or take-home pay received by such employees or the quantum or value of the service performed.

4. Rules that require the payment of higher than standard rates of pay where no conceivable excuse exists for such discrimination.

Since these rules became generally effective on the American railroads there have been revolutionary changes in the work and working conditions of all railroad operating employees, and in the requirements and characteristics of the service. The speeds of through freight and intercity passenger trains have doubled. Diesel and electric locomotives have replaced steam power. There have been vast changes and improvements in road bed, rolling stock, signal systems, protective devices, communication systems and operating methods. The average hours on duty per week and per trip or tour of duty and average hours on duty required to earn a day's pay have been cut in half in through freight and passenger service. Technological advance has eliminated most of the physical labor and hazards that were formerly involved in railroad employment. But due to the fact that the organizations have stubbornly rejected the carriers' proposals to modernize the basis of pay and wage structure, the rules here referred to and those governing the assignments of road operating employees are now costing the railroad industry over $200 million a year in pay for time not worked and in compensation that is not commensurate with the value of the services rendered.

In their notices of November 2, 1959, the carriers proposed to increase the number of miles of service constituting a day's work, for which road service employees receive a day's pay, from 100 miles to 160 miles in through freight service and passenger engine service, and from 150 miles to 225 miles in passenger train service, to reflect increases in the speeds of trains that have occurred since the rules governing this subject matter (the basic day rules) were standardized throughout the railroad industry by the Director General of Railroads during World War I; to abolish rules requiring duplicate time payments or arbitraries and special allowances which conflict with the payment of single time in miles or hours from the time called for duty until released from duty, and to abolish earnings guarantees (other than minimum earnings guarantees for each trip or tour of duty), and higher than standard rates of pay. (Appendix, pp. 17 to 21)

In their so-called implementing proposals of April 6, 1961, the organizations proposed a 4-hour day in passenger engine service, a 6-hour day in through freight and passenger train service, and a 7-hour day in local freight and yard service -- all without any reduction in

daily, weekly or monthly take-home pay; increases in the hourly and basic daily rate component of the dual basis of pay; overtime at one and one-half times the applicable hourly or mileage rate, whichever is greater; additional half-time for all time in excess of 10 hours between the time of first reporting for duty and final release in any assignment or combination of assignments (a) in intercity road service having one or more intervals of release of less than 10 hours within or between assignments, and (b) in commutation passenger service with an interval of release of more than 1 hour; weekly or monthly earnings guarantees (or both), exclusive of overtime and other compensation, for all classes of employees in all grades of service; and the retention of all duplicate time payments, and upward adjustments in all arbitrary payments and special allowances on a time equivalent basis. (See pages 294 to 300 of the Report of the Presidential Railroad Commission, and pages 9 to 11 supra.)

The Presidential Railroad Commission recommended reductions in permissible hours on continuous duty, and weekly or monthly hours limitations; but recommended the retention of a 5-hour day in passenger engine service, a 7½-hour day in passenger train service, and an 8 hour day

in freight and yard service; recommended that the mileage basis of pay be eliminated in short turnaround or commutation passenger service and on local freight runs of up to 100 or 110 miles; recommended that an additive basis of pay be substituted for the dual basis of pay in freight and intercity passenger service; recommended substantial increases in the rates of pay of yard service employees and road service employees not covered by the additive basis of pay, and substantial increases in overtime benefits; recommended that employees in regularly assigned service paid on a daily basis, who do not lay off of their own accord, receive a weekly guarantee of 5 days, and that the parties review all other earnings guarantees in the light of the proposed changes in the wage structure and other pay rules to develop a more consistent system of guarantees among classes of service and occupations; and recommended that duplicate time payments for initial and final terminal switching and intermediate yard switching be eliminated in road service, that all duplicate time payments be eliminated in local freight service paid on a daily basis, and that the parties review the continued application of initial and final terminal delay rules and other duplicate time payments in freight service. (Report, pages 134 to 139; cf. pp. 15 and 16 supra.)

The carriers' accepted the recommendations of the Presidential Railroad Commission. The rules proposed by the carriers to make such recommendations effective appear on pages 138 to 145 of the appendix to this statement.

The organizations rejected the recommendations of the Presidential Railroad Commission.

Emergency Board No. 154 proposed two modifications in the Commission's recommendations, namely: (1) "that a full 2 percent be used in working out the adjustments in this case," (presumably referring to a 2 percent "increase in average compensation") and (2) that if employees in through freight and passenger service are unable to maintain reasonable current earnings with normal hours of work under the proposed revised basis of pay, then some form of earnings guarantee should be provided so that "incumbent employees will not be unduly affected by structural changes." (Report, pp. 9, 10)

The Presidential Railroad Commission estimated that its proposed revisions in the pay rules would yield increases in earnings for approximately 75% of all operating employees, and that the net effect of its proposals would increase earnings approximately 2 percent in freight

and yard service. (Report, p. 140) The "full 2 percent to be used in working out adjustments in this case" recommended by the emergency board was qualified by the statement that "we would expect, of course, that consideration will be given to the parties to the impact of these wage adjustments when they next consider /a general wage movement/ which is even now in the early stages of processing." (Report, p. 10) In view of all the circumstances it is questionable to what extent the "full 2 percent" would modify the recommendations of the Presidential Railroad Commission. However that may be, the carriers accepted the recommendations of Emergency Board No. 154 and the organizations rejected such recommendations. Some of the brotherhoods have indicated a willingness to discuss some of the issues involved; however, the carriers and the majority of the organizations have agreed that any proposed modifications of the recommendations of the Commission and the emergency board cannot be the subject of further meaningful discussion until other issues involved in the dispute have been disposed of.

Holidays With Pay

The organizations demand for all employees holiday pay equivalent to 1 day's pay for each of 9 specified holidays and, in addition, time and one-half for all services performed on such holidays with a minimum of one and one-half days' pay.

The Presidential Railroad Commission recommended seven specified holidays with pay and time and one-half for service performed on such holidays for regularly assigned employees paid on a daily basis. (Report, p. 148) Emergency Board No. 154 suggested no change in the Commission's recommendation.

The carriers accepted the recommendations of the Commission. The rule proposed by the carriers to make such recommendations effective will be found on pages 14[illegible] to 147 of the appendix to this statement.

The organizations rejected both the recommendations of the Commission and the carriers' proposed rule.

Differential for Night Work

The organizations propose a night-work differential of 10 percent of the applicable hourly rate for all time on duty between the hours of 6 p.m. and 6 a.m., in addition to all other compensation; but the Presidential Railroad Commission recommended against the adoption of such a rule. (Report, pp. 148, 151)

Emergency Board No. 154 suggested no change in the recommendation of the Commission.

The organizations rejected the Commission's recommendation.

Away From Home Terminal Expense

The organizations are demanding allowances during layover periods at points other than home terminals of 1 hour's pay for layovers of 4 hours or less, 1 hour's pay for the next 4 hours or less, 2 hours' pay for the next 5 hours or less -- such allowances to be cumulative, be repeated for each 24-hour period of any layover, and be in addition to all other compensation.

The Commission recommended a national rule requiring each carrier to provide suitable lodging or equivalent allowance for road service crews (other than short turnaround) when they are required to be at a terminal other than their home terminal for 5 hours or more.

The organizations' proposal and the considerations involved are discussed on pages 151 to 153 of the Commission's report. Emergency Board No. 154 suggested no change in the recommendation of the Commission.

The carriers accepted the recommendation of the Commission. The rule proposed by the carriers to make such recommendation effective is shown on page 147 of the appendix to this statement.

The organizations have rejected both the recommendation of the Commission and the carriers' proposed rule.

Interdivisional Runs -- Road Train and Engine Service Assignments

On most railroads the length of runs and the location of terminals are "frozen" by the seniority and a variety of other rules. In their notices of November 2, 1959, the carriers proposed a rule which would permit rail managements to extend the length of runs, establish interseniority district runs, and move or abolish crew terminals with provision for an equitable distribution of earnings opportunities between the affected employees and the negotiation and arbitration of protective conditions, all as appears more fully by the proposal which will be found on pages 21 to 23 of the appendix to this statement.

The Presidential Railroad Commission recommended adoption of the carriers' proposal subject to further conditions protecting the employees affected against burdensome or onerous working conditions, unduly frequent relocation of homes, loss from sale of homes, moving expenses and wage loss directly attributable to the time involved in relocation.

The carriers accepted the recommendations of the Commission (Report, pp. 163 to 165); and proposed rules to make such recommendations effective (Appendix, pp. 147 to 150). The organizations rejected both the recommendations of the Commission and the carriers' proposed rules. Emergency Board

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No. 154 suggested no material change in the recommendations of the Commission (Report, pp. 8, 9), and some or all of the organizations state that nothing can be accomplished by further discussion of the issue until agreement is reached with respect to basis of pay and wage structure changes.

The abolishment or revision of the rules which "freeze" the length of runs or road assignments, and which prevent the establishment of interdivisional runs is of great importance to the railroad industry: First, because of the excessive costs of operating short runs, including payments for constructive mileage and the expenses involved in changing crews and cabooses and maintaining terminal facilities; and second, because the revision of such rules is essential to any worthwhile or effective modernization of the wage structure.

The length of runs on the American railroads today was largely determined during the last two decades of the Nineteenth Century by

(a) the distance that steam locomotives could be safely and efficiently operated without inspection or servicing;

(b) the average miles of service that road crews could perform within the hours comprehended by the prevailing work day, and

(c) the distance between points where the requirements of the service made it necessary or desirable to make up or break up trains.

The length of runs varied on different railroads and on different divisions on each railroad, depending upon these circumstances; but the average length of runs in the late 1880s was approximately 100 miles.

By the early 1920s the average miles run per trip or tour of duty in passenger engine service was approximately 128 miles and in passenger train service 170 miles, but in through freight service average miles run per trip or tour of duty still stood at about 100 miles. Such increase as has since occurred in the average length of runs has largely been due to the abandonment of branch line and secondary operations. It appears from the Pay Structure Study made by the staff of the Presidential Railroad Commission that 22.4 percent of all through freight service runs or assignments are still less than 100 miles in length. About 9 percent are less than 80 miles in length. This study also discloses that 20 percent of all through freight service assignments involve less than 4 hours' time on duty. In passenger engine service 55 percent of the assignments involve less than 4 hours' time on duty, and 20 percent less than 3 hours' time on duty.

To illustrate the effect of length of runs on the cost and quality of the service, the Presidential Railroad Commission referred in its report to a freight run between

Chicago, Illinois and Richmond, California. On this run of 2,498 miles, 20 engine crews are required. The average time on duty per crew is 3 hours and 23 minutes. The Commission observes that even less time is spent in the actual running of the train, and that

> "In connection with crew changes it should be noted that the carriers must maintain terminals for that purpose and on occasion incur additional expense in the nature of initial and final terminal delay payments." (Rep., pp. 159, 160)

Hundreds of examples of comparable waste of manpower and money could be cited. For example, fast passenger trains operated by the Illinois Central between New Orleans and Chicago make the run of 920 miles in slightly over 16 hours. But the carrier must pay the equivalent of 9 days' pay to 7 engine crews for this service. Each crew averages 1-1/2 days' pay for less than 2½ hours' of service.

Nine engine crews must be assigned to fast passenger trains operated by the Union Pacific between Ogden, Utah and Omaha, Nebraska. The run of 990 miles is made in 16 hours. Each member of these crews puts in an average of less than 2 hours on the road and receives an average of 1-1/5 days' pay per trip.

There are 10 through freight runs on the Southern Pacific Lines within 100 miles of Oakland, California. Average miles per run and per crew are 74.7 miles, and the average scheduled running time per trip and per crew is 2 hours and 51 minutes. The 5 members of each of the 10 crews employed in this service receive in the aggregate more than 55 days' pay for 747 miles or 18-1/2 hours on the road.

Fast freight trains operated by the Pennsylvania Railroad between Chicago and New York City make the trip of 891 miles in less than 26 hours. Six train and engine crews must be assigned to this service. The members of these crews average 1-1/2 days' pay for each 4-1/3 hours on the road.

Fast passenger trains operated between Chicago and Denver by the Burlington Railroad make the run of 1,034 miles in 16-1/2 hours. Eight engine crews must be used under existing rules governing this service. Average time on the road per crew is 2 hours and 4 minutes per trip. Average earnings per employee are 1-1/3 days' pay per trip.

During the last 20 years, with perhaps a few insignificant exceptions, the organizations have rejected and vetoed every effort of the carriers, through collective bargaining, to extend runs, eliminate constructive mileage or establish interdivisional runs.

Combination of Road and Yard Service

Existing rules preventing the carriers from combining so-called road service with so-called yard service in a single assignment result in a ridiculous and unjustifiable waste of manpower, money and equipment. Road and yard crews are each fully qualified to perform all of the services involved; however, frequently during the course of a single operation, first a road crew then a yard crew stands by in idleness while the other crew performs work to which it claims jurisdictional and seniority rights.

In their notices of November 2, 1959, the carriers proposed to eliminate restrictions on the combination of road and yard service in the assignments of freight and yard crews and further proposed that passenger crews be permitted to perform so-called yard work in connection with the movements of the trains to which they are assigned. (Appendix, pp. 23 to 25)

The April 6, 1961 proposals of the organizations contained the provision that "further combination of road and yard service shall be prohibited and nothing in these proposals shall be otherwise construed." (Commission Report, p. 301)

The Presidential Railroad Commission recommended that all road crews should be permitted to perform certain specified switching services or yard work in connection

with the movements of their trains subject to conditions designed to protect what the Commission supposed to be the interests of the employees involved. The Commission also recommended that when the last remaining yard assignment on any shift performs less than 4 hours yard work during its 8-hour tour of duty, such last remaining assignment may be abolished; but that when yard service requirements increase to the extent that there is more than 4 hours of yard work available to be performed in such assignment, the assignment shall be reestablished. (Report, pp. 179, 180)

The carriers accepted the recommendations of the Commission. The rules proposed by the carriers to make such recommendations effective are set forth on pages 151 to 153 of the appendix to this statement.

The organizations rejected both the recommendations of the Commission and the carriers' proposed rules.

It does not appear that Emergency Board No. 154 suggested any changes in the recommendations of the Presidential Railroad Commission. (Report, p. 9) All that the board had to say with respect to this issue was the following:

> "Involved here is the extent to which road crews should be permitted to perform

work in connection with their own trains within switching limits.

"We believe that a rule can and should be negotiated which would permit a more flexible use of road and yard crews, while preserving the basic distinctions which are reflected by the existence of separate seniority rights. Attention must be directed to devising limitations which will prevent abuse by employers while permitting the desired flexibility.

"The negotiation of specific rules to limit carrier abuse and the development of protections for employees adversely affected by changes in operations occasioned by any new rules in this area, should allay the fears of the employees and make possible the resolution of this issue."

During the early days of railroading no distinction was made between road and yard work, and crews performed either or both, from day to day and on the same tour of duty, as directed by management. But as early as the 1880s it had become apparent that freight operations could be expedited, faster schedules maintained, and greater efficiency achieved, if some of the shunting or classification work in the larger yards was performed by yard crews with lighter locomotives especially designed for that purpose. Accordingly, in many of the larger terminals specialized yard assignments were established; but for many years after these specialized assignments appeared on the American railroads, yard crews also performed road work and road crews continued to perform yard work, without question or objection, as required of them in the interests of efficient and economical operations.

The separation of road and yard work was highly favored by the organizations, who not only encouraged the establishment of specialized yard work assignments but also urged the adoption of rules and the interpretation of existing rules to establish separate craft or jurisdictional rights to the work performed. The organizations contended that employees performing yard work should be given exclusive seniority rights to such work, that employees performing road work should be given exclusive seniority rights to road work, and that employees who performed both road and yard work should be reclassified as road employees or yard employees with separate and exclusive seniority rights to the work involved in one or the other of the two categories of the service.

From the beginning the carriers resisted the effort of the organizations to draw jurisdictional or so-called craft lines between road and yard work; and the controversy continued on many carriers until the First Division of the National Railroad Adjustment Board resolved the dispute in favor of the organizations. As a result, work defined as road work cannot now be performed by employees defined as yard employees, and work defined as yard work cannot be performed by employees defined as road employees.

An important part of the controversy involved the evolution of the definitions of road work and of yard work. The character of the work performed was not at all determinative. Of more importance was the location where the work was performed, and of still more importance was the question of whether yard employees had ever worked at such locations. To this day switching and station work is road work at some stations or locations but yard work at others; nevertheless, except under unusual circumstances, yard crews must be used to perform all yard work, whatever yard work may be, and road crews must be used to perform all road work -- regardless of how small or inconsequential the item of work (whether road or yard) may be. The division of the work is so arbitrary as to apply even to the throwing of a switch and coupling or uncoupling an air hose, which require only two minutes of the time of a single member of a crew. Also, throwing switches and coupling air hose may be either road work or yard work depending upon the circumstances involved in each individual case.

As a result of these interpretations and restrictions the carriers are compelled at many locations to employ a road crew to perform only a fraction of a day's work, sometimes only to move a single car or a small cut of cars

for a short distance, although yard crews may be working in the vicinity and have ample time and opportunity to perform the small service involved. Likewise the carriers at many locations are compelled to employ a yard crew to perform only a few minutes of service while one or more road crews are standing idle waiting for the yard work to be done. But regardless of how small may be the service required or performed, each member of each crew receives a minimum of a day's pay.

The arbitrary and unreasonable prohibitions against combining road and yard work in a single assignment are costing the railroad industry from $40 to $50 million each year in wages and payroll taxes for unneeded employees, unearned compensation for time not worked and services not performed, and the cost of owning and maintaining engines and other equipment and facilities that would not be required or used apart from the restraints imposed upon the efficiency of operations by such prohibitions. Prior efforts of the carriers to revise the rules to permit the elimination of this waste of money and manpower, though persistent have been of no avail due to the adamant refusal of the organizations to consider any change in existing rules that might result in reductions in the number of positions filled by members and employees that they represent.

HISTORICAL BACKGROUND

The problem of rules revision, the positions of the parties in this dispute, and the present posture of the dispute can be fully understood and evaluated only in the light of their historical background. Of particular importance is the history of prior movements initiated by the carriers to modernize the wage structure and work rules, and the role that has been played by arbitration boards in the handling of disputes between the carriers and the organizations representing their operating employees.

Prior Rules Movements

The origins of most of the rules governing the compensation and assignments of railroad operating employees are summarized on pages 71 and 72 supra. As was stated by the Presidential Railroad Commission,

> "By World War I the system had substantially matured into its present form. Directives of the Director General of Railroads codified and standardized the evolving practices. Further evolution has continued, but essentially in the same mold." (Report, p. 3)

When the railroad properties were returned to the possession and control of the carrier companies, on February 28, 1920, pursuant to the provisions of the Transportation Act of 1920, many of the rules governing the compensation and assignments of railroad operating employees were even then obsolete and unsuited to the new industry that was emerging with the revival of a peacetime economy.* A movement initiated by the carriers to revise such rules was progressed to the Railroad Labor Board, established by the Transportation Act of 1920, and culminated in Decision No. 2688 of that board, dated

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* The Director General of Railroads recognized that some of the rules governing the compensation and working conditions of railroad employees were inequitable in their operation and effect and burdensome upon the carriers when he unilaterally imposed such rules upon the industry during World War I. He was particularly critical of rules and the effect of rules providing that 100 miles of service shall constitute a day's work for which certain employees shall receive a day's pay, rules limiting the length of runs, and rules providing for duplicate time payments. See General Order No. 27 with its Supplements, Addenda, Amendments and Interpretations, United States Railroad Administration, pages 23, 24, 215, and 216. Cf. Memorandum of the Director General dated December 17, 1919, and the testimony of the President of the Order of Railway Conductors before the United States Railroad Labor Board on April 22, 1920. See also, Harry D. Wolf, The Railroad Labor Board, 1927, University of Chicago Press, pages 170 et seq.

November 29, 1924, which was rejected by the organizations representing engine service employees and followed by resort to self help. These developments largely contributed to the destruction of the Railroad Labor Board and the substitution of the Railway Labor Act for those provisions of the Transportation Act of 1920 dealing with the handling of labor disputes.*

There have been seven concerted national rules movements (in addition to the diesel rules movement, discussed supra) to which the carriers and the organizations representing railroad operating employees have been parties since the great depression. Each of these movements involved multiple proposals of both the carriers and the organizations. The general subject matter of the carriers' proposals, served under Section 6 of the Railway

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* For a detailed history of the movement initiated by the carriers, referred to above, see Wolf, The Railroad Labor Board, pages 166 to 170 and 266 to 294, and Railroad Labor Board Decisions, particularly Decisions Nos. 2 and 2688. In discussing the action taken by the organizations representing engine service employees, following Decision No. 2688, Wolf concludes that

> "... it seems fairly obvious that at least insofar as these organizations were concerned -- and, it may be presumed, also for the conductors and trainmen -- the act creating the Railroad Labor Board was a dead letter..." (P. 294)

Labor Act, in each of these movements is shown in the table submitted on pages 196 and 197 of the appendix to this statement. All of the proposals referred to on page 196 and some of the proposals referred to on page 197 relate to rules or working conditions that are involved in this dispute.

Thirteen emergency boards and four arbitration boards, created pursuant to the provisions of the Railway Labor Act, participated in the handling of these prolonged disputes.* In order to avoid threatened interruptions of commerce arising out of the disputes, the Government seized possession, control and operation of the railroads on three occasions: In May of 1946, in May of 1948, and in August of 1950. The carriers' properties were in the possession of and operated by the Army from August 25, 1950 until May 23, 1952 -- a period of Federal control nearly equal in length to that which occurred during World War I. Acceptance of the currently effective

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* Emergency Boards involved were Boards Nos. 11, 33, 57, 61, 68, 70, 81, 83, 97, 109, 110 and 116 and the Diesel Emergency Panel Board of 1943. Arbitration Boards to which reference is made are identified infra (pp. 104, 105). The organizations rejected the recommendations of all of the emergency boards, other than those of Emergency Board No. 116. The carriers accepted all of the recommendations of such boards.

agreement with the Brotherhood of Locomotive Firemen and Enginemen governing the use of firemen on other than steam power, dated May 17, 1950, followed a strike on the lines of the Santa Fe, Southern, Pennsylvania and New York Central railroads, which lasted from May 10 to to May 16, 1950, and a threat to extend the strike to other carriers.

Little was accomplished in any of these movements, although some revision was made in rules governing changes in switching limits, the use of cabooses, the combination of more than one class of road service, coupling and uncoupling air hose, and time limits on claims. It is significant that the new rule governing changes in switching limits provides for the arbitration of disputes not resolved by collective bargaining, and that settlements with reference to the combination of road services and coupling and uncoupling air hose were reached through arbitration.

The failure of the carriers' efforts to modernize the wage structure and work rules of their operating employees has been largely due to the militant opposition of the organizations, to the extraordinary vulnerability of the industry to all forms of economic duress, and to

the inadequacy of the machinery or procedures available for the handling of such matters.*

The Role of Arbitration in Prior Disputes

The organizations have rejected the proposals of the President of the United States and of the Secretary of Labor for the settlement of this dispute, and the recommendations of the Presidential Railroad Commission and those of Emergency Board No. 154 largely on the alleged ground that such organizations are traditionally opposed to the resolution of disputes involving the subject matter with which the parties are here concerned by arbitration.**

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* Prior efforts of the carriers to modernize rules and agreements governing the use, compensation and assignments of railroad operating employees, and the comment and recommendations of authoritative sources, including public and governmental agencies and instrumentalities, with respect to the need for rules reform, are documented in the Transcript of the Proceedings of the Presidential Railroad Commission. See particularly pages 172 to 181, 236 to 243, and 440 to 495. Also, as pertinent to some or all of the circumstances referred to above, see Leonard A. Lecht, Railway Labor Legislation, Columbia University Press; Julius H. Parmalee, The Modern Railway, Association of American Railroads; Harry D. Wolf, The Railroad Labor Board, University of Chicago Press; and Edwin C. Robbins, Railway Conductors, A Study in Organized Labor, Columbia University Press.

** See the Report to the President on the Railroad Rules Dispute by the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy, July 19, 1963.

But it is not true that these organizations have traditionally been opposed to the handling of either wage or rules disputes of importance through arbitration. In no other industry has arbitration played so large a part in collective bargaining. In no other industry have there been as many arbitration proceedings and awards of nation wide significance as in the railroad industry.

It was the organizations that induced the Congress to amend the Railway Labor Act in 1934 to provide for the compulsory arbitration by the National Railroad Adjustment Board of all disputes involving the interpretation and application of all rules, practices, and agreements pertaining to rates of pay, rules and working conditions in the railroad industry.

Most of the rules governing the compensation and working conditions of railroad operating employees originated with or were standardized or codified in arbitration awards rendered during the first two decades of this century. Under enlightened leadership, each of the organizations representing operating employees were parties to and participated in these arbitration proceedings. Awards of national importance included, among others, the following:

(a) The Clark-Morrissey Arbitration Award of May 4, 1910, to which certain Eastern railroads, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen were parties, which established the dual basis of pay, overtime rules and other conditions of employment for train service employees in the Eastern district.

(b) The Firemen's Western Arbitration Award of June 4, 1910, to which Western railroads and the Brotherhood of Locomotive Firemen and Enginemen were parties, which established rules providing for graduated rates of pay and other working conditions for firemen in the Western district.

(c) The Eastern Engineers' Award of November 2, 1912, to which the Eastern railroads and the Brotherhood of Locomotive Engineers were parties, which standardized and codified the basic day and overtime rules governing the compensation of engineers, and rules governing the payment of arbitraries and constructive allowances, the beginning and end of a day and hours of service.

(d) The Eastern Firemen's Award of April 23, 1913, to which the Eastern railroads and the Brotherhood of Locomotive Firemen and Enginemen were parties, which was similar in scope and subject matter to the Eastern Engineers' Award of November 2, 1912.

(e) The Eastern Train Service Employees' Award of November 10, 1913, to which the Eastern railways, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen were parties, which was also similar in scope and subject matter to the Eastern Engineers' Award of November 2, 1912.

(f) The Burlington Train Service Employees' Award of February 19, 1914, to which the Chicago, Burlington & Quincy Railroad Company, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen were parties, which established detailed and comprehensive rules, later adopted throughout the Western region, governing the compensation and working conditions of train service employees.

(g) The Western Arbitration Award of April 30, 1915, to which the Western railroads, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen were parties, which established in the Western region rules governing the compensation and certain working conditions of engine service

employees which were later adopted by the Director General of Railroads and which remain virtually unchanged to this day.

(h) The Switchmen's Arbitration Award of December 23, 1916, to which various Eastern and Western railroads and the Switchmen's Union of North America were parties, which standardized and codified the basic day and overtime rules, and rules governing the beginning and ending of the day, points for going on and off duty, the night work differential and meal hour regulations for switchmen.

(i) The Settlement Awarded by the Committee of the Council of National Defense, dated March 19, 1917, to which all of the organizations other than the Switchmen's Union of North America and all carriers were parties, which revised the basic day and overtime and related rules in the light of the Adamson Eight-Hour Law.

(j) The Awards of the Commission of Eight, to which all of the organizations other than the Switchmen's Union of North America and all carriers were parties, which resolved differences arising over the application of the Award of the Committee of the Council of National Defense prior to Federal control of the railway industry during World War I.

Virtually all of the basic rules governing the basis of pay and wage structure for railroad operating employees originated in or were codified and standardized in or by the foregoing awards. Subsequent awards of significance include the following:

(k) The Eastern Train Service Employees' Award of December 1, 1926, to which the Eastern railroads, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen were parties, prescribing

rates of pay and rules governing the working conditions of train service employees in the Eastern district.

(l) The Southeastern Firemen's Award of June 16, 1927, to which certain Southeastern railroads and the Brotherhood of Locomotive Firemen and Enginemen were parties, relating to graduated rates of pay and other rules governing the compensation of firemen employed in the Southeastern district.

(m) The Western Train Service Employees' Award of June 25, 1927, to which Western railroads, the Order of Railway Conductors and the Brotherhood of Railroad Trainmen were parties, which was comparable in scope and subject matter to the Eastern Train Service Employees' Award of December 1, 1926.

(n) The Western Firemen's Award of August 1, 1927, to which Western railroads and the Brotherhood of Locomotive Firemen and Enginemen were parties, which was similar in scope and subject matter to the Southeastern Firemen's Award of June 16, 1927.

(o) The Southeastern Engineers' Award of February 4, 1928, to which Southeastern railroads and the Brotherhood of Locomotive Engineers were parties, which was similar in scope and subject matter to the Southeastern Firemen's Award of June 16, 1927.

(p) The Award of Arbitration Board No. 61, dated April 3, 1946, to which the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, the Switchmen's Union of North America and the Class I railroads were parties, involving proposals for wage adjustments.

(q) The Trainmen's Air Hose Award of August 1, 1951, to which the Brotherhood of Railroad Trainmen and the Class I railroads were parties, dealing with rules relating to coupling and uncoupling air hose and the combination of more than one class of road service.

(r) The Award of Arbitration Board No. 168, dated December 3, 1952, to which the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and the entire railroad industry were parties, relating to a dispute involving the combination of more than one class of road service.

(s) The Productivity Award of March 13, 1953, to which the entire railroad industry and all of the standard organizations representing railroad employees were parties, involving improvement factor or productivity wage adjustment issues.

(t) The Award of Arbitration Board No. 140, dated April 13, 1954, to which virtually all of the American railroads and the Brotherhood of Locomotive Firemen and Enginemen were parties, dealing with the use of firemen on diesel locomotives.

(u) The Award of Arbitration Board No. 192, dated August 13, 1954, to which the Brotherhood of Locomotive Engineers and the entire railroad industry were parties, dealing with issues involving levels of earnings and intra industry wage differentials.

(v) The Award of Arbitration Board No. 201, dated March 1, 1955, to which the Switchmen's Union of North America and railroads with employees represented by that organization were parties, dealing with wage differential issues.

(w) The Award of Arbitration Board No. 254, dated June 3, 1960, to which the Brotherhood of Locomotive Engineers and the entire railroad industry were parties, dealing with issues involving levels of earnings, rates of pay and intra industry wage differentials. The adjustments awarded by Board No. 254 were later recommended for nonoperating employees and other classes of operating employees by two emergency boards, and established a pattern of adjustments which was adopted throughout the industry. The rates of pay so established are still generally effective as to all operating employee classifications.

All of the organizations representing operating employees have made innumerable agreements, both before and after the enactment of the Railway Labor Act, with individual carriers and with groups of carriers, referring local disputes concerning rates of pay, rules and working conditions and disputes involving the interpretation and application of national, regional and system agreements to arbitration or to the finality of decision provided by various types of referee procedures.

It is clear that the organizations' supposed traditional opposition to arbitration neither is real nor does it explain the refusal of the organizations to submit any part of this dispute to any form of referee procedure for final determination.

THE URGENT NEED FOR CHANGE

The urgent need for modernization of the rules governing the use, compensation and assignments of railroad operating employees cannot be reasonably questioned. Judge Rifkind, Chairman of the Presidential Railroad Commission, stated during his press conference of February 26, 1962, that

> "Very early in the work of this Commission I discovered that this Commission had a choice to make, a very important choice. The choice it had to make was between a moribund industry destined to decline in importance, to decline in capacity and to decline as an employer of labor. The other choice was to have a railroad industry which was revived, which was modern, which was fit and in trim for competition with the other modes of transport which have been crowding it on this continent, and thereby become capable of a vastly increased volume of employment." (Appendix, pp. 83, 84)

Successive emergency boards have recommended that the rules governing the compensation and working conditions of railroad employees be modernized to keep pace with changing conditions. The problem has also been given extensive consideration by the Interstate Commerce Commission, the various state regulatory bodies, committees and subcommittees of the Congress, and in the writings of leading economists and other authority.*

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* See note on page 108.

The urgent need for the more efficient use of labor in the railroad industry, for the elimination of redundant employee positions and for the modernization of rules governing the compensation, use and assignment of railroad operating employees is reflected in the steady deterioration of the financial condition and competitive position of the railroad industry, in deferred maintenance, and in the curtailment of expenditures for additions and betterments, research and technological advance and declining job and employment oppor-

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The Interstate Commerce Commission was particularly apprehensive as to the effect of the rules involved in this dispute upon railroad service and upon the financial condition and competitive position of the railroad industry in Railroad Passenger Train Deficit, 306 I.C.C. 417 to 494. See also, Report of the Senate Committee on Interstate and Foreign Commerce, The Deteriorating Position of American Railroads, Senate Report No. 1647, June 3, 1958, particularly pages 10 to 12; Reports of the Special Committee on Cooperation with the Interstate Commerce Commission in the Study of the Railroad Passenger Deficit Problem of the National Association of Railroad and Utility Commissioners; and Railroad Transportation and Public Policy, Dr. James C. Nelson, The Ford Foundation, April 1959, particularly pages 4, 233, 283 and 426.

The comment and recommendations of authoritative sources including public and governmental agencies and instrumentalities with respect to the need for rules reform is documented in the transcript of the proceedings of the Presidential Railroad Commission. See particularly, pages 172 to 181, 236 to 243 and 445 to 495.

Emergency boards created by the President under Section 10 of the Railway Labor Act that have had occasion to point up the importance of efficiency in the use of labor or the relation of the financial condition and competitive position of the railroad industry to labor costs include Emergency Boards Nos. 6, 11, 81, 106, 109, 114, 116, 130, 145 and the National Railway Panel Emergency Board that made its report to the President on September 25, 1943.

tunities. These circumstances are readily apparent from the table appearing on page 199 of the appendix showing results of operations by the Class I line-haul railroads and levels of railroad employment since 1955.

Operating revenues have declined during each of the years 1956 to 1961. Net railway operating income, rate of return on net investment, net railway operating income per dollar of gross, net income, and number of positions available to employees have declined during each of the years 1955 to 1961. Results of operations improved slightly during the year 1962; however, rate of return on net investment was less than 2-3/4 percent. All things considered, results of operations for the year 1962 were about the same as those for 1960.

Although the deterioration in the financial condition of the railroads has been particularly severe since 1955, results of operations have been unsatisfactory during the entire post-war period, as shown by the tables on pages 200 and 201 of the appendix. Resort must be had to data for pre-depression years in order to show results of operations in the railroad industry comparable to those of even the poorer of other American industries.

In 1929 the net income of these railways, expressed in constant dollars, was four times as great as their net income for the year 1961.

The data on pages 200 and 201 of the appendix are summarized in the table on page 204; and net investment, net railway operating income, rate of return, and net income for each Class I line-haul railroad, for the years 1955, 1957, 1959 and 1961, is submitted on pages 202 and 203.

As appears from the data shown for individual lines of road, the railroads of the New England region have had net railway operating deficits since 1957; in 1961 the railroads of the entire Eastern district had both net railway operating income and net income deficits; the number of carriers without net railway operating income or net income has steadily increased over the period 1955 to 1961; in 1961, 22 of the 104 Class I railroads had net railway operating income deficits totaling 83-1/2 millions of dollars; and 25 (or nearly 25 percent of the 104 roads) had net income deficits totaling 142 millions of dollars.

The financial stringency of the railroad industry has resulted in deferred maintenance (appendix, p. 205) and in the curtailment of capital expenditures for additions and betterments (appendix, pp. 206, 207). Average annual gross capital expenditures for additions and betterments, in constant dollars, have been only about two-fifths as great during recent years as during the period 1923 to 1929 -- yet the amounts of such expenditures have exceeded

net railway operating income during each of 13 out of the last 16 years.

Emergency Board No. 130, in its report to the President dated June 8, 1960, emphasized the fact that

> "the volume of capital expenditures... has been inadequate to accomplish the changes in the industry required by the new conditions which arose in the 1950's and which are likely to prevail in the 1960's."

That board concluded that

> "clearly the record of net railroad operating income, and the rate of return of the last 2 or 3 years, and particularly its decline from earlier levels, are not conducive to the capital expenditures and expansion required by the public interest."

The President of the United States in his Message on Transportation to the Congress of the United States, dated April 5, 1962, pointed out that technological advance in transportation must be explored and developed to meet growing requirements for the movement of people and goods. In this connection he stated that

> "for the long-range benefit of labor, management and the public, collective bargaining in the transportation industry must promote efficiency as well as solve problems of labor-management relations."

He then directed attention to the importance of scientific and engineering research, stating that

> "in the field of transportation where we have many unfulfilled opportunities, research has been fragmented, unsteady, inadequate in scope and balance."

As far as the railroad industry is concerned, the reason is not difficult to find. In this industry money which should be employed in research and technological advance is used to pay the wage costs of unneeded employees and to provide compensation for employees that exceeds the value of the services that they perform.

A considerable part of the research done by the railroad industry is conducted by the Association of American Railroads. The research budget of the Association was reduced from $1.5 million dollars in 1959 to $700 thousand in 1961, due to the fact that the industry did not have the money to maintain expenditures for this purpose at higher levels.

Similar reductions have been made in expenditures for research by individual carriers.

The results of a survey made by the Association of American Railroads, presented to the Presidential Railroad Commission by Mr. W. M. Keller, Vice President, Association of American Railroads, Research Department, indicate that capital expenditures for research and technological development by other leading American industries are many times greater than those of the railroad industry; that the British Railways have approximately 75 research projects for every one of the American railroads, and that what is true of the British railroads is generally true in Europe and is particularly true in Russia.

But the unavailability of funds for research and development work in the American railroad industry is only one of the difficulties that confronts the rail carriers in this field. Even more important is the fact that there are many technological improvements that are now available to the American railroads which can only be partially installed or not used at all because of lack of funds. Money which should be used to take advantage of the technological developments which have been discovered and made available to the industry is now being absorbed by the inefficient use of labor, and by labor costs that are not commensurate with the value of the services rendered.

The deterioration in the financial condition of the railroad industry has been accompanied by a like deterioration in its competitive position. The tables on pages 208 and 209 of the appendix show that the railroads' participation in the available intercity freight and passenger traffic in the United States has declined steadily during the entire post-war period.

Obviously, these unfortunate circumstances are the result of a variety of factors -- and not due entirely to the waste of money and manpower sought to be corrected by the carriers' proposals involved in this dispute. But it is equally obvious that a loss of more than 600 million dollars per year in operating revenues (appendix, p. 30) resulting from obsolete rules, laws, regulations

and practices governing the compensation, use and assignments of railroad operating employees has contributed to the unsatisfactory financial condition and competitive position of the industry and to the steady decline in job and employment opportunities. The ratio of employee compensation to sales is substantially greater and has increased by substantially greater amounts during the last two decades in the railroad industry than in other leading industries (appendix, p. 210). This abnormal increase in labor costs is due in part to changes in the characteristics of the assignments of railroad operating employees which have resulted from the inability of the carriers to modernize the pay and work rules to keep abreast of changing conditions within the industry. See appendix, page 211. Expressed in terms of general averages, passenger and through freight service employees are working about 5½ hours per trip or tour of duty, are paid for 11½ hours, and receive a basic day's pay for 4 hours' time on duty -- during which time many of these employees perform no useful or needed service.

Rules responsible for inequities in the railroad wage structure, and the contribution of each of such rules to such inequities, are shown in the table on page 212 of the appendix.

Appendix To

S T A T E M E N T

in the matter of

A DISPUTE BETWEEN CERTAIN RAIL CARRIERS
AND FIVE RAILWAY LABOR ORGANIZATIONS

involving

Rules and Practices Governing
the Use, Compensation and Assignments
of Railroad Operating Employees

22-330 O—63——21

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REPRESENTATIVES OF THE CARRIERS

NATIONAL RAILWAY LABOR CONFERENCE

J. E. WOLFE, CHAIRMAN

EASTERN CARRIERS' CONFERENCE COMMITTEE

G. W. KNIGHT (CHAIRMAN)
Vice-President--Labor Relations
Pennsylvania Railroad System

J. J. GAHERIN (VICE CHAIRMAN)
Chairman, Labor Relations Committee
Eastern Railroads

FRED DIEGTEL, Vice-President--Labor Relations
Erie-Lackawanna Railroad

L. B. FEE, Vice-President--Employee Relations
New York Central System

R. L. HARVEY, Director of Labor Relations
Baltimore & Ohio Railroad Company

R. W. PICKARD, Vice-President--Personnel
Boston and Maine Railroad

WESTERN CARRIERS' CONFERENCE COMMITTEE

E. H. HALLMANN (CHAIRMAN), Chairman
Committee on Labor Relations
The Association of Western Railways

A. D. HANSON, Vice President-Labor
Relations, Transportation Division
Union Pacific Railroad

K. K. SCHOMP, Manager of Personnel
Southern Pacific Company (Pacific Lines)

SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

C. A. McREE (CHAIRMAN), Chairman
Southeastern Carriers' Conference Committees

W. S. BAKER, Assistant Vice President
Atlantic Coast Line Railroad

W. L. BURNER, Jr., Manager
Bureau of Information of the Southeastern Railways

F. K. DAY, Jr., Assistant Vice President
Norfolk & Western Railway

W. S. SCHOLL, Director of Personnel
Louisville & Nashville Railroad

G. M. SEATON, Jr., Assistant Vice President-Labor Relations, Chesapeake & Ohio Railway

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Note: The scope of representation and authority of the Regional Carriers' Conference Committees are shown in Exhibits "A", "B" and "C", and their supplements, which follow.

EXHIBIT "A"

EASTERN RAILROADS WHICH HAVE AUTHORIZED REPRESENTATION BY THE EASTERN CARRIERS' CONFERENCE COMMITTEE IN THE HANDLING OF NOTICES COVERING RULES CHANGE PROPOSALS SERVED ON OR ABOUT NOVEMBER 2, 1959 BY THE INDIVIDUAL RAILROADS ON THEIR EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS; ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN; BROTHERHOOD OF RAILROAD TRAINMEN AND/OR SWITCHMEN'S UNION OF NORTH AMERICA, RELATING TO (1) USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER, (2) BASIS OF PAY AND ASSIGNMENT OF EMPLOYEES, (3) CONSIST OF CREWS; ALSO, PROPOSALS SERVED ON THE RAILROADS UNDER DATE OF SEPTEMBER 7, 1960 BY THE AFOREMENTIONED FIVE OPERATING RAILWAY LABOR ORGANIZATIONS FOR - WAGE STRUCTURE IMPROVEMENTS, CONSIST OF CREWS, EMPLOYEE PROTECTION IN MERGERS, ETC., AND STABILIZATION OF EMPLOYMENT

- - - - - - - - - - -

(Authority is co-extensive with provisions of current schedule agreements applicable to employees represented by the organizations shown)

RAILROAD	AUTHORIZATION COVERS DESIGNATED ITEM AND ORGANIZATION INDICATED												
	BLE			ORCB		BLFME			BRT		SUNA		
	1	2	3	2	3	1	2	3	2	3	2	3	
Akron & Barberton Belt						x	x	x	x	x			
Akron, Canton & Youngstown		x	x			x	x		x	x			
Ann Arbor						x	x	x	x	x			
Baltimore & Ohio		x	x	x	x	x	x		x	x			
B&O Chicago Terminal		x	x			x	x		x	x			
Staten Island Rapid Transit		x	x			x	x		x	x			
Strouds Creek & Muddlety				x	x	x	x	x					
Curtis Bay						x	x	x	x	x			
Bangor & Aroostook						x	x	x	x	x			
Bessemer & Lake Erie						x	x	x	x	x			
Boston & Maine		x	x			x	x		x	x			
Brooklyn Eastern District Terminal		x	x						x	x			
Buffalo Creek						x	x	x					
Bush Terminal						x	x	x	x	x			
Canadian National													
Lines in New England		x	x			x	x		x	x			
United States & Canada		x	x			x	x		x	x			
Champlain & St. Lawrence		x	x			x	x		x	x			
St. Clair Tunnel Co.		x	x			x	x		x	x			
Central RR of New Jersey		x	x	x	x	x	x		x	x			
New York & Long Branch		x	x	x	x	x	x		x	x			
Central Vermont		x	x			x	x		x	x			
Chicago Union Station									x	x			
Cincinnati Union Terminal		x	x			x	x		x	x			
Delaware & Hudson		x	x	x	x	x	x		x	x			
Detroit & Mackinac						x	x	x	x	x			
Detroit & Toledo Shore Line				x	x	x	x	x	x	x			
Detroit Terminal	x	x	x						x	x			
Detroit, Toledo & Ironton		x	x			x	x		x	x			
Erie-Lackawanna		x	x			x	x		x	x			
Grand Trunk Western		x	x	x	x	x	x		x	x			
Greenwich & Johnsonville						x							
Hoboken Shore		x	x						x	x			
Indianapolis Union		x	x			x	x				x	x	
Lake Terminal						x	x						
Lehigh & Hudson River		x	x			x	x		x	x			
Lehigh & New England				x	x	x	x	x	x	x			
Lehigh Valley		x	x	x	x	x	x		x	x			

RAILROAD	AUTHORIZATION COVERS DESIGNATED ITEM AND ORGANIZATION INDICATED											
	BLE			ORC&B		BLF&E			BRT		SUNA	
	1	2	3	2	3	1	2	3	2	3	2	3
Long Island		x	x			x	x		x	x		
Maine Central		x	x			x	x		x	x		
Portland Terminal		x	x			x	x		x	x		
McKeesport Connecting						x	x					
Monon		x	x	x	x	x	x		x	x		
Monongahela (1)		x	x	x	x	x	x		x	x		
Montour						x	x	x	x	x		
Youngstown & Southern	x	x	x						x	x		
Newburgh & South Shore						x	x					
NEW YORK CENTRAL SYSTEM												
New York Central RR												
Eastern & New York Districts		x	x	x	x	x	x		x	x		
B&A Div. of Eastern District		x	x	x	x	x	x		x	x		
Western District		x	x	x	x	x	x		x	x		
Northern District		x	x	x	x	x	x	x	2	2		
Southern District	3	3	3	x	x	x	x		x	x		
Pittsburgh & Lake Erie - Lake Erie & Eastern		x	x	x	x	x	x		x	x		
Chicago River & Indiana		x	x			x	x		x	x		
Indiana Harbor Belt		x	x			x	x		x	x		
Cleveland Union Terminals		4	4			4	4		5	5		
New York, Chicago & St. Louis		x	x	x	x	x	x		x	x		
New York Dock	x	x	x						x	x		
New York, New Haven & Hartford		x	x			x	x		x	x		
Union Freight (Boston)						x	x	x				
New York, Susquehanna & Western		x	x	x	x	x	x		x	x		
Pennsylvania		x	x			x	x		x	x		
Baltimore & Eastern		x	x			x	x		x	x		
Pennsylvania-Reading Seashore Lines		x	x			x	x		x	x		
Pittsburgh & West Virginia		x	x			x	x		x	x		
Pitts., Chartiers & Youghiogheny (1)		x	x			x	x		x	x		
Reading		x	x	x	x	x	x		x	x		
Toledo Terminal		x	x			x	x		x	x		
Washington Terminal (1)						x	x	x	x	x		
Western Maryland						x	x	x				
Youngstown & Northern						x	x	x				

(Notes on following page)

NOTES:

(1) - Monongahela, Pitts., Chartiers & Youghiogheny, Washington Terminal) - Employees' Standard Notice of September 7, 1960 not served by Brotherhood of Railroad Trainmen.

NEW YORK CENTRAL

(2) - Northern District - The BRT also represents Road Conductors on the Canada Southern Division.

(3) - Southern District - The BLE also represents Firemen and Hostlers on the Louisville and Jeffersonville Bridge and Railroad, a part of the Southern District.

(4) - Cleveland Union Terminals - Covered by Joint Agreement of October 11, 1929, which has status of supplement to basic agreements on participating roads.

(5) - Cleveland Union Terminals - Covered by Yardmen's Agreement on NYC RR - Western District.

EXHIBIT B

WESTERN RAILROADS

LIST OF WESTERN RAILROADS REPRESENTED BY THE WESTERN CARRIERS' CONFERENCE COMMITTEE, IN CONNECTION WITH NOTICES IDENTIFIED AS RELATING TO - (1) USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER, (2) BASIS OF PAY AND ASSIGNMENT OF EMPLOYEES, AND (3) CONSIST OF CREWS, DATED ON OR ABOUT NOVEMBER 2, 1959, SERVED BY THE RAILROADS GENERALLY ON THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THEIR ENGINE, TRAIN AND YARD SERVICE EMPLOYEES, REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, BROTHERHOOD OF RAILROAD TRAINMEN AND SWITCHMEN'S UNION OF NORTH AMERICA; ALSO, NOTICES DATED ON OR ABOUT SEPTEMBER 7, 1960, SERVED UPON VARIOUS INDIVIDUAL WESTERN RAILROADS BY THE GENERAL CHAIRMEN, OR OTHER RECOGNIZED REPRESENTATIVES, OF THE FIVE OPERATING RAILWAY LABOR ORGANIZATIONS, RELATING TO - WAGE STRUCTURE IMPROVEMENTS, CONSIST OF CREWS, EMPLOYEE PROTECTION IN MERGERS, ETC., AND STABILIZATION OF EMPLOYMENT.

This authorization is co-extensive with the provisions of current schedule agreements applicable to employees represented by the above-named organizations.

Subject to the foregoing, the notices and classes of employees covered by the authorizations are indicated by an "x" inserted in Columns (1), (2) and (3) below:

RAILROADS	BLE			BLF&E			ORC&B		BRT		SUNA	
	1	2	3	1	2	3*	2	3	2	3	2	3
Alton and Southern RR.				x	x	x			x	x		
Atchison, Topeka & Santa Fe Railway, The		x	x	x	x		x	x	x	x		
Gulf, Colorado & Santa Fe Ry.		x	x	x	x		x	x	x	x		
Panhandle & Santa Fe Ry.		x	x	x	x		x	x	x	x		
Bauxite & Northern Ry.									x	x		
Belt Ry. Co. of Chicago, The		x	x	x	x				x	x		
Butte, Anaconda & Pacific Ry.				x	x	x						
Camas Prairie RR. (1)		x	x	x	x		x	x	x	x		
Chicago & Eastern Illinois RR.		x	x	x	x				x	x		
Chicago & Illinois Midland Ry.		x	x	x	x				x	x		
Chicago & North Western Ry., incl. former CStPM&O (Except former L&M)		x	x	x	x		x	x	x	x		
L&M District	x	x	x						x	x		
Chicago & Western Indiana RR.		x	x	x	x				x	x		
Chicago, Burlington & Quincy RR.		x	x	x	x		x	x	x	x		
Chicago Great Western Ry., incl. South St. Paul Terminal		x	x	x	x		x	x	x	x		
Chicago, Milwaukee, St. Paul & Pacific RR. - Lines East		x	x	x	x		x	x	x	x		
Chicago, Milwaukee, St. Paul & Pacific RR. - Lines West		x	x	x	x		x	x	x	x		
Chicago, Rock Island & Pacific RR.		x	x	x	x				x	x	x	x
Chicago Short Line Ry.				x	x	x			x	x		
Chicago, West Pullman & Southern RR.				x	x	x			x	x		
Colorado and Southern Ry.		x	x	x	x		x	x	x	x		
Davenport, Rock Island and North Western Ry.				x	x	x					x	x

1. Use of Firemen (Helpers) on Other Than Steam Power
2. Basis of Pay and Assignment of Employees
3. Consist of Crews

* Representing Engineers.

RAILROADS	BLE			BLF&E			ORC&B		BRT		SUNA	
	1	2	3	1	2	3*	2	3	2	3	2	3
Denver & Rio Grande Western RR., The		x	x	x	x		x	x	x	x	x	x
Des Moines Union Ry.				x	x	x			x	x		
Duluth, Missabe & Iron Range Ry. (2)				x	3x	x	x	x	x	x		
Duluth, South Shore & Atlantic RR.		x	x	x	x				x	x		
Duluth Union Depot & Transfer Co.									x	x		
Duluth, Winnipeg & Pacific Ry. (1)				x	x	x			x	x		
East St. Louis Junction RR.				x	x	x			x	x		
Elgin, Joliet and Eastern Ry.		x	x	x	x							
Fort Worth and Denver Ry.		x	x	x	x		x	x	x	x	x	x
Joint Texas Division of CRI&P RR. and FtW&D Ry.		x	x	x	x		x	x	x	x		
Galveston, Houston & Henderson RR.				x	x	x			x	x		
Galveston Wharves				x	x	x						
Great Northern Ry.		x	x	x	x		x	x			x	x
Green Bay & Western RR.		x	x	x	x				x	x		
Kewaunee, Green Bay & Western RR.		x	x	x	x				x	x		
Houston Belt & Terminal Ry.				x	x	x			x	x		
Illinois Central RR.		x	x	x	x	4x	x	x	x	x		
Illinois Northern Ry.				x	x	x			x	x		
Illinois Terminal RR.				x	x	x			x	x		
Kansas City Southern Ry., The		x	x	x	x		x	x	x	x		
Arkansas Western Ry., The		x	x	x	x		x	x	x	x		
Kansas City Terminal Ry.				x	x	x					x	x
Kansas, Oklahoma & Gulf Ry.		x	x	x	x		x	x	x	x		
Midland Valley RR.		x	x	x	x				x	x		
Oklahoma City-Ada-Atoka Ry.	x	x	x				x	x				
King Street Passenger Station (Seattle)		x	x	x	x				x	x		
Lake Superior & Ishpeming RR.				x	x	x			x	x		
Lake Superior Terminal & Transfer Ry.				x	x	x					x	x
Longview, Portland & Northern Ry.				x	x							
Los Angeles Junction Ry.				x	x	x					x	x
Louisiana & Arkansas Ry.		x	x	x	x		x	x	x	x		
Manufacturers Railway				x	x	x			x	x		
Minneapolis & St. Louis Ry., The		x	x	x	x		x	x	x	x	x	x
Minneapolis Industrial Ry.				x	x	x			x	x		
Railway Transfer Co. of the City of Minneapolis				x	x	x					x	x
Minneapolis, Northfield & Southern Ry.				x	x	x			x	x		

1. Use of Firemen (Helpers) on Other Than Steam Power
2. Basis of Pay and Assignment of Employees
3. Consist of Crews

* Representing engineers.

RAILROADS	BLE			BLF&E			ORC&B		BRT		SUM	
	1	2	3	1	2	3*	2	3	2	3	2	3
Minneapolis, St. Paul and Sault Ste. Marie RR.		x	x	x	x		x	x	x	x		
Minnesota, Dakota & Western Ry.				x	x	x			x	x		
Minnesota Transfer Ry., The		x	x	x	x				x	x		
Missouri-Kansas-Texas RR.		5x	x	x	5x		5x	x	5x	x		
Missouri Pacific RR.		x	x	x	x		x	x	x	x		
Missouri-Illinois RR.				x	x	x	x	x	x	x		
New Orleans & Lower Coast RR.				x		x				x		
New Orleans Union Passenger Term.		x	x	x	x				x	x		
Northern Pacific Ry.		x	x	x	x		x	x	x	x		
Northern Pacific Terminal Co. of Oregon		x	x	x	x						x	x
Northwestern Pacific RR.		x	x	x	x		x	x	x	x		
Ogden Union Ry. and Depot Co., The		x	x	x	x				x	x		
Oregon, California & Eastern Ry.		x	x	x	x		x	x				
Pacific Coast RR.				x	x	x	x	x	x	x		
Peoria and Pekin Union Ry.				x	x	x			x	x		
Port Terminal Railroad Association				x	x	x			x	x		
St. Joseph Terminal RR.				x	x	x			x	x		
St. Louis-San Francisco Ry.		x	x	x	x		x	x	x	x		
St. Louis, San Francisco and Texas Ry.		x	x	x	x		x	x	x	x		
St. Louis Southwestern Ry.		x	x	x	x				x	x		
St. Paul Union Depot Co., The		x	x	x	x						x	x
San Diego & Arizona Eastern Ry.	x	x	x				x	x	x	x		
Sioux City Terminal Ry.				x	x	x					x	x
Southern Pacific Co. (Pacific Lines) excl. former El Paso & Southwestern System and Nogales, Arizona, yard.		x	x	x	x		x	x	x	x	x	x
Southern Pacific Co. (Pacific Lines) former El Paso & Southwestern System		x	x	x	x		x	x	x	x	x	x
Southern Pacific Co. (Pacific Lines) Nogales, Arizona, yard		x	x	x	x						x	x
Spokane International RR.				x	x	x	x	x			x	x
Spokane, Portland & Seattle Ry.		x	x	x	x		x	x	x	x		
Oregon Trunk Ry.		x	x	x	x		x	x	x	x		
Oregon Electric Ry.		x	x	x	x		x	x	x	x		
Terminal Railroad Association of St. Louis		x	x	x	x				x	x		
Texas and New Orleans RR.		x	x	x	x				x	x		
Texas and Pacific Ry., The		x	x	x	x		x	x	x	x		
Abilene & Southern Ry.	x	x	x				x	x	x	x		
Fort Worth Belt Ry.				x	x	x			x	x		
Texas-New Mexico Ry.		x	x	x	x		x	x	x	x		
Texas Short Line Ry.		x	x	x	x		x	x	x	x		
Weatherford, Mineral Wells & Northwestern Ry., The	x	x	x				x	x	x	x		

1. Use of Firemen (Helpers) on Other Than Steam Power
2. Basis of Pay and Assignment of Employees
3. Consist of Crews

* Representing engineers.

RAILROADS	BLE			BLF&E			ORC&B		BRT		SUW	
	1	2	3	1	2	3*	2	3	2	3	2	3
Texas Mexican Ry., The		x	x	x	x				x	x		
Texas Pacific-Missouri Pacific Terminal RR. of New Orleans	x	x	x								x	x
Toledo, Peoria & Western RR.				x	x	x			x	x		
Union Pacific RR.		x	x	x	x		x	x	x	x		
Union Ry. Co. (Memphis)				x	x	x			x	x		
Union Terminal Co., The (Dallas)				x	x	x			x	x		
Wabash RR. (Lines West)		x	x	x	x		x	x	x	x		
Wabash RR. (Lines East)		x	x	x	x				x	x		
Western Pacific RR., The		x	x	x	x		x	x	x	x	x	x
Wichita Terminal Association, The				x	x	x			x	x		

1. Use of Firemen (Helpers) on Other Than Steam Power
2. Basis of Pay and Assignment of Employees
3. Consist of Crews

* Representing engineers.

- - - - -

NOTES: -

1 - Authorization covers the Camas Prairie Railroad as governed by Northern Pacific and Union Pacific schedules.
2 - Authorization includes employees on both the Missabe Division and the Iron Range Division.
3 - Authorization includes "head hostlers" and "assistant hostlers" on the Missabe Division.
4 - Authorization applicable to Engineers on Winnfield District, Mississippi Division where B. of L.F.& E. represents Engineers (formerly T.& G. RR.)
5 - Carrier did not serve the standard notice. Authorization covers only the undeleted portions of the standard notice served by the carrier.

- - - - -

(A) September 7, 1960 Notice not served by B.L.F.& E.

Note: Since Exhibit "B" was signed by the representatives of the parties therein named on June 23, 1961, the Minneapolis, St. Paul & Sault Ste. Marie Railroad and the Duluth, South Shore & Atlantic Railroad have become the Soo Line Railroad; the Minneapolis & St. Louis Railway, the Minneapolis Industrial Railway and the Railway Transfer Company of the City of Minneapolis have been absorbed by the Chicago & North Western Railway; the Texas & New Orleans Railroad has become the Texas & Louisiana Lines of the Southern Pacific Company, and the Texas Short Line Railway (a subsidiary of the Texas & Pacific Railway) was abandoned effective March 7, 1962.

EXHIBIT C

SOUTHEASTERN RAILROADS
which have authorized their representation
by
SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE - 1960

in the handling of notices to
Revise and Supplement Agreements as to

(1) USE OF FIREMEN ON OTHER THAN STEAM POWER
(2) BASIS OF PAY AND ASSIGNMENT OF EMPLOYEES
(3) CONSIST OF ROAD AND YARD CREWS

served by such railroads
on November 2, 1959

on

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
BROTHERHOOD OF RAILROAD TRAINMEN
SWITCHMEN'S UNION OF NORTH AMERICA

as representatives of their engine, train and yard service employees

Such authority extending to the proposal of September 7, 1960, served on such railroads by the organizations indicated by ✓ below;

such authority being limited in coverage to those employee groups the rates of pay and working conditions of which are governed by the current schedule-agreements, under which such employee groups are represented by the above-named organizations:

Railroads	Organizations and Railroad Proposals											
	BLE			BLF&E			ORC&B		BRT		SUNA	
	1	2	3	1	2	3	2	3	2	3	2	3
Atlantic Coast Line		✓	✓	✓	✓		✓	✓	✓	✓		
Atlanta & West Point		✓	✓	✓	✓				✓	✓		
Western Railway of Alabama		✓	✓	✓	✓				✓	✓		
Atlanta Joint Terminals		✓	✓	✓	✓				✓	✓		
Birmingham Southern				✓	✓							
Central of Georgia		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Chesapeake & Ohio		✓	✓	✓	✓		✓	✓	✓	✓		
Clinchfield		✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Fort Street Union Depot	✓	✓	✓						✓	✓		
Georgia	✓	✓	✓				✓	✓	✓	✓		
Gulf Mobile & Ohio		✓	✓	✓	✓		✓	✓	✓	✓		
Jacksonville Terminal	✓	✓			✓	✓			✓	✓		
Kentucky & Indiana Terminal				✓	✓				✓	✓		
Louisville & Nashville		✓	✓	✓	✓		✓	✓	✓	✓		
Memphis Union Station				✓	✓	✓			✓	✓		
Norfolk & Portsmouth Belt Line				✓	✓				✓	✓		
Norfolk Southern		✓	✓	✓	✓		✓	✓	✓	✓		
Norfolk & Western		✓	✓	✓	✓		✓	✓	✓	✓		
Richmond Fredericksburg & Potomac	✓	✓	✓				✓	✓	✓	✓		
Seaboard Air Line		✓	✓	✓	✓		✓	✓	✓	✓		
Tennessee Central		✓	✓	✓	✓		✓	✓	✓	✓		

MEMORANDUM OF AGREEMENT

THIS AGREEMENT made and entered into this 17th day of October, 1960, between the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, listed in Exhibits A, B and C, attached hereto and made a part hereof (hereinafter referred to as party of the first part), and the employees shown and described in said exhibits as being represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America, through their Conference Committees (hereinafter referred to as party of the second part).

WITNESSETH:

The parties hereto mutually agree and stipulate as follows:

1. The carriers above referred to are carriers as defined in the Railway Labor Act; the employees above referred to are employees, as defined in such Act, of such carriers; and the above representatives are the duly accredited representatives of such carriers and employees, respectively.

2. The controversy between the parties hereto involves the proposals of the carriers dated November 2, 1959, copies of which are affixed hereto and marked Attachments D, E, and F, and the proposal of the employees dated September 7, 1960, a copy of which is affixed

hereto and marked Attachment G, including any implementing proposal or proposals that may be submitted to the Commission herein agreed to, by either of the parties that come within the ambit of such proposals dated November 2, 1959, and September 7, 1960 and the scope of collective bargaining required under the provisions of the Railway Labor Act. This controversy, with the consent and approval of the President of the United States, is hereby submitted to a Commission which shall proceed in general conformity with the recommendations of Emergency Board No. 109, investigate the facts, and report its findings and recommendations to the President. The report of Emergency Board No. 109 shall have no binding effect upon the Commission in making its findings and recommendations. The Commission may recommend that any proposal or implementing proposal or any part of any such proposal should be rejected in whole or in part or accepted in whole or in part, or should be accepted as amended or revised by the Commission, as it finds under the evidence to be justified.

3. The Commission shall consist of fifteen members designated by the President. Five members of the Commission shall be designated from among persons nominated by the party of the first part, five from among persons nominated by the party of the second part, and five, including the chairman of the Commission, shall be designated without nominations from the parties to this agreement. Members nominated by the parties may be required to serve without public compensation. Any vacancy on the Commission, resulting from resignation, inability to serve or otherwise, shall be filled in the manner in which the original incumbent was selected.

4. The Commission shall organize and, subject to the provisions of this Agreement, make all necessary rules for conducting its investigation. It shall give the parties a full and fair hearing. The parties, on their part, agree to give the Commission their full cooperation. The Commission shall also be authorized to use its best efforts, by mediation, to bring about an amicable settlement and agreement between the parties with respect to any issue concerning which the evidence has been heard.

5. It is the intent of the parties that the proceedings of the Commission, including its mediatory efforts and its report shall be considered and accepted as in lieu of the mediation and emergency board procedures provided by Sections 5 and 10 of the Railway Labor Act.

National conferences between the parties under the Railway Labor Act shall be resumed and expedited, provided no settlement is sooner reached, immediately following the report of the Commission.

In the event the National Mediation Board shall proffer its services, or the Board's services be invoked, the parties will jointly request the Board to expedite mediation and as promptly as feasible terminate the Board's services under the Act.

6. The Commission shall commence its proceedings between January the first and January the fifteenth, 1961 at a time and place to be designated by the chairman. The Commission shall make and file its report with the President of the United States, including its findings and recommendations with respect to the controversy described in Paragraph 2 hereof, on or before December first, 1961, except that at the request of the majority of the

Commission the parties signatory hereto agree that a reasonable extension of time will be granted not to exceed ninety days.

7. The Commission should be provided with an appropriate staff and should receive from all executive departments and agencies of the Federal Government, and particularly from the United States Department of Labor, such cooperation, information, and assistance, not inconsistent with law, as it may require in the performance of its duties.

8. The Commission shall furnish certified copies of its report, including its findings and recommendations, to the parties, and shall transmit the originals, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the Commissioners, to the President. The Commission shall also furnish a certified copy of its report, and the papers and proceedings, including testimony relating thereto, to the National Mediation Board, to be filed in its office.

9. Each member of the Commission nominated by the parties shall be compensated by the party nominating him.

10. The terms and provisions of this Agreement may be revised and amended by stipulation of the parties subject to the approval of a majority of the Commissioners.

11. Nothing contained in this Agreement and none of the proceedings had pursuant to this Agreement shall be construed as a waiver of any legal right or rights of the parties hereto.

Signed on behalf of the party of the first part by the Chairmen of the Eastern, Western and Southeastern Carriers' Conference Committees and on

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behalf of the party of the second part by the Chief Executive Officers of the participating Railway Labor Organizations, this day and year as above written.

For the participating carriers listed in Exhibits A, B and C:

By _____
Chairman, Eastern Carriers' Conference Committee

By _____
Chairman, Western Carriers' Conference Committee

By _____
Chairman, Southeastern Carriers' Conference Committee

For the employees:

By _____
Grand Chief Engineer, Brotherhood of Locomotive Engineers

By _____
President, Brotherhood of Locomotive Firemen and Enginemen

By _____
President, Order of Railway Conductors and Brakemen

By _____
President, Brotherhood of Railroad Trainmen

By _____
President, Switchmen's Union of North America

APPROVED:

_____
Secretary of Labor

ATTACHMENT D

USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER

A. Eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous and unclassified services) or in any class of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

B. Establish a rule to provide that

1. Management shall have the unrestricted right, under all circumstances, to determine when and if a fireman (helper) shall be used on other than steam power in all classes of freight service (including all mixed, miscellaneous and unclassified services) and in all classes of yard service (including all transfer, belt line and miscellaneous services to which mileage rates do not apply).

2. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of paragraph 1 of this rule shall be eliminated.

ATTACHMENT E

BASIS OF PAY AND ASSIGNMENT OF EMPLOYEES

Basis of Pay

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine, yard or hostling service employees, which

(i) provide for rates or bases of pay, daily earnings minima, minimum daily earnings or daily, weekly or monthly earnings guarantees,

(ii) provide for arbitrary payments, or special or constructive allowances, which conflict with the payment of single time in miles or hours from the time called to report for duty until released from duty, or

(iii) impose restrictions on weekly, monthly or annual earnings through the limitation of miles run or paid for, hours worked or paid for or compensation received.

B. Establish a rule to provide that

1. Train and engine service employees used in road service, including all miscellaneous and unclassified services, shall be paid single time in miles or hours, whichever is greater, from the time called to report for duty until released from duty at the end of the trip or tour of duty, as follows:

(a) All road miles actually run during each trip or tour of duty shall be paid for at the rates provided in paragraph 3 of this rule; or

(b) All time on duty shall be paid for on a minute basis at the straight time hourly rates provided by paragraph 3 of this rule, except that (i) In freight service overtime shall be paid for at 1½ times such straight time hourly rates. In assigned local freight service overtime shall begin when the time on duty ex-

ceeds the miles run divided by 12½, and in all other classes of freight service (including miscellaneous and unclassified services) overtime shall begin when the time on duty exceeds the miles run divided by 20; but in any case overtime shall not accrue until the expiration of 8 hours from time of first reporting for duty; and (ii) On short turnaround passenger runs, no single trip of which exceeds 80 miles, including suburban and branch line service, time shall be paid on the minute basis at straight time hourly rates for all time actually on duty, or held for duty, in excess of 8 hours (computed on each run from the time required to report for duty to the end of that run) within 9 consecutive hours; and also for all time in excess of 9 consecutive hours computed continuously from the time first required to report to the final release at the end of the last run. Time shall be counted as continuous service in all cases where the interval of release from duty at any point does not exceed one hour. For calculating time paid for as provided herein, the Management may designate the initial trip.

2. Train and engine service employees used in yard service, including transfer, belt line, hostling and all miscellaneous services to which mileage rates do not apply, shall be paid single time, from the time called to report for duty until released from duty, at the straight time rates provided in paragraph 3 of this rule; except that under circumstances where existing rules provide for the payment of overtime at 1½ times the hourly rate, such payments shall be continued at 1½ times the hourly rates provided in paragraph 3.

3. Mileage and straight time hourly rates of pay shall be as follows:

Note: The mileage and straight time hourly rates to be provided in this paragraph 3 shall be determined by multiplying standard mileage and pro-rata hourly rates currently paid under existing agreements immediately prior to the effective date of this proposed rule by the conversion factors set forth in the following table. For classes and grades of service where rates of pay are graduated, the rate paid in the weight on drivers or car scale rate bracket specified in Column (2) of the table shall be used in computing the new single rates.

Grade of service	Identification of the current graduated rate, if rates are graduated, to be used in calculating the new single rates—weight on drivers or car scale rate bracket	Conversion Factor	
		Rate Per Mile	Rate Per Hour
(1)	(2)	(3)	(4)
Passenger Service Other Than Short Turnaround			
Engineers and motormen	450,000 to 499,999 lbs.	.625	1.6
Firemen and helpers	Less than 80,000 lbs.	.625	1.6
Conductors	—	.667	1.067
Assistant conductors and ticket collectors	—	.667	1.067
Baggagemen	Minimum rate	.667	1.067
Brakemen and flagmen	—	.667	1.067
Short Turnaround Passenger Service			
Engineers and motormen	170,000 to 199,999 lbs.	.6416	1.0
Firemen and helpers	Less than 80,000 lbs.	.625	1.0
Conductors	—	.667	1.0
Assistant conductors and ticket collectors	—	.667	1.0
Baggagemen	Minimum rate	.667	1.0
Brakemen and flagmen	—	.667	1.0
Assigned Local Freight Service			
Engineers and motormen	250,000 to 299,999 lbs.	1.0	1.0
Firemen and helpers	Less than 140,000 lbs.	1.0	1.0
Conductors	Less than 81 cars	1.0	1.0
Brakemen and flagmen	Less than 81 cars	1.0	1.0
Through Freight Service			
Engineers and motormen	750,000 to 799,999 lbs.	.625	1.0
Firemen and helpers	Less than 140,000 lbs.	.625	1.0
Conductors	106 to 125 cars	.625	1.0
Brakemen and flagmen	106 to 125 cars	.625	1.0

Note: Under circumstances where existing rules provide for conversion from through to local freight rates, the following amounts shall be added to the above mileage and hourly rates:

(a) Engineers, motormen and conductors—0.35¢ to the mileage rates and 7.00¢ to the hourly rates.

(b) Firemen and helpers—0.25¢ to the mileage rate and 5.00¢ to the hourly rate.

(c) Brakemen and flagmen—0.26875¢ to the mileage rate and 5.375¢ to the hourly rate.

Grade of service	Identification of the current graduated rate, if rates are graduated, to be used in calculating the new single rates—weight on drivers or car scale rate bracket	Conversion Factor	
		Rate Per Mile	Rate Per Hour
(1)	(2)	(3)	(4)
Other Freight Service (Including All Miscellaneous and Unclassified Services)			
Engineers and motormen	250,000 to 299,999 lbs.	.625	1.0
Firemen and helpers	Less than 140,000 lbs.	.625	1.0
Conductors	Less than 81 cars	.625	1.0
Brakemen and flagmen	Less than 81 cars	.625	1.0

Note: The conversion factor shall be applied to the standard through freight rate paid in the bracket specified.

Yard, Transfer, Belt Line And All Miscellaneous Services To Which Mileage Rates Do Not Apply			
Engineers and motormen	200,000 to 249,999 lbs.	—	1.0
Firemen and helpers	Less than 140,000 lbs.	—	1.0
Conductors and foremen	—	—	1.0
Brakemen and helpers	—	—	1.0
Switchtenders	—	—	1.0
Outside hostlers	—	—	1.0
Inside hostlers	—	—	1.0
Outside hostler helpers	—	—	1.0
Car retarder operators	—	—	1.0

Note: Where the five-day work week is in effect, the factors set forth above shall be applied to currently applicable five-day work week rates. Where the five-day work week is not in effect, such factors shall be applied to currently applicable (or basic) rates covering other than five-day work week service. Where existing rules provide for paid holidays, 4.0¢ per hour shall be deducted from the rates derived by such application of the foregoing factors.

4. Minimum earnings from all sources for each tour of duty, from the time called to report for duty until finally released, including aggregate service for which payment is made on a continuous time basis, shall not be less than pay for 5 hours at straight time rates in passenger engine service (other than short turnaround); 7½

hours at straight time rates in passenger train service (other than short turnaround), and 8 hours at straight time rates in short turnaround passenger engine and train service, and in all classes of freight and yard engine and train service, including miscellaneous and unclassified services.

5. Compensation for time held at away from home terminal, deadheading, attending court and attending investigations shall be paid under existing rules (if any) at the rates provided in paragraph 3 of this rule or at a fractional part thereof as may in each case be provided by existing rules.

6. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the foregoing provisions of this rule shall be eliminated; and no employee paid pursuant to the provisions of this rule shall receive any other or additional compensation for any service performed during his tour of duty; provided, that existing rules and practices considered by the carrier to be more favorable are preserved.

Road Train and Engine Service Assignments

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of road train or engine service employees, which

(i) prohibit or impose restrictions on the right of the carrier to establish, move, consolidate or abolish crew terminals, or merge or consolidate seniority districts,

(ii) prohibit or impose restrictions on the establishment or operation of interdivisional, interseniority district, intradivisional or intraseniority district runs,

(iii) prohibit or provide penalties for running crews through established crew terminals, or

(iv) provide for automatic release of crews upon arrival at terminals or end of run, or when off of assigned territory.

B. Establish a rule to provide that

1. The carrier shall have the right to establish, move, consolidate and abolish crew terminals, to merge and consolidate seniority districts and to establish interdivisional, interseniority district, intradivisional and intraseniority district runs in assigned and unassigned service with the right to operate any such run, whether assigned or unassigned (including extra service), on either a one way or turnaround (including short turnaround) basis and through established crew terminals. The right to operate such runs as may be established under the provisions of this rule will be free of the imposition of any restrictions as to class of traffic which may be handled or as to the origin or destination of any empty or loaded cars moving on such runs; and such service shall be paid for at the rates provided in paragraph 3 of the Basis of Pay Rule.

2. No rule, regulation, interpretation or practice, however established, shall be construed to in any way prohibit, restrict or limit the provisions of paragraph 1 of this rule except as provided in sub-paragraphs (a) and (b) of this paragraph 2.

(a) The carrier shall distribute the mileage ratably as between employees from the seniority districts affected.

(b) Before a run is established under the provisions of this rule which the carrier does not now have the right to establish without agreement with its employees, and which involves both the establishment of a new home terminal for the class of service involved and operation through an established crew terminal or terminals for such class of service, the carrier shall give notice to the general chairman of its intention to establish such run and the carrier and the general chairman shall endeavor to agree within 30 days upon such other conditions not inconsistent or in conflict with the provisions of paragraph 1 of this rule upon which such proposed run shall be established. In the event the carrier and the general chairman cannot so agree on the matter within 30 days, then the dispute will be submitted to arbitration in accordance with the procedure provided for in Sections 7 and 8 of the Railway Labor Act, as amended, with the limited authority to decide what

conditions shall be met under this sub-paragraph (b) by the carrier, if and when such run is established.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the above shall be eliminated, except that existing rules and practices considered by the carrier to be more favorable are preserved.

Combination of Road and Yard Service

A. Except as hereinafter provided, eliminate all agreements, rules, regulations, interpretations and practices, however established, applicable to any class or grade of train, engine, yard or hostling service employees, which

(i) prohibit or impose restrictions upon the use of passenger crews to perform switching or station work in connection with the cars of their own trains, or to handle the light engine or engines of their own trains,

(ii) prohibit or impose restrictions upon the use of road crews in other than passenger service to perform any and all switching and station work, whether or not such switching or station work is in connection with the cars of their own trains, or to handle the light engine or engines of their own trains,

(iii) prohibit or impose restrictions upon the use of yard crews to perform road work, or to perform service outside of switching limits,

(iv) provide for arbitrary payments, special or constructive allowances or penalty payments to any employee, or class or grade of employees, when road or yard crews perform any of the work described above, or

(v) prohibit or impose restrictions on the right of management to designate or change switching limits or to establish or abolish yard or hostling service or yard or hostling service assignments.

B. Establish a rule to provide that

1. Passenger crews will perform any and all switching and station work in connection with the cars of their own trains as may be required of them at their initial and final terminals and at all intermediate points, including the clearing of any track or tracks and the shoving and coupling of cars on any track for the purpose of handling the cars of their own trains, and the handling of the light engine or engines of their own trains; and in the performance of such work will handle cars of other than their own trains as may be required, including the respotting of displaced cars. Road crews in other than passenger service will perform any and all switching and station work as may be required of them at their initial and final terminals and at all intermediate points, including the handling of the light engine or engines of their own trains, whether or not such switching and station work is in connection with cars of their own trains. When switching or station work is performed by road crews as provided herein, such work shall be paid for as a part of the road day or trip and additional compensation for such work shall not be paid under either road, yard or hostling rules or regulations. The provisions of this paragraph 1 shall apply whether or not yard crews, yard men or hostlers are on duty when and where the work is performed.

2. Yard crews, where employed, may be required to perform both road and yard service; and where switching limits are established yard crews may be required to perform service outside of such switching limits. When service is performed by a yard crew as provided herein, such work shall be paid for as part of the yard day or tour of duty and additional compensation shall not be paid for such work under either road or yard rules or regulations. The provisions of this paragraph 2 shall apply whether or not road crews are available when and where the work is performed.

3. When road crews perform switching or station work or handle the light engine or engines of their trains as provided in paragraph

1 of this rule, neither yard crews, yard men nor hostlers shall be entitled to any penalty pay or other compensation; nor shall road crews be entitled to any penalty pay or other compensation when yard crews perform road work or perform service beyond switching limits as provided in paragraph 2.

4. Management shall have the exclusive right to designate and change switching limits, and to establish and abolish yard and hostling service and yard and hostling service assignments.

5. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the foregoing shall be eliminated, except that existing rules and practices considered by the carrier to be more favorable are preserved.

ATTACHMENT F

CONSIST OF CREWS

Consist of Road and Yard Crews

A. Eliminate all agreements, rules, regulations and practices, however established, applicable to any class or grade of train, engine or yard service employees, which require the employment or use of

(i) a stipulated number of trainmen (assistant conductors, ticket collectors, baggagemen, brakemen or flagmen) or more than one conductor in any crew used in any class of road service, including all miscellaneous and unclassified services,

(ii) a stipulated number of brakemen or helpers or more than one conductor or foreman in any crew used in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply, or

(iii) a conductor or trainman in connection with the movement of light engines or in pusher or helper service, or an engineer, conductor or trainman in pilot service.

B. Establish a rule to provide that

1. Management shall have the unrestricted right, under any and all circumstances to determine when and if trainmen (assistant conductors, ticket collectors, baggagemen, brakemen and flagmen) shall be used in each crew employed in all classes of road service, including all miscellaneous and unclassified services, and if used the number and classification of employees who will be so used; and when and if brakemen or helpers shall be used in each crew employed (including yardmen who work independent of a yard crew) in all classes of yard, transfer and belt line service, including all miscellaneous services to which mileage rates do not apply, and if used, the number and classification of employees who will be so used.

2. Management shall also have the unrestricted right, under all

circumstances, to determine when and if more than one conductor shall be used in any crew employed in any class of road service, including all miscellaneous and unclassified services; and when and if more than one conductor or foreman shall be used in any crew employed in any class of yard, transfer or belt line service, including all miscellaneous services to which mileage rates do not apply; and when and if a conductor, trainman or yardman will be used in connection with the movement of light engines and in helper and pusher service, and when and if an engineer, conductor, trainman or yardman will be used in pilot service.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

Manning Motor Cars and Self-Propelled Machines

A. Eliminate all agreements, rules, regulations, interpretations and practices, however established, which require the use of engine, train or yard service employees in any capacity on (or in connection with the operation or use of) any motor car or self-propelled roadway or shop equipment or machine used in maintenance, repair, construction or inspection work, whether operated on tracks or otherwise.

B. Establish a rule to provide that

1. Engine, train and yard service employees shall have no claim to man or to be called to work in any capacity on or in connection with the use or operation of inspection motor cars used by company officials, or motor cars operated with or without trailer cars and used by telegraph, telephone or company forces in the performance of maintenance, construction or inspection work, or self-propelled roadway or shop equipment or machines used in repair, construction or maintenance work, such as (this enumeration being by way of illustration and not by way of limitation) track motor

cars operated with or without trailers, inspection motor cars, locomotive cranes, ditchers, clamshells, pile drivers, scarifiers, wrecking derricks, weed burners, rail detector cars, and all other self-propelled roadway and shop equipment and machines, whether operated on tracks or otherwise, or with or without cars.

2. Management shall have the unrestricted right, under all circumstances, to determine when and if engine, train and yard service employees shall be used on motor cars and self-propelled roadway and shop equipment and machines, as described in paragraph 1 of this rule; and to determine the number and classification of such employees when so used. If an engine, train or yard service employee is so used, he will be paid the rates and under the rules applicable to work train service; and in such case, each day such service is performed the time of the employee used shall be computed from the time he is required to report for duty until he is released from duty at the point where he is so relieved.

3. All agreements, rules, regulations, interpretations and practices, however established, which conflict with the provisions of this rule shall be eliminated.

ATTACHMENT G

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
BROTHERHOOD OF RAILROAD TRAINMEN
SWITCHMEN'S UNION OF NORTH AMERICA

PROPOSAL

A. Negotiate agreements providing for the following:

1. Improvements in the existing wage structure including but not limited to provision for adequate compensation for night work and shift differentials, daily, weekly and monthly guarantees, payment for time held away from home and improved overtime rules.

2. Consist of crews including Engineers (Motormen), Firemen (Helpers), Conductors, Brakemen, Hostlers, Hostler Helpers, Yard Conductors (Foremen) and Yard Brakemen (Helpers), the adequacy of the number of men in the crew and their qualifications and training.

3. Financial and other protection of employees affected by mergers, consolidations, abandonments, technological changes in operations, or by changes in working conditions.

4. Stabilization of employment.

B. Establish a commission to function in general conformity with the recommendation of Emergency Board No. 109 to investigate and report respecting the changes requested above and your notices of November 2, 1959, with the view of assisting the parties to arrive at an agreement.

September 7, 1960

WASTE OF MANPOWER AND MONEY RESULTING FROM OBSOLETE RULES, LAWS REGULATIONS AND PRACTICES GOVERNING THE COMPENSATION, USE AND ASSIGNMENTS OF RAILROAD OPERATING EMPLOYEES

Estimates for the Year 1961 - Class I Line-Haul Railroads

Categories of Costs	Average Number of Unneeded Employees		Wages and Payroll Taxes	
	By Categories	Cumulative	By Categories	Cumulative
(1)	(2)	(3)	(4)	(5)
1. Use of firemen in road freight and yard service	32 700	32 700	$270 153 000	$270 153 000
2. Use of unneeded road trainmen and yard switchmen	18 800	51 500	148 156 000	418 309 000
3. Assignment of road and yard operating employees to motor cars and self-propelled maintenance and shop equipment	550	52 050	4 741 000	423 050 000
4. Obsolete basic day (mileage) and road assignment rules	15 700	63 900	127 972 000	520 712 000
5. Separation of road and yard service assignments	4 100	66 750	35 556 000	546 109 000
6. Duplicate time payments			45 714 000	575 823 000
7. Earnings guarantees			17 175 000	586 987 000
8. Higher than standard rates of pay			7 807 000	592 062 000

Note: Cumulative data eliminate duplication of costs companion to overlapping scope of the several categories.

22-330 O—63——23

February 10, 1959

Messrs: Guy L. Brown,
Grand Chief Engineer, BLE

J. A. Paddock,
President, ORC&B

H. E. Gilbert,
President, BLF&E

W. P. Kennedy,
President, BRT

W. A. Fleete,
President, SUofNA

Gentlemen:

The urgent need for the creation of sound, new work standards in our industry has long been recognized in many competent quarters. This is evidenced by the report of Emergency Board 109 in the Conductors' graduated rate wage case, dated March 25, 1955 -- "The Board has concluded that there is imperative need in this industry, and specifically in the operating classifications, for a clear going revision and modernization of the internal wage structure. Indeed, such a revision and modernization is long overdue".

You will recall the statement elsewhere in the same report that -- "The fact that the railroad wage rate structure for operating classifications has received no comprehensive review for more than 30 years and no systematic study for almost 20 years, alone suggests that it may well be obsolete and ill-designed for a modern railroad system".

The condition to which I refer is heightened by present below-normal operating conditions in our industry. There is sound reason to believe not only that the ability of the industry to compete but that job opportunities of railroad workers are threatened by the failure to modernize our work, rules and wage structure.

I therefore invite you, as leaders of the Operating Brotherhoods, to join with rail management in seeking the appointment of a presidential commission to study the impact of our present rules on the public welfare. Such a study is called for, in my opinion, to protect the welfare of our country, the solvency of our industry and the security of our workers.

If by acting together with distinguished citizens representing the public interest we can arrive at a solution of the problems in this area, we may well be on the way to a new era in railroading with better service to a growing America. May I hear from you?

Very truly yours,

/s/ D. P. Loomis

ASSOCIATION OF AMERICAN RAILROADS

Transportation Building
Washington, D. C.

May 15, 1959

Daniel P. Loomis
President

Messrs:
Guy L. Brown, Grand Chief Engineer, Brotherhood of Locomotive Engineers, 1112 Engineers' Building, Cleveland 14, Ohio
H. E. Gilbert, President, Brotherhood of Locomotive Firemen and Enginemen, 318 Keith Building, Cleveland 15, Ohio
J. A. Paddock, President, Order of Railway Conductors and Brakemen, ORC&B Building, Cedar Rapids, Iowa
W. P. Kennedy, President, Brotherhood of Railroad Trainmen, 1370 Ontario Street, Cleveland 13, Ohio
W. A. Fleete, President, Switchmen's Union of North America, 3 Linwood Avenue, Buffalo 2, New York

Gentlemen:

Referring to our discussion at the meeting on April 1 in Washington in connection with our request that the organizations representing train, engine and yard service employes join with railroad management in requesting the President of the United States to appoint a commission to study and report on the railroad wage structure and rules governing the compensation and use of railroad operating employes:

At the meeting on April 1 some or all of the chief executives of the five organizations stated that they were opposed to the appointment of a Presidental Commission for the purposes indicated and that they were of the opinion that the problems should be handled pursuant to procedures set forth in the Railway Labor Act, but that they were without authority at that time to make any agreement with representatives of the carriers with respect to any of the procedural problems involved. It was suggested that the meeting be recessed to a later date and that in the meantime all of us would give further consideration to this subject.

On April 28 I addressed a joint letter to each of you, suggesting various dates for a further meeting for the progression of this matter. From the replies thus far received it appears that no meeting can be arranged until after June 7, 1959. This appears to us to amount to an undue delay in the handling of a subject of such importance to the public and suggests to me the possibility that perhaps we can reach a conclusion by mail.

The areas in working rules and schedule provisions which the carriers propose for exploration and study by the Commission are, as follows:

(1) What adjustments should be made in the present arrangements for the dual basis of pay and existing rate structure?

(2) What changes should be made in the rules governing inter-divisional, interseniority, and other extended runs, and what conditions should attach to such extensions?

(3) What changes should be made in rules governing combinations of road and yard service?

(4) What changes should be made in rules governing the employment of firemen on other than steam locomotives in freight and yard service?

(5) What changes should be made in crew consist rules?

(6) What changes should be made in rules governing the manning of motor cars and self-propelled machines?

It is, of course, possible that there may be other work rules that should be looked at but the six items mentioned are the areas which we would propose for investigation.

I shall appreciate it if you will advise me as to your position and the position of your organization on each of the following items:

(1) Will you and your organization join with the carriers in requesting the President of the United States to appoint a Commission for the purposes stated above?

(2) If you and your organization will not join with the carriers in requesting the appointment, will you oppose a request by the carriers that such a Commission be created?

I would greatly appreciate a statement of the position of your organization at your earliest convenience.

Yours very truly,

/s/ D. P. Loomis

ASSOCIATION OF AMERICAN RAILROADS
Transportation Building
Washington 6, D. C.

Daniel P. Loomis
President

June 1, 1959

Messrs.
Guy L. Brown, Grand Chief Engineer, Brotherhood of Locomotive Engineers, 1112 Engineers' Building, Cleveland 14, Ohio
H. E. Gilbert, President, Brotherhood of Locomotive Firemen and Enginemen, 318 Keith Building, Cleveland 15, Ohio
J. A. Paddock, President, Order of Railway Conductors and Brakemen, ORC&B Building, Cedar Rapids, Iowa
W. P. Kennedy, President, Brotherhood of Railroad Trainmen, 1370 Ontario Street, Cleveland 13, Ohio
W. A. Fleete, President, Switchmen's Union of North America, 3 Linwood Avenue, Buffalo 2, New York

Gentlemen:

On May 15 I wrote you asking for your prompt answer to our urgent request that the organizations representing train, engine and yard service employees join with railroad management in requesting the President of the United States to appoint a special objective commission to study and report on the rules governing the compensation and use of railroad operating employees.

That letter, as you will recall, was necessitated by the difficulty in arranging another direct meeting on this subject until after June 7, and constituted an effort to head off further delay in taking effective action against a problem of overriding importance to the public and to the railroads and their employees.

I note with growing concern your continued silence in the face of the pressing need to deal immediately with this matter. Your failure to accept our proposal in the nearly four months since it was first suggested to you, as well as your failure to reply to my urgent letter of May 15, forces me to conclude that you do not intend to join railroad management in the indicated course of action which is so clearly in the public interest.

Under the circumstances, unless we hear from you to the contrary within the next few days, I will assume that this conclusion is correct. In that case the railroads have no choice but to request Presidential action on the work rules problem. I would appreciate hearing from you by June 8.

Yours very truly,

/s/ D. P. LOOMIS

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
BROTHERHOOD OF RAILROAD TRAINMEN
SWITCHMEN'S UNION OF NORTH AMERICA

Cleveland, Ohio
June 4, 1959

Mr. D. P. Loomis, President
Association of American Railroads
Transportation Building
Washington, D. C.

Dear Sir:

This will acknowledge your letters of May 15 and June 1, 1959, having to do with your proposal that a Presidential Commission be appointed to study and report "on the railroad wage structure and rules governing compensation and use of railroad operating employees". This proposal, you say, stems from the Report of Emergency Board No. 109, dated March 25, 1955, in the ORC&B dispute. However, only one of the six proposals set forth in your communication has any semblance to the recommendations contained therein.

If this proposal were made with a sincere desire to seek a better and more equitable solution of all our mutual problems then the recommendations contained in the report would of course be in line for careful consideration.

However, we cannot overlook the fact that for the past four years you have displayed no particular interest in the recommendations of this Board except just prior to or during national negotiations for wage or rules revisions. Your present proposal is now advanced on the very eve of the conclusion of a three-year moratorium and subsequent to a barrage of charges and accusations of what you term "featherbedding" by employees.

Emergency Board No. 109 recommended that a Commission be appointed, composed of neutrals, representatives of the carriers and representatives of the organizations representing operating employees, for the purpose of developing and compiling

factual data needed for an appraisal of a revised and modernized wage rate structure. The Board emphasized the following:

> "Any survey must be factual and designed to compile all data needed to appraisal proposals for the modification of the wage structure *** the objective of the Commission should be to propose for the consideration of carriers and labor organizations a revised and modernized wage rate structure for the operating classifications. The objective is not to change the general level of rates but to reorganize the structure and payrolls." (Para 14, Item D)

The Board's recommendations for a comprehensive review of the wage structure for operating employees were received by the carriers in a silence, especially noteworthy in contrast to their usual vocal acceptance of emergency board recommendations deemed favorable and acceptable to them.

It is pertinent to observe that not only have the carriers displayed little, if any, interest in the recommendations of Emergency Board No. 109 but that your present proposal, in fact, bears small resemblance to those recommendations. That Board recommended a detached and factual study of the wage structure of operating employees free of emotion or bias. Your recent proposal to us, however, is framed in the light that a Commission be appointed to investigate "featherbedding". It was immediately preceded by a release by the carriers of an avalanche of public accusations of "featherbedding", the like of which the industry has never seen before. Even your initial letter to us on your proposal, dated February 10, 1959, was simultaneously accompanied by your public address before the Annual Meeting of the Association of Shippers Advisory Board at St. Louis, Missouri, February 11, in which you announced sending the proposal to us in an attempt to free the railroads of the yoke of "featherbedding" which was claimed to have been foisted on them by the organizations representing operating employees. Thus, while you sought our cooperation in seeking the establishment of a Commission, it was at the same time accompanied by a tirade of charges of "featherbedding", which aroused the antagonism of all operating employees. You evidently sought to divert attention to these assertions of "featherbedding" rather than to the detached and co-operative effort for review and modernization of the wage structure as contemplated by Emergency Board No. 109.

We believe it significant that you have completely ignored our contention that a complete study of the financial structure of the industry must be included as well as management practices which adversely affect the economic soundness of this important public service, if full import or consideration is to be given to the subject that involves the welfare of the public, the owners and the employees of the railroad industry.

For the reasons set forth we must decline your proposal. We will not join you in asking for the appointment of a Commission by the President under the circumstances you have proposed and we will oppose the appointment of such commission.

We trust you will give further consideration to the suggestions made in our discussion on April 1, 1959, in order that all concerned may be privileged to fulfill their responsibilities in true collective bargaining as contemplated by the procedures outlined in the Railway Labor Act.

Yours very truly,

/s/ J. A. Paddock
President
Order of Railway Conductors and Brakemen

/s/ Guy L. Brown
Grand Chief Engineer
Brotherhood of Locomotive Engineers

/s/ W. P. Kennedy
President
Brotherhood of Railroad Trainmen

/s/ H. E. Gilbert
President
Brotherhood of Locomotive Firemen and Enginemen

/s/ W. A. Fleete
President
Switchmen's Union of North America

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
Cleveland 14, Ohio

June 4, 1959

Honorable James P. Mitchell,
Secretary of Labor
Washington, D. C.

Dear Mr. Secretary:

At a meeting held in my office today with Presidents Paddock of the ORC&B, Gilbert of the BLF&E and Kennedy of the BRT present, and in telephone communication with President Fleete of the Switchmen's Union, for the purpose of discussing communications that we had received from Mr. D. P. Loomis, President of the American Association of Railroads, and preparing a reply to his most recent letter, the thought came to us that because of your discussion with some of our group last December in Washington, D. C. relative to the Report of Emergency Board No. 109 that you should be furnished, for your information, a complete file of the exchange of correspondence. I am attaching herewith verifax or typed copies of all of this correspondence.

I would call your particular attention to Mr. Loomis' letter of May 15, 1959 wherein he most specifically sets forth his views in what seems to us to depart completely from the recommendations of Presidential Emergency Board No. 109, which he gave as his reason for addressing his letter of February 10th to us. Undoubtedly you are well aware of the various news releases, speeches, and other material that has been circulated by the Association of American Railroads which, in our opinion, is clearly designed to distort the true picture of the railroad industry and is definitely designed to influence public opinion against the operating employees and the labor organizations which represent them.

In the event that an effort is made by Mr. Loomis or the railroad representatives to induce President Eisenhower to appoint a board or commission to investigate what they term "featherbedding of railroad employees", we hope that you will see fit to suggest to the President that such a board or commission should not be appointed; but that if any investigation is to be made, it should be made along the lines of the Report of Emergency Board No. 109 and take into consideration all phases of the industry, including managerial and financial practices, instead of singling out the operating employees exclusively.

Very truly yours,

/s/Guy L. Brown
Grand Chief Engineer

cc: J. A. Paddock, Pres., ORC&B
H. E. Gilbert, Pres., BLF&E
W. P. Kennedy, Pres., BRT
A. E. Lyon, Exec. Secy., RLEA
W. A. Fleete, Pres., SUNA

ASSOCIATION OF AMERICAN RAILROADS
Transportation Building
Washington 6, D. C.

DANIEL P. LOOMIS
President

August 17, 1959

The President
The White House
Washington 25, D. C.

Dear Mr. President:

You are undoubtedly aware of the efforts made in recent months by railroad management to secure the cooperation of the five operating Brotherhoods in seeking an objective study of the public impact of outmoded work rules in this industry. These rules, based largely on conditions prevailing in 1919 and earlier, we believe, are unrealistic in the light of tremendous technological advances made in railroad operations in the last 40 years. Detailed, authenticated operating cost studies show that the traveling and shipping public is paying in excess of 500 million dollars annually as an outgrowth of these long outmoded work rules for work not performed or not needed.

Because of the inflation-producing, job-destroying nature of this waste, rail management proposed five months ago that the operating rail Unions join with us in requesting the appointment by you of an impartial commission of distinguished citizens to make a study of these rules and their impact on the general economy and recommend changes for the mutual benefit of the public, the rail employees and the nation's essential railroad system.

We were advised that the Unions would not join us in asking for such a study and that, moreover, they would oppose any such request we make. Subsequently, at a meeting in the office of the Secretary of Labor, a final effort to persuade the Unions to change their position was unsuccessful.

The public's interest in securing relief from these unnecessary and unwarranted payments does not permit the problem to be thus brushed aside. Under the circumstances, rail management is left with no alternative but to proceed alone in seeking a solution that will be in the interest of all concerned.

Accordingly, I am directed by the management of the nation's railroads respectfully to request that you establish a Presidential Commission charged with the responsibility of studying the effect upon the public of outmoded work rules in the railroad industry and of recommending essential changes that will eliminate this unconscionable waste.

Our request is made at this time for the following reasons:

1. For more than 20 years, efforts have been made to negotiate changes in the light of the great technological improvements in the industry, but such efforts have produced no substantial or meaningful relief.

2. Continued existence of these rules imperils employment in the industry. In the last decade, an average of 1,000 jobs a week has been lost, and an even greater loss is inevitable if the rules are not modernized in keeping with mid-Century operating practice and competitive reality.

3. Need for a broad study of the wage and rules structure by a special Presidential Commission has been noted by numerous Presidential Emergency Boards, including Board No. 109, which you appointed in 1955. This Board stated clearly: "There is imperative need in this industry and specifically in the operating classifications for a thoroughgoing review and modernization of the internal wage structures. Indeed, such a review and rationalization is long overdue." That Board was immediately concerned with the question of wage differentials between classes of employees but its recommendation constitutes a clear recognition that a broad study of the operating wage and rules structure such as is now sought calls for the appointment of a special Presidential Commission.

4. A committee of the National Association of Railroad and Utilities Commissioners, composed of the elected and appointed public utility commissioners of the various states, this spring adopted a resolution calling for an early objective study of this question by an impartial and cooperative group.

5. The Interstate Commerce Commission, in its landmark report of May 18, 1959, on the railroad passenger deficit problem, called for a public review and revision of working rules for railroad employees.

6. A study now, in an atmosphere of calmness, can achieve far more effective results than fact-finding by the Presidential Emergency Board provided for by law if the issue threatens a transportation tie-up. As the current three-year moratorium on work-rule changes expires on October 31, 1959, it seems to us most urgent that action be taken in advance of possible crisis and while there is still time for rational decisions in the national interest.

7. Finally, and perhaps most important, drawing up sound new work standards for the railroad industry has become so complex and challenging that the machinery provided for settling ordinary disputes appears hopelessly inadequate to cope with this task. Only a new, broader-based and determined approach has real hope of coming up with workable and fair solutions.

For all these primary reasons, Mr. President, railroad management appeals to you to appoint a commission clothed with the objectivity and prestige of your office to examine this problem from the standpoint of the public's interest, and to recommend steps to bring these rules into line with modern conditions to the benefit of all parties concerned.

Respectfully yours,

/s/ Daniel P. Loomis

August 24, 1959

The Honorable Dwight D. Eisenhower, President
The White House
Washington 25, D.C.

Dear Mr. President:

Through the Press we, the Chief Executives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Enginemen, Order of Railway Conductors & Brakemen, Brotherhood of Railroad Trainmen, and The Switchmen's Union of North America, have been informed that Mr. D. P. Loomis, President of the Association of American Railroads, has now addressed a letter to you under date of August 17, 1959, urging the creation of a Commission for the purpose of reviewing the rules structure in the railroad industry.

While we have had several conferences on this subject with rail management, it is apparent to us that the carrier proposal to you is not made in the spirit of a sincere desire to seek some better and more equitable solution of our mutual problems but is rather made in an effort, in our opinion, for rail management to gain a unilateral and selfish advantage in the forthcoming railway labor negotiations. While the railroad industry now seeks to pay lip service to a Report of the Emergency Board created by you in 1955, the fact is that the carriers' suggestion to you now has no practical resemblance to the recommendations of Emergency Board 109.

We are of the strong opinion that any real job evaluation of the wage and rules structure within the railroad industry could have success only if a factual and detailed study was made over a period of months under proper skilled supervision. A Commission such as the carriers now urge upon you would, in reality, be merely a vehicle, in our opinion, for more carrier propaganda which is designed only to adversely influence negotiations that may be started under the provisions of the Railway Labor Act, after November 1, 1959.

Furthermore, the Railway Labor Act has for many years brought about, for the most part, peaceful labor relations in the railroad industry. Railroad strikes have been kept at a minimum. With such legislation already established by Congress, to supervise labor relations in the railroad industry,

it is difficult for us to see how a Commission appointed by you at this time could, in the final analysis, bring about any practicable solution to labor disputes in the railroad industry. Rail Management on November 1st is at liberty to make any requests they desire on the labor organizations for changes in working agreements, and after a reasonable period of collective bargaining, the Railway Labor Act provides other means of procedure which ultimately will result in settlement of labor disputes.

For these reasons we urge you to continue your wisely chosen general policy of non-government intervention into labor disputes so that the normal processes of collective bargaining will have an opportunity to work. It is therefore our sincere hope and we earnestly implore that you reject rail management's request upon you for the appointment of a Presidential Commission.

Respectfully yours,

/s/ Guy L. Brown
Guy L. Brown, Grand Chief Engineer
Brotherhood of Locomotive Engineers

/s/ H. E. Gilbert, President
H. E. Gilbert, President
Brotherhood of Locomotive Firemen and Enginemen

/s/ J. A. Paddock
J. A. Paddock, President
Order of Railway Conductors and Brakemen

/s/ W. P. Kennedy
W. P. Kennedy, President
Brotherhood of Railroad Trainmen

/s/ Neil P. Speirs
N. P. Speirs, President
Switchmen's Union of North America

cc: James P. Mitchell,
Secretary of Labor

THE WHITE HOUSE
Washington

September 9, 1959

Dear Mr. Loomis:

I have your letter of August 17 in which you propose that I establish a Presidential Commission to study and make recommendations concerning the rules structure of the operating classifications in the railroad industry.

I recognize that there are important problems in this area, of mutual concern to management and labor, as well as to the general public. I am informed that collective bargaining negotiations between the industry and the major operating unions are scheduled to begin on November 1 of this year. The issues of wages and rules may well be a part of the subject matter of these negotiations. The appointment of a Commission at this time could interfere with normal collective bargaining processes, and such a result would, in my judgment, not be in the public interest. Accordingly, without expressing any opinion on the merits of your proposal, I cannot consider it at this time.

It is my earnest hope that in the course of the upcoming negotiations labor and management will exert every effort through negotiation to settle the issues between them.

Sincerely,

/s/

Dwight D. Eisenhower

Mr. Daniel P. Loomis, President
Association of American Railroads
Transportation Building
Washington 6, D. C.

Chicago, Illinois
November 2, 1959

Mr. H. E. Gilbert,
President,
Brotherhood of Locomotive Firemen and Enginemen,
318 Keith Building,
Cleveland 15, Ohio.

Dear Mr. Gilbert:

As you undoubtedly have been informed, the individual carriers on this date, served a notice under Section 6 of the Railway Labor Act as amended on the General Chairmen representing your Organization of the desire of such carriers affecting the employment of firemen (helpers) on other than steam locomotives in freight and yard service.

Following the traditional practice in a case of this kind the carriers have in mind that this matter will be handled on a concerted basis and they have so informed the respective system committees.

We recognize that our proposals will have an effect on the employees you represent. Consequently we will be glad to give full consideration to these problems and any proposals your organization may have in connection therewith, provided they are bargainable subjects under the Railway Labor Act. If such proposals are served you may rest assured that the carriers will agree to handle them on a concerted basis concurrently with the carriers' proposals herein referred to.

Yours very truly,

Chairman, Eastern Carriers' Conference Committee

Chairman, Western Carriers' Conference Committee

Chairman, Southeastern Carriers' Conference Committee

Chicago 6, June 9, 1960

Mr. Guy L. Brown,
Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
1112 Engineers' Building,
Cleveland 14, Ohio.

Mr. H. E. Gilbert, President,
Brotherhood of Locomotive Firemen
and Enginemen,
318 Keith Building,
Cleveland 14, Ohio.

Mr. J. A. Paddock, President,
Order of Railway Conductors and
Brakemen,
ORC&B Building,
Cedar Rapids, Iowa.

Mr. W. P. Kennedy,
President,
Brotherhood of Railroad Trainmen,
1370 Ontario Street,
Cleveland 13, Ohio.

Mr. Neil P. Speirs,
International President,
Switchmen's Union of North America,
3 Linwood Avenue,
Buffalo 2, New York.

Gentlemen:

On November 2, 1959, individual railroads served notice of their desire to revise current rules relating to basis of pay and assignment of engineers, firemen, conductors, trainmen and switchmen.

Conferences on the railroad proposals have been held locally pursuant to the provisions of the Railway Labor Act but no agreements were reached. Officers of your organizations have informed individual railroads that your organizations would appoint a committee to deal concertedly with the Carriers' Conference Committees on the matter.

We would appreciate it if you would inform us as soon as possible of the consist of your committee so that we can undertake arrangements for a date and place for commencement of conferences.

Yours very truly,

EASTERN CARRIERS' CONFERENCE COMMITTEE

By Guy W. Knight
Chairman

WESTERN CARRIERS' CONFERENCE COMMITTEE

By J. Skeet
Chairman

SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

By H. Dunning
Manager, B. I. SE. Rys.

22-330 O—63——24

Chicago 6, June 9, 1960

Mr. H. E. Gilbert, President,
Brotherhood of Locomotive Firemen and
Enginemen,
318 Keith Building,
Cleveland 15, Ohio.

Dear Mr. Gilbert:

On November 2, 1959, individual railroads served notice of their desire to eliminate requirements that firemen be used on other than steam locomotives in all classes of freight and yard service.

You will recall that on the same date the railroads' notice was served, we informed you by letter that "we recognize that our proposals will have an effect on the employees you represent" and we offered to give full consideration to any bargainable proposal you might have for dealing with the human problems arising out of the railroad proposal. We remain ready to do so.

Conferences on the railroad proposal have been held locally pursuant to the provisions of the Railway Labor Act but no agreements were reached. Officers of your Brotherhood have informed individual railroads that your Brotherhood would appoint a committee to deal concertedly with the Carriers' Conference Committees on the matter.

We would appreciate it if you would inform us as soon as possible of the consist of your committee so that we can undertake arrangements for a date and place for commencement of conferences.

Yours very truly,

EASTERN CARRIERS' CONFERENCE COMMITTEE

By _____
Chairman

WESTERN CARRIERS' CONFERENCE COMMITTEE

By _____
Chairman

SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

By _____
Chairman

July 6, 1960

Mr. Guy W. Knight, Chairman
Eastern Carriers Conference Committee
Union Station Building
Chicago 6, Illinois

Mr. T. Short, Chairman
Western Carriers Conference Committee
Union Station Building
Chicago 6, Illinois

Mr. W. L. Burner, Jr., Manager
Bureau of Information, Southeastern Railways
Union Station Building
Chicago 6, Illinois

Mr. B. B. Bryant, Chairman
Southeastern Carriers Conference Committee
Union Station Building
Chicago 6, Illinois

Gentlemen:

In accordance with your letter of June 9, 1960, relative to national conference on your several notices of November 2, 1959, and our reply of June 14, 1960, the undersigned chief executives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, and Brotherhood of Railroad Trainmen are prepared to discuss procedures for handling the rules dispute initiated by your notices.

Those notices requested extensive changes throughout the wage structure of operating employees, proposing modification or elimination of virtually every rule affecting compensation and working conditions. Your proposal necessarily involves a comprehensive review of the entire wage structure, to which the ordinary processes of the Railway Labor Act are not suited. We believe that such a review, if it is to be made, calls for the creation of a special wage structure study commission. We accordingly propose that you

Messrs Knight, Short,
Burner and Bryant

July 6, 1960

join with us in the creation of such a commission, to be established and to function in general conformity with the recommendations of Emergency Board No. 109 on this subject. We further propose that this study commission be authorized to consider changes requested in your notices of November 2, 1959, and such other proposals as either party may desire to submit. Our proposal is consistent with that made in the letter to Mr. D. P. Loomis, February 19, 1959, signed by the chief executives of the five transportation organizations. (Copy attached.) We quote below the relevant sections of the recommendations of Emergency Board No. 109, setting forth bases for the proposed study commission:

> "RECOMMENDATION: There should be established a commission to review and to modernize the wage rate structure of the operating classifications in the railroad industry. We believe that such a comprehensive review is long overdue and is essential to the correction of wage inequities, to mutually constructive industrial relations and to the efficient operation of the railroads. It is recommended that such a commission be established in accordance with the principles and guideposts outlined in the above discussion." (From p. 38 of the printed report.)
>
> "(14) For parties so experienced in collective bargaining it is not necessary to set forth the details or mechanics by which such a comprehensive review and revision of the operating wage rate structure of the railroads should be accomplished. The Board has felt, however, that it might be helpful in the further exploration of this recommendation by all the interested parties and agencies for the Board to indicate some suggestions or guideposts which may merit consideration. Participation in the work of the commission should not in advance bind any party to accept the conclusions or recommendations of the commission, except by prior agreement.

Messrs Knight, Short.
Burner and Bryant

July 6, 1960

"(a) A comprehensive review of the wage structure would require the establishment of a wage structure commission. It would be necessary that such a commission be composed of senior negotiators since they are most familiar with the wage rate structure of the industry. The effective operation of the commission would, no doubt, also require that there be selected several neutrals, with experience in collective bargaining, and wage structure problems, to be members of the commission. One of the neutrals should be Chairman.

"(b) A truly comprehensive review requires that the commission include representatives from the three regional organizations of carriers and from all of the major labor organizations of operating employees. It is essential to any comprehensive review and in keeping with long standing precedent in this industry that all these interested and affected organizations be represented on such a commission.

"(c) Each segment of the commission would, no doubt, find it necessary to appoint a small group of technical experts familiar with railroad wages and wage structure problems. All related Government agencies would be expected to provide the commission and its technical experts with all possible assistance and information.

"(d) The effective work of the commission would require that studies be initiated to secure all relevant information on the wage rate structure and earnings of the industry among operating classifications. A comprehensive wage survey is independent of any particular proposal for revision of the rate structure and is essential to the consideration of such proposals. While such a survey should no doubt be planned by the technical experts, the commission should take responsibility for the study and should from time to time consider the problems and progress of any survey. Any survey must be factual and designed to compile all data needed to appraise proposals for the modification of the wage structure.

"(e) All elements and aspects of the wage structure should be reviewed. In the language of the British agreement:

'This examination would be completely exhaustive without conditions of any kind.'

Messrs Knight, Short,
Burner and Bryant

July 6, 1960

"(f) The objective of the commission should be to propose for the consideration of Carriers and the labor organizations a revised and modernized wage rate structure for the operating classifications. The objective is not to change the general level of rates but to reorganize the structure and pay rules.

"It has been the experience of industry generally that improved wage rate structures pay for themselves, while they may result in some initial rise in average earnings. In these operating classifications it should be possible to reduce average labor costs per ton mile and per passenger mile and increase some earnings.

"(g) This report does not contemplate any mechanical system of job evaluation or other formula for setting wages. A systematic survey of various job duties is essential to a wage review. The wage rate structure should be established by negotiations after a complete survey and a thorough review of the wage structure. In the tradition of this industry, Section 307 (d) of the Transportation Act of 1920 (Carriers' Ex. 14, p.1; Tr. 356, 504, 555) sets forth some general principles for a review of wage structure.

"(h) Industries which have revised their wage structures have invariably adopted a 'red circle' or 'incumbent' rule, under which no present employee by virtue of the wage rate revision suffers a loss in wage rate without adequate compensation. There may be some technical problems in applying literally this principle to the railroads in view of the operation of the seniority system under which employees may work in several different classifications from day to day, and in view of the variation in pay rules which create variations in earnings. The practicable application of this principle is needed to assure the full cooperation of the individual employees in the wage structure revision program.

"(i) The work of the commission should be kept apart from the normal negotiations of the parties on other questions in view of the magnitude of the task and in order to assure the greatest possibility of achievement." (From pp. 36-38 of the printed report.)

Cooperation of the Federal Government in the work of such a study commission has been offered to railway labor and management,

Messrs Knight, Short,
Burner and Bryant

July 6, 1960

particularly in recent public addresses by the Secretary of Labor. Since, under the Railway Labor Act, costs incident to the procedures of Emergency Boards, Arbitration Boards, and adjustment boards are paid by the Federal Government, we believe it appropriate that we jointly request that funds necessary to meet the expenses of the proposed study commission be similarly provided.

To expedite the formation of such commission, we are prepared to name representatives of our several organizations at once. Further to expedite creation and action in accordance with the recommendation of Emergency Board 109

> "...that there be selected several neutrals, with experience in collective bargaining, and wage structure problems ..."

we propose the selection of any three of the following named six gentlemen as neutral members of the study commission:

CYRUS S. CHING: Director, Federal Mediation and Conciliation Service, 1947-1952; Chairman, Wage Stabilization Board, October 1950 - April 1951, on leave from Federal Mediation and Conciliation Service; Industrial member, National Regional Labor Board (N.R.A.) 1933; Member, Advisory Council on Industrial Relations, National Industrial Conference Board, 1925-1931 and 1940-1947; Appointed March 1941, by President Roosevelt, member of National Defense Mediation Board; Member National War Labor Board 1942-1943; Member, Business Advisory Council, Department of Commerce, since 1942.

DAVID L. COLE: Director, Federal Mediation and Conciliation Service, 1952-1953; Chairman, President's Board of Inquiry, Bituminous Coal Industry, 1948 and 1950; Impartial Umpire under A.F.L.-C.I.O. No Raiding Agreement; President, National Academy of Arbitrators, 1951-1952.

NATHAN P. FEINSINGER: Chairman, Wage Stabilization Board, 1952; Public Member, National War Labor Board, 1942-1946; Impartial Umpire, General Motors Corporation and United Automotile Workers; Professor of Law, University of Wisconsin.

Messrs Knight, Short,
Burner and Bryant

July 6, 1960

WHITLEY P. McCOY: Director, Federal Mediation and Conciliation Service, 1953-1954; Permanent Arbitrator, International Harvester and United Automobile Workers, 1948-1951; Permanent Arbitrator, Goodyear Tire and Rubber Co. and United Rubber Workers, 1951-1953; Vice President, National Academy of Arbitrators, 1947-1950.

GEORGE W. TAYLOR: Chairman, National War Labor Board, 1945; Secretary, National Management-Labor Conference, 1945; Chairman, Wage Stabilization Board, 1951; Chairman Advisory Commission, Office of War Mobilization and Reconversion, 1946-1947; President, Industrial Relations Research Association, 1950; Chairman, President's Board of Inquiry into Steel Dispute, 1959; Professor of Industry, University of Pennsylvania.

W. WILLARD WIRTZ: Chairman, National Wage Stabilization Board, 1946; Public Member and General Counsel, National War Labor Board, 1943-1945; Permanent Arbitrator, United States Rubber Co. and United Rubber Workers, 1947-1950; Professor of Law, Northwestern University.

Very truly yours,

H. E. Gilbert
International President
Brotherhood of Locomotive
Firemen and Enginemen

Guy L. Brown
Grand Chief Engineer
Brotherhood of Locomotive
Engineers

W. P. Kennedy
President
Brotherhood of Railroad Trainmen

J. A. Paddock
President
Order of Railway Conductors
and Brakemen

Chicago 6, Illinois
July 21, 1960

Mr. Guy L. Brown,
Grand Chief Engineer,
Brotherhood of Locomotive Engineers,
1112 Engineers' Building,
Cleveland 14, Ohio.

Mr. H. E. Gilbert, President,
Brotherhood of Locomotive Firemen
and Enginemen,
318 Keith Building,
Cleveland 15, Ohio.

Mr. J. A. Paddock, President,
Order of Railway Conductors and
Brakemen,
O.R.C.& B. Building,
Cedar Rapids, Iowa.

Mr. W. P. Kennedy,
President,
Brotherhood of Railroad Trainmen,
1370 Ontario Street,
Cleveland 13, Ohio.

Mr. Neil P. Speirs,
International President,
Switchmen's Union of North America,
3 Linwood Avenue,
Buffalo 2, New York.

Gentlemen:

We are in receipt of your letter of July 14, 1960, relating to the notices served by the carriers on November 2, 1959.

The Carriers' Conference Committees are agreeable to beginning conferences with your committees on September 7, 1960. We suggest that the initial conference commence at 10:00 A.M., in Room 107-A, Union Station Building, Chicago, Illinois.

We regret that you have rejected our suggestion that the issues involving work rules and pay structure be submitted either to arbitration or to an official investigative commission whose judgment would be final and binding on both parties to the dispute.

You will recall that on February 10, 1959, a spokesman for the railroad industry sought your cooperation in establishment of "a Presidential Commission to study the impact of our present rules on the public welfare." Following inconclusive discussions with you over a period of several months, on August 17, 1959, Mr. Loomis, President of the Association of American Railroads, addressed a letter to the President of the United States asking him to appoint a commission clothed with the objectivity and prestige of his office, to examine from the standpoint of the public's interest, the effect of outmoded work rules in the railroad industry and to recommend steps to bring those rules into line with modern conditions for the benefit of all parties concerned.

On August 24, 1959, you wrote the President, stating that the Railway Labor Act provided means of procedure which ultimately would result in settlement of the issues between us. The President concurred in this view, and so notified the railroads.

It was, therefore, in keeping with your own suggestion, as well as our understanding of the views of the President of the United States, that on November 2, 1959, the railroads we represent served formal proposals under the Railway Labor Act, covering matters of basis of pay and assignment of employees, and by separate notices, the elimination of requirements that railroads use certain employees who are not necessary to safe and efficient operations.

Concerted handling of those proposals was deferred pending disposition of your wage notices. As soon as the wage matters were disposed of, we arranged with you for preliminary conference July 6th on the rules proposals.

The proposition you presented at the July 6th conference was for a so-called study commission which would be invited to dissipate its attention on matters not even remotely affecting work or pay rules. You estimated that its studies would consume at least two years, following which it would be necessary for us to go into collective bargaining, so that we would not then be any closer to solution of our problem than we are now.

We pointed out to you that we would give favorable consideration to submitting the rules issues to arbitration, and would even consider the formation and functioning of a study commission, provided that its findings would be final and binding upon the parties. Such handling could include not only the railroad proposals of November 2, 1959, but also such related bargainable issues as you feel should be made the subject of concurrent handling. Your rejection of this approach makes it necessary for us to proceed under the Railway Labor Act.

We will, accordingly, meet your committees on September 7th, at the time and place suggested above. Because of the great amount of time that has already been lost -- time which has been extremely costly to the industry and to the people of the United States -- we ask your cooperation in proceeding to negotiate the rules issues between us without further delay.

The Section 6 notice which railroads served on the Brotherhood of Locomotive Firemen and Enginemen November 2, 1959, covering their desire to eliminate requirements for use of firemen on other than steam power, does not, for purposes of the Railway Labor Act, involve any other organization. Accordingly, we are writing Mr. Gilbert separately on that matter.

Yours very truly,

/s/ G. W. Knight
Chairman,
Eastern Carriers' Conference Committee

/s/ B. B. Bryant
Chairman,
Southeastern Carriers' Conference Committee - Firemen

/s/ T. Short
Chairman,
Western Carriers' Conference Committee

/s/ W. L. Burner, Jr.
Manager, B. I. SE. Rys. - For the
Southeastern Carriers' Conference Committee

August 26, 1960

The Honorable James P. Mitchell
Secretary of Labor
Washington, D. C.

Dear Mr. Secretary:

The current dispute between the railroads and the railway labor organizations representing the operating employees was initiated with the service by the railroads upon the employees of notices dated November 2, 1959, for changes in rates of pay, rules and working conditions. As of September 7, 1960, we intend to serve upon the railroads certain proposals. The controversy between the railroads and the operating employees or, stated another way, the issues between them, are made by the proposals of November 2, 1959, and the organizations' proposals of September 7, 1960. Ultimately, these substantive issues must be resolved in the interests of industrial peace.

These issues are of such breadth and scope, and their investigation necessarily so extensive, that we believe consideration of them can best be given by procedures that will permit full study outside of the usual pattern of collective bargaining in the railway industry.

The suggestion for appointment of a Commission has been made by both the railroads and the organizations representing operating employees. It has been repeated in our proposal to the railroads dated September 7, 1960. It is our thought that the Commission ought to be composed of representatives of the railroads, representatives of the employees, and appointees by the government in whose selection the railroads and employees should have a voice.

As stated above, the issues making up the dispute arise from the notices of the railroads and the proposals of the employees. We believe settlement of the dispute thus created could be advanced by appointment of a Commission to function in general conformity with the recommendation of Emergency Board No. 109 and to investigate and report with the view of assisting the parties to arrive at an agreement.

We feel that the Commission should be adequately staffed and financed by the Federal Government and be otherwise equipped to carry out its duties, including a primary role as mediator. Necessarily, many details must be worked out in agreement between the parties, but the foregoing explanation discloses the essence of our views and is offered in response to your recent request.

Hon. James P. Mitchell

August 26, 1960

Enclosed herewith are copies of the carrier notices of November 2, 1959, and the notice of the organizations which will be served as of September 7, 1960.

Very truly yours,

/s/ H. E. Gilbert
International President
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

/s/ Roy E. Davidson
Grand Chief Engineer
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

/s/ W. P. Kennedy
President
BROTHERHOOD OF RAILROAD TRAINMEN

/s/ J. A. Paddock
President
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

/s/ Neil P. Speirs
President
SWITCHMEN'S UNION OF NORTH AMERICA

enclosures

September 7, 1960

Mr. Guy W. Knight, Chairman
Eastern Carriers' Conference Committee
Union Station Building
Chicago 6, Illinois

Mr. T. Short, Chairman
Western Carriers' Conference Committee
Union Station Building
Chicago 6, Illinois

Mr. B. B. Bryant, Chairman
Southeastern Carriers' Conference Committee
Union Station Building
Chicago 6, Illinois

Mr. W. L. Burner, Jr., Manager
Bureau of Information, Southeastern Railways
Union Station Building
Chicago 6, Illinois

Gentlemen:

Attached hereto is a copy of a proposal served by representatives of our respective organizations on individual properties as of September 7, 1960.

You will observe that we have suggested waiving the procedures of the Railway Labor Act requiring conferences on the respective properties so as to permit joint handling of the proposal in national conferences concurrently with carrier notices of November 2, 1959.

Please inform us of the disposition of our suggestion.

Very truly yours,

H. E. Gilbert
International President
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Roy E. Davidson
Grand Chief Engineer
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

W. P. Kennedy
President
BROTHERHOOD OF RAILROAD TRAINMEN

J. A. Paddock
President
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN

Neil P. Speer
President
SWITCHMEN'S UNION OF NORTH AMERICA

_____ _____
(City) (State)

September 7, 1960

_____
(Name of Railroad Official)

_____
(Title)

_____
(Name of Railroad)

Dear Sir:

In accordance with the provisions of the Railway Labor Act, as amended, and the agreement, or agreements, now in effect on the _____ Railroad, please accept this as formal notice of our desire to change the provisions of said agreement, or agreements, governing rates of pay and rules of the employes on said railroad represented by the undersigned, as indicated in the attached proposal.

Since like notices are being served by the operating organizations on you and the other carriers on a national basis, we suggest waiving the procedures of the Railway Labor Act requiring conferences on this property so as to permit joint handling by the operating organizations with the railroads of the attached proposal in national conferences concurrently with your notices of November 2, 1959.

Please acknowledge receipt and advise whether you are agreeable to waive conferences on the property and to handle the subject matter of the attached proposal as suggested herein.

Very truly yours

_____ General Chairman

Enc

_____
Organization

BROTHERHOOD OF LOCOMOTIVE ENGINEERS
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN
BROTHERHOOD OF RAILROAD TRAINMEN
SWITCHMEN'S UNION OF NORTH AMERICA

PROPOSAL

A. Negotiate agreements providing for the following:

1. Improvements in the existing wage structure including but not limited to provision for adequate compensation for night work and shift differentials, daily, weekly and monthly guarantees, payment for time held away from home and improved overtime rules.

2. Consist of crews including Engineers (Motormen), Firemen (Helpers), Conductors, Brakemen, Hostlers, Hostler Helpers, Yard Conductors (Foremen) and Yard Brakemen (Helpers), the adequacy of the number of men in the crew and their qualifications and training.

3. Financial and other protection of employees affected by mergers, consolidations, abandonments, technological changes in operations, or by changes in working conditions.

4. Stabilization of employment.

B. Establish a commission to function in general conformity with the recommendation of Emergency Board No. 109 to investigate and report respecting the changes requested above and your notices of November 2, 1959, with the view of assisting the parties to arrive at an agreement.

September 7, 1960

Brotherhood of Locomotive
Firemen and Enginemen
Cleveland, Ohio

H. E. GILBERT
PRESIDENT

October 4, 1960

THE ASSOCIATION OF WESTERN RAILWAYS
RECEIVED
OCT. 5 1960
A.M. P.M.

Dear Mr. Secretary:

Pursuant to understanding reached in your office in Washington, D. C., on September 30, I am enclosing herewith, three (3) copies of "Draft of Agreement to Establish a Commission" which has been prepared by the transportation organizations for your and the carrier representatives' consideration preparatory to our next meeting scheduled for 10:00 a.m., October 7, 1960, in your office.

The others concerned have been furnished copies of this instrument.

Very truly yours,

H. E. Gilbert

The Honorable James P. Mitchell
Secretary of Labor
Washington, D. C.

enc.

cc: Mr. T. Short, Chrmn., AWR (10)
Mr. R. E. Davidson, GCE, BLE (6)
Mr. J. A. Paddock, Pres., ORC&B (6)
Mr. W. P. Kennedy, Pres., BRT (6)
Mr. N. P. Speirs, Pres., SUNA (6)

10/4/60

DRAFT OF AGREEMENT TO ESTABLISH A COMMISSION

THIS AGREEMENT made and entered into this _____ day of October, 1960, between the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, listed in Exhibits A, B, and C, attached hereto and made a part hereof (hereinafter referred to as party of the first part), and the employees shown and described in said exhibits as being represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America, through their Conference Committees (hereinafter referred to as party of the second part).

WITNESSETH:

The parties hereto mutually agree and stipulate as follows:

1. The carriers above referred to are carriers as defined in the Railway Labor Act; the employees above referred to are employees, as defined in such Act, of such carriers; and the above representatives are the duly accredited representatives of such carriers and employees, respectively.

22-330 O—63——25

2. There shall be established, with the consent and approval of the President of the United States, a governmental commission to conduct an investigation pursuant to the recommendations of Emergency Board No. 109 and report its findings and recommendations to the President of the United States.

3. The Commission shall consist of fifteen members, five members of which shall be named by the Secretary of Labor, five members by the party of the first part, and five members by the party of the second part.

In the event a vacancy shall occur in the membership of the Commission through resignation, inability to serve, or otherwise, the vacancy shall be filled by the party naming the original incumbent.

Each member of the Commission named by the parties shall be compensated by the party naming him. The compensation and expenses of the five commissioners selected by the Secretary of Labor together with all costs of operation of the staff employed and facilities provided by the United States to assist and promote the work of the Commission shall be paid by the United States.

4. In connection with its investigation, the Commission shall give consideration to the proposals of the parties described in Paragraph 5 of this agreement and may recommend that any proposal of the parties should be rejected in whole or in part, or should be accepted as amended or revised by the Commission, as it finds, under the evidence, to be justified.

5. The proposals referred to in paragraph 4 are the notices of the carriers dated November 2, 1959, copies of which are affixed hereto and marked attachments "D", "E" and "F", and the proposal of the employees dated September 7, 1960, a copy of which is affixed hereto and marked attachment "G", including any implementing proposal or proposals that may be submitted to the Commission by the parties that come within the ambit of such notices and proposal dated November 2, 1959, and September 7, 1960, and the scope of collective bargaining under the provisions of the Railway Labor Act.

6. The Commission shall organize, select its own chairman, if not appointed by the Secretary of Labor, and formulate and adopt all rules necessary and proper for conducting its proceedings and carrying out its duties.

The Commission shall give the parties a full and fair hearing, which shall include an opportunity to present evidence, and submit briefs and arguments with respect to all matters which it finds reasonably relevant and material to its investigation under such rules and restrictions as the Commission may prescribe.

The Commission shall be authorized to make an independent investigation into or for any relevant facts or information through its Commissioners or the staff employed for the assistance and promotion of its work.

The Commission shall have power to direct a party to produce for examination and copy by the Commission or an opposing party any books, papers, contracts, agreements, documents, or records deemed by the Commission likely to be material or relevant

to its investigation or determination of its recommendations.

The Commission shall also be authorized to use its best efforts, by mediation, to bring about an amicable settlement and agreement between the parties with respect to any dispute arising from service of the notices of November 2, 1959, and the proposal of September 7, 1960.

7. The Commission shall commence its proceedings in Chicago, Illinois, on Tuesday, January 10, 1961, and shall file its final report containing its findings and recommendations with the President of the United States on or before December 1, 1962.

8. In carrying on its work the Commission may use and employ the services of the Department of Labor and all other instrumentalities of government insofar as such services may be made available to it by law or by the order creating it.

9. The Commission shall furnish certified copies of its report, including its findings and recommendations, to the parties, and shall transmit the original together with its records and proceedings to the President of the United States. The report, findings, and recommendations shall be certified to by at least a majority of the Commission.

10. National conferences between the parties under the Railway Labor Act shall be resumed and expedited, provided no settlement is sooner reached, immediately following the report of the Commission.

11. In the event the National Mediation Board shall proffer its services, or the Board's services be invoked, the parties will jointly request the Board to expedite mediation and as promptly as feasible terminate the Board's services under

the Act. Should an Emergency Board be appointed under Section 10 of the Act, each party agrees not to consent to an extension of time for the functioning of the Board under the Act.

Signed on behalf of the party of the first part by the Chairmen of the Eastern, Western and Southeastern Carriers' Conference Committees, and on behalf of second party by the chief executive officers of the participating railway labor organizations, this day and year as above written.

EXCERPTS FROM TRANSCRIPT OF PRESS CONFERENCE

U.S. DEPARTMENT OF LABOR
James P. Mitchell, Secretary
Washington, D. C.
October 18, 1960

SECRETARY MITCHELL: Gentlemen, the representatives of the nation's railroads and the representatives of the five railway operating brotherhoods are here with me, and we are prepared to announce that an agreement that the dispute over the work rules and work practices in the operations of trains on the nation's railroads will be submitted to a Presidential Commission to consist of five members nominated by the brotherhoods and five members nominated by the carriers, and five members from the public, all to be appointed by the President.

The Presidential Commission will begin hearings and investigations early in January and its final report is due December 1, 1961. It is proposed that this commission will study and evaluate the work practices, the work rules, wage rate structure, in the operation of trains, and make recommendations to the parties for their consideration.

This is a monumental step forward in one of our major basic industries, and great credit is due to the statesmanship of both sides in arriving at this agreement. It is a project that the carriers and the operating brotherhoods have been concerned about for some years. I have been working with both parties for nearly a year and a half now, in bringing them together and reaching an agreement, which we have reached and signed today. I think that this step is an indication of maturity in labor-management relations which is unparalleled in American history, in American management and labor relations.

Are there any questions?

QUESTION: Will the recommendations be binding?

SECRETARY MITCHELL: These recommendations will be made to the parties by the fifteen man commission. It is expected that during the course of the investigations and the studies, that the commission will attempt to mediate any differences. The final report of the commission will not be binding on the parties. Recommendations, of course, will have great weight. In other words, this is not compulsory arbitration. This is a recommended commission in the spirit of volunteerism.

* * *

QUESTION: Could we have one of the brotherhood presidents and one of the carrier members comment?

SECRETARY MITCHELL: If they care to.

MR. KNIGHT: The railroads welcome this agreement and the appointment of this commission as a major contribution to the public welfare. We intend to cooperate fully. We are certain that if all of the parties approach this thing in the same spirit, and we are sure that they will, certainly this commission ought to be able to find a solution for the very difficult and troublesome problem of the work rules in the railroad industry.

We want to thank Secretary Mitchell for his untiring and determined efforts to find a peaceful method of settling this very difficult long standing problem.

QUESTION: Could you identify yourself?

MR. KNIGHT: My name is Guy Knight. I am Chairman of the Eastern Carriers Conference Committee and Director of Labor Relations of the Pennsylvania Railroad.

MR. KENNEDY: Speaking for the chief executives of the five railroad operating brotherhoods, I desire to say that we entered into the present discussions with the Secretary of Labor and the railroad representatives in the sincere hope that a study commission was the only way to avoid a national transportation crisis. The agreement that has been signed and reached today on the establishment of a three party study commission is, in our opinion, a major step toward the reestablishment of sound labor relations in the railroad industry.

It is noteworthy that the public, through public members of the commission will have a strong voice in this study. As chief executives of the operating organizations representing 250,000 railroad operating employees on practically every railroad in the United States, we express sincere gratitude to Secretary of Labor, James P. Mitchell, for his foresight and determination in bringing this historic agreement about. We feel that this will be one of the most important commissions that has been established in the railroad industry, and it has been brought about through tireless efforts on the part of this group of operating railroad labor executives and railroad management and through the foresight of Secretary of Labor Mitchell.

QUESTION: What is your name, sir?

MR. KENNEDY: William P. Kennedy.

QUESTION: I take it both sides are satisfied with the arrangement that President Eisenhower will appoint the public members?

MR. KENNEDY: Yes, we are perfectly satisfied with the arrangements as stipulated in the agreement.

* * * * * * *

FOR RELEASE: Immediate
Tuesday, October 18, 1960

STATEMENT OF CHIEF EXECUTIVES, Five Rail Operating Brotherhoods

Washington, D. C.
October 18, 1960

We have been in agreement for many months now with Secretary of Labor James P. Mitchell that the work rules problem is "too difficult" to be resolved under the regular procedures of the Railway Labor Act.

We entered into the present discussions with the Secretary of Labor and railroad representatives in the sincere hope that a study Commission was the way to avoid a national transportation crisis.

The agreement reached today on the establishment of a three-party study commission is, in our opinion, a major step toward the reestablishment of sound labor relations in the railroad industry. It is noteworthy that the public, through public members of the Commission, will have a strong voice in this study.

As chief executives of the organizations representing 250,000 railroad operating employees, we express sincere gratitude to Secretary of Labor James P. Mitchell for his foresight and determination in bringing this historic agreement about.

R. E. Davidson, BLE
H. E. Gilbert, BLF&E
J. A. Paddock, ORC&B
W. P. Kennedy, BRT
N. P. Speirs, SUNA

EXECUTIVE ORDER

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ESTABLISHING A COMMISSION TO INCUIRE INTO A CONTROVERSY BETWEEN CERTAIN CARRIERS AND CERTAIN OF THEIR EMPLOYEES

By virtue of the authority vested in me by Title I of the General Government Matters Appropriation Act, 1961 (74 Stat. 473, 475), and as President of the United States, it is ordered as follows:

Section 1. There is hereby established a Presidential commission to consider a controversy between, and involving certain proposals of, the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America. The commission shall consist of fifteen members to be designated by the President as follows: five members from among persons nominated by the carriers, five members from among persons nominated by the employees, and the chairman of the commission and four other members without nominations.

Section 2. The commission is authorized and directed to investigate and to inquire into the issues raised by the proposals of the parties involved in the above-mentioned controversy with the objective of making a report to the President, including its findings and recommendations with respect to the controversy, and assisting in achieving an amicable settlement and agreement with respect to issues in dispute between the parties. In connection with its inquiry, the commission is authorized to hold such public hearings and to hear such witnesses as it may deem appropriate. It shall provide a full and fair hearing to the said parties and shall otherwise endeavor to conform its proceedings and activities to the understanding upon the basis of which the controversy is submitted to the commission by the parties thereto.

Section 3. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the commission in its work and to furnish the commission with such information and assistance, not inconsistent with law, as it may require in the performance of its duties.

Section 4. The controversy referred to in sections 1 and 2 of this order is hereby found to constitute an emergency affecting the national interest within the meaning of the provisions appearing under the heading "Emergency Fund for the President - National Defense" in Title I of the General Government Matters Appropriation Act, 1961 (Public Law 86-642), approved July 12, 1960. During fiscal year 1961 the expenditures of the commission may be paid out of an allotment made by the President from the appropriation made under the aforesaid heading "Emergency Fund for the President - National Defense"; and during the fiscal year 1962, to the extent permitted by law, such expenditures may be similarly paid from any corresponding or like appropriation made available for the fiscal year 1962. Such payments may be made without regard to the provisions of (a) section 3681 of the Revised Statutes (31 U.S.C. 672), (b) section 9 of the act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 673), and (c) such other provisions of law as the President may hereafter specify. The members of the commission shall receive such expense allowances as the President shall hereafter fix. The chairman of the commission and those other members of the commission who are designated by the President under section 1 hereof without nominations shall receive such compensation as the President shall hereafter specify.

Section 5. The commission shall endeavor to make a final written report of its findings and recommendations not later than December 1, 1961. The commission shall cease to exist thirty days after the rendition of its final report to the President.

Section 6. The provisions of this order shall become effective on January 1, 1961, except that on any earlier date or dates (a) nominations may be presented to the President under the provisions of section 1 of this order, (b) persons may be designated as members of the commission under the provisions of section 1 hereof, such designations to become effective on January 1, 1961, and (c) funds may be allotted under the provisions of section 4 hereof, such funds to become available for expenditure on January 1, 1961.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

November 1, 1960.

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IMMEDIATE RELEASE

December 22, 1960

James C. Hagerty,
Press Secretary to the President

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THE WHITE HOUSE

The President today appointed a fifteen-member Presidential Railroad Commission to study the railway industry's dispute over work rules and practices. The appointment of such a Commission was recommended by both railway unions and railway management.

In announcing the membership of the Commission, President Eisenhower said:

> "The members of this Commission, representing management, labor and the public, are embarking upon an effort that will have far-reaching and lasting consequences for the railroad industry. The appointment of this Commission represents a major and constructive innovation that will prove to be a significant achievement in the progress of labor-management relations toward greater maturity and stability. In resolving this problem in a manner fair to the men, helpful to the industry, and in the best interests of our country, the members of this Commission will provide service of incalculable value.
>
> "Representatives of the railroads and railway labor organizations concerned have, in a letter to me, jointly recommended that Secretary of Labor James P. Mitchell serve as Chairman of the Commission. I am particularly pleased that Secretary Mitchell has agreed to provide this additional and significant service to our Nation in the cause of industrial peace."

In addition to Secretary Mitchell, who was appointed Chairman and a public member of the Commission, other members are:

For the Carriers:

Daniel P. Loomis, of Washington, D. C., President, Association of American Railroads.

T. A. Jerrow, of St. Paul, Minnesota, Vice President-Operations, Great Northern Railway

Guy W. Knight, of Philadelphia, Pennsylvania, Director-Labor Relations, Pennsylvania Railroad

J. E. Wolfe, of Chicago, Illinois, Vice President-Personnel, Chicago, Burlington and Quincy Railroad

B. B. Bryant, of Huntington, West Virginia, Assistant Vice President-Labor Relations, Chesapeake and Ohio Railway

For the Operating Brotherhoods:

A. F. Zimmerman, of Cleveland, Ohio, Assistant Grand Chief Engineer, Brotherhood of Locomotive Engineers

S. C. Phillips, of Cleveland, Ohio, Assistant President, Brotherhood of Locomotive Firemen and Enginemen

S. W. Holliday, of Vancouver, Washington, Vice President, Order of Railway Conductors and Brakemen

H. F. Sites, of Harrisburg, Pennsylvania, Vice President, Brotherhood of Railroad Trainmen

James W. Fallon, of Minneapolis, Minnesota, Vice President, Switchmen's Union of North America

For the Public:

John T. Dunlop, of Belmont, Massachusetts, Professor of Economics, Harvard University

Charles A. Myers, of Weston, Massachusetts, Member of the Staff, Massachusetts Institute of Technology

Francis J. Robertson, of Washington, D. C., attorney and arbitrator

Russell A. Smith, of Ann Arbor, Michigan, arbitrator.

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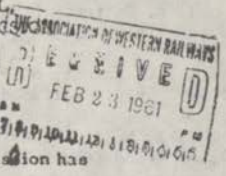
IMMEDIATE RELEASE February 14, 1961

Office of the White House Press Secretary

FOLLOWING IS AN EXCHANGE OF LETTERS BETWEEN PRESIDENT JOHN F. KENNEDY AND JAMES MITCHELL, CHAIRMAN OF THE PRESIDENTIAL RAILROAD COMMISSION



February 14, 1961

Dear Mr. Mitchell:

Your resignation as Chairman of the Presidential Railroad Commission has been received.

I can appreciate the factors which impel you to take this step. I, therefore, accept your resignation with genuine regret.

When I have received a joint recommendation from the parties, I shall appoint your successor.

Sincerely,

/s/ John F. Kennedy

The Honorable James P. Mitchell
Chairman
Presidential Railroad Commission
Washington 25, D.C.

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February 13, 1961

The President
The White House

Dear Mr. President:

As you know President Eisenhower by Executive Order 10891 established the Presidential Railroad Commission which I now chair. The Commission has been organized, staff has been engaged and both the carriers and organizations representing the employees have made their opening statements. The Commission is now at the point of deciding on how it will proceed to hold future hearings, to conduct investigations and other substantive matters.

At this juncture of the Commission's activities I have felt it desirable to consider whether or not I would have the time available for the next ten to twelve months to give to the important function of Chairman.

I have now determined that the pressure of other responsibilities makes it impossible for me to continue as Chairman and do justice to the important duties vested in that office. Therefore, I am regretfully submitting my resignation to take place at once.

Respectfully,

/s/ James Mitchell

Chairman

(C o p y)

PRESIDENTIAL RAILROAD COMMISSION
Washington

FOR RELEASE: IMMEDIATE
Tuesday, February 14, 1961

James P. Mitchell announced today that he is tendering his resignation as Chairman of the Presidential Railroad Commission to President Kennedy.

"The decision," Mr. Mitchell said, "was regretfully reached after several days of serious deliberation." He concluded that the demands on his time as Chairman were such that he could not continue to serve and, at the same time, fulfill his responsibilities as a candidate for the Governorship of New Jersey.

Mr. Mitchell stated: "Last December I accepted the appointment as Chairman of the Presidential Railroad Commission at the request of President Eisenhower and the representatives of both railroad management and railroad labor. Since then I have become a candidate for Governor of New Jersey."

In his letter to President Kennedy, Mr. Mitchell stated:

"The Commission has been organized, staff has been engaged and both the carriers and organizations representing the employees have made their opening statements. The Commission is now at the point of deciding on how it will proceed to hold future hearings, to conduct investigations and other substantive matters.

"At this juncture of the Commission's activities I have felt it desirable to consider whether or not I would have the time available for the next ten to twelve months to give to the important function of Chairman.

"I have now determined that the pressure of other responsibilities makes it impossible for me to continue as Chairman and do justice to the important duties vested in that office. Therefore, I am regretfully submitting my resignation to take place at once."

Mr. Mitchell further stated:

"As an active participant at all stages up to and including the negotiation of the basic agreement of the parties and the formation of the Commission, my belief has been confirmed that this effort has ramifications of great importance to labor-management relations in the transportation industry and other industries. It is therefore a major disappointment to me personally that circumstances dictate that I will not be able to continue this work to its conclusion."

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(C O P Y)

PRESIDENTIAL RAILROAD COMMISSION

Washington 25, D. C.

FOR RELEASE: IMMEDIATE
Tuesday, February 14, 1961

Following the announcement of James P. Mitchell that he is tendering his resignation as Chairman of the Presidential Railroad Commission, railroad management and railroad labor members of the Commission issued a joint statement as follows:

"As representatives of the railroad management and railroad labor members of the Presidential Railroad Commission, we fully appreciate and understand the considerations that motivated Mr. Mitchell in tendering his resignation as Chairman of the Commission. Nevertheless we deeply regret the loss of his great talents as Chairman.

"Without Mr. Mitchell's determination, dedication and enlightened insight into the problems involved, there would not be a Presidential Railroad Commission today The agreement which forms the basis for the Commission was arrived at under his guidance and through his mediation efforts. It became evident that he was eminently qualified to serve as its Chairman. As a result representatives of railroad management and railroad labor jointly made this recommendation to President Eisenhower who persuaded Mr. Mitchell, at some personal sacrifice of his own future plans, to accept this additional service."

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(C O P Y)

RELEASE TO AM PAPERS MARCH 5, 1961

Office of the White House Press Secretary

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THE WHITE HOUSE

The President today appointed Judge Simon H. Rifkind of New York as Chairman of the Presidential Commission to study the railway industry's dispute over work rules and practices. Mr. Rifkind will assume the post previously held by former Secretary of Labor Mitchell.

In announcing the appointment, the President expressed his confidence that Mr. Rifkind would be an excellent leader of this important Commission, called by President Eisenhower "a landmark in the history of labor-management relations in the United States".

Mr. Rifkind is the senior partner of the law firm Paul, Weiss, Rifkind, Wharton and Garrison in New York City. He is a former judge of the United States District Court for the southern district of New York and has served as special master for the Supreme Court in the Colorado River litigation. He was born in Meretz, Russia in 1901. He and his family make their home in New York city.

President Kennedy expressed great pleasure that a man of Judge Rifkind's great competence and integrity would accept the Chairmanship of the Presidential Railroad Commission.

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CAUTION
HOLD FOR RELEASE
Wednesday, February 28, 11:00 a.m.

PRESIDENTIAL RAILROAD COMMISSION

PRESS CONFERENCE

OF

HON. SIMON H. RIFKIND, CHAIRMAN.

4:00 p.m.
Monday, February 26, 1962

Hearing Room,
Veterans of Foreign Wars Bldg.
Second St. and Maryland Ave.N.E
Washington, D. C.

CHAIRMAN RIFKIND: I think the hour of four has struck, and it gives me great pleasure to welcome you all here, and to thank you for coming here. If there is anybody in the room who can't hear me, if you will speak up, we will speak up loud enough so you can hear me.

This session, gentlemen, will be devoted to background briefing of the report of the Presidential Railroad Commission which will be presented to the President on Wednesday morning at or about ten o'clock this week. Everything else I am going to say beyond this point I hope you will respect the release date, which appears on the face of the report.

I think it would be both out of order and unseemly to have news of this conference precede the President's receipt of this report, and consequently I ask you to withhold

whatever happens here which you may want to publish until the release date of 11 o'clock Wednesday a.m.

I should say to you gentlemen that what I say orally here will be my own remarks and I do not want you to attribute to any other members of the Commission any responsibility for what I shall say. Whereas the report is the work of the Commission, and I will indicate later the extent to which it is, and the release that you have is a statement of the public members of the Commission, what I say orally I alone want to take responsibility for. My colleagues do not know what I shall say, and it would not be fair to attribute it to them or to hold them accountable for it.

I should like to say to you gentlemen that this past year, and for my colleagues more than a year, has been a very rewarding one, and I have met among my fellow Commissioners many wonderful people, and I have made very fast friends. And that is true of the representatives of the carriers, it is true of the representatives of the labor organizations, and it is true of the public members. And I should like to say of all of them that rarely have I met a group of men so endowed with extraordinary amounts of knowledge with respect to this industry, and endowed with intellect and experience in this field.

I think it would not be out of order for me to say that I am not disturbed that some of my colleagues on this

Commission, especially among the labor representative, speak in uncomplimentary terms about the work of this Commission. As you may know, I come from a profession where we speak vigorously of each other's views, and those of you who have had occasion to read Supreme Court opinions know that judges speak vigorously of each other's views, without thereby in any way lessening their mutual regard for each other, or indeed their mutual affection for each other.

That is my view of the matter today. As a matter of fact, I should say to you that I am pleased by the vigor of the dissenting views which have been expressed. When it happens that a labor representative can call the report "vicious and obnoxious" and when carrier representatives can say that it is so radical that never before have protective provisions of such generosity and magnitude been afforded to any group of wage earners in the history of the United States, then at least I know this; that we have done something which if adopted will make a difference.

These are not trivial proposals that have been submitted to the parties. They have force and impact and consequences of wide import. And, of course, that is just as it should be.

This Commission has spent an enormous amount of time, effort and energy, and it would have been a tragedy had it produced something that could be taken or left alone without much disturbance.

I am proud that what it has done will generate a reaction. Whether in fact it is so radical as to be beyond the realm of acceptability, or whether it is so vicious that it is a disaster to labor, of that I will let you gentlemen who are familiar with the labor situation and the public in general to judge.

Now I must confess that it will be impossible from the amount of time that I can expect from the members of the working press to give you more than a brief inkling of this report. Each of you has received a copy of it, and as you can see it will take a good deal of time to digest it. What I hope to do is to give you some highlights so that as you thumb through it and as you study it, your eye will more readily come to rest upon those portions of it which are of greater, rather than lesser, significance.

But of this, gentlemen, I am sure. I don't believe there is a single railroad official or a single union official or a single railroad worker who, no matter how long and how many years he has devoted to this industry, who will not discover new insights, after reading this report, which he did not previously possess with respect to this industry, and who will not gain knowledge from it and understand, and who, if he is responsive to reason, will not have his judgment improved by the report.

Now, in the written release which has been

distributed, you will find the, what shall I call it, the national data about the Commission, how it came to be, and the names and identities of the members and how the Commission operated and what segment of the industry it is concerned with.

I will omit all reference to that in order to save time.

You will also learn from that, I believe, that the following has occurred with respect to the report. All of the public members unanimously approve this report of the Commission. Two, the carrier members signed the report. I believe it would be safe to say with some reluctance and with some disappointment, and perhaps even with some mental reservations. The organization members withheld approval and filed dissents, some dissents more vigorous than others. But all of the representatives of the labor organizations signed the letter of transmittal of the report to the President save only one, Mr. Zimmerman of the Brother hood of Locomotive Enginers, who withheld his signature.

Very early in the work of this Commission I discovered that this Commission had a choice to make, a very important choice. The choice it had to make was between a moribund industry destined to decline in importance, to decline in capacity and to decline as an employer of labor. The other choice was to have a railroad industry which was revived, which was modern, which was fit and in trim for competition with the other modes

of transport which have been crowding it on this continent, and thereby become capable of a vastly increased volume of employment.

Had we chosen the first of those choices, we would not have made the report which is before you. Having made the second choice, that we wanted an effective, revived industry in muscular trim for competition, then of necessity we had to prepare and file the report which is before you.

The railroad industry, as you all know, is governed by rules derived from many sources. Some of those rules are derived from federal law, like, for instance, the 16 hour limitation on employment. Some of it is derived from state law, like the full crew laws that some of the states have. Some of it is derived frmm decisions of various arbitration tribunals. A great deal of it is derived from collectively bargained agreements, like the national diesel rule. And then a good deal is derived from just practice, usage and ancient habit. A great deal of it is of very ancient origin, much of it derived from the 19th Century. And certainly almost all of it from a time before the modern technological revolution had been set in full force.

There is at least a generation of history behind most of the rules in the railroad industry. Naturally when you deal with an industry in the present context of economics, and in the present context of technology, held down by a system

of rules generated in the 19th Century and before World War I, we found manythings of which we could not approve.

Let us take some of those things. Railroad employment had been shrinking. In World War I times, there were 2 million employees working for the railroads. By 1950, there were 1.2 million. By 1960, it was down to 780,000. So that in a decade over 400,000 men left the employ of the railroads, some of them undoubtedly by natural and proper causes, but a very large proportion of them left that industry involuntarily and left it without any protection except unemployment insurance.

Many of these were long service employees under conditions which I will describe. At the same time that this attrition was going on, new men were being hired by each of the railroads. In the last year of which we have statistics, I am told something like 9,000 new employees were added to the rolls at the same time when men were stepping out of this industry by the thousands. I don't think that makes good sense.

Second, in this great industry there is no national compulsory retirement system -- excuse me -- no national compulsory retirement requirement for the employees. There is a retirement system. But it is a voluntary matter whether you take advantage of it, and this goes on despite the fact that trains have been getting longer and faster and heavier. Five per cent -- five out of every 100 engineers -- who drive

our trains, and many of them the fastest and heaviest trains, are over 70 years of age. 22 per cent of the engineers are over 65 years of age. And corresponding similar figures are obtained for conductors who are in charge ofthese trains.

Does that make sense, especially in an industry which is losing employment? Let us take a look at the hours situation.

For some employees in this industry, especially those engaged in local freight service, we find a pattern of unconscionably long hours, and I use that adjective, and I should make it an adverb, unconscionably long hours, advisedly. Let me give you just a few examples.

15 per cent of these men work more than 70 hours a week. 34 per cent work more than 60 hours a week. Let us look at the daily arrangement. Unless you know it, this is going to startle you. 8 per cent of these men work more than 15 hours a day. 30 per cent work more than 12 hours a day. Mind you, the average in this service -- the average, including all the lows and all the highs -- is over ten hours a day. It sounds pretty medieval to me.

This extraordinary condition prevails at the very same time that in another branch of the same industry, other men are working incredibly short hours. Let me give you one example.

A through freight train starts out from Chicago

towards the West Coast, and before it arrives at the West Coast, this through freight train has used 20 crews. And the hours on duty for these crews, not the hours on the train, the hours on duty from the moment of report to the moment of release vary from two hours and 10 minutes to five hours and 25 minutes, and average three hours and 23 minutes. That is a day's work?

The average for engineers and firemen in through freight service is only four hours a day. In passenger service it is four, and 5.6, I think, in through freight.

Now, it seems to me, gentlemen, that not only do these absolute figures present a condition which needs correction, but think of the inequity of such a structure, where employees working for the same employer, having the same general skill, are so arranged that one group works on the average only 30 hours a week, and the other 50 hours a week for the same pay.

Now, of course, if you try to deal with a structure ofthat kind and try to rationalize it, to twist it around, so that those who work too long shall work less and those who work too little shall work more, naturally those who have to work a little more are going to squawk. I have heard that squawk.

Next, we found an overtime system which unlike overtime arrangements in every other industry of which I have

any knowledge, did not in fact penalize management for excessively long tours of duty. As you know, in every other industry if you work overtime, you pay a penalty rate. That serves as a brake opon the management's discretion in using its men for excessively long tours of duty.

Not so, really,not so effectively in the railroad industry. Under this system which prevails in the railroad industry, a 15 hour run -- a 15 hour run pays no overtime if the train covers at least 200 miles. In the freight service, the rule is that as long as the train averages 12-1/2 miles an hour or more, the crew gets no overtime. Such a system, it seems to me, does not encourage the management to reduce excessively long runs.

Next, the pay structure for road service, the so-called dual system of pay, produces bizarre and irrational results. Let me give you some illustrations of why I call it bizarre and irrational.

An engineman runs a fast freight train on Monday, and he covers 160 miles in four hours. He gets paid $39.95 for that day's run. On Tuesday the same engineer, or another, on a slow freight does 100 miles in 11 hours, as against the other man's four. He gets $39.02.

Now, you might say, well, but he did 60 miles less. So let us see whether that is the thing that makes the difference.

An engineer doing 100 miles in 12 hours gets $43.70. But if in this same length of time he does 160 miles, he gets less pay, only $39.95. Now, whoever invented that belongs in the Rube Goldberg Club. Why should he get less money for doing more miles in the same amount of time? An engineer who does 120 miles in 14 hours gets $50.56. But if he does 180 miles in the same 14 hours, he gets $6 less. Figure that one out.

Here is a neat one. If the engineer does 60 miles in ten hours, he gets $34 in change. If he does twice as much in ten hours, he gets $3 less. And so on.

I can multiply instances by the gross, and what is why I subscribe to the words which appear in the report which say the conclusion that we draw is that the present disparity in hours on duty, some unduly short and others excessively long, is unconscionable.

The speed basis of overtime is an anachronism involving inconsistence among types of runs. The dual basis of pay contains widespread anomalies, and inequities. The wage differentials among classes of service and occupation contain serious inequities, and so on.

The pay rules are complex, with many components and as such they contribute to disputes. In short, the word which best describes the compensation structure is that it is a mess.

Now, when you try to introduce some rationality into it, it follows -- it follows, gentlemen, that those who are the adventitious beneficiaries of those anomalies will complain. One of the sacred institutions of railroading is the seniority system, and there is no question that the seniority system does afford the long service employees many choices and many protections. But the seniority system is based upon or is founded upon a base so small that actually it doesn't give the protection that it ought to give. By that I mean this:

The seniority system is based upon the division or the terminal or the yard or some other facility. So you might have a division of 100 miles in length and an old man engineer or conductor is the senior man there, but if that division should shrink or should disappear entirely, because it may be discontinued, or the terminal may be discontinued, or if the yard be discontinued, he loses his seniority and may be let out. While a 25 year old youngster may be hired that very day in the adjacent yard in the adjacent terminal or on the adjacent stretch of track. Why? Because 100 years ago, a hundred miles of road meant something. And the same archaic division points are responsible for the 20 crew changes that I spoke to you about a moment ago. We had a problem of manning the train. How to man these trains. And there were two services which have to be manned, and you should keep distinct, because the railroad people keep them distinct.

There is engine service and there is train service.

The engine eervice consists of the men who serve the engine, the engineer and his fireman. The train service consists of the men who serve the train in road service, the conductor and brakemen. In yard service the foreman and his helpers.

Now let us look at the engine situation. Every freight diesel engine today carries a complement of three men, a driver, called an engineer, a fireman, called a fireman-helper, and a head brakeman. And of this I am certain, because we saw it with our own eyes, and we heard the evidence with our own ears, and we studied it until we knew that we had reached a correct result.

The fireman on board that engine does not serve a useful enough purpose to warrant his retention there. In short, the national diesel rule which was adopted in 1937 was a mistake. Had that mistake not been made in 1937, then in the slowprocess of dieselization, the problem would have been solved, and we would not have that problem today. But because that mistake was made, we have something like 40,000 firemen on bur hands, today, who are condemned to a life of doing something which doesn't have to be done, and that does not contribute to the human personality.

In the train service, you find these extraordinary conditions. You find a train running along, and it is served

by a conductor and two brakemen, which is in most cases the normal crew for trains. It comes to a state boundary and the train slows down, it doesn't quite stop, and another brakeman jumps aboard. He rides a short distance, maybe 20, 30, 40, 50 miles, until he comes to the other boundary of that state, at which point the train slows down and he gently drops to the side of the train. He hasn't done any work on that train. Why is he there? Because the legislature of that state requires an extra brakeman for every train that passes through that state. It doesn't contribute to a man's self-respect to be assigned to that kind of a job.

We can go on indefinitely. We found many other things that required correction and revision. But we realized that you can't make your evolution overnight, and that it is wiser and more prudent to introduce an element of time into the changes that you make, as you bring the railroad system from its archaic condition to its modern state that it ought to be in.

So we propose a number of things. We propose first and foremost that we inaugurate an era of change, realizing that all these reforms cannot be accomplished at once. We suggest that an era of change be inaugurated and that both sides, labor and management, organize themselves through appropriate biparty teams to plan the change, to supervise the change, to guide the transition so as to do

the most good with the least amount of harm.

Secondly, we were rather impressed with the accomplishments of collective bargaining in the railroad industry. After all, this industry has been one of the leaders in the application of collective bargaining to the solution of labor-management problems. But we discovered that in some instances the collective bargaining process broke down in the sense that it reached too many impasses where neither side would yield, and that for many subjects where life and death were not really involved, there had to be some solvent for these impasses, and we suggest a method of opening that up by terminal arbitration in those areas that we have so identified. And none of those areas is one in which it can be said that life and death is at stake.

We recommended here in this report that we should give predominance to the public interest in railroading, and both management and labor ought to be aware that they are engaged in running a public utility, and not a strictly private business. Because the public is interested in a safe and efficient railroad system, and in a system which has ready access to technological advances with protection for the men hurt by the advances.

We thought the railroad system ought to have a sound and equitable, a morale building pay structure, and a railroad system that was equipped to compete with its transport

competitors.

We recommend in this report the establishment of a national compulsory retirement system age. A compulsory retirement age beginning at 70 but tapering down to 65 so that by the year 1967, all railroad operating employees would have to retire at age 65.

We make a number of recommendations designed to accomplish shorter days and shorter weeks for those who today work unduly long hours, and unduly long weeks.

First, we think that the statutory 16 hour limit has reached the stage where it ought to go to the Smithsonian the same as the steam engine, which was wielded in there a few months ago, and that gradually we ought to adopt a lower statutory limit, bring it down to 14 and 12. That is long enough in this modern age.

We have made some proposals which are designed to accomplish that.

Then we suggest a method, a pay structure which will penalize the management by making it expensive to have runs which are excessive in number of hours, that is, which exceed 8 hours in length, or runs which are excessive in length, that is, runs which exceed 160 miles a run. And the pay structure which we have recommended is designed to curb management in both of those respects.

We have suggested that we scrap the speed basis of

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overtime in road service, and instead we introduce an overtime system which runs like this: For all work over 8 hours, time and a half for every hour at the hourly rate. That is, time and a half at the hourly rate. For all miles over 160, mile and a half rates, that is, the mileage rate plus 50 per cent of the mileage rate for every mile run. Since under the pay system which we recommend you add hours and miles to produce the compensation, you see that this is a very sharp curb indeed on management which prolongs the day or prolongs the miles.

In the pay structure, as far as yard work is concerned, we recommend that the present system of the daily rate be retained, but we also recommend that local freight be put on a daily rate basis, and not on a mileage basis. Through freight we recommend a system where you add miles and hours so that these anomalies that I have spoken of before, these bizarre combinations could not happen.

If you work longer hours , you get more pay. If you run more miles, you get more pay. If you run both longer hours and longer miles, you get more pay than either of the other. The actual rates are that we retain the present hourly rate and add to it half the old mileage rate, but whereas prior to this time the system operated on miles or hours, the proposed system will operate on miles and hours.

You might ask me how does this affect the actual compensation of the employees. Let me give you this overall

estimate. It will increase the compensation of 75per cent of the operating employees of the railroads. It will diminish the earnings of the 25 per cent if everything remains as is. But we do not recommend that everything remain as it is. We recommend several steps by which these men who work unconscionably short hours -- let me withdraw the word "unconsdonably", I don't suppose it is unconscionable to work too few hours, I would like to do it myself -- these people who work incredibly short hours could by working a little more run a few more miles, keep the take-home pay that they have been accustomed to, and that we do (a) by lifting the mileage limitation, and (b) by authorizing interdivisional runs which will extend the capacity of the run to absorb a longer day, and by a number ofother suggestions.

We have made a number of suggestions designed to correct certain inequities in and between the various services. That is, we found that there was too small a differential, say, between the engineer and the fireman, and too small a differential between the conductor and his brakeman. We thought that those differentials ought to be wideened a little, so that there would be some inducement for taking on additional responsibilities of these higher offices by the men who are climbing the ladder of promotion to those offices.

On the other hand, we have to some extent shrunk the differentials between the conductors and the engineers.

We have certainly improved the position of the yard and local freight employees vis a vis the road employees in a significant degree. We have made a number of other recommendations. We have tried to eliminate an area of controversy which has long prevailed in the line of demarcation which exists between the road and the yard, that is, today there are very rigid rules which govern what the roadmen may do and what the yardmen may do and never shall one cross the other's domain. There is a gray area, and we have tried to define that gray area by authorizing roadmen to put their own trains away, for instance, and do a few other things with respect to their own trains,,that having been a very substantial area of dispute.

Then we have tried to get rid of the so-called ghost crews in ghost yards, that is, there have been yards where traditionally there was a yard crew employed, but where the amount of work or yard work there called for because of change of industrial conditions has disappeared. Nevertheless, under the rules, a yard crew had to be maintained there. We have suggested that where the amount of work in a yard diminishes to the point where it will not give a yard crew four hours' work a day, it may be dismantled. We have authorized extension of runs beyond the boundary line of a division, but only by giving protection, first, to the seniority of the men of each of the divisions; secondly, by compelling the carrier

to pay the expenses in moving, if there be any, or a loss of time, if there be any, that the men suffer. And finally, to submit after negotiation to arbitration the question as to whether the new run is unduly burdensome or onerous.

There was considerable dispute over the question of whether crews in train service, that is, the conductor and his brakemen, on some of the trains were unduly large or unduly small. We have recommended a system of survey, negotiation, and adjudication to resolve that issue, and we have provided a limit on the number of men that may be separated from the service by reason of any reduction so ordered. We have provided that any men so displaced by reason of the reduction in the size of the crew shall be entitled to twice the amount of unemployment insurance which the law presently gives them, the carrier making up the difference.

Now, the most important crew change that we considered, of course, was the one I have referred to, the firemen in the freight train. We have left the firemen alone in the passenger train because in the passenge r train engine there are only two persons. But we have recommended the elimination of the fireman from the freight train. But we did not do that carelessly or heartlessly or thoughtlessly. Here is what we have done.

First, we expect that a certain number of firemen who have reached the ages of 65 or 70 and beyond will retire

as a result of the retirement program that we suggest. That will leave room for firemen to move up into the ranks of engineers.

Secondly, we have said that no fireman who has ten years of seniority shall be affected by the change. If anybody has devoted ten years of his life to this industry, we said that it is too late now to displace him from it by virtue of this change. That man retains his rights of employment on the railroad for the rest of his life, unless he reaches his retirement age.

For those who have less than ten years seniority we have provided three classes. Those recently hired; they can be separated by not sooner than October 1, 1962. Young people under 25, they can be separated not sooner than January 1, 1963. All others will be furloughed, that is, retaining certain rights. But all of these three classes get the following protection.

First, if they are displaced as the result of this change, they will get 60 per cent of their earnings level up to 36 months or for a period up to 36 months, depending upon their length of service. If he has as much as five years' employment he will get three years of compensation at the rate of 60 per cent of his former earnings, and in addition, if he gets work outside the railroad industry, he can keep those earnings without diminuation of the benefits he receives under this proposal.

Secondly, or thirdly, we suggest that the carriers provide tuition to train this man for such other jobs as he may choose by obtaining instruction from any institution approved by the Veterans Administration under the GI Bill of Rights, and that the carrier, for a period of two years must pay 75 per cent of that tuition cost.

And, finally, we suggest the establishment on a national basis of a national re-hiring roster of all railroad employees so let out so that any man let out from any railroad will have a first call on a job on any railroad in the country for which he wants to apply, junior only to the employees of that particular carrier.

We dealt with the subject of technological change generally. Of course, the fireman situation is really the product of a technological change that occurred some years ago. In connection with technological change we thought that it

was important to lay down a policy in the future, that men shall not be dropped by reason of technological change without some measure of protection. We, therefore, established or proposed this policy:

One, the carrier has the right to introduce technological changes, and the men displaced by reason thereof, have the right to receive protection of the same character as I have already described for firemen. But not limited to 36 months, because we are dealing with employees of any length of service, governed by the same schedule which applies under the Washington job agreement, that is, up to five years or 60 months of compensation at 60 per cent of his previous rate, plus outside earnings, plus retraining, plus a national hiring roster.

Now, of course, we rejected many proposals made by the carriers. We rejected many proposals made by the organization. We did recommend, for instance, holiday pay for daily rated employees, seven paid holidays with time and a half if they work on those holidays in addition. We did not recommend it for road employees because the practice is, in fact, that road employees do have many days off.

We rejected the proposal for night premiums for reasons which are set forth at length in our report and I won't take the time to develop now. We had a proposal calling for reimbursement of road employees for expenses they incur at a terminal away from their home terminal. That problem had a

long history. We recommended a lodging allowance or a lodging for every road employee kept away from his own terminal for a period of as much as five hours. We did not recommend compensation in lieu of expenses in such cases.

It is getting to be close to five o'clock and I must call a halt.

What is the next step? The next step is to carry out the agreement of the parties. The agreement of the parties pursuant to which this Commission was established provides that upon the submission of its report, the parties will then promptly repair to the negotiating table, and there to negotiate in the light of the report the terms and conditions and rules under which they will live.

If I may say one word of hope, and not of fact, if the parties abide by this agreement which they have reached, and if they then retire to the negotiating room and then use this report as a candle to light their discussions by, and not as a radiator to heat them up, I think they will make progress.

Thank you.

Incidentally, I may say that we have arranged to have what I have said transcribed by the Alderson Reporting Company, 306 9th Street, Northwest, and if any of you want that, you may get it from them.

If you have any questions I will try and answer them.

QUESTION: Judge Rifkind, as I recall, the

Presidential Order and this Memorandum of Agreement, both stressed one of the duties of the Commission should be to try to achieve, and I believe the quotes were, "an amicable settlement." Do you believe, in line with some of these reactions that you described earlier from both sides, that the Commission has had much success along that line?

CHAIRMAN RIFKIND: I am glad you asked the question. I will tell you the fact. We spent many, many days and many nights in an effort to find a common ground between the parties. We did find considerable common ground, but not enough common ground so that we could say that we had reached a mediated result within the time limit imposed by the Executive Order upon our deliberations.

Under the Executive Order and the agreement of the parties, we must submit our report not later than the 28th day of February, 1962. We are going to live up to that agreement, b ut despite the fact that we saw hope, we did not have the time to achieve success in time to incorporate it in this report. But I must say to you that in my opinion there is more common ground in this report than published statements would lead you to believe.

QUESTION: Will any of your recommendations require new legislation?

CHAIRMAN RIFKIND: Not directly, but we do recommend, generally, that it would be well for the United States to adopt

a national transportation policy which would encompass all forms of transport, rail, bus, air, pipeline, etc., so that what we here do may be more fruitful in bringing about an amicable and enduring result.

QUESTION: I assume this is covered in the report, but I would like to hear from you why you determined that firemen on freight trains are not essential and conversely, I suppose, that firemen on passenger trains are.

CHAIRMAN RIFKIND: I will be very glad to answer your question. Passenger engines are manned by two men, an engineer and a fireman. We thought it was a factor of safety to have these great trains manned by two people. Freight trains are manned by three people, an engineer, a head brakeman and a fireman. It was very clear to us that two was enough.

You might ask me why did we drop the fireman and not the head brakeman. The answer to that is that the head brakeman's duties and functions continued as they had been from time immemorial. That is, he performed exactly the same job he had always done. But the fireman job, which in steam days was to stow coal into the furnace, has vanished.

There were many arguments that he was still necessary, that he was supposed to help fix the diesel engines. We were not impressed with that evidence. I may also add that neither side suggested the elimination of the firemen in the passenger service.

QUESTION: Judge, assume the millenium---

CHAIRMAN RIFKIND: I believe very firmly in the millenium.

QUESTION: But all the recommendations you proposed are adopted, have you made an estimate, a cost estimate, either a cost or savings estimate, to the industry? That is, what would be the net cost in wages or what would be the net savings?

CHAIRMAN RIFKIND: We have not made a precise estimate. I can express this view, of course, to you. Manifestly, when as and if the firemen are taken off the freight engines, and yard engines, there will be a saving, of course, of considerable magnitude. As far as the rest of the program is concerned, it will involve a small increase in the wages.

QUESTION: Small increase?

CHAIRMAN RIFKIND: That's right, of maybe 2 per cent, plus or minus a per cent.

QUESTION: I take it that the saving on the fireman would more than compensate for the 2 per cent?

CHAIRMAN RIFKIND: I am unable to answer your question. I don't know the answer. But let me say this to you very candidly. We did not found these recommendations or any of them either on the plea that the railroads were unable to meet the bill or on the basis that the railroads were rich and could pay any bill. We paid no attention to the railroad's capacity to pay. We found that many railroads in this country

differed one from another enormously in that regard and we did not have a common basis of action on that ground.

QUESTION: Wasn't your economist, Mr. Dunlop, intrigued by this question so that he would have made some estimate? How about Commissioner Dunlop, who is an economist? One would assume that he must have made some estimate of costs.

CHAIRMAN RIFKIND: I don't know what Commissioner Dunlop did in the privacy of his laboratory if that is where he cogitates about these matters. The Commission made no determination of the amount of savings other than what I have indicated.

QUESTION: Sir, I am unclear. What happens to the fireman with ten years' seniority who retains his job rights?

CHAIRMAN RIFKIND: He stays on work.

QUESTION: If he doesn't get promoted to engineer, does he stay as a fireman?

CHAIRMAN RIFKIND: He stays as a fireman and occupies the same seat he occupies now in the same engine he is running or some such other engine he elects to run on the basis of his seniority.

QUESTION: Did the Commission make any effort to predict the effect of the total changes on railroad computation service in urban areas that rely on it?

CHAIRMAN RIFKIND: Let me say we made a recommendation, I could not cover it all in these few minutes, that with

local commutation service that be withdrawn from national negotiation and be negotiated entirely on a local basis in response to the particular conditions which may prevail in the particular region where the commutation service occurs.

QUESTION: Judge, do you know whether the non-public members have tried to get together and set a negotiating session yet or not?

CHAIRMAN RIFKIND: I do not know.

QUESTION: You say there is more common ground between the parties than their public statements would lead one to believe. Why do you think they dissembled their attitude this way?

CHAIRMAN RIFKIND: If you have never been a negotiator, you wouldn't know, but if you have been a negotiator, you would know. All I can say is that we have had many private conversations with the individual members representing both the carriers and the railroads and we have been made privy to positions to which they might be willing to go when it came down to brass tacks, but which they would not be willing to disclose in the initial stages of a discussion.

QUESTION: So all this is a kind of preliminary to maneuver; is that right?

CHAIRMAN RIFKIND: I wouldn't say it is a maneuver. This is part of the regular process antecedent to collective bargaining and it is one of the traditional methods of procedure.

QUESTION: Assuming that all men with less than ten years service were furloughed. You mentioned that those men would retain certain rights.

CHAIRMAN RIFKIND: That's right.

QUESTION: Assuming that the man with nine years service was furloughed, when he had ten-year service and one day, would he be called back?

CHAIRMAN RIFKIND: No. If he was nine years and he was furloughed, then he would wait on the seniority roster and when there was a job open to which he would be entitled by virtue of his seniority, for instance a job on a passenger train or a job on a train which the railroad wanted to keep a fireman on for some reason, he would be eligible for it.

QUESTION: And further, that the attrition rate here indicates that it will take the decade of the 60's to eliminate this.

CHAIRMAN RIFKIND: We think less than ten years. But within ten years there should be complete attrition.

QUESTION: Then it is possible that the men who have nine years and nine months would be called back in about seven years.

CHAIRMAN RIFKIND: He might be called back in 30 days or a week or three days or the next morning, depending upon what vacancies occur for jobs for which firemen are required.

QUESTION: On this basis, do you have figures on how many men would be left out of the industry? That is, if all of your recommendations were put into effect immediately, how many men would be added to the unemployment rolls?

CHAIRMAN RIFKIND: We have these figures which I can give you. Assuming the position as of July 1, 1962, and

most of our recommendations are geared to a date July 1, 1962, on that day we expect that there will be on the rolls in freight and yard service five men, 41,200. Now, what do we do with them? Let me go on.

Firemen hired since November 2, 1959 -- what I call the recent hires, that is the date when the notice was served pursuant to which this Commission was established -- 2,500. Then firemen still in service who are under 25 years of age. They became eligible for separation on January 1, 1963. There are 1300 of them. Then firemen with less than ten years seniority end they become eligible for furlough July 1, 1963, and there will be 10,100 of them. That means that there will be firemen whose status is protected in addition to the firemen who now work on passenger trains who number over 6,000, 10,100. Excuse me, 27,300.

QUESTION: I thought it was worse than that.

QUESTION: Judge, are you willing to make any type of estimate as to the total impact on employment in the entire railroad industry if all the recommendations of this Commission are followed through?

CHAIRMAN RIFKIND: In my private opinion, given a reasonable period of time within which this program can be digested, and assuming that the economies and modernization which is contemplated take place, I think that will make the railroads once again a growing source of employment in the

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United States.That is my private opinion to which I am devoutly devoted. I think that when the railroads are in a position to compete effectively they will gather back to them a great deal of traffic that now moves by other modes of transport and that than, and only then, will they become important new sources of employment in the United States.

QUESTION: Do you envision a difficult readjustment period, though, Judge?

CHAIRMAN RIFKIND: Change presents a degree of disruption. All disruption involves some inconvenience and all inconvenience involves some unhappiness.

QUESTION: In addition to these some 14,000 firemen who would be dropped, do you have any figure for job loss in other work categories?

CHAIRMAN RIFKIND: It is impossible to make such a calculation because there should not be very much. But there may be some. In other words, there may be some as a result of crew losses. There may be some as a result of inter-divisional run extensions. But it is impossible to make any estimate because they are based upon premises which are unforetellable.

QUESTION: Judge, just a procedure question: You spoke a little bit about the impossibilities of immediate mediatory efforts resolving this thing. As I understand it, this Commission has 30 days before it goes out of existence.

CHAIRMAN RIFKIND: That is true.

QUESTION: Is it possible or would you have any plans for any further mediation efforts during these next 30 days?

CHAIRMAN RIFKIND: I think you under-estimate how strenuous this job has been for the last 15 months.

QUESTION: Thirty days wouldn't be much?

CHAIRMAN RIFKIND: It would take a lot of persuasion to get some of these gentlemen to submit to fuether efforts at this time. But no one has yet asked me.

QUESTION: This 2700 figure, 27,300, is that the number of firemen that have ten years seniority or more?

CHAIRMAN RIFKIND: Who will on July 1, 1962 have protected seniority, yes.

QUESTION: Did you find that any of these problems arose from or were exaggerated or aggravated by the existence of five unions instead of, say, fewer unions, or would they lend themselves to easier solution if there were fewer unions?

CHAIRMAN RIFKIND: Well, that is a fair question and we make an un-asked-for recommendation on this subject, that is, the parties didn't solicit our opinions. We expresaed the view that it might be desirable to reduce the number of organizations. We thought it might be nice if we had one engine service union and one train service union. That is one of those millenium things that one of my friends spoke of a moment ago. It is something you pray for. Who knows? It might

happen. There is a section in the report devoted to it. It is the last section.

QUESTION: Is there a similar section on consolidation of companies?

CHAIRMAN RIFKIND: No, no section dealing with consolidation. That has not been consigned to us for a solution. There is a section or a portion dealing with what management should do with respect to its own self-improvement which you submit for the consideration of management.

QUESTION: Judge, you used the figure 9000 new hires in a single year.

CHAIRMAN RIFKIND: I think it was in 1959.

QUESTION: And you used a figure of 10,100 in national labor pool that would be made up of men with less than ten years service.

CHAIRMAN RIFKIND: I don't follow you. You mean the firemen?

QUESTION: Yes.

JUDGE RIFKIND: The two things are not the same.

QUESTION: In the national labor pool it has been suggested, has it not, that new hires would come from that pool and not from the ready labor market.

CHAIRMAN RIFKIND: That would apply to the whole railroad industry, operating and non-operating, we hope, and everything that goes with it. It would be an entirely different

situation.

QUESTION: But nonetheless, you are suggesting that any railroad in any part of the country that needs a man should hire through this national labor pool of 10,100 rather than go to the ready labor market?

CHAIRMAN RIFKIND: That pool may be larger than 10,100. We also hope that a great many of these men, encouraged by the protection which is afforded them, namely, the 60 per cent of compensation assured and allowed to keep outside earnings would find themselves seeking outside earnings and establish themselves in another industry.

QUESTION: In other words, this is a manner in which you can expedite the release of these men from the railroad industry?

CHAIRMAN RIFKIND: Yes, sir. That is exactly what it is designed to do.

QUESTION: Before you stop, could you identify the other Commissioners?

CHAIRMAN RIFKIND: But Generally not with the abruptness or not with the lack of christening that has been prevalent in the last 25 years.

QUESTION: Would you identify the other commissioners before we quit here.

CHAIRMAN RIFKIND: I will be avery glad to. Those who are here, my extreme right, Mr. Jerrow, Mr. Knight,

Mr. Loomis, Mr. Wolfe, representing various railroad organizations. Then here, Dr. Dunlop of Harvard, Mr. Robertson of Washington, Dr. Myers of MIT, and Mr. Smith of Michigan Law School.

QUESTION: What happened to the red circle principle that no significant number of employees would take a cut in pay or work longer hours to maintain earnings?

CHAIRMAN RIFKIND: We have a discussion of that in this report and if you dig deep enough into it, which I recommend to you very heartily as good instructive reading, you will find there is an analysis of why the red circle method would not be operative in the railroad industry usefully and especially do I solicit your attention to the circumstance that jobs are selected on the seniority system in the railroad industry so that if a job turns out to be less advantageous than it used to be senior employees can then select the new job which is then more advantageous.

QUESTION: Judge, in that rundown of the Commissioners present, do I understand that we have all the carrier commissioners and public members but that the labor members were engaged elsewhere, or is that wrong?

CHAIRMAN RIFKIND: I do not know what the gentlemen are doing outside this room. Nobody was invited to this meeting except myself. But anybody is free to come.

QUESTION: Is that a correct description?

CHAIRMAN RIFKIND: No, there are not all the carrier representatives here. Some of them are here.

QUESTION: But you have no labor?

CHAIRMAN RIFKIND: I do not see any of the labor representatives. I think they are engaged in a meeting.

QUESTION: How many of the carrier commissioners have we?

CHAIRMAN RIFKIND: Four. There are five altogether and there are four here. Any other questions?

If there are no other questions, I thank you all sincerely and remember the release date on this material.

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FOR RELEASE: 11:00 A.M. Wednesday, February 28, 1962

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT ON RECEIPT OF THE REPORT BY THE PRESIDENTIAL RAILROAD COMMISSION ESTABLISHED BY EXECUTIVE ORDER NO. 10891 ON NOVEMBER 1, 1960

In December 1960, President Eisenhower established, at the joint request of the nation's railways and the five unions representing the some 250,000 workers who operate the trains, a Presidential Railroad Commission. This Commission was composed of representatives of the railway unions and carriers, designated by them, and public members appointed by the President. On March 5, 1961, I appointed Judge Simon H. Rifkind to be chairman of the Commission. By the mutual and voluntary agreement of the parties, the Commission was charged with the duty to study the dispute in the railroad industry over work rules and practices and to submit to the President and to the parties a report of its findings and recommendations for the amicable settlement of the dispute.

Today, I have received the report of the Commission. It represents more than a year's work, during which, I am informed, over 15,500 pages of oral testimony was given before the Commission, and more than 300 exhibits filed with it. In addition, special studies were made for the Commission by its staff and by outside experts. The work of the Commission represents an exhaustive study of the relations between the railroads and their operating employees.

As provided for in the memorandum of agreement entered into between the parties in October 1960, the report is remanded to them for their appropriate consideration. Under the terms of their agreement, this report is not an arbitration award. Rather it is a study by men who have conscientiously tried to ascertain the facts as they exist and to make recommendations based on these facts. It is now up to the parties themselves to consider these recommendations and, as they have agreed, to enter into immediate and expeditious collective bargaining over the issues which remain in dispute. I believe the report will be useful in this task.

The good offices of the National Mediation Board and the Secretary of Labor are available to help the parties reach agreement.

I cannot point out too strongly that while the carriers and the unions have great responsibilities to their respective interests they have an overriding responsibility to the national interest to provide the most efficient and safe rail transportation possible. I know that both sides agree with me that in serving the national interest first they serve their own interest best.

The railroads and their employees are important national assets which we must conserve. Their survival as a healthy industry and an outstanding work force vital to our economy, depends to a large extent upon their cooperative ability to modernize and improve their services and practices in the face of increasing competition from other means of transportation. In doing this, the human aspect of the equation must not be overlooked.

The railroad industry is a conspicuous illustration of the problem of changing technology. While seeking ways in which to reap the benefits of advancing technology, it is necessary at the same time to preserve basic human interests.

These demands--service to the public, modernization of the industry, protection of the legitimate rights of the workers--are the basic issues that lie on the bargaining table. I am sure that the mature wisdom of both parties, experienced as they are through many years of labor-management relations, can resolve these issues sensibly and amicably.

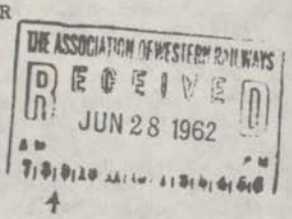
I commend the members of the Commission for their diligent efforts on the report they have submitted. The report contains the unanimous views of the public members, the dissenting views of the labor members and the supplemental views of the carriers. I am sure that it represents the sincere views of the various parties. I especially wish to extend my personal thanks and appreciation to Judge Simon H. Rifkind, the Commission chairman, for devoting his time and energies to the work of the Commission and for bringing his great competence and integrity to bear on its operation. Judge Rifkind has rendered another fine contribution to his already outstanding record of public service.

# # # # #

NATIONAL MEDIATION BOARD
WASHINGTON

June 26, 1962
Case No. A-6700

ARBITRATION OFFER



Mr. Guy W. Knight, Chairman
Eastern Carriers' Conference Committee
% The Pennsylvania Railroad Company
1040 Transportation Center
Six Penn Center Plaza
Philadelphia, Pennsylvania

Mr. J. E. Wolfe, Chairman
Western Carriers' Conference Committee
% Association of Western Railways
Union Station Building, Room 474
Chicago 6, Illinois

Mr. B. B. Bryant, Chairman
Southeastern Carriers' Conference Committee
% The Chesapeake & Ohio Railway Company
Eleventh Street and Fourth Avenue
Huntington, West Virginia

Mr. R. E. Davidson, Grand Chief Engineer
Brotherhood of Locomotive Engineers
1118 BLE Building
Cleveland 14, Ohio

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen and Enginemen
318 Keith Building
Cleveland 15, Ohio

Mr. Louis J. Wagner, President
Order of Railway Conductors and Brakemen
Cedar Rapids, Iowa

Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Mr. N. P. Speirs, International President
Switchmen's Union of North America
3 Linwood Avenue
Buffalo 2, New York

On May 21, 1962, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America by their duly authorized representatives made application in due form and in accordance with the provisions of the Railway Labor Act for the services of the National Mediation Board on the following subject:

Case A-6700. "Carriers' Section 6 notices of November 2, 1959 and Organizations' Section 6 notices of September 7, 1960."

These disputes were assigned for mediation to Chairman Leverett Edwards and have been the subject of mediation proceedings. without composing the differences. The mediator reports that he has used his best efforts to bring about an amicable settlement through mediation but has been unsuccessful.

In accordance with Section 5, First, of the Railway Labor Act, the National Mediation Board therefore now requests and urges that you enter into an agreement to submit the controversy to arbitration as provided in Section 8 of the Act.

In making your written reply, which is requested at your earliest convenience, please submit it in triplicate so that we may transmit a copy to the other parties as advice of your determination in the matter.

Very truly yours,

NATIONAL MEDIATION BOARD

Chairman

EASTERN CARRIERS' CONFERENCE COMMITTEE
WESTERN CARRIERS' CONFERENCE COMMITTEE
SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEE

June 28, 1962

Mr. Leverett Edwards,
Chairman,
National Mediation Board,
Washington 25, D. C.

Dear Mr. Edwards:

Replying to your letter of June 26, 1962, file Case A-6700, proposing arbitration of the dispute presently existing between the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees and their employees represented by The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen & Enginemen, The Order of Railway Conductors & Brakemen, The Brotherhood of Railroad Trainmen, and The Switchmen's Union of North America which, for brevity, you identified as follows:

> "Carriers' Section 6 notices of November 2, 1959 and Organizations' Section 6 notices of September 7, 1960."

This is the dispute which at the request of the organizations above-named, in pursuance of an agreement dated October 17, 1960, was submitted to a Presidential Railroad Commission. Article 5 of the agreement of October 17, 1960 reads as follows:

> "It is the intent of the parties that the proceedings of the Commission, including its mediatory efforts and its report shall be considered and accepted as in lieu of the mediation and emergency board procedures provided by Sections 5 and 10 of the Railway Labor Act."

The report of the Presidential Railroad Commission, after thirteen months of exhaustive study and presentation of the respective positions of the parties, was submitted to President John F. Kennedy on February 28, 1962.

As to your proffer of arbitration, this will advise you on behalf of the carriers represented by the three Carriers' Conference Committees that said carriers are agreeable to submitting the dispute, in its present posture, to arbitration provided the parties are able to agree on the provisions of an arbitration agreement, which, among other things, shall state specifically the issues to be arbitrated.

If your proffer of arbitration is accepted by the other party, namely, The Brotherhood of Locomotive Engineers, The Brotherhood of Locomotive Firemen & Enginemen, The Order of Railway Conductors & Brakemen, The Brotherhood of Railroad

Trainmen and The Switchmen's Union of North America, the Committees representing the carriers will be prepared to meet the representatives of the other party for the purpose of executing an arbitration agreement at the earliest date convenient to the parties.

Yours very truly,

Chairman,
Eastern Carriers' Conference Committee

Chairman,
Western Carriers' Conference Committee

Chairman,
Southeastern Carriers' Conference Committee

cc: The Honorable Arthur J. Goldberg,
Secretary of Labor,
Washington 25, D.C.

NATIONAL MEDIATION BOARD
WASHINGTON

July 16, 1962
Case No. A-6700

Mr. Guy W. Knight, Chairman
Eastern Carriers' Conference Committee

Mr. J. E. Wolfe, Chairman
Western Carriers' Conference Committee

Mr. B. B. Bryant, Chairman
Southeastern Carriers' Conference Committee

% The Association of
Western Railways
Rm 474 Union Station Building
Chicago, Illinois

Mr. R. E. Davidson, Grand Chief Engineer
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1118 BLE Building
Cleveland 14, Ohio

Mr. H. E. Gilbert, President
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Cleveland 15, Ohio

Mr. Louis J. Wagner, President
Order of Railway Conductors & Brakemen
Cedar Rapids, Iowa

Mr. W. P. Kennedy, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Mr. N. P. Speirs, President
Switchmen's Union of North America
3 Linwood Avenue
Buffalo 2, New York

Gentlemen:

The National Mediation Board has been advised by the Chairmen of the Eastern, Western and Southeastern Carriers' Conference Committees that the carriers represented by those Committees are agreeable to submitting the dispute, in its present posture, to arbitration provided the parties are able to agree on the provisions of an arbitration agreement, which, among other things, shall state specifically the issues to be arbitrated. We have been advised by Messrs. Davidson, Gilbert, Wagner,

Kennedy and Speirs, on July 6, 1962, that the organizations have declined, in writing, to arbitrate the issues in NMB Case No. A-6700 as set forth in our arbitration offer dated June 26, 1962.

Your attention is, therefore, directed to the last clause in Section 5, First (b) of the Railway Labor Act, amended, reading as follows:

> "If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in wirting that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Messrs. Knight, Wolfe and Bryant copy of the organizations' jointly signed letter of July 6, 1962, and to Messrs. Davidson, Gilbert, Wagner, Kennedy and Speirs copy of letter dated June 28, 1962 and telegrams dated July 10 and 12, 1962 from the Chairmen of the Eastern, Western and Southeastern Carriers' Conference Committees.

By direction of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

ctm

July 17, 1962

Brotherhood of Locomotive Engineers
Mr. R. E. Davidson, Grand Chief Engineer

Brotherhood of Locomotive Firemen and Enginemen
Mr. H. E. Gilbert, President

Order of Railway Conductors and Brakemen
Mr. L. J. Wagner, President

Brotherhood of Railroad Trainmen
Mr. W. P. Kennedy, President

Switchmen's Union of North America
Mr. Neil P. Speirs, President

Dear Sirs:

The carriers herewith serve upon you, the representatives of their operating employees, the attached promulgation of certain revisions in the work rules of operating employees to become effective at 12:01 A.M. August 16, 1962. The revisions in the work rules embraced in this promulgation are to make effective the rules proposed in the carriers' Section 6 Notices of November 2, 1959, and the rules proposed by the organizations with which you are associated, as our respective Notices were modified by the recommendations of the Presidential Railroad Commission set forth in its report to the President of the United States on February 28, 1962.

While the carriers propose to make these revised work rules effective on August 16, 1962, 47 days later than the effective date contemplated by the recommendations of the Presidential Railroad Commission, if any representative or representatives of any railway labor organization or organizations parties to the agreement of October 17, 1960 shall call, authorize or direct any strike against, or withdrawal from the service of any one or more of the carriers named in Exhibits A, B and C attached to said revised work rules, to become effective prior to August 16, 1962, for the purpose of preventing any carrier or carriers from placing the revised work rules in effect, then said revised work rules will be made effective by all of the carriers named in Exhibits A, B and C as of the effective date of such strike or withdrawal from service. In case of any slow down or other interference with the operations of any such carrier or carriers, prior to August 16, 1962, the Chairmen of the Regional Carriers' Conference Committees will advise you of the date on which the revised work rules will become effective.

Very truly yours,

(Signed) GUY W. KNIGHT
Chairman,
Eastern Carriers' Conference Committee

(Signed) J. E. WOLFE
Chairman,
Western Carriers' Conference Committee

(Signed) B. B. BRYANT
Chairman,
Southeastern Carriers' Conference Committee

OPS

July 17, 1962

PROMULGATION OF REVISIONS IN WORK RULES

by the Railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees for application in respect to operating employees represented by:

Brotherhood of Locomotive Engineers

Brotherhood of Locomotive Firemen and Enginemen

Order of Railway Conductors and Brakemen

Brotherhood of Railroad Trainmen

Switchmen's Union of North America

Rules Effective at 12:01 A.M. August 16, 1962

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PROMULGATION OF REVISIONS IN WORK RULES

This promulgation of revisions in work rules for operating employees is made this 17th day of July, 1962, by each of the participating carriers listed in Exhibits A, B and C, attached hereto and hereby made a part hereof, and represented by the Eastern, Western and Southeastern Carriers' Conference Committees. These revisions become effective 12:01 A.M. August 16, 1962, in respect to the operating employees of the participating carriers represented by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors and Brakemen, the Brotherhood of Railroad Trainmen, or the Switchmen's Union of North America.

This promulgation of rules arises from the Notices served by each of the participating carriers upon the above-listed five operating brotherhoods on or about November 2, 1959, proposing revisions of existing agreements in accordance with the provisions of Section 6 of the Railway Labor Act. Counter-notices were served upon the participating carriers by the five operating brotherhoods on September 7, 1960. By agreement dated October 17, 1960, the participating carriers and the five operating brotherhoods, with the approval of the Secretary of Labor, submitted the controversy over the proposed revisions of rules to a Presidential Commission to investigate the facts and report its findings and recommendations to the President of the United States. This Presidential Railroad Commission, established by the President in Executive Order No. 10891, dated November 1, 1960, conducted its hearings, investigations and deliberations throughout the year 1961 and, on February 28, 1962, submitted its findings and recommendations to the President. Following the submission

of the report of the Presidential Railroad Commission, the further conferences contemplated by the agreement of October 17, 1960, have been completed without reaching any agreement, either to place in effect the recommendations of the Presidential Railroad Commission or to realize any improvements in or modernization of the existing work rules consistent with the findings and recommendations of that Commission. All procedures of the Railway Labor Act have been exhausted and the periods prescribed by the Act, during which no change shall be made in rates of pay, rules or working conditions, have expired.

Accordingly, to make effective rules proposed in the carriers' Section 6 notices and the rules proposed by the operating brotherhoods, as those respective Notices were modified by the recommendations of the Presidential Railroad Commission, each of the participating carriers hereby promulgate the following revisions in work rules of operating employees effective on all their lines at 12:01 A.M. August 16, 1962:

Article I - Use of Firemen-Helpers

(a) Effective August 16, 1962, firemen-helpers need not be assigned to other than steam locomotives in freight and yard service, except as provided in paragraphs (d), (e), (f) and (i) hereof.

(b) Effective August 16, 1962, new firemen-helpers need not be hired to man road freight and yard diesels.

(c) Firemen-helpers and engineers shall be retired and forfeit their seniority rights in accordance with the provisions of Article X hereof.

(d) Firemen-helpers hired since November 2, 1959, shall be separated from the carriers' payrolls three months after August 16, 1962. The pro-

tection afforded under paragraph (g) hereof shall apply only if these firemen-helpers were in active service as such at any time after May 16, 1962. An employee who meets the protection qualification requirements of this paragraph, by reason of having been in active service as a fireman-helper on his home seniority district after May 16, 1962, who because of having been furloughed is not in active service on November 16, 1962, will be considered as having been deprived of employment pursuant to this rule as of the date last furloughed for the purpose of determining length of service and average compensation in applying the "schedule of allowances" referred to in paragraph (g) hereof.

(e) All firemen-helpers under 25 years of age August 16, 1962 and hired prior to November 2, 1959, shall be separated from the carriers' payrolls six months after August 16, 1962. The protection afforded under paragraph (g) hereof shall apply only if these firemen-helpers were in active service as such at any time after February 16, 1962. An employee who meets the protection qualification requirements of this paragraph, by reason of having been in active service as a fireman-helper on his home seniority district after February 16, 1962, who because of having been furloughed is not in active service on February 16, 1963, will be considered as having been deprived of employment pursuant to this rule as of the date last furloughed for the purpose of determining length of service and average compensation in applying the "schedule of allowances" referred to in paragraph (g) hereof.

(f) All other firemen-helpers who on August 16, 1962 will

have less than 10 years' seniority shall be furloughed on or after August 16, 1963. Such firemen-helpers shall not be assigned to other than steam locomotives in freight and yard service but shall retain existing rights and obligations to protect vacancies as firemen-helpers in passenger service and for promotion to engineer. Failure to so respond, as required by rule or practice, will constitute forfeiture of all protection provisions afforded herein. The protection afforded under paragraph (g) hereof shall apply only if these firemen-helpers were in active service as such at any time after August 16, 1961. An employee who meets the protection qualification requirements of this paragraph, by reason of having been in active service as a fireman-helper on his home seniority district after August 16, 1961, who because of having been furloughed is not in active service on August 16, 1963, will be considered as having been deprived of employment pursuant to this rule as of the date last furloughed for the purpose of determining length of service and average compensation in applying the "schedule of allowances" referred to in paragraph (g) hereof.

(g) Firemen-helpers separated or furloughed under paragraphs (d), (e) or (f) hereof shall if qualified be entitled to the schedule of allowances set forth in Section 7(a) of the Washington Agreement of May 21, 1936, without diminution due to earnings from any employment outside the railroad industry during the guarantee period applicable. To the extent that a firemen-helper is employed on another job in the railroad industry, the monthly allowances

provided under this paragraph shall be reduced to the amount which, when added to the employee's monthly earnings, will produce not in excess of 100 percent of his average monthly compensation as a fireman-helper during the 12 months upon which his allowance is based.

NOTE: In applying this paragraph (g), length of service, limited to service as a fireman-helper on his home seniority district, shall be otherwise measured in conformity with the agreed upon interpretation of Section 7 of the Washington Agreement of May 21, 1936, and monthly allowance shall be sixty (60%) percent of the average monthly compensation during the last twelve months of employment prior to date deprived of employment pursuant to this rule.

(h) In lieu of the allowances in paragraph (g), all employees covered by paragraphs (d), (e), or (f) may elect on or before the separation or furlough dates set forth in paragraphs (d), (e), or (f) to accept the lump sum separation allowances as provided in Section 9 of the Washington Agreement of May 21, 1936. Any employee electing a lump sum separation allowance shall be separated from the carriers' payrolls on the date when the lump sum allowance is paid and concurrently therewith shall forfeit all rights and privileges provided under these rules or under any existing rules, agreements, regulations, interpretations or practices, however established.

NOTE: In applying this paragraph (h), length of service, limited to service as a fireman-helper on his home seniority district, shall be otherwise computed as provided in Section 7 of the Washington Agreement of May 21, 1936, and "one month's pay" shall be determined by applying the formula outlined specifically in Section 9 of the Agreement.

(i) The remainder of the firemen-helpers who are on the carriers'

seniority lists on August 16, 1962, shall have the right to exercise their seniority to work their turn as firemen-helpers, to the extent that positions as firemen-helpers are available on any locomotive on which firemen-helpers are presently assigned, until such seniority rights are forfeited under the provisions of the rules or otherwise.. All firemen-helpers in this group shall be required to protect vacancies: as engineers, as firemen-helpers in passenger service, or on other occasional runs to which the carriers assign helpers.

(j) Firemen-helpers referred to in paragraphs (d), (e) and (f) of this rule who are retained in service subsequent to August 16, 1962, and who, prior to date of furlough or separation from service, are assigned to extra boards will not be permitted to work more than one tour of duty in yard service within any twenty-four (24) hour period or start a trip out of the home terminal for such extra board in any class of road freight service during such periods if this would result in more than one trip being credited to a calendar day.

Firemen-helpers retained in service under the conditions set forth in paragraph (i) of this rule, who are assigned to extra lists for firemen-helpers, will not be permitted to start more than one tour of duty in yard service on any calendar day, nor will they be permitted to work more than five (5) days in any calendar week in any class of service referred to in Article V (j) hereof. Such firemen-helpers, if promoted to locomotive engineers, will be called to fill temporary vacancies as locomotive engineers, for which qualified, on the basis of seniority rank without regard to vacancies in any class of service

as firemen-helpers. Such firemen-helpers, when used as such, will, in the order named:

(1) Fill temporary vacancies for firemen-helpers in passenger service; or

(2) Be called for such other service in which firemen-helpers were employed prior to the effective date of this agreement as may be selected by management.

(k) In addition to all other rights provided for firemen-helpers in paragraphs (d), (e) and (f) hereof, for any such firemen-helpers, if qualified, who elect within one year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans Administration under the Veterans' Readjustment Assistance Act of 1952), the carrier shall pay 75 percent of the tuition costs of such training for a period not exceeding two years. Whenever and to the extent that the United States Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

(l) No yard diesel may be operated without a fireman-helper unless it is equipped with a "dead man's control" or other appropriate safety device.

Article II - Consist of Crews, Road and Yard Crews (Other Than Engine Service)

(a) Changes in road and yard crew consist requirements (other than engine service) shall be handled in conformity with the procedures and subject to the conditions set forth in the following paragraphs of this rule.

(b) During the period August 16, 1962 to November 16, 1962, and not more than once yearly thereafter, any carrier or any organization may conduct a survey for the purpose of determining what changes in crew consist requirements it wishes to propose. Fifteen (15) days' written notice shall be given of any such proposal for changes in crew consist requirements. Following such notice period, the carriers will, at the request of the organization having bargaining rights with respect to the employees involved, engage in joint negotiations on the changes proposed.

(c) If agreement has not been reached within sixty (60) days from the expiration date of the notice period provided in paragraph (b) hereof, the matter may be submitted by either party to the Special Tribunal described in Article XI hereof for final and binding determination, in a single proceeding involving the carrier and the organization or organizations having bargaining rights with respect to the class or classes of the employees affected. The Special Tribunal is authorized, in its discretion, to permit or direct the carrier to place in effect a particular proposal for a limited period pending final determination of the issue, for the purpose of obtaining information not otherwise available for the appropriate resolution of the dispute. The criteria for determination of a dispute by such tribunal shall be the following:

(1) The adequacy or necessity of the proposed crew consist in terms of the safety of the operations; and

(2) whether the proposed crew consist will impose an un-

reasonably burdensome or onerous workload on the members of the crew, or is necessary to avoid such workload.

In any such submission to the Special Tribunal, the burden of proof shall be upon the party proposing the change. Pending action by the Special Tribunal, there shall be no change in crew consist requirements except by mutual agreement. Nothing in these rules shall be construed as depriving any carrier of any preexisting rights to discontinue any position it is not required to continue under any existing agreement, rule, regulation, interpretation or practice, however established.

(d) A crew consist issue raised and disposed of in accordance with the procedures set forth in paragraph (b) hereof shall not be reopened for at least one year, except that the carrier shall have the right to increase the consist of any crew.

(e) The aggregate reductions in crew consist pursuant to this rule by any carrier in any seniority district during any yearly period subsequent to the adoption of this rule shall not exceed seven and one-half (7-1/2) percent of the employees who, as of the beginning of the year, are on the seniority roster of the class or craft of employees directly affected by the proposed changes with a minimum permissible aggregate yearly reduction of two (2) employees in any seniority district irrespective of the number of employees on the roster of such seniority district.

(f) Employees furloughed as the immediate and proximate consequence of the application of the rule shall be entitled to the following protective conditions: Employees who qualify for and receive unemployment benefits under the Railroad Unemployment Insurance Act shall be guaranteed by the employing carrier additional unemployment benefits, payable following the period of benefits to which the employee would be entitled under said Act, in like manner and under like conditions for another such period.

(g) This rule shall not be subject to reopening for at least five (5) years from the effective date hereof.

Article III - Consist of Crews, Manning of Motor Cars and Self-Propelled Machines

(a) Existing rules, agreements, regulations, interpretations and practices, however established, which require the use of engine, train, or yard service employees on or in connection with the operation or use of any motor car or self-propelled vehicle or machine used in maintenance, repair, construction or inspection work are eliminated, except where such vehicle or machine is used to provide motive power to move or switch other cars, vehicles or machines (other than a maximum of two such other cars or vehicles used exclusively in hauling material or personnel to be used in connection with the work to which the vehicle or self-propelled machine is assigned).

(b) This rule shall not be subject to reopening for at least five (5) years from the effective date hereof.

Article IV - Technological Change

(a) The carrier has and may exercise the right to introduce techno-

logical changes without limitation, subject only to the procedures specified in paragraph (b) hereof and subject to the provisions of employee protection defined in paragraph (c) hereof.

(b) Whenever the introduction of a technological change cannot be accomplished or where its benefits could not be fully realized without amendment of one or more of the rules or agreements in effect, the carrier proposing to make the change shall give fifteen (15) days' notice to the affected organization or organizations. The carrier will engage in joint negotiations concerning amendments of such rules or agreements if requested by the affected organization or organizations. If no request for negotiations is made within the fifteen (15) day notice period, the carrier may proceed to amend the rules to make the proposed technological change fully effective. If negotiations have been requested but agreement has not been reached within sixty (60) days following the expiration of the notice period provided herein, any party may submit the question for final and binding determination of the Special Tribunal described in Article XI hereof. Pending the decision of the Special Tribunal such technological changes shall not be introduced. The Special Tribunal shall consider and decide only issues raised concerning amendments to the rules or agreements affected. It shall not undertake to examine whether the technological change is to be introduced; nor what protection shall be afforded to displaced employees.

(c) Every employee deprived of employment as the immediate and proximate consequence of technological change shall be entitled:

(1) to the schedule of allowances set forth in Section 7(a) of the Washington Agreement of May 21, 1936;

(2) to the option of choosing the lump sum separation allowance set forth in Section 9 of the Washington Agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph (1) above;

(3) to the retraining subventions specified in paragraph (j) of Article I.

(4) The formula used in applying the employee protection provisions contained in Article I of this Agreement shall be used in the application of subsections 1, 2, and 3 hereof.

Article V - Wage Structure

(a) An employee in road service who shall have completed 208 hours on duty in any calendar month shall not be permitted, in that calendar month, to perform further road service originating at his home terminal except when other employees are not available for such service. No monthly or weekly guarantees shall be required to be made up by reason of the application of this rule to any employee in any given month.

(b) The mileage basis of pay for short turnaround passenger service is hereby abolished. The existing basic daily rate shall be applied for all mileage runs in such service, overtime rules to remain unchanged unless and until changed as a result of local negotiations.

(c) All agreements, rules, regulations, interpretations, and practices, however established, providing for a speed basis to determine the application of overtime pay are hereby eliminated and cancelled. Overtime shall be paid under the conditions and in the manner provided in paragraphs (d) and (e) of this rule.

(d) The basis of pay in local freight service shall be governed

by the following provisions:

(1) Employees in local freight service are those employees in regular assigned local freight service, including road switchers and roustabout runs, on runs up to, and including, 110 miles.

(2) The mileage basis of pay, initial and final terminal delay payments and all other duplicate time payments are hereby eliminated for employees in local freight service.

(3) The schedule of hourly basic rates as set forth in paragraph (h) hereof shall be applied as payment for the entire service performed.

(4) In local freight service, eight (8) hours (straight-away or turnaround) shall constitute a day's work. Overtime shall begin at the expiration of eight (8) hours. Overtime shall be paid for on the minute basis, at one and one-half times the hourly rate.

(e) The basis of pay in through freight service shall be governed by the following provisions:

(1) Employees in all classes of road service, except passenger service and local freight service as defined in paragraph (d) hereof, will be paid through freight rates as set forth in paragraph (h) hereof and according to through freight rules for all runs for the entire service performed.

(2) Employees in all classes of road service, except passenger service and local freight service, shall be paid the hourly rates set forth in paragraph (h) hereof on the minute basis for all time actually worked computed continuously from the time required to report for duty until released at end of the run. Overtime will begin at the expiration of 8 hours. Overtime shall be paid for on the minute basis, at one and one-half times the hourly rate.

(3) In all classes of road service, except passenger service and local freight service, miles run in excess of 100 and up to and including 160 (straightaway or turnaround) on any trip shall also be paid the mileage rate; all miles in excess of 160 on any trip shall be paid overmiles at one and one-half times the mileage rate.

(4) The total compensation received from straight time, overtime, mileage, and over-mileage on any trip (straightaway or turnaround) shall not be less than eight (8) times the hourly rate.

(5) Initial terminal switching, final terminal switching, and intermediate terminal switching payments and rules providing for conversion of through freight rates of pay to local rates of pay are hereby eliminated.

(f) The basis of pay in straightaway passenger service shall be

governed by the following provisions:

(1) Employees in straightaway passenger service shall be paid the hourly rate set forth in paragraph (h) hereof, on the minute basis, for all the time actually worked computed continuously from the time required to report for duty until released at the end of the run.

(2) In straightaway passenger engine service, miles run in excess of 100 and up to and including 160 on any trip shall also be paid the mileage rate; all miles in excess of 160 on any trip shall be paid overmiles at one and one-half times the mileage rate.

(3) In straightaway passenger train service, miles run in excess of 150 and up to and including 220 on any trip shall be paid at the mileage rate; all miles in excess of 220 on any trip shall be paid overmiles at one and one-half times the mileage rate.

(4) Total earnings, resulting from payments at the hourly rates, plus payments at the mileage rates, in straightaway passenger service, shall not be less than five (5) hours pay for engine service employees and not less than seven and one-half (7-1/2) hours pay for train service employees.

(5) Initial terminal switching, final terminal switching, and intermediate terminal switching payments are hereby eliminated.

(g) The minimum and maximum mileage limitations in through freight service and straightaway passenger service shall be increased by fifteen (15) percent. The purpose of this rule is to combine time paid for at the hourly rates with time paid for at the mileage rates so that minimum and maximum mileage payments, when translated into total earnings, will permit a fifteen (15) percent increase in mileage equivalent over and above the mileage equivalent that would be permitted under existing mileage limitations rules.

(h) Employees shall be paid the following rates of pay in accordance with their appropriate craft and class of service, as defined herein, as follows:

Through Freight Service

Craft of Employees	Hourly rate	Mileage Rate (cents per mile)
Engineers	$3.1925	12.485¢
Firemen (helpers)	$2.72	10.68¢
Conductors:		
East and Southeast	$2.82	10.61¢
West	$2.8125	10.58¢
Brakemen		
East and Southeast	$2.47875	9.7¢
West	$2.4725	9.675¢

NOTE: The hourly rates and mileage rates set forth above are based upon weight on driving wheels of locomotives used by enginemen for the 900,000-950,000 pound bracket and upon cars handled by conductors and brakemen for the 106-125 car bracket, respectively. Such rates are subject to adjustment, upward or downward, as the case may be, in order to give effect to presently existing graduations in rates applicable to enginemen and car scale additives applicable to conductors and brakemen.

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Local Freight Service

Craft of Employees	Hourly Rate
Engineers	$3.20
Firemen (helpers)	$2.65
Conductors:	
East and Southeast	$2.85625
West	$2.84875
Brakemen:	
East and Southeast	$2.55625
West	$2.55

NOTE: All graduations in rate systems applicable to local freight service, both for enginemen and trainmen, are hereby eliminated.

Yard Service

Craft of Employees	Hourly Rate
Engineers	
5- day week	$3.20
6- or 7-day week	$2.94375
Firemen (helpers)	$2.795
Conductors (foremen)	$3.10
Brakemen (Yard helpers)	$2.90
Switchtenders	$2.650
Car Retarder Operators	$3.203

NOTE: Graduated rates applicable to enginemen, based on weight on driving wheels, are hereby eliminated.

Straightaway Passenger Service

Craft of Employees	Hourly Rate	Mileage Rate (cents per mile)
Engineers	$4.354	11.6¢
Firemen	$3.834	10.4¢
Conductors:		
East and Southeast	$2.881	7.7¢
West	$2.873	7.68¢
Brakemen		
East and Southeast	$2.524	6.7¢
West	$2.5187	6.69¢
Assistant conductors (ticket collectors)		
East and Southeast	$2.651	7.09¢
West	$2.644	7.07¢
Train baggagemen		
East and Southeast	$2.547	6.76¢
West	$2.542	6.75¢

NOTE: The hourly rates and mileage rates set forth above for enginemen are based upon weight on driving wheels of locomotives used by enginemen for the 550,000-600,000 bracket. Such rates are subject to adjustment, upward or downward, as the case may be, in order to give effect to presently existing graduations in rates applicable to enginemen.

(i) All hourly rates and mileage rates set forth in this Article, for all crafts of employees and classes of service, shall be decreased on carriers where agreements providing for hospital and surgical benefits are in effect, in order that the cost of such benefits, whether expressed by the agreement in cents per hour or a percentage of existing basic rates, will be excluded from the hourly and mileage rates set forth herein.

(j) All agreements, rules, regulations, interpretations and practices,

however established, applicable to any grade of employees in regularly assigned yard, local freight, and miscellaneous classes of road service paid on an hourly basis without a mileage component, which provide weekly or monthly earnings guarantees are hereby eliminated and cancelled. Regularly assigned employees in yard, local freight service, and in miscellaneous classes of service paid on an hourly basis without a mileage component, who are ready for service the entire week and who do not lay off of their own accord, will be guaranteed the equivalent of eight (8) hours pay for 5 days in each calendar week. Yard service employees who fail to exercise their seniority in conformity with existing rules when their assignments are annulled, will be considered as having laid off of their own accord.

Article VI - Paid Holidays for Regularly Assigned Employees Paid on a Daily Basis

(a) Effective August 16, 1962, each regularly assigned yard, local freight or miscellaneous service employee who is paid on a daily basis without a mileage component in his basis of pay, and who meets the qualifications set forth in paragraph (c) hereof, shall receive one basic day's pay at the rate for the class and craft of service in which last engaged for each of the following enumerated holidays when such holidays fall on the assigned workday of the work week of the individual employee:

New Year's Day
Washington's Birthday
Decoration Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Day

Only one basic day's pay shall be paid for the holiday irrespective of the number of shifts worked.

NOTE: When any of the above-listed holidays fall on Sunday, the day observed by the State or Nation shall be considered the holiday.

(b) Any of the employees described in paragraph (a) hereof who works on any of the holidays listed in paragraph (a) hereof shall be paid, in addition to the holiday pay for which he is eligible, at the rate of time and one-half for all services performed on the holiday with a minimum, in addition to the holiday pay, of one and one-half times the rate for the basic day.

(c) To qualify for holiday pay, a regularly assigned employee referred to in paragraph (a) hereof, must be available for or perform service as a regularly assigned employee in the classes of service referred to on the workdays immediately preceding and following such holiday, and if his assignment works on the holiday, the employee must fulfill such assignment. If the holiday falls on the last day of an employee's work week, the first workday following his "days off" shall be considered the workday immediately following. If the holiday falls on the first workday of his work week, the last workday of the preceding work week shall be considered the workday immediately preceding the holiday.

NOTE: An employee will be deemed to have performed service or fulfilled his assignment if he is required by the carrier to perform other service in accordance with rules and practices on the carrier.

(d) Weekly or monthly guarantees shall be modified to provide that where a holiday falls on the workday of the assignment, payment of a basic day's pay pursuant to paragraph (a) hereof, unless the regularly assigned employee fails to qualify under paragraph (c) hereof, shall be applied toward such guarantee. Nothing in this Section shall be considered to create a guarantee where none now exists, or to change or modify rules or practices dealing with the carrier's right

to annul assignments on the holidays enumerated in paragraph (a) hereof.

(e) That part of all rules, agreements, practices or understandings which require that crew assignments or individual assignments in the classes of service referred to in paragraph (a) hereof be worked a stipulated number of days per week or month will not apply to the seven holidays herein referred to; but where such an assignment is not worked on a holiday, the holiday payment to qualified employees provided by this rule will apply.

(f) As used in this rule, the terms "workday" and "holiday" refer to the day to which service payments are credited.

Article VII - Away-from-Home Terminal Expense

Each member of a road service crew (except short turnaround passenger crews) who is obliged to be at a terminal other than his home terminal five (5) hours or more after being released from duty on his in-bound trip and before the time of reporting for duty for his out-bound trip, shall be provided suitable lodging or an equivalent allowance.

On railroads where agreements have been made to pay higher than standard rates, or special allowances, in lieu of furnishing lodging as a result of agreements which permit the pooling of cabooses, the higher than standard rates, or special allowances, may be retained by the employees in lieu of the requirement that suitable lodging be furnished by the carrier. If lodging is furnished by the carrier, the higher than standard rates, or special allowances, now being paid will be eliminated.

Article VIII - Interdivisional Runs

(a) The carrier shall have the right, subject to the requirements of paragraphs (b), (c) and (d) hereof, (1) to establish runs in interdivisional service (which shall include for purposes of this rule interseniority district,

interdivisional, intraseniority district and intradivisional runs), (2) to establish, move, consolidate or abolish crew terminals in connection therewith, (3) to operate such runs in assigned or unassigned service (including extra service) on a one way or turnaround basis (including short turnaround) and through established crew terminals; and on such runs to handle any class of traffic as may be required, regardless of origin or destination.

This rule will not in any case deprive the carrier of a preexisting right to establish, discontinue, or rearrange intraseniority service which does not involve the abolishment of or the operation through an established crew terminal, and the procedural requirements of this rule do not apply to such changes.

(b) The right set forth in paragraph (a) hereof is subject to the following qualifications:

(1) that such interdivisional runs as are established shall not create working conditions that are unreasonably burdensome or onerous;

(2) that the mileage on such interdivisional runs be distributed ratably as between employees from the seniority districts affected;

(3) that employees required to move their homes as the result of the establishment, movement, abolishment or consolidation of crew terminals be protected against loss from sale of their homes, be compensated for moving expenses in connection with any such moves, and be given reasonable allowance for wage loss directly attributable to the time

involved in relocation; and

(4) that the carrier shall not arbitrarily establish, move, consolidate or abolish crew terminals so often as to require unduly frequent relocation of homes of employees affected.

(c) Where the carrier proposes to establish new runs in interdivisional service or to rearrange existing runs in interdivisional service in the manner contemplated by this rule, it shall give fifteen (15) days' written notice of the proposed runs to the representative or representatives of the employees involved and:

(1) Following the notice period, the carrier will, at the request of the representative or representatives of the employees involved made before the expiration of the notice period, jointly negotiate in good faith with respect to matters set forth in paragraph (b) hereof and, if no request for negotiations is made within the fifteen (15) day notice period, the carrier may proceed to establish the interdivisional service described in its notice.

(2) If negotiations have been requested but agreement has not been reached within sixty (60) days of the expiration date of the notice period provided herein, the matter may be submitted by either party for final and binding determination by the Special Tribunal described in Article XI hereof. This Tribunal shall determine, in accordance with the qualifications set forth in paragraph (b) hereof, whether or

not such runs may be established and the conditions to be attached to the establishment of such runs.

(3) An award of the Special Tribunal shall be final and binding except that it may not require the carrier to establish the proposed run. A decision of the Special Tribunal shall serve as a bar to the carrier from proposing the same or similar runs for a period of at least one year from the award.

(d) The initial rearrangement or establishment of interdivisional runs shall be made by the carrier in the form of a general or overall proposal within one year of the effective date of this rule (August 16, 1962). Any unresolved disputes concerning the proposed runs shall be consolidated in one proceeding for submission to the Special Tribunal. The carrier shall not propose any further changes in interdivisional runs for a period of at least six months after the disposition of the initial group of proposals. Any further proposals for new runs or rearrangements of existing runs in the manner contemplated by this rule shall thereafter be governed by the procedure set forth in paragraph (c) hereof.

(e) On carriers which now have the right to establish such interdivisional service, the rights described in paragraph (a) hereof shall be applicable to the operation of such existing interdivisional service, and paragraphs (a), (b), (c) and (d) hereof shall be applicable to the rearrangement of existing runs in the manner contemplated by this rule, and to the establishment of new runs in such service.

Article IX - Combination of Road and Yard Service

(a) The carrier shall have the right, regardless of whether yard crews or hostlers are employed or are on duty in the terminal or yard where such services may be performed, to require road crews:

(1) to accompany or handle engines of their own trains from engine facilities or ready tracks to departure tracks or from arrival tracks to engine facilities or ready tracks.

(2) to switch out defective or "no bill" cars from their own trains;

(3) to handle cabooses of their own trains and to exchange cabooses from one train to another, provided the road crew handles either train into or out of the terminal;

(4) to pick up or set out cars of their own trains as required from or to the minimum number of tracks which could hold the same; and

(5) to pick up or set off cars which are part of the road train consist in more than one yard in consolidated terminals subject to reasonable restrictions concerning the maximum number of such yards.

(b) Where yard crews are not on duty, road crews may be required to perform all the work enumerated in paragraph (a) hereof and, in addition, may be required to handle all switching in connection with their own trains. Road crews operating in other than through freight service or passenger service where yard crews are not on duty may be required to perform any switching or station work.

(c) In requiring road crews to perform the services described in

paragraph (b) hereof, the carrier shall not arbitrarily transfer switching work to road crews to be performed on line of road which normally would be performed by yard crews.

Nothing in these rules shall be construed as depriving any carrier of any preexisting right to require road crews to perform services under any existing agreement, rule, regulation, interpretation or practice, however established.

(d) Road crews are not entitled to any additional compensation other than that contemplated by the basic day, initial and final terminal delay rules, applicable to the class of service for which called, for the performance of the services described in paragraphs (a) and (b) hereof, and no yard crew or hostlers shall have any claim by reason of the road crew engaging in such work.

(e) Where more than one shift of yard assignments is worked and yard service requirements during the period of assignment of a given shift diminish to the extent that less than an average of 4 hours' yard work is required on that shift over a period of ten consecutive working days, the last remaining assignment on such shift may be abolished. Conversely, when yard service requirements in such yards increase to the extent that over a period of ten consecutive working days an average of more than 4 hours of yard work is performed within a period of time constituting a normal work shift, the yard assignment shall be reestablished.

(f) Where only one yard assignment remains in a given yard and yard service diminishes to the extent that less than an average of 4 hours' yard work remains to be performed on that assignment over a period of ten consecutive working days that assignment may be abolished. Conversely, when yard service

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requirements in such yards increase to the extent that an average of 4 hours' yard work is required over a period of ten consecutive working days within a period of time constituting a normal work shift, the assignment shall be re-established.

(g) Time spent by road crews in performing the services enumerated in paragraph (a) hereof, shall not be counted in computing the 4-hour average to which reference is made in paragraphs (e) and (f) hereof.

(h) When yard service assignments are abolished under the conditions set forth in paragraph (e) or (f) hereof, yard crews shall be considered as "not on duty" for the purpose of applying the provisions of paragraph (b) hereof.

Article X - Retirement

(a) Effective August 16, 1962, all employees subject to the provisions of these rules who are over 70 years of age shall be retired from active service and concurrently forfeit all existing seniority rights, except that no employee in the employ of the carrier on August 16, 1962, shall by virtue of this rule be declared ineligible for active service sooner than August 16, 1963, subject to the provisions of paragraph (c) hereof.

(b) The age at which operating employees shall be retired from active service and concurrently forfeit all existing seniority rights shall be in accordance with the following schedule:

August 16, 1963	69 years of age
August 16, 1964	68 years of age
August 16, 1965	67 years of age
August 16, 1966	66 years of age
August 16, 1967, and thereafter	65 years of age

(c) Existing agreements which provide for retirement at an earlier age than is provided in paragraphs (a) and (b) hereof shall remain in full force and effect.

Article XI - Establishment of Special Tribunals

(a) There are hereby established a system of Special Tribunals to make final and binding determination of the disputes submitted pursuant to the provisions of paragraph (c) of Article II, paragraph (b) of Article IV, and paragraph (c) of Article VIII hereof. These Special Tribunals shall be established on an individual railroad or individual railroad system basis.

(b) Each Special Tribunal will consist of a neutral to be selected by the parties to the dispute within ten (10) days of the service of a notice of intention to submit a dispute to a Special Tribunal. Should the parties fail to agree upon the selection of a neutral within ten (10) days from the date of the service of such notice, the parties or any party to the dispute may certify that fact to the National Mediation Board, which Board shall, within ten (10) days from the receipt of such certificate, name the neutral. If the parties to the dispute fail to agree upon the fee to be paid to the neutral, the National Mediation Board shall stipulate the amount of such fee.

(c) The Special Tribunal shall begin hearings within ten (10) days of the appointment of the neutral. The Special Tribunal shall make all necessary rules for conducting the hearings; provided, however, that it shall be bound to give the parties to the controversy a full and fair hearing, which shall include but not be limited to, an opportunity to present evidence in support of their positions; the right to be represented by counsel, or by other representative as they may respectively elect. Findings shall be rendered in writing by the Special Tribunal within thirty (30) days from the date of the beginning of the hearings on the particular dispute, such findings to be final and binding upon all the

parties to the dispute, whether or not such parties appear before the Special Tribunal. It is intended that the time limitations of this rule may be extended by mutual agreement of the parties.

(d) The fees of the neutral and other expenses shall be divided equally as between the carrier and the organization or organizations representing the employees involved in the dispute.

Article XII - Participation in Joint Activities

The Presidential Railroad Commission, in its report submitted to the President on February 28, 1962, recommended that the parties give long range consideration to the following matters:

(a) Development of joint procedures on each carrier for periodic review of the manpower needs;

(b) Broadening of seniority districts so as to provide greater job protection for long-service employees;

(c) Policies and procedures for a national hiring pool;

(d) Consideration of matters relating to employees who are over age 65 who may retire prior to August 16, 1967 for reasons other than physical disability or other than under agreements referred to in paragraph (c) of Article X hereof, and consideration of procedures for preretirement planning and counseling for other railroad operating employees;

(e) Development of a program to train future engineers;

(f) Review of the possibilities of lowering the daily limit of permissible hours of continuous service;

(g) Negotiations of pay scales and other pay rules applicable to

short turnaround passenger service on a local basis, separate and apart from other issues;

(h) Negotiation of a single unified system of graduation of rates of pay by number of cars in train and size of power for through freight service employees.

(i) Review of continued application of initial and final terminal delay rules and other duplicate time payment in freight service;

(j) Review of mileage limitations;

(k) Consideration of gradual reductions in work week or work month;

(l) Review of all existing guarantees;

(m) Establishment of a standing committee to conduct future wage surveys.

The carriers are willing, when mutually convenient, to discuss the foregoing subjects, on a national, regional or local basis as may be agreed upon by the interested parties, such discussions to have the scope contemplated as to each subject in the report of the Presidential Railroad Commission.

Article XIII - General Provisions

(a) All agreements, rules, regulations, interpretations and practices, however established, including the 1937 National Diesel Agreement, as revised by the National Diesel Agreement of May 17, 1950, all national agreements with operating employees and all agreements negotiated by individual carriers or groups of carriers with the operating employees are eliminated and cancelled to the extent that they conflict in any respect with the provisions of the rules set forth herein.

(b) With respect to railroads in the hands of receivers or trustees, promulgation of these rules is subject to the approval of the courts to the extent, if any, that such approval may be required.

(c) Promulgation of these rules having as its purpose the effectuation of the recommendations contained in the report of the Presidential Railroad Commission submitted to the President on February 28, 1962, these rules may properly be interpreted by reference to the discussion, findings and recommendations set forth in that report.

(d) No notices of proposals for changes or modifications in these rules shall be served or progressed unless all such notices shall be served by and contain the uniform proposal of all the carriers party to these rules or all of the organizations representing employees affected by these rules, and shall be served on all such carriers or all such organizations, as the case may be, for concerted national handling by and between all of such carriers and organizations; provided, that nothing contained herein shall be construed to effect notices for general increases or decreases in basic rates of pay, served for handling on a regional or national basis under the procedures provided by the Railway Labor Act, as amended.

DATED AT CHICAGO, ILLINOIS, THIS 17th DAY OF JULY, 1962.

For the participating carriers listed in Exhibit A

(Signed) GUY W. KNIGHT
Chairman

For the participating carriers listed in Exhibit B

(Signed) J. E. WOLFE
Chairman

For the participating carriers listed in Exhibit C

(Signed) B. B. BRYANT
Chairman

In the

United States Court of Appeals

For the Seventh Circuit

No. 13876 SEPTEMBER TERM, 1962 SEPTEMBER SESSION, 1962

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, *et al.*, *Plaintiffs-Appellants*,

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, a corporation, *et al.*, *Defendants-Appellees.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

November 28, 1962

Before SCHNACKENBERG, CASTLE and SWYGERT, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* A complaint was filed in the District Court by plaintiffs, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and Switchmen's Union of North America, unincorporated labor organizations. It designated as defendants, The Baltimore & Ohio Railroad Company and fifteen other named railroad companies, described as representatives of a class of railroads that is so numerous (more than 200) as to make it impracticable to bring them all before the court.

The complaint sought a judgment declaring unlawful a July 17, 1962 Promulgation of Revision in Work Rules issued by defendants, with respect to defendants' operating employees represented by plaintiffs in collective bargaining duly authorized under the Railway Labor Act, 45

U.S.C.A. § 151, *et seq.* Each of the members of the class represented by defendants is a carrier as defined in § 1 of the Act.[1]

On August 6, 1962 at the conclusion of arguments on a motion of the Carriers to dismiss the complaint, they were permitted by the court and without objection from the Organizations, to withdraw their July 17, 1962 promulgation of rules changes. The Carriers then by letter issued a promulgation of rules changes dated August 6, 1962, which stated that the changes proposed by the Carriers in their notices served under § 6 of the Railway Labor Act (45 U.S.C.A. § 156) on November 2, 1959 would become effective August 16, 1962. The Organizations thereupon amended their complaint to seek similar relief against the later promulgation.

On August 8, 1962, the court, after hearing arguments upon the Carriers' motion to dismiss, entered an order dismissing the amended complaint for failure to state a claim upon which relief could be granted and also denying a motion for a preliminary injunction based thereon. The Organizations appealed from that order and moved for an injunction pending appeal, under 28 U.S.C.A. Rule 62 (c). This injunction was granted on August 10, 1962. In our case No. 13855 we heard arguments on a motion of the Carriers to dissolve and vacate that injunction and on August 15, 1962 we denied the motion. We have this day disposed of that case.

In case No. 13876 there was evidence tending to prove the facts which we now summarize.[2]

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[1] Plaintiffs are sometimes hereinafter referred to as the Organizations and defendants will at times be referred to as the Carriers.

[2] The Organizations in a reply brief submit that, on this appeal, we should not consider certain factual matters appearing from evidence in the record, because they are *irrelevant* on this appeal. They do concede, however, that they do not question that we may consider such material if we choose. The criticism is directed at facts proved by the Carriers before the district court in connection with the Organizations' motion for injunction pending appeal hereinbefore referred to, *supra*.

We do not deem it our duty to close our eyes to relevant facts actually appearing before us in the record. The mere occasion for their proof does not render them irrelevant. We hold that this evidence was relevant, not only on the question of the issuance of an injunction pending appeal, but also on the merits of the case stated in the complaint as amended. Both phases of the case involved the same general subject matter and the identical parties. Cf. *United States* v. *Nudelman*, 7 Cir., 104 F. 2d 549, 552; and also *Wilson* v. *Calculagraph Co.*, 1 Cir., 153 Fed. 961, 962.

This view is in harmony with the liberal provisions of Rule 12 (b) (6) and (c) of the Federal Rules of Civil Procedure, 28 U. S. C. A. Rule 12.

By letter dated February 10, 1959, President Loomis of the Association of American Railroads invited the Organizations to join with the Carriers in seeking the creation of a presidential commission to investigate and make a report on rules about which the Carriers complained, and, more particularly, the impact of the existing rules on the public welfare.

This proposal was rejected by the Organizations on June 4, 1959 in a letter to President Loomis. At the same time they addressed a letter to the Secretary of Labor of the United States, in which it was stated:

> "In the event that an effort is made by Mr. Loomis or the railroad representatives to induce President Eisenhower to appoint a board or commission to investigate what they term 'featherbedding of railroad employees', we hope that you will see fit to suggest to the President that such a board or commission should not be appointed; but that if any investigation is to be made, it should be made along the lines of the Report of Emergency Board No. 109 and take into consideration all phases of the industry, including managerial and financial practices, instead of singling out the operating employees exclusively."[3]

Testimony at the trial supports the factual allegations in a letter by Mr. Loomis to the President of the United States, under date of August 17, 1959, from which we quote:

> "1. For more than 20 years, efforts have been made to negotiate changes in the light of the great technological improvements in the industry, but such efforts have produced no substantial or meaningful relief.
>
> "2. Continued existence of these rules imperils employment in the industry. In the last decade, an average of 1,000 jobs a week has been lost, and an even greater loss is inevitable if the rules are not modernized in keeping with mid-Century operating practice and competitive reality.
>
> "3. Need for a broad study of the wage and rules structure by a special Presidential Commission has been noted by numerous Presidential Emergency Boards, including Board No. 109, which you appointed in 1955. This Board stated clearly: 'There is imperative need in this industry and specifically in the

[3] The term "featherbedding" did not appear in Mr. Loomis' letter.

operating classifications for a thoroughgoing review and modernization of the internal wage structures. Indeed, such a review and rationalization is long overdue.' That Board was immediately concerned with the question of wage differentials between classes of employees but its recommendation constitutes a clear recognition that a broad study of the operating wage and rules structure such as is now sought calls for the appointment of a special Presidential Commission.

* * * * *

"5. The Interstate Commerce Commision, in its landmark report of May 18, 1959, on the railroad passenger deficit problem, called for a public review and revision of working rules for railroad employees.

"6. A study now, in an atmosphere of calmness, can achieve far more effective results than fact-finding by the Presidential Emergency Board provided for by law if the issue threatens a transportation tie-up. As the current three-year moratorium on work-rule changes expires on October 31, 1959, it seems to us most urgent that action be taken in advance of possible crisis and while there is still time for rational decisions in the national interest.

"7. Finally, and perhaps most important, drawing up sound new work standards for the railroad industry has become so complex and challenging that the machinery provided for settling ordinary disputes appears hopelessly inadequate to cope with this task. Only a new, broader-based and determined approach has real hope of coming up with workable and fair solutions.

"For all these primary reasons, Mr. President, railroad management appeals to you to appoint a commission clothed with the objectivity and prestige of your office to examine this problem from the standpoint of the public's interest, and to recommend steps to bring these rules into line with modern conditions to the benefit of all parties concerned."

On August 24, 1959, the Organizations wrote to the President opposing his appointment of a Commission and urging a policy of non-government intervention.

The President, by letter dated September 9, 1959, refused to appoint a commission.

On November 2, 1959, the Carriers served on the repre-

sentatives of the Organizations, pursuant to the provisions of Section 6 of the Railway Labor Act, notices of intended changes in agreements affecting rates of pay, rules and working conditions, which proposed changes are now before this court. These proposed changes in existing agreements contemplate the following:

1. The elimination of existing rules and agreements requiring the use of firemen on other than steam locomotives when used in yard and freight service.
2. The revision of rules governing the basis of pay and the assignments of railroad operating employees used in through freight and straightaway passenger service.
3. The elimination of rules requiring the use of a stipulated number of trainmen in road train crews and a stipulated number of brakemen (helpers) in yard ground crews.
4. The elimination of rules requiring the use of operating employees on motor cars and self-propelled work machines used in inspection, construction, repair and maintenance work, and
5. Various miscellaneous and minor other changes which are not material in these proceedings.

The evidence in the record is to the effect that certain rules contained in existing agreements between the Carriers and their operating employees, during the year 1961, cost the railroad industry $592,062,000 in wage costs for unneeded employees occupying redundant positions, pay for time not worked, compensation that was not commensurate with the value of the services rendered, and the cost of owning and maintaining equipment and facilities that would not be required apart from the restrictions placed upon the efficiency and economy of operations by such rules.

Following service of the Carriers' notices, the proposals therein contained were the subject of conferences on individual railroads, but no agreements were reached. On June 9, 1960, the Carriers requested concerted national handling of their proposals by national bargaining committees designated by the Carriers and the Organizations. Meetings of such national bargaining committees were begun on July 6, 1960, and extended through October 17, 1960. During such national conferences the Organizations contended that the ordinary processes of the Railway Labor Act were not suited to handling the Carriers' pro-

posals, and now urged that the parties agree to refer the Carriers' proposals and such other proposals as either party might desire to submit to "a special wage study commission." This merely produced further correspondence.

On October 17, 1960, an agreement was entered into between the Carriers and the Organizations, under the auspices of the Secretary of Labor, providing for the creation of a Presidential Railroad Commission to investigate the facts and report its findings and recommendations to the President with respect to the controversy between the parties—substantially as proposed by the Organizations. It was further provided in said agreement that the "controversy between the parties" involved the proposals of the Carriers contained in their Section 6 notices of November 2, 1959, and proposals of the Organizations served on the Carriers on September 7, 1960 (both of which were attached to the memorandum) "including any implementing proposal or proposals that may be submitted to the Commission." The memorandum also contained, among others, the following provisions:

"2. * * * The Commission may recommend that any proposal or implementing proposal or any part of any such proposal should be rejected in whole or in part or accepted in whole or in part, or should be accepted as amended or revised by the Commission, as it finds under the evidence to be justified.

* * * * *

"4. * * * The Commission shall also be authorized to use its best efforts, by mediation, to bring about an amicable settlement and agreement between the parties with respect to any issue concerning which the evidence has been heard.

"5. It is the intent of the parties that the proceedings of the Commission, including its mediatory efforts and its report *shall be considered and accepted as in lieu of the mediation and emergency board procedures provided by Sections 5 and 10 of the Railway Labor Act.* (Italics supplied.)

"National conferences between the parties under the Railway Labor Act shall be resumed and expedited, provided no settlement is sooner reached, immediately following the report of the Commission.

> "In the event the National Mediation Board shall proffer its services, or the Board's services be invoked, the parties will jointly request the Board to expedite mediation and as promptly as feasible terminate the Board's services under the Act."

The Organizations thereafter expressed their entire satisfaction with the arrangements stipulated in the agreement, and reasserted their contention "that the work rules problem is 'too difficult' to be resolved under the regular procedures of the Railway Labor Act"; and on November 1, 1960, the Presidential Commission requested by the parties was duly created by Executive Order No. 10891.

The members of the Commission were appointed by the President on December 22, 1960. Five of the members of the Commission were appointed from nominations submitted by the Organizations, five members from nominations submitted by the Carriers, and five public members were appointed without nominations from the parties.

The Commission began its hearings on February 16, 1961, and delivered its report and recommendations to the President on February 28, 1962. There were 15,500 pages of oral testimony and thousands of pages of exhibits received by the Commission. The Commission also made numerous studies independently of the parties, and was assisted in its work by a staff of independent technical experts. Beginning in October, following the fact-gathering stage of the Commission's proceedings, the public members of the Commission sought to narrow the issues and mediate the differences between the parties, but no agreement was reached.

When the report and recommendations of the Commission were delivered to the President on February 28, 1962, he requested the parties to enter into immediate and expeditious collective bargaining over the issues which remained in dispute. National conferences were resumed on April 2, 1962, and continued through May 17, 1962. The Carriers accepted the report and recommendations of the Presidential Commission but its report and recommendations were rejected by the Organizations, and no agreement was reached.

On May 21, 1962, the Organizations made application for the mediation services of the National Mediation Board under Section 5 of the Railway Labor Act, and during the

period May 25 to June 22, 1962, approximately 32 meetings were held with the representatives of the Carriers and the Organizations under the auspices of the chairman of that Board. But the National Mediation Board was unable to bring the parties into agreement.

On June 26, 1962, the National Mediation Board requested and urged that the Carriers and the Organizations enter into an agreement to submit the controversy to arbitration under Section 7 of the Railway Labor Act (45 U.S.C.A. § 157). The Carriers accepted this proffer of arbitration but the Organizations rejected it.

On July 16, 1962, the National Mediation Board advised the parties that in its judgment all practical methods provided for its adjusting the dispute had been exhausted without effecting a settlement, and that the Board had that day terminated its services under the provisions of the Railway Labor Act.

On the next day, the Carriers issued the promulgation of July 17, 1962, *ante* 1, for which the promulgation of August 6, 1962 was substituted, *ante* 2.

1. As amended, the complaint of the Organizations alleges that the Carriers' promulgation of rules of August 6, 1962 violates the Railway Labor Act.

They argue that it is unlawful because, if given effect, it would destroy the basic ingredient upon which the Railway Labor Act and the other federal labor laws depend for success in the elimination of strikes. They define this essential ingredient as knowledge on the part of the employees and their supervisors of the rates of pay and the terms and conditions of employment, the source of which knowledge is the collective bargaining agreement.

In short, they argue that mutual knowledge granted by collective agreement, tends to promote understanding between the employees and the employer and hence reduces the occasions for surprise, for friction, for discontent, for strikes, and for interruptions to the flow of interstate commerce. They cite *Teamsters Union* v. *Oliver*, 358 U.S. 283, 295, *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33 and *Labor Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 266. They point out that collective bargaining in the railroad industry long antedated the enactment of the Act, especially in the operating crafts, and that it was enacted to prevent unilateral determinations by

the carriers. They assert that the promulgation which they now attack would confer on the Carriers just such power of unilateral determination.

In referring to the legislative history of the Act, counsel for the Organizations cite Representative Casey on the floor of the House, when he said, concerning the 1924 bill (65 Cong. Rec. 8923):

> "This bill does not prevent any change in present rates of pay or working conditions, unless the parties agree to a change.
>
> "It does prevent an arbitrary change of wages or rules without notice or opportunity for conference, after which, if an agreement can not be reached, the parties are free to act independently."

The Organizations' cause of action is set forth in the amended complaint as follows:

> "Said second Promulgation is in violation of Section 2, First of the Railway Labor Act in that it announces that effective August 16, 1962 there will be no rules concerning the assignment of employees * * * the minimum number of such assignments to a train or engine, and the classification of such assignments, * * * notwithstanding that for many years it has been the custom, practice, and usage for the collective bargaining agreements * * * to contain such rules * * *."

They rely particularly upon § 2, First and Seventh (45 U.S.C.A. § 152, First and Seventh), and § 6 of the Railway Labor Act as indicating that congress intended to achieve stability in conditions and rules under which railway employees perform their services. Section 2, First, provides:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Seventh, provides:

> "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its em-

ployees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

Section 6 of the Act reads:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board. * * * "

The Supreme Court described the nature of the procedures provided by the Railway Labor Act which we deem relevant here, in *Elgin, Joliet & Eastern Ry. Co.* v. *Burley*, 325 U.S. 711 (1945), where the court said, at 724, that, to induce agreement for the settlement of disputes, the first of three stages required is negotiation, which seeks voluntary action by both sides, in the sense that agreement is sought and cannot be compelled. At 725, the court added:

"Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agree-

ment is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration."

In *Terminal Assn.* v. *Trainmen*, 318 U.S. 1, 6, the court made these observations which are pertinent here:

"The Railway Labor Act, like the National Labor Relations Act [29 U.S.C. § 151 *et seq.*], does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. *The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce.* * * *" (Italics supplied.)

That language suggests this quotation from *Labor Board* v. *American Ins. Co.*, 343 U.S. 395, 402:

"* * * The theory of the Act [National Labor Relations] is that the making of voluntary labor agreements is encouraged by protecting employees' rights to organize for collective bargaining and by imposing on labor and management the mutual obligation to bargain collectively.

"Enforcement of the obligation to bargain collectively is crucial to the statutory scheme. And, as has long been recognized, performance of the duty to bargain requires more than a willingness to enter upon a sterile discussion of union-management differences. Before the enactment of the National Labor Relations Act, it was held that the duty of an employer to bargain collectively required the employer 'to negotiate in good faith with his employees' representatives; to

match their proposals, if unacceptable, with counter-proposals; and to make every reasonable effort to reach an agreement.' * * * "

In *California* v. *Taylor*, 353 U.S. 553, 566, speaking of the Railway Labor Act and its machinery for conciliation, mediation, arbitration and adjustment of disputes, the court said:

"* * * A primary purpose of this machinery of railway government is 'To avoid any interruption to commerce or to the operation of any carrier engaged therein. . . .' * * *"

and also

"* * * Its continuous operation is important to the national flow of commerce."

While in this case both parties recognize that collective bargaining between the Organizations and the Carriers is required by the Railway Labor Act, *Virginia Ry.* v. *Federation*, 300 U.S. 515, we know of no requirement as to precise form or method of such bargaining. For that reason, we conclude that the conferences between the respective parties on individual railroads, following the service on November 2, 1959 of the Carriers' notices, were steps in collective bargaining and that the same is true of the national conferences thereupon held and extending through October 17, 1960. Furthermore it is our opinion that the October 17, 1960 agreement between the Carriers and the Organizations providing for a commission, as hereinbefore set forth, is to be considered as another step in collective bargaining, especially inasmuch as it was expressly agreed that the Commission's mediatory efforts and report should be considered and accepted as in lieu of the somewhat similar procedure provided by the Railway Labor Act.

In reviewing the history of the Carriers' notice of proposed rule changes on November 2, 1959, we find that these proposals were a proper subject of bargaining procedures and at all levels as required by law. Significantly the proffer of arbitration by the National Mediation Board, although accepted by the Carriers, was rejected by the Organizations.[4] While the Organizations participated in the

[4] Although they violated no legal obligation by their refusal. 45 U. S. C. A. § 157, First. Cf. *E. J. & E. Ry. Co.* v. *Brotherhood of Railroad Trainmen*, 302 F. 2d 540, 544

various procedures, their refusal to conform to the results reached by the machinery set up for the purpose of avoiding interruption to commerce reduced their participation in the various steps of negotiation to a mere "sterile discussion" of differences, thus placing the Carriers in a position to exercise their prerogatives to unilaterally put into effect their proposed changes, unless proscribed by the Railroad Labor Act. *Labor Board* v. *American Ins. Co., ante* 11.

We have reached the following conclusions which are applicable to the situation now before us:

(a) There is an area in the administration of a railroad business in which management is free to operate without consultation with the representatives of its employees.

(b) The exercise of management's prerogatives is however subject to the employees' right to bargain collectively in areas covering rates of pay, rules and working conditions of the employees, and on the question whether these areas include the proposed rules before us relating to the operating employees of the railroad.

(c) When, after compliance with the procedural requirements of the Act relating to a proposed change in an existing agreement or the introduction of new terms where no agreement exists, resort to collective bargaining fails without the fault of management, it may thereafter freely exercise its managerial prerogatives in such areas of operation as may have been up to then disputed.

2. While disclaiming any contention that a carrier may not, after complying with the procedural requirements of the Act and failing to reach agreement, change the rules governing the employment relation, the Organizations argue "that unilaterally established rules must be rules and not a 'rule' that there shall be no rules, and that such a 'rule' that there shall be no rules can be established, if at all, only by agreement".

In view of this contention we have examined the contents of the promulgation under attack and we find that a set of rules is contained in three articles entitled:

I—Use of Firemen (Helpers) on Other Than Steam Power

II—Basis of Pay and Assignment of Employees

III—Consist of Crews.

While the length of this opinion does not permit our including a reproduction of the material set forth in the promulgation, we have examined it carefully and find that it is a statement of detailed rules affecting the work and pay of the operating employees of the railroads. It is not in any way subject to the criticism of being a rule that there shall be no rules. Moreover, a rule regulating the work of operating employees on a railroad is by its nature subject to change. It is not like the immutable laws of the Medes and Persians. It is subject to alteration from time to time consistently with the duties of the carriers to the employees and the public which uses their lines.

We conclude that the promulgation of these rules was an act of management within the area in which the Carriers had a right to exercise their prerogatives without consulting or obtaining approval of the representatives of their employees, after the Carriers' required submission to collective bargaining had been frustrated by the Organizations, although they had a legal right to do so.

3. Having reached that conclusion, we are compelled by the course pursued by the Organizations through the various procedures, culminating in their rejection of a proffer of arbitration by the National Mediation Board, to hold that such conduct by the Organizations justified the railroads putting into effect the original rules reannounced in their promulgation of August 6, 1962.

4. The Organizations in this court make a separate attack upon the promulgation of August 6, 1962 by charging that it "is susceptible of the interpretation that it announces the repudiation of 'craft' or 'class' in certain situations, a concept at the very heart of the Railway Labor Act." However, the Carriers call our attention to the fact, which is not denied by the Organizations, that this contention was not raised in the district court, either by argument or in the complaint, as amended. This statement is not questioned by the Organizations in their subsequent reply brief. This contention comes too late now. However, we have given consideration to the point raised and as a result are of the opinion that the Carriers are right in the assertion which they have made, and which we repeat:

> "* * * The promulgation simply gives the carriers the right to determine the number of trainmen that shall be used in road train crews and of that number

how many are to be assistant conductors, ticket collectors, baggagemen and brakemen. All such employees are now represented by the same organizations for purposes of collective bargaining. It likewise gives the carriers the right to use road crews in yard service and yards crews in road service; but the several classes or crafts involved are represented by the same organizations whether they work in road or yard service. It is clear, therefore, that the organizations' real complaint goes to the carriers' assignment of work. The Railway Labor Act does not deal with this subject."

5. We are aware that the Organizations clearly informed the district court in their complaint, as amended, that

> "If the defendants and the carriers represented by them proceed to put into effect the revisions contained in their second Promulgation, the plaintiffs will be forced to resist said revisions by asking those they represent who are employed by the carriers represented by the defendants to withdraw from the service of said carriers until said second Promulgation is cancelled. * * * "

We would like to believe that this unnecessary threat of a strike of such magnitude as to amount to a national transportation paralysis was ill-advised. If we are wrong in that assumption, then we shall remind the persons responsible that they are dealing with railroad properties which are impressed with a public interest, which is paramount to that of all the litigants in this case. Always invisibly present as a nonparticipating party, at the bargaining table and at every stage thereafter, have been the people of the United States, to whose interest that of the Organizations and the Carriers is subordinate. Through their representatives in congress, the people may resort to such governmental power as is necessary to assert their superiority to any private interest, whether corporate or otherwise. The Carriers enjoy a regulated monopoly in their field. The Organizations enjoy an immunity from the restrictions of anti-trust laws. These references suggest only some of the ways in which the people might respond if any party to this suit resorts to an economic force which would jeopardize the nation, more than the opposing litigant in this case.

For the reasons which we have set forth herein, the order of the district court dismissing the complaint, as amended, and denying a motion for a preliminary injunction is affirmed.

ORDER AFFIRMED.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. *v.* BALTIMORE & OHIO RAILROAD CO. ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 730. Decided March 4, 1963.

PER CURIAM.

Certiorari is granted and the judgment of the Court of Appeals is affirmed for the reasons stated in this opinion.

The petitioners, hereinafter referred to as the Organizations, are the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and Switchmen's Union of North America. The respondents, hereinafter referred to as the Carriers, are the Baltimore & Ohio Railroad Company and 15 other named railroad companies, as representatives of a class of more than 200 such companies.

In February of 1959, the Association of American Railroads proposed the creation of a presidential commission to investigate and report on the possibility of a radical overhaul of working rules affecting the Organizations and their members in the light of substantial technological changes in the railroad industry. The basis for this proposal was that ". . . drawing up sound new work standards for the railroad industry has become so complex and challenging that the machinery provided for settling ordinary disputes appears hopelessly inadequate to cope with this task." The Organizations opposed this pro-

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posal, and the President of the United States, in September of 1959, refused to appoint such a commission.

On November 2 of that year, pursuant to § 6 of the Railway Labor Act,[1] the Carriers served on the Organizations notices of intended changes in agreements affecting rates of pay, rules, and working conditions. After conferences both on individual railroads and on a national level had failed to produce agreement concerning the proposed changes, the Organizations and the Carriers in October of 1960, under the auspices of the Secretary of Labor, agreed to the creation of a Presidential Railroad Commission which was to investigate and report on the controversy, and was also authorized "to use its best efforts, by mediation, to bring about an amicable settlement . . . ."[2] The parties agreed that the proceedings

[1] Section 6 of the Railway Labor Act, as amended, 45 U. S. C. § 156 provides:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended changes has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

[2] This authorization echoed the words of § 5 First of the Railway Labor Act, as amended, 45 U. S. C. § 155 First:

"First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

of the Commission were to be accepted ". . . as in lieu of the mediation and emergency board procedures provided by Section 5 and 10 of the Railway Labor Act." The Commission was created by Executive Order 10891 in November of 1960, and its members were appointed in December of that year.

The report and recommendations of the Commission were delivered to the President on February 28, 1962, and national conferences on the issues which remained in dispute resumed on April 2 and continued through May 17. No agreement having been reached, the Organizations on May 21 made application for the mediation services of the National Mediation Board pursuant to § 5 of the Railway Labor Act.[3] Between May 25 and June 22, approximately 32 meetings were held by the Organizations and the Carriers under the auspices of the Chair-

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"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

[3] See note 2, *supra*.

man of that Board, but no agreement was reached. The Organizations having refused to submit the dispute to arbitration, the National Mediation Board on July 16 terminated its services under the provisions of the Railway Labor Act.

On the following day, the Carriers served notice on the Organizations that, as of August 16, 1962, changes in rules, rates of pay, and working conditions would be placed in effect by the Carriers. On July 26, the Organizations brought the present suit seeking a judgment that the proposed rule changes would violate the Railway Labor Act. Subsequently, the Carriers, with leave of court and without objection from the Organizations, withdrew their July 17, 1962 notices, and substituted therefor the notices which had been served on November 2, 1959, to become effective August 16, 1962. The Organizations' complaint was then amended to seek similar relief against those notices.

The District Court found that both parties had exhausted all of the procedures available under the Railway Labor Act, and that they were therefore free to resort to self-help, restricted only by the possibility of the appointment of an Emergency Board by the President under the provisions of § 10 of the Railway Labor Act.[4] It

[4] Section 10 of the Railway Labor Act, as amended, 45 U. S. C. § 160 provides:

"If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly

therefore dismissed the complaint for failure to state a cause of action. The Court of Appeals affirmed.

The petitioners insist that, because the Court of Appeals characterized the Organizations' actions as reducing negotiations to "sterile discussion," its opinion must be read as holding that the right of the Carriers to serve the § 6 notices here at issue somehow arose as a penalty for the Organizations' failure to bargain in good faith. No evidence was introduced below as to the good faith of either of the parties during the lengthy bargaining proceedings prior to the institution of this suit, and there is nothing in the record before us to indicate that either party acted in bad faith. Any contrary implication in the opinion of the Court of Appeals is disapproved.

The Court of Appeals concluded, as had the District Court, that the Railway Labor Act procedures had been exhausted, and that therefore the § 6 notices served by the Carriers were proper. The Court of Appeals correctly rejected the contention of the Organizations that the standards contained in the notices themselves violated the Railway Labor Act. As this Court has pointed out, "[t]he Railway Labor Act . . . does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest . . . is not primarily in the working conditions as such. So far as the Act itself is concerned those conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions.

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the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

. . . . .

"After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce . . . ." *Terminal Assn.* v. *Trainmen*, 318 U. S. 1, 6. See also *Labor Board* v. *American Ins. Co.*, 343 U. S. 395, 402.

The only question presented, therefore, is whether the record before us sustains the finding of both lower courts that the parties have exhausted the procedures provided by the Railway Labor Act for major disputes such as that involved here. As this Court stated in *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 725:

> ". . . [t]he parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration."

The 1960 agreement establishing the Presidential Commission contained a provision purporting to accept the Commission's proceedings as a replacement for the procedures required by the Railway Labor Act. Whether or not such a provision could effectively forestall either party from resorting to the procedures of § 5 of the Act is a question which we need not decide, because the services of the National Mediation Board were in fact specifically invoked by the Organizations' and the Board's procedures were exhausted. Similarly, although arbitration pursuant to § 7 [5] was refused by the Organizations, that

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[5] Section 7 First of the Railway Labor Act, as amended, 45 U. S. C. § 157 First provides:

"First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151–156 of this title, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration

section clearly provides that "the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise."

There is, consequently, no question of bad faith or misconduct on the part of either party justifying the other side's unilateral imposition of changes in working rules. What is clear, rather, is that both parties, having exhausted all of the statutory procedures, are relegated to self-help in adjusting this dispute, subject only to the invocation of the provisions of § 10 providing for the creation of an Emergency Board.[6] And on this basis the judgment below must be, and is

Affirmed.

MR. JUSTICE GOLDBERG took no part in the consideration or decision of this case.

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of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise."

[6] See note 4, *supra.*

The 1960 agreement establishing the Presidential Commission was "approved" by Secretary of Labor Mitchell. It provided that the parties accepted its proceedings ". . . as in lieu of the mediation and emergency board procedures provided by Section 5 and 10 of the Railway Labor Act." In addition, the agreement somewhat inconsistently made provision for the invocation of the services of the National Mediation Board and for national bargaining conferences between the parties immediately following the report of the Commission. Finally, it provided that the agreement was not to be construed as a waiver of any legal right of any of the parties. We have already noted that the parties did in fact exhaust § 5 procedures. Neither party in this Court has contended that the 1960 agreement would affect the applicability of § 10. In any event, it is clear that no private agreement can interfere with the duty of the National Mediation Board or the power which § 10 confers upon the President of the United States.

MEMORANDUM OF AGREEMENT Draft

Crew Consist Issue

The crew consist issue (involving road and yard crews other than engine service) is remanded to the local properties for further negotiations on the understanding that such negotiations will be based on the following Provisional Crew Consist Agreement, and on the further understanding that this Provisional Agreement will be adopted by the parties if the local negotiations do not produce full and complete agreement by August 31, 1963:

Provisional Crew Consist Agreement
(Road and Yard Crews Other
Than Engine Service)

1. Review Procedure.

(a) During the three-month period between September 1, 1963, and November 30, 1963, any carrier or any organization may conduct a survey to determine what, if any, changes in crew consist it considers proper.

(b) Notice of any proposed changes shall be given in writing, with a detailed statement of the reasons for such proposal, on or before November 30, 1963.

(c) There shall be active negotiation regarding any such proposal during the period of sixty days following the receipt of such notice; and these negotiations shall take account of the factors listed in Paragraph 2, following.

2. The following facyors will be taken into account in determining whether a change should be made in existing crew consists:

(a) In general:

i - The crew consist must be adequate to provide reasonable assurance of safe operations.

ii - The crew consist must be adequate to avoid placing an unreasonable burden or workload on the members of the crew.

iii - Account will be taken of whether there have been changes in operating conditions which warrant a change in crew consist, although this factor alone will not be controlling.

iv - Account will be taken of the general practice regarding the consist of crews in comparable situations on the property and in the industry.

(b) In particular, the following factors will be taken into account in determining what crew consist is adequate:

i - In passenger road service:

-- The amount of baggage and storage mail to be handled on and off the train at intermediate stations by the train crew.

-- The number of revenue passenger cars handled in the train and passenger count.

-- The method of handling passenger transportation (tickets).

-- The number of passengers boarding and leaving the train at intermediate stations.

ii - In freight road service:

-- The amount and nature of work to be performed en route.

-- The length of train, in context with the amount and nature of work to be performed en route.

-- The availability or unavailability of communication equipment such as end-to-end train radio, train-to-wayside radio and walkie-talkies.

-- Time limitations applicable to the particular assignment.

iii - In yard service:

-- Volume of work considered in context with applicable service time limitations, and physical characteristics of the areas where switching and industrial work is to be performed.

3. If agreement is reached between the parties as a result of considering the factors listed in Paragraph 2, such agreement shall be put into effect. However, no employee employed on the date this Agreement becomes final and binding shall lose his employment by reason of the provisions of this Agreement provided, that whenever an employee retires, terminates or leaves his employment the carrier need not replace the position so vacated.

The parties will negotiate locally regarding educational scholarships, retraining allowances, and severance options which might properly accelerate attrition.

4. If agreement is not reached under Paragraphs 1, 2, and 3:

(a) The parties shall, on or before February 5, 1964, designate an independent and neutral but experienced third person to assist them in the resolution of disagreements regarding the application of the Paragraph 2 factors to particular cases. If they cannot agree on such a person, they or either of them will so advise the National Mediation Board by February 10, 1964, and the Board will name such a person within five days. The parties will jointly bear the expenses of his services. He will handle all pending crew consist cases on the property.

(b) This third person will conduct such proceedings as are in his judgment required to permit an application of the Paragraph 2 factors to the unresolved case or cases. He will, in his discretion, attempt to obtain agreement between the parties, and will, if this is necessary, make an effective and binding determination regarding such application. These determinations will be made within 60 days following the selection of the third person.

(c) A determination made under the provisions of this Paragraph 4 will be put into effect as provided in Paragraph 3.

5. A similar review procedure of crew consist issues shall be followed at one-year intervals.
6. No change shall be made in crew consists except as provided in this Agreement.

STATEMENT TO THE PARTIES
TO THE PENDING RAILROAD CASE
July 5, 1963

Your negotiations have produced no agreement whatsoever, and you have stated that you have no further proposals to make which offer any prospects of settlement.

Unless this situation changes, it leaves only two possibilities: either a nation-wide shutdown of the railroads, or legislation. You appear to accept the inevitability of these possibilities. I don't. A shutdown would damage the national economy to an extent it cannot afford. Legislation would result inevitably in weakening free collective bargaining. The public interest in avoiding both of these consequences, by the prompt settlement of this dispute on a fair and equitable basis, is immeasurable; and this public interest demands your recognition.

Knowledge of this case makes it completely clear that all parties to it will benefit more from a voluntary settlement now than they will from any settlement which may be reasonably expected to follow either a shutdown or legislation. There will be no gain to any party from pressing it along either of these courses, and there will be incalculable losses.

The development of this case has made clear, furthermore, the basic elements which must eventually be combined to resolve the key

issues in dispute. They have been considered by two boards appointed by the President, and recommendations have been made by these boards for their settlement. Emergency Board No. 154 was unanimous in its recommendations. The negotiations of the past several weeks have disclosed no prospect of settlement along any significantly different lines. The only question left is whether or not responsibility will be assumed by the parties to complete this matter through collective bargaining.

It is of vital importance that every opportunity for peaceful, voluntary settlement be provided. I have accordingly prepared proposals for settling the two disputed issues which have so far been the subject of the most extensive negotiation. These proposals are attached. I urge their acceptance.

Recognizing that under the procedural rules of some of the organizations, a time factor is involved so far as definitive action on these proposals is concerned, I urge the immediate convening of whatever body is required to act on such proposals, subject, where required, to ratification. It is imperative, under the terms of the President's statement to the parties of June 15, 1963, that they be in a position at this time, to take whatever action is necessary to settle this dispute.

Upon acceptance of these proposals, further recommendations will be made for the expeditious settlement of the other disputed issues.

The parties are requested to advise me as to their position regarding these proposals at my office at 4:00 p.m., Sunday, July 7, 1963.

/s/ W. Willard Wirtz
Secretary of Labor

Proposal Regarding

Fireman-Helper Issue

It is proposed that the parties agree

1. To accept the Report and Recommendations of Emergency Board No. 154 as a basis for the establishment of a general rule to be in effect for two years, with the understanding that specific rules will be established regarding:

   (a) Standards of safety and undue burden to govern the maintaining or eliminating of fireman-helper jobs;

   (b) The sequence in which various categories of fireman-helper jobs are to be placed under the established standards;

   (c) Provisions, including provisions for supplemental annuity and employee transfer arrangements, designed to avoid, to the fullest practicable extent, involuntary termination during the period covered by the agreement of fireman-helpers hired before what is determined to be a reasonable date; and

   (d) Provisions for adequate protection or compensation, where this is appropriate, for the job equities of employees transferred or terminated.

2. To negotiate for a period of 20 days in an effort to agree upon specific rules regarding the matters in Paragraph 1, with the assistance of Assistant Secretary James J. Reynolds, with any

issue not resolved in such negotiation to be finally settled by such procedure as he shall prescribe.

3. To establish a Joint Board, composed of one representative of each of the two brotherhoods representing firemen-helpers and two representatives of the carriers, this Board

(a) To undertake a continuing study of the fireman-helper situation and the developing experience under the present agreement; and

(b) To make timely recommendations to the parties, prior to the end of the two-year period of the present agreement, for the subsequent disposition of this matter, which recommendations shall be binding upon the parties; with provision for the adding of three neutral members to this Board for the purpose of making such recommendations if the four members appointed by the parties are not themselves unanimous regarding such recommendations.

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Proposal Regarding
Crew Consist Issue

It is proposed that the parties agree:

1. To accept the recommendations of Emergency Board No. 154 as a basis for the establishment of a general rule to be in effect for two years, with the understanding that specific rules will be established in line with the suggestion previously made by the Secretary of Labor.
2. To negotiate for a period of 20 days in an effort to agree upon specific rules regarding the matters in Paragraph 1, with the assistance of Assistant Secretary James J. Reynolds, with any issue not resolved in such negotiation to be finally settled by such procedure as he shall prescribe.
3. To establish a Joint Board, composed of one representative each of the BRT, ORC, and SUNA and three representatives of the carriers, this Board
   (a) To undertake a continuing study of the crew consist situation and the developing experience under the present agreement; and
   (b) To make timely recommendations to the parties, prior to the end of the two-year period of the present agreement, for the subsequent disposition of this matter, which recommendations shall be binding upon the parties; with provision for the adding of three neutral members to this Board for the purpose of making such recommendations if the four members appointed by the parties are not themselves unanimous regarding such recommendations.

~~The parties are requested to advise me as to their position regarding these proposals at my office at 3:00 p.m., Sunday, July 7, 1963.~~

IMMEDIATE RELEASE July 9, 1963

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT
AS READ TO THE RAILROAD
CARRIERS AND OPERATING
BROTHERHOODS, THE WHITE
HOUSE, JULY 9, 1963

I have been advised by the Secretary of Labor and the parties to the current . 'lroad controversy that this dispute remains unresolved; that the carriers have served notice that they will put certain rules changes into operation, effective as of midnight tomorrow night; and that the unions have served notice that they will strike if this is done. In short, this Nation faces widespread economic disruption, dislocation and distress unless this dispute is settled by other means.

I continue to believe that this controversy can and should be settled by voluntary and peaceful processes.

It is essential that the particular issues in dispute be resolved. It is equally important that the freedom of collective bargaining be preserved.

It is obvious that the parties cannot reach agreement on the specific terms of settlement before the deadline which has now been set for midnight tomorrow. They can, however, agree voluntarily on a procedure for reconciling these differences.

Yesterday the Brotherhood of Railway Clerks, largest of the unions representing rail and airline employees, entered into a voluntary agreement with Pan American World Airways to submit to binding arbitration all disputes which cannot be settled by the full processes of negotiation, convinced that they can resort to "voluntary referral to a system of impartial adjudication rather than economic warfare without weakening collective bargaining."

The operating brotherhoods and the railroad carriers are equally free to avail themselves of similar voluntary settlement procedures. Such procedures are not substitutes for collective bargaining; they are part of such bargaining, to be used when the possibilities of negotiation have been exhausted.

It must be made clear, in this connection, that there has been no proposal for arbitration at any point in this case by any government representative or board except after every effort has been made to get the parties to agree on specific settlement terms. These arbitration proposals have not reflected government's desire or design; they have resulted solely from private failure or refusal or inability to agree.

I consider negotiated agreement infinitely superior to arbitration. But where private parties can not negotiate successfully, arbitration is infintely superior to a shut-down over a period of a vital segment of the nation's economy.

I am convinced that an agreement now, in this case, to follow this course will be in the interest of the parties. I urge strongly that it be followed in the public interest -- not only in maintaining continued rail transport but in preserving the freedom of private decision-making.

It is of vital importance that this most critical of all labor controversies end with the parties' agreement upon the procedure to be followed in resolving this dispute. The future of collective bargaining may well depend upon this being achieved.

I accordingly propose to the parties that they agree to submit all issues in dispute between them for final settlement to Associate Justice of the Supreme Court Arthur J. Goldberg, with the understanding that this matter will be completed before the convening of the next term of the Court. Mr. Justice Goldberg has previously made clear his intention to disqualify himself from any decisions coming before the Court which may arise out of this dispute. Although the use of a member of the High Court for additional duties has been and should be reserved for extraordinary situations -- such as the Nuremberg Trials and the Pearl Harbor inquiry -- I believe this situation is extraordinary, in terms of its impact on collective bargaining, its relationship to the whole problem of technological unemployment and the potential effects of a nationwide rail strike on our economy, our defense effort and our citizenry.

I urge the adoption of this proposal by both parties, with the understanding that the rules change and strike notices be immediately withdrawn.

I request the parties to advise me by 10:00 a.m., tomorrow, July 10, of their response to this proposal.

FOR IMMEDIATE RELEASE JULY 10, 1963

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

THE WHITE HOUSE

STATEMENT OF THE PRESIDENT

In view of the unique and all-important nature of this labor-management dispute, I am asking a special six-man subcommittee of the Labor-Management Advisory Committee, to be composed of Joseph Block, George Harrison, George Meany, Stuart Saunders, Secretary of Labor as Chairman, the Secretary of Commerce as Vice Chairman, to undertake immediately, in full consultation with the parties, a comprehensive review and report limited to the facts and issues in this case and the respective positions of the parties.

This report will be transmitted to the Congress on July 22, 1963, with appropriate legislative recommendations from me which would be designed to dispose of the issues in this particular case.

After consultation with the Congressional leaders, I am asking the parties to withhold any rules change or strike notice until July 29 to permit appropriate consideration of this matter, with the understanding that no further such request for a continuance will be made by this Administration.

The railroads and the unions have accepted this proposal, and there will be no strike this evening.

# # # # # # # #

PROPOSALS OF THE CARRIERS TO REVISE THE SCHEDULE AGREEMENTS, 1937 to 1956

Subject matter of proposals served on one or more organizations	Movements						
	1937	1941	1945	1947	1949 -'50	1954 -'55	1956
Use of firemen on other than steam power							X
Revision of basic day and overtime rules	X				X		X
Mileage and earnings limitations	X	X					
Single time basis of pay	X	X	X	X	X		X
Coupling and uncoupling air hose		X	X	X	X		
Bleeding cars			X	X	X		
Terminal delay rules		X					
More than one class of service					X		
Side trips and lap backs					X		
Deadheading, attending examinations, etc.			X	X			
Elimination of daily, weekly and monthly guarantees	X				X		X
Modify local freight guarantee	X	X					
Application of overtime to guarantees			X	X			
Eliminate higher than standard rates	X	X			X		
Interdivisional runs			X	X	X		
Reduction in crews and mileage	X		X	X	X		
Automatic release			X	X			
Running through terminals					X		
Extra passenger runs			X				
Short turn-around freight rule			X	X			
Switching by road crews	X	X	X	X	X		
Road work by yard crews		X			X		
Designation of switching limits			X	X	X		
Establishing and abolishing yard service			X			X	
Consist of crews		X	X	X			X
Handling light engines		X	X	X	X		
Pilot service	X						
Work on succeeding shifts and work by one or more members of crew		X	X	X	X		
Use of engine crews to handle switches, etc.						X	
Use of member of yard crew as herder, etc.		X					
Manning self-propelled machines		X	X	X		X	
Manning motor cars	X		X	X			
Flagging on maintenance and construction work		X	X	X			

PROPOSALS OF THE CARRIERS TO REVISE THE SCHEDULE AGREEMENTS, 1937 to 1956

Subject matter of proposals served on one or more organizations	Movements						
	1937	1941	1945	1947	1949 -'50	1954 -'55	1956
Yard starting time	X	X	X	X	X		
Time limit on claims	X	X	X	X			
Limitation of runaround payments	X	X	X	X			
Reducing pay for time lost		X	X	X			
Work to be done by supervisors			X	X			
Promotion to yardmaster			X	X			
Pooling cabooses				X	X		
Pay for Sundays and holidays					X		
Rest and relief day rules					X		
Sick leave					X		
Rate of pay - held-away-from-home terminal		X	X	X	X		
Uniform rules for road switchers	X						
Annulment of yard shifts		X			X		
Vacation rules						X	
Penalties not provided by rule							
Assignments of yard masters and stewards						X	
Work on split tricks					X		
Time of reporting for duty					X		
Interchanging cars						X	
Handling freight on passenger trains		X	X	X	X	X	
Crew unit rules			X	X			
Double header and train limit rules		X	X	X	X		
Basis for computing compensation		X					
New work rules					X		

Agreement Between

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
and
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Grand Central Depot,
New York, Jan. 26th, 1875

The established rate of pay for locomotive engineers of this company as agreed upon this day, to take effect on the 1st day of February, 1875, is as follows:

1. For all passenger and freight engineers 3½ cents per mile run, actual mileage, excepting when the run is under 100 miles, for which $3.50 per day will be paid.

2. For all engineers of switch and work trains $3.50 per day, including Sunday, and when required to report for duty.

3. It is understood that the number of engineers are to be kept down to the lowest possible number necessary to perform the work of the company, and in case engineers are dropped from the service of the company by reason of falling off in business, the youngest engineers in the service of the company are to be taken first.

4. This abolishes all pay for Sundays when not actually running, and all lay over, shop, and extra days.

5. When engines in actual service become disabled and are put in the shop for repairs, then the master mechanic shall furnish engineers running such engines with engines to take their place.

6. The time and mileage of engineers shall be computed and carried out separately for each day's work.

7. This shall take the place of all existing agreements.

Wm. H. Vanderbilt,
President.

J. P. Chambers,
For Vice President.

M. J. Rickett,
For Engineers.

RESULTS OF OPERATIONS - CLASS I LINE-HAUL RAILROADS

Item	1955	1956	1957	1958	1959	1960	1961	1962
1. Operating revenues (millions)	$10 106	$10 551	$10 491	$9 565	$ 9 825	$9 514	$9 189	$9 440
2. Net railway operating income (millions)	1 128	1 068	922	762	748	584	538	726
3. Rate of return on net investment (per cent)	4.22	3.95	3.36	2.76	2.72	2.13	1.97	2.74
4. Net railway operating income per dollar of gross (cents)	11.2	10.1	8.8	8.0	7.6	6.1	5.9	7.7
5. Net income (millions)	927	876	737	602	578	445	382	571
6. Compensation received by railroad employees a (millions)	5 306	5 721	5 792	5 324	5 435	5 359	5 109	5 199
7. Average midmonth count of employees (thousands)	1 058	1 043	986	841	815	780	717	700

a Includes total payroll, payroll taxes, and estimated health and welfare benefits.

Source: Reports of Interstate Commerce Commission

RATIO OF NET EARNINGS TO TOTAL OPERATING REVENUES

Railroads of Class I in the United States

1925 to 1961

Year	Total operating revenues (millions)	Net railway operating income	
		Amount (millions)	Cents per dollar of gross
	1	2	3
1925	$6 122.5	$1 121.1	18.3¢
1926	6 382.9	1 213.1	19.0
1927	6 136.3	1 068.0	17.4
1928	6 111.7	1 172.9	19.2
1929	6 279.5	1 251.7	19.9
Avg.1925-29	6 206.6	1 165.3	18.8
Avg.1930-34	3 792.7	531.6	14.0
Avg.1935-39	3 846.2	543.8	14.1
1940	4 296.6	682.1	15.9
1941	5 346.7	998.3	18.7
1942	7 465.8	1 484.5	19.9
1943	9 054.7	1 359.8	15.0
1944	9 436.8	1 106.3	11.7
1945	8 902.2	852.1	9.6
1946	7 627.7	620.1	8.1
1947	8 684.9	780.7	9.0
1948	9 671.7	1 002.0	10.4
1949	8 580.1	686.5	8.0
1950	9 473.1	1 039.7	11.0
1951	10 390.6	942.5	9.1
1952	10 580.8	1 078.2	10.2
1953	10 664.2	1 109.4	10.4
1954	9 370.8	874.0	9.3
1955	10 106.3	1 128.0	11.2
1956	10 550.9	1 068.2	10.1
1957	10 491.4	922.3	8.8
1958	9 564.6	762.3	8.0
1959	9 825.1	747.7	7.6
1960	9 514.3	584.0	6.1
1961	9 189.1	537.8	5.9
1962	9 439.9	725.6	7.7

Source: Interstate Commerce Commission reports.

EFFECT OF PRICE INFLATION ON RAILROAD NET INCOME

Railroads of Class I in the United States

1925 to 1961

Year	Net income as reported (millions)	Consumer Price Index (1929=100)	Railroad construction index (1929=100)	Net income adjusted to 1929 dollars a (millions)
	1	2	3	4
1925	$700.8	102.3	100.6	$691.0
1926	809.1	103.1	101.2	792.2
1927	672.9	101.2	101.2	664.9
1928	786.8	100.0	98.8	791.1
1929	896.8	100.0	100.0	896.8
Avg.1925-29	773.3	101.3	100.4	766.9
Avg.1930-34	99.3	83.8	86.4	118.5
Avg.1935-39	48.0	81.6	88.9	58.8
1940	188.9	81.7	92.8	226.8
1941	499.8	85.8	99.4	532.4
1942	901.7	95.1	113.9	826.8
1943	873.5	101.0	120.5	759.6
1944	667.2	102.6	121.1	587.6
1945	450.4	104.9	125.9	396.9
1946	287.1	113.8	139.8	243.7
1947	478.9	130.3	155.4	337.5
1948	698.1	140.2	170.5	446.1
1949	438.2	138.9	171.1	290.2
1950	783.6	140.2	173.5	494.4
1951	693.2	151.4	184.3	414.8
1952	825.4	154.8	189.8	475.1
1953	903.2	156.1	196.4	510.1
1954	681.7	156.6	197.6	394.6
1955	927.1	156.2	202.4	523.4
1956	876.3	158.5	218.1	476.2
1957	737.4	164.0	229.5	395.5
1958	601.7	168.5	234.9	318.7
1959	577.7	170.0	239.8	310.0
1960	444.6	172.6	240.4	247.9
1961	382.4	174.4	e 240.4	215.4

a Portion paid out in dividends adjusted on basis on Consumer Price Index. Retained earnings adjusted on basis of Railroad Construction Index.

e Estimated.

Source: Interstate Commerce Commission and Bureau of Labor Statistics, U. S. Department of Labor.

INVESTMENT, NET RAILWAY OPERATING INCOME, RATE OF RETURN, AND NET INCOME

Railroads of Class I in the United States

1955, 1957, 1959 and 1961

Railroad	Average net investment year 1961 (thousands)	Net railway operating income (thousands)				Rate of return on net investment*				Net income (thousands)			
		1955	1957	1959	1961	1955	1957	1959	1961	1955	1957	1959	1961
NEW ENGLAND REGION:													
Bangor & Aroostook	$54 046	$3 015	$2 961	$1 434	$1 356	5.73%	5.24%	2.54%	2.51%	$1 156	$1 051	$380	$464
Boston & Maine	242 333	6 894	5 519	1 219	2 669	2.71	2.03	0.46	1.10	3 323	764	Def 3 765	Def 3 280
Canadian National Lines in New England	[a]	Def 1 121	[a]	[a]	[a]	Def	[a]	[a]	[a]	**	[a]	[a]	[a]
Canadian Pacific (Lines in Maine)	12 827	88	262	1 193	835	0.62	1.90	8.91	6.51	-	-	-	-
Canadian Pacific (Lines in Vermont)	[a]	Def 997	[a]	[a]	[a]	Def	[a]	[a]	[a]	-	[a]	[a]	[a]
Central Vermont	25 251	327	Def 478	Def 311	Def 775	1.25	Def	Def	Def	Def 496	Def 1 291	Def 915	Def 1 390
Maine Central	62 783	2 289	2 145	1 989	1 646	3.59	3.23	3.10	2.62	1 114	915	807	549
New York Connecting	21 893	763	181	436	330	3.21	0.78	1.92	1.51	91	Def 445	Def 59	3
New York, New Haven & Hartford	402 952	5 732	343	Def 9 215	Def 19 577	1.34	0.08	Def	Def	4 247	Def 2 364	Def 10 816	Def 19 550
Rutland	22 082	246	267	Def 3	Def 324	1.14	1.15	Def	Def	272	299	46	Def 246
Total - New England Region	844 167	17 236	11 200	Def 3 258	Def 13 840	1.91	1.23	Def	Def	9 707	Def 1 071	Def 14 322	Def 23 448
GREAT LAKES REGION:													
Ann Arbor	20 345	1 006	470	Def 169	456	4.48	1.97	Def	2.24	847	416	Def 336	230
Cambria & Indiana	[a]	1 165	[a]	[a]	[a]	17.63	[a]	[a]	[a]	1 196	[a]	[a]	[a]
Delaware & Hudson	123 707	10 664	8 858	6 361	2 559	7.85	6.43	4.81	2.07	8 855	7 596	5 386	1 751
Detroit & Mackinac	[a]	303	[a]	[a]	[a]	3.92	[a]	[a]	[a]	306	[a]	[a]	[a]
Detroit & Toledo Shore Line	13 331	1 125	667	585	449	8.11	4.50	3.97	3.37	1 048	581	515	367
Erie-Lackawanna	637 600	[b]	[b]	[b]	Def 17 242	[b]	[b]	[b]	Def	[b]	[b]	[b]	Def 26 489
Erie	[b]	15 068	10 815	415	[b]	3.76	2.68	0.11	[a][b]	7 892	3 601	Def 5 685	[a][b]
Delaware, Lackawanna & Western	115 732	2 629	3 451	Def 673	[b]	0.95	1.21	Def	[a][b]	Def 986	430	Def 4 335	[a][b]
Grand Trunk Western	6 359	4 689	Def 5 125	Def 6 024	Def 5 099	4.02	Def	Def	Def	793	Def 9 453	Def 11 772	Def 11 646
Lehigh & Hudson River	19 702	295	201	86	114	4.19	2.99	1.32	1.80	313	218	103	127
Lehigh & New England	184 562	2 086	1 758	799 [c]	Def 638	8.81	6.71	3.18	Def	1 952	1 533	670 [c]	Def 519
Lehigh Valley	28 963	8 254	946	Def 1 488	Def 6 415	3.83	0.47	Def	Def	5 599	Def 1 188	Def 2 402	Def 8 320
Monongahela	[a]	482	Def 84	726	820	1.54	Def	2.42	2.83	Def 5	Def 536	276	442
Montour	1 848 780	490	[a]	[a]	[a]	4.90	[a]	[a]	[a]	462	[a]	[a]	[a]
New York Central	394 760	73 897	29 532	24 014	Def 493	3.72	1.49	1.26	Def	52 284	8 423	8 403	Def 12 549
New York, Chicago & St. Louis	[d]	21 872	19 693	18 053	12 591	5.68	4.93	4.59	3.19	16 687	14 706	13 289	8 706
New York, Ontario & Western	13 121	Def 1 834	[d]	[d]	[d]	Def	[d]	[d]	[d]	Def 3 291	[d]	[d]	[d]
New York, Susquehanna & Western	169 339	295	Def 6	Def 486	Def 313	1.69	Def	Def	Def	Def 131	Def 388	Def 588	Def 394
Pittsburgh & Lake Erie	[a]	13 163	9 880	8 473	9 757	9.81	7.00	5.03	5.76	11 805	9 652	8 128	8 829
Pittsburg & Shawmut	52 267	907	[a]	[a]	[a]	6.29	[a]	[a]	[a]	508	[a]	[a]	[a]
Pittsburgh & West Virginia	274 801	1 299	1 518	289	Def 1 364	2.41	2.71	0.53	Def	874	1 070	Def 149	Def 1 816
Wabash		17 365	10 981	5 787	6 701	7.06	4.15	2.13	2.44	15 845	9 183	3 782	5 064
Total - Great Lakes Region	3 903 369	175 420	93 555	56 748	1 882	4.23	2.28	1.41	0.05	122 853	45 824	15 285	Def 36 197
CENTRAL EASTERN REGION:													
Akron, Canton & Youngstown	12 909	766	477	366	192	5.52	3.50	2.80	1.49	643	362	283	92
Baltimore & Ohio	1 040 978	38 899	37 918	28 851	Def 17 411	3.68	3.50	2.60	Def	23 919	24 131	14 809	Def 31 347
Bessemer & Lake Erie	55 116	6 808	6 648	2 935	1 698	9.63	9.71	4.35	3.08	6 510	6 861	2 842	2 137

Central R.R. of New Jersey	144 608	4 566	3 383	343	Def 4 099	2.83	2.16	0.23	Def	811	144	Def 2 872	Def 3 142
Chicago & Eastern Illinois	96 419	4 031	3 580	2 514	1 372	4.68	3.99	2.68	1.42	1 916	1 212	359	300
Chicago & Illinois Midland	14 871	1 027	1 505	1 247	1 146	6.37	9.72	8.28	7.71	898	1 265	1 103	1 090
Detroit, Toledo & Ironton	63 346	6 635	5 506	4 217	3 119	10.90	8.55	6.54	4.92	6 287	5 163	3 901	2 802
Elgin, Joliet & Eastern	60 415	6 874	4 363	2 390	2 343	10.84	6.68	3.65	3.88	6 953	4 579	2 690	2 840
Illinois Terminal	27 096	815	989	34	82	1.60	2.78	0.12	0.30	83	225	Def 341	Def 181
Long Island	146 929	1 401	2 118	1 113	995	0.93	1.32	0.72	0.68	636	1 239	334	587
Missouri-Illinois	14 905	1 429	1 296	1 247	695	10.25	8.78	8.07	4.66	1 403	1 396	1 327	800
Monon	44 129	2 101	1 225	1 102	Def 50	4.30	2.56	2.42	Def	1 392	546	6	Def 904
Pennsylvania	2 304 676	68 967	43 154	29 835	17 833	2.84	1.78	1.26	0.77	41 184	19 057	7 267	3 516
Penna.-Reading Seashore Lines	33 492	Def 3 458	Def 4 058	Def 3 372	Def 5 319	Def	Def	Def	Def	Def 4 359	Def 5 008	Def 6 275	Def 6 358
Reading Company	373 981	15 113	16 402	7 683	Def 1 291	3.89	4.06	1.98	Def	10 897	10 298	1 848	Def 6 257
Staten Island Rapid Transit	16 102	Def 624	Def 1 038	Def 1 002	Def 1 148	Def	Def	Def	Def	Def 1 139	Def 1 036	Def 1 110	Def 864
Western Maryland	208 841	10 489	12 198	8 458	5 548	6.69	7.60	4.05	2.66	8 225	8 637	5 843	2 403
Total - Central Eastern Region	4 658 813	165 639	135 666	85 161	3 707	3.45	2.80	1.77	0.12	106 259	79 221	35 014	Def 35 487
Total - Eastern District	9 406 349	358 295	240 421	138 651	Def 6 251	3.63	2.44	1.43	Def	238 819	123 974	32 977	Def 96 [illegible]
POCAHONTAS REGION:													
Atlantic & Danville	a	14	a	a	a	0.22	a	a	a	Def 64	a	a	a
Chesapeake & Ohio	915 415	68 909	78 155	54 940	37 793	8.01	8.10	5.82	4.13	57 983	67 567	45 687	29 [illegible]
Norfolk & Western	876 300	37 841	44 676	66 164	65 484	6.94	7.12	7.56	7.47	38 630	44 336	60 242	60 [illegible]
Virginian	c	13 413	19 076	c	c	7.81	10.02	c	c	10 588	17 097	c	c
Richmond, Fredericksburg & Potomac	47 471	2 982	2 981	2 397	2 558	5.87	6.01	4.88	5.39	3 332	3 466	3 065	3 [illegible]
Total - Pocahontas Region	1 839 186	123 159	144 888	123 501	105 835	7.54	7.91	6.61	5.75	110 469	132 666	109 [illegible]	93 423
SOUTHERN REGION:													
Alabama Great Southern	50 771	3 231	1 767	728	Def 356	6.57	3.51	1.40	Def	4 238	2 730	1 718	253
Alabama, Tennessee & Northern	7 817	f	f	182	130	f	f	2.34	1.66	f	f	161	118
Atlanta & St. Andrews Bay	6 235	820	896	621	460	14.83	14.36	9.69	7.39	767	889	621	473
Atlanta & West Point	6 938	180	Def 44	106	Def 1	2.44	Def	1.50	Def	225	9	170	80
Atlantic Coast Line	457 073	12 903	9 206	9 486	10 811	3.01	2.08	2.20	2.37	13 851	10 388	11 841	9 915
Charleston & Western Carolina	g	939	817	502	g	4.78	4.15	2.63	g	584	506	257	g
Carolina & Northwestern	12 054	i	555	583	513	i	4.86	4.50	4.26	i	150	77	80
Central of Georgia	123 494	4 867	4 907	3 988	1 691	4.14	3.87	3.19	1.37	3 184	3 204	2 314	486
Cincinnati, New Orleans & Tex. Pac.	117 509	9 370	8 414	7 185	4 374	9.45	8.24	6.50	3.72	7 720	6 532	4 192	2 133
Clinchfield	85 073	7 299	8 276	7 771	6 649	8.28	9.45	8.87	7.82	-	-	-	-
Columbus & Greenville	a	46	a	a	a	0.68	a	a	a	72	a	a	a
Florida East Coast	95 186	5 182	2 857	Def 142	645	5.54	2.96	Def	0.68	908	Def 1 435	Def 4 757	Def 1 388
Georgia	19 101	706	677	406	299	3.25	3.32	2.02	1.56	-	-	-	-
Georgia & Florida	21 790	227	83	Def 29	Def 275	1.06	0.39	Def	Def	Def 814	Def 985	Def 482	Def 502
Georgia Southern & Florida	17 127	294	886	544	Def 396	1.72	4.92	3.16	Def	Def 24	580	328	Def 619
Gulf, Mobile & Ohio	193 433	9 831	5 086	5 544	4 770	4.54	2.44	2.75	2.47	6 854	3 508	2 738	2 600
Illinois Central	631 666	32 230	20 833	18 789	16 880	5.42	3.36	3.00	2.67	26 542	15 744	15 [illegible]	12 215
Louisville & Nashville	745 639	29 015	23 829	19 046	23 652	5.31	3.49	2.71	3.17	24 638	19 167	13 [illegible]	14 135
Nashville, Chattanooga & St. Louis	h	2 904	h	h	h	2.31	h	h	h	1 742	h	h	h
Mississippi Central	a	265	a	a	a	2.60	a	a	a	187	a	a	a
New Orleans & Northeastern	41 883	2 434	1 777	1 243	914	7.88	5.85	3.22	2.18	2 509	[illegible]	1 188	68
Norfolk Southern	29 241	742	663	434	191	2.85	2.48	1.56	0.65	817	531	221	Def 89
Piedmont & Northern	17 886	j	798	775	635	j	4.30	4.24	3.55	j	832	882	824
Savannah & Atlanta	9 735	j	627	467	409	j	6.44	4.88	4.20	j	[illegible]	467	354
Seaboard Air Line	417 006	24 363	21 343	19 078	14 584	6.58	5.33	4.65	3.50	21 538	18 [illegible]	1 [illegible]	12 184
Southern	721 639	48 430	40 531	39 692	35 771	6.95	5.65	5.54	4.96	37 993	34 067	33 [illegible]	29 431
Tennessee Central	9 811	558	197	311	186	4.80	1.72	2.91	1.90	242	Def 9	81	Def [illegible]
Western Ry. of Alabama	9 417	267	275	237	106	2.60	2.72	2.38	1.12	25	25	21	46
Total - Southern Region	3 847 524	197 103	155 256	137 547	122 641	5.45	4.14	3.63	3.19	153 805	117 665	101 814	86 [illegible]

Railroad	Average net investment year 1961 (thousands)	Net railway operating income (thousands)				Rate of return on net investment*				Net income (thousands)			
		1955	1957	1959	1961	1955	1957	1959	1961	1955	1957	1959	1961
NORTHWESTERN REGION:													
Chicago & Northwestern	$752 291	$7 667	$5 456	$3 124	$10 746	1.29%	0.79%	0.45%	1.43%	$2 386	Def $48	Def $2 897	$3 030
Chicago, St. Paul, Minn. & Omaha	j	Def 763	j	j	j	Def	j	j	j	Def 3 110	j	j	j
Litchfield & Madison	j	j	Def 31	j	j	j	Def	j	j	j	Def 77	j	j
Minneapolis & St. Louis	j	1 896	2 061	1 269	j	2.98	3.25	1.92	j	1 784	1 888	1 113	j
Chicago Great Western	100 607	4 234	4 526	3 550	1 796	4.00	4.25	3.38	1.78	3 244	3 552	2 728	1 151
Chicago, Milwaukee, St. Paul & Pacific	782 972	15 780	16 418	13 651	14 113	2.06	2.10	1.74	1.80	9 532	7 916	5 875	5 328
Duluth, Missabe & Iron Range	125 142	10 221	8 638	132	1 536	9.28	7.56	0.12	1.23	9 826	8 526	Def 729	1 366
Duluth, Winnipeg & Pacific	10 941	250	540	25	Def 299	2.49	5.20	0.23	Def	**	**	-	-
Great Northern	699 417	30 154	24 854	24 210	16 762	4.38	3.52	3.45	2.40	32 064	26 644	26 558	18 632
Green Bay & Western	9 827	424	288	254	253	4.62	2.92	2.73	2.57	444	242	191	104
Lake Superior & Ishpeming	14 222	1 493	1 148	283	551	14.12	8.99	1.99	3.88	1 490	1 155	212	466
Minneapolis, Northfield & Southern	7 989	j	675	565	242	j	8.84	6.73	3.03	j	680	592	244
Northern Pacific	739 801	19 224	17 401	14 569	8 586	2.81	2.42	2.00	1.16	19 144	21 126	23 781	16 313
Soo Line R.R.	m 242 797	m	m	m	3 722	n	m	n	1.53	m	m	m	664
Duluth, South Shore & Atlantic	m	762	209	110	m	3.22	0.88	0.48	m	447	-	1	m
Minneapolis, St. Paul & S.S. Marie	m	3 462	2 769	1 618	m	2.62	1.96	1.14	m	2 512	1 653	596	m
Wisconsin Central	m	3 499	1 850	859	m	4.52	2.26	1.02	m	1 748	190	Def 948	m
Spokane International	10 336	752	708	484	697	7.28	6.62	4.78	6.74	601	519	419	958
Spokane, Portland & Seattle	141 372	5 924	3 529	4 872	1 906	4.48	2.61	3.38	1.35	2 742	504	2 598	Def 89
Total - Northwestern Region	3 637 914	104 969	91 039	69 595	60 611	2.99	2.52	1.91	1.67	84 854	74 470	60 091	48 369
CENTRAL WESTERN REGION:													
Atchison, Topeka & Santa Fe	1 434 825	73 773	56 310	59 557	49 116	5.60	4.06	4.34	3.42	77 565	61 942	65 786	54 830
Chicago, Burlington & Quincy	752 839	26 490	21 001	19 442	18 918	3.74	2.87	2.59	2.51	22 158	17 183	17 696	14 409
Chicago, Rock Island & Pacific	543 338	20 980	14 324	11 844	10 191	3.90	2.65	2.20	1.88	16 988	9 704	8 290	6 516
Colorado & Southern	82 568	1 413	1 185	784	917	1.86	1.51	0.96	1.11	1 497	1 209	860	791
Colorado & Wyoming	9 324	629	737	477	694	6.89	8.35	5.11	7.44	597	716	484	695
Denver & Rio Grande Western	217 504	14 954	15 974	11 196	11 127	7.04	7.58	5.21	5.12	11 789	13 302	8 694	8 804
Fort Worth & Denver	60 983	1 967	1 529	1 105	961	3.05	2.42	1.76	1.58	879	591	219	192
Northwestern Pacific	57 660	Def 17	532	1 272	973	Def	0.92	2.20	1.69	15	548	1 251	1 200
Pacific Electric	46 123	f	f	Def 374	Def 561	f	f	Def	Def	f	f	1 911	1 492
Sacramento Northern	n	5	Def 169	n	n	0.04	Def	n	n	Def 767	Def 88	n	n
Southern Pacific	1 839 982	49 525	45 030	46 118	53 103	3.55	2.99	3.00	2.89	53 097	43 564	50 002	54 552
Texas & New Orleans	o	7 761	8 805	7 043	o	2.58	2.89	2.38	o	5 299	6 579	5 389	o
Toledo, Peoria & Western	10 095	760	867	885	570	7.72	8.53	8.49	5.64	767	896	886	597
Union Pacific	1 319 224	43 740	38 818	36 957	31 814	3.61	3.11	2.89	2.41	79 227	78 248	64 841	67 670
Utah	a	115	a	a	a	1.61	a	a	a	116	a	a	a
Western Pacific	174 979	7 308	7 130	5 858	5 917	4.52	4.19	3.41	3.38	4 606	4 362	4 089	5 007
Total - Central Western Region	6 549 444	249 403	212 073	202 164	183 739	4.10	3.35	3.14	2.81	273 833	238 756	230 598	216 766

SOUTHWESTERN REGION:													
Kansas City Southern	154 720	8 011	7 995	8 052	7 025	5.27	5.12	5.18	4.54	6 505	6 416	6 775	5 711
Kansas, Oklahoma & Gulf	21 245	802	812	888	450	3.60	3.71	4.13	2.12	682	714	787	402
Louisiana & Arkansas	60 909	6 038	4 014	3 385	2 254	8.58	5.81	5.17	3.70	5 635	3 955	3 634	2 933
Midland Valley	a	237	a	a	a	1.23	a	a	1.07	260	a	a	a
Missouri-Kansas-Texas	264 376	6 361	2 290	3 782	2 839	2.25	0.81	1.38		3 111	Def - 855	Def 2 985	139
Missouri Pacific	784 235	27 504	35 756	33 199	30 965	4.32	4.69	4.29	3.95	13 618	18 447	15 559	9 884
Beaumont, Sour Lake & Western	p	144	p	p	p	1.37	p	p	p	355	p	p	p
International-Great Northern	p	3 761	p	p	p	4.87	p	p	p	1 375	p	p	p
New Orleans, Texas & Mexico	p	3 060	p	p	p	11.81	p	p	p	1 040	p	p	p
St. Louis, Brownsville & Mexico	p	3 138	p	p	p	6.17	p	p	p	2 282	p	p	p
San Antonio, Uvalde & Gulf	p	Def 609	p	p	p	Def	p	p	p	Def 814	p	p	p
Oklahoma City-Ada-Atoka	a	118	a	a	a	3.65	a	a	a	123	a	a	a
Quanah, Acme & Pacific	5 059	Q	Q	Q	779	Q	Q	Q	15.39	-	Q	Q	595
St. Louis-San Francisco	358 991	14 215	11 265	11 629	10 936	4.23	3.12	3.23	3.05	9 989	5 426	5 028	3 341
St. Louis, San Francisco & Texas	7 185	203	178	891	764	3.07	2.67	13.11	10.63	177	161	876	762
St. Louis Southwestern Lines	178 837	10 686	9 732	10 062	10 413	7.75	6.28	6.09	5.82	10 579	9 464	9 483	9 515
Texas & Northern	a	1 027	a	a	a	65.78	a	a	a	1 027	a	a	a
Texas & Pacific	213 139	10 164	6 281	4 198	4 744	4.64	2.87	1.94	2.23	9 280	5 899	3 480	2 721
Texas Mexican	10 618	208	334	133	27	1.93	3.12	1.24	0.25	118	273	108	13
Total - Southwestern Region	2 059 314	95 068	78 657	76 219	71 195	4.59	3.85	3.72	3.46	65 342	49 900	42 745	36 015
Total - Western District	12 246 672	449 440	381 769	347 978	315 546	3.86	3.18	2.87	2.58	424 029	363 126	333 434	301 150
Total - United States	27 339 731	1 127 997	922 334	747 677	537 771	4.22	3.36	2.72	1.97	927 122	737 431	577 719	382 444

* Rate of return based on average net investment at beginning and end of year.
** Less than $500.
a Reclassified to Class II railroad, January 1, 1956.
b Delaware, Lackawanna & Western merged with Erie to form Erie-Lackawanna, October 17, 1960.
c Lehigh & New England abandoned November 1, 1961. Figures shown for 1961 are for 10 months ended October 31, 1961.
d New York, Ontario & Western abandoned March 29, 1957.
e Virginian merged with Norfolk & Western, December 1, 1959.
f Reclassified to Class I railroad on January 1, 1958.
g Charleston & Western Carolina merged with Atlantic Coast Line, January 1, 1960.
h Nashville, Chattanooga & St. Louis merged with Louisville & Nashville, August 31, 1957.
i Reclassified to Class I railroad, January 1, 1956.
j Chicago, St. Paul, Minneapolis & Omaha leased to Chicago & North Western, January 1, 1957.
k Litchfield & Madison merged with Chicago & North Western, January 2, 1958.
l Minneapolis & St. Louis merged with Chicago & North Western, November 1, 1960.
m Minneapolis, St. Paul & Sault Ste. Marie; Duluth, South Shore & Atlantic; and Wisconsin Central merged to form Soo Line Railroad, January 1, 1961.
n Reclassified to Class II railroad, January 1, 1958.
o Texas & New Orleans merged with Southern Pacific, November 1, 1961.
p Gulf Coast Lines and International Great Northern merged with Missouri Pacific, March 1, 1956.
Q Reclassified to Class I railroad on January 1, 1961.

Source: Reports of the railroads to the Interstate Commerce Commission.

RESULTS OF OPERATIONS - CLASS I LINE-HAUL RAILWAYS

Period	Ratio of operating income to operating revenues	Ratio of net income to operating revenues	Rate of return on net investment a	Rate of return on net assets b
(1)	(2)	(3)	(4)	(5)
Avg. 1925-29	18.8	12.5	5.11	6.5
Avg. 1930-34	14.0	2.6	2.24	0.8
Avg. 1935-39	14.1	1.2	2.35	0.4
Avg. 1940-44	15.8	8.8	4.82	5.6
Avg. 1945-49	9.1	5.4	3.42	3.6
Avg. 1950-54	10.0	7.7	3.93	5.1
1955	11.2	9.2	4.22	5.7
1956	10.1	8.3	3.95	5.3
1957	8.8	7.0	3.36	4.4
1958	8.0	6.3	2.76	3.8
1959	7.6	5.9	2.72	3.4
1960	6.1	4.7	2.13	2.6
1961	5.9	4.2	1.97	2.2
1962	7.7	6.0	2.74	3.3

a Net investment represents investment in railroad property used in transportation service after accrued depreciation plus material and supplies and cash. (Average at beginning and end of year)

b Net assets represent shareholders' equity at beginning of each year

Source: Computed from reports of Interstate Commerce Commission

For rate of return on net assets see
First National City Bank of New York Monthly Letter

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EVIDENCES OF DEFERRED MAINTENANCE

Item	Averages 1953-57	1961	Percent Change
1. Average hourly rates of pay of railroad employees (126 classes)	$2.00	$2.63	↗31.5
2. Railroad construction cost index (1929 = 100)	211	241	↗14.2
3. Maintenance of equipment expense (millions)	$1861	$1683	- 9.6
4. Maintenance of way and structures expense (millions)	$1432	$1118	-21.9
5. Average number of bad order freight cars	90532	155249	↗71.5
6. Ratio of bad order freight cars to total ownership	5.2%	9.5%	↗82.7
7. Average cost of freight car repairs per car owned	$321	$270	-15.9
8. Cost of freight car repairs per car mile	2.24¢	1.97¢	-12.1
9. Cost of locomotive repairs per locomotive unit mile	25.8¢	22.8¢	-11.6
10. Cross ties laid in replacement (millions)	24.6	12.0	-51.2
11. Tons of rail laid in replacement (thousands)	963	288	-70.1

CAPITAL EXPENDITURES FOR ADDITIONS AND BETTERMENTS,
NET RAILWAY OPERATING INCOME, AND NET INCOME

Class I Railroads 1930 - 1961

Year	Capital expenditures			Net railway operating income (millions)	Net income (millions)
	Equipment (millions)	Roadway & structures (millions)	Total (millions)		
(1)	(2)	(3)	(4)	(5)	(6)
Average 1930-34	$ 109.0	$ 234.6	$ 343.6	$ 531.6	$ 99.4
Average 1935-39	162.0	135.2	297.2	543.8	48.0
Average 1940-44	314.6	189.7	504.3	1 126.2	626.2
1945	314.8	248.2	563.0	852.1	450.4
1946	319.0	242.9	561.9	620.1	287.1
1947	565.9	298.8	864.7	780.7	478.9
1948	917.4	356.0	1 273.4	1 002.0	698.1
1949	981.3	330.9	1 312.2	686.5	438.2
1950	779.4	286.4	1 065.8	1 039.7	783.6
1951	1 050.8	363.1	1 413.9	942.5	693.2
1952	935.1	405.8	1 340.9	1 078.2	825.4
1953	857.9	401.9	1 259.8	1 109.4	903.2
1954	498.7	321.5	820.2	874.0	681.7
1955	568.2	341.3	909.5	1 128.0	927.1
1956	821.4	406.5	1 227.9	1 068.2	876.3
1957	1 007.7	387.0	1 394.7	922.3	737.4
1958	479.7	258.3	738.0	762.3	601.7
1959	567.5	250.5	818.0	747.7	577.7
1960	633.5	285.7	919.2	584.0	444.6
1961	427.1	219.3	646.4	537.8	382.4
1962	593.5	239.6	833.1	725.6	571.0

Source: Interstate Commerce Commission reports, except 1930-1949 from reports of railroads to Bureau of Railway Economics, AAR.

GROSS CAPITAL EXPENDITURES IN CONSTANT DOLLARS

Class I Railroads 1921 to 1961

Year	Gross capital expenditures	Railroad construction index (1929 = 100)	Expenditures adjusted to 1929 dollars
(1)	(2)	(3)	(4)
1921	$ 557 035 000	106.6	$522 500 000
1922	429 273 000	95.8	448 100 000
1923	1 059 149 000	106.6	993 600 000
1924	874 744 000	104.2	839 500 000
Average 1925-29	787 043 000	100.4	783 900 000
Average 1930-34	343 675 000	86.4	380 000 000
Average 1935-39	297 210 000	88.9	332 300 000
Average 1940-44	504 292 000	109.5	463 600 000
1945	562 980 000	125.9	447 200 000
1946	561 957 000	139.8	402 000 000
1947	864 689 000	155.4	556 400 000
1948	1 273 484 000	170.5	746 900 000
1949	1 312 200 000	171.1	766 900 000
1950	1 065 842 000	173.5	614 300 000
1951	1 413 995 000	184.3	767 200 000
1952	1 340 912 000	189.8	706 500 000
1953	1 259 797 000	196.4	641 400 000
1954	820 246 000	197.6	415 100 000
1955	909 521 000	202.4	449 400 000
1956	1 227 857 000	218.1	563 000 000
1957	1 394 705 000	229.5	607 700 000
1958	738 036 000	234.9	314 200 000
1959	818 002 000	239.8	341 100 000
1960	919 154 000	240.4	382 300 000
1961	646 452 000	239.2	270 256 000

Source: Interstate Commerce Commission reports, except col. 1, 1925-1949 from reports of railroads to Bureau of Railway Economics, AAR.

DISTRIBUTION OF INTERCITY FREIGHT TRAFFIC IN THE UNITED STATES*

1929 and 1939 to 1961

Year	Railroads a	Motor trucks b	Great Lakes c	Rivers and canals	Oil pipe lines	Air carriers	Total
	1	2	3	4	5	6	7
1929	74.9%	3.3%	16.0%	1.4%	4.4%	-	100.0%
1939	62.4	9.7	14.0	3.7	10.2	-	100.0
1940	61.3	10.0	15.5	3.6	9.6	-	100.0
1941	62.4	10.5	14.7	3.5	8.9	-	100.0
1942	69.5	6.5	13.1	2.8	8.1	-	100.0
1943	71.3	5.5	11.2	2.5	9.5	-	100.0
1944	68.6	5.4	10.9	2.9	12.2	-	100.0
1945	67.3	6.5	11.0	2.9	12.3	-	100.0
1946	66.6	9.1	10.6	3.1	10.6	-	100.0
1947	65.3	10.0	11.0	3.4	10.3	-	100.0
1948	61.9	11.1	11.4	d 4.1	11.5	-	100.0
1949	58.4	13.8	10.6	4.6	12.6	-	100.0
1950	56.2	16.3	10.5	4.9	12.1	-	100.0
1951	55.6	16.0	10.2	d 5.3	12.9	-	100.0
1952	54.5	17.0	9.1	5.6	13.8	-	100.0
1953	51.0	18.1	10.6	d 6.2	14.1	-	100.0
1954	49.6	19.0	8.1	d 7.4	15.9	-	100.0
1955	49.5	17.5	9.3	7.7	16.0	-	100.0
1956	48.4	18.4	8.2	8.0	17.0	-	100.0
1957	46.9	19.0	8.8	8.7	16.7	-	100.0
1958	46.0	21.0	6.6	9.0	17.4	-	100.0
1959	45.0	22.3	6.2	9.0	17.5	-	100.0
1960	43.7	22.4	7.5	9.1	17.2	.1%	100.0
1961e	43.2	22.6	6.8	9.5	17.8	.1	100.0
**	42.9						

* Includes intercity freight traffic of private as well as contract and common carriers. Excludes coastwise and intercoastal traffic.

a Includes mail and express, and includes electric railways.

b Includes movements between cities and between rural areas and urban areas. Rural-to-rural movements, city deliveries and city movements to or from contiguous suburbs are omitted.

c Includes Canadian and overseas traffic on the Great Lakes.

d New coverage accounted for increases over the preceding year of 2.6 billion ton-miles in 1948; 4.3 billion in 1951; 6.4 billion in 1953; and 6.7 billion in 1954. Thus, the table indicates a greater increase than has actually occurred.

e Estimated. ** Revised

Source: Interstate Commerce Commission, Corps of Engineers, and A.A.R.

DISTRIBUTION OF INTERCITY PASSENGER TRAFFIC IN THE UNITED STATES*

1929 and 1939 to 1961

Year	Railroads a	Busses	Air carriers	Inland waterways b	Total
	1	2	3	4	5
1929	77.0%	15.4%	.1%	7.5%	100.0%
1939	67.7	26.0	2.0	4.3	100.0
1940	67.1	26.5	2.8	3.6	100.0
1941	65.2	27.9	3.0	3.9	100.0
1942	69.5	26.4	1.8	2.3	100.0
1943	75.5	21.5	1.4	1.6	100.0
1944	75.8	20.8	1.7	1.7	100.0
1945	74.3	21.4	2.7	1.6	100.0
1946	65.7	26.1	5.9	2.3	100.0
1947	59.5	30.4	7.8	2.3	100.0
1948	57.3	32.2	8.2	2.3	100.0
1949	48.6	e 37.8	e 11.7	1.9	100.0
1950	46.3	37.7	14.3	1.7	100.0
1951	45.9	35.6	16.8	1.7	100.0
1952	43.5	36.0	18.8	1.8	100.0
1953	40.5	35.7	21.9	1.9	100.0
1954	38.6	33.6	25.6	2.2	100.0
1955	36.5	32.4	28.9	2.2	100.0
1956	35.8	31.0	31.5	2.3	100.0
1957	33.7	e 27.6	36.2	2.5	100.0
1958	31.5	27.7	38.0	2.8	e 100.0
1959	29.0	26.3	42.1	2.6	100.0
1960	27.8	25.7	43.8	2.7	100.0
1961a	26.8	26.1	44.9	2.2	100.0

* Passenger-miles in private automobiles not included.
** 26.6

a Includes electric railways.
b Great Lakes, rivers and canals.
c New series. Bus data beginning with 1949 expanded to include urban portions of intercity trips. Bus series from 1957 and private auto estimates from 1958 reduced on basis of new data developed by Bureau of Public Roads. Air carrier series beginning with 1949 expanded to include nonscheduled commercial carriers and private planes.
e Estimated. ** Revised

Source: Interstate Commerce Commission, Civil Aeronautics Board, Corps of Engineers, and A.A.R.

RATIOS OF EMPLOYEE COMPENSATION TO SALES
(Including Wages and Supplements)

Industry	1939	1960	Increase	Percent Increase
(1)	(2)	(3)	(4)	(5)
Railroads	48.4	57.6	9.2	19.0 %
Other transportation	51.4	55.1	3.7	7.2
Communications and public utilities	30.5	29.3	D 1.2	D 3.9
Manufacturing	23.3	26.4	3.1	13.3
Wholesale and retail trade	20.7	20.6	D 0.1	D 0.5
Mining	44.1	42.6	D 1.5	D 3.4

Source: Ratios for 1939 computed from U. S. Dept. of Commerce, "National Income Supplement to the Survey of Current Business," 1954 edition, pp. 179 and 205, except manufacturing sales taken from "Industry Survey," issue of September 1951, p. 13.
Ratios for 1960 computed from "Survey of Current Business," July 1961, table 48, p. 26 and table 62, p. 30.

CHARACTERISTICS OF THE ASSIGNMENTS OF RAILROAD OPERATING EMPLOYEES

Class I Line-Haul Railroads - Years 1922 to 1926 and 1961

Classes of employees	Average hours on duty per trip or tour of duty			Average hours paid for per trip or tour of duty			Average straight time hours on duty per basic day		
	Average 1922-26	1961	Percent decrease	Average 1922-26	1961	Percent increase	Average 1922-26	1961	Percent decrease
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Passenger engineers & motormen	6.4	4.8	25.0%	8.2	9.3	13.4%	4' 22"	3' 07"	28.5%
Passenger firemen	6.3	4.5	28.6	8.1	8.8	8.6	4' 18"	2' 57"	31.3
Passenger conductors	7.6	6.1	19.7	10.3	12.1	17.5	5' 38"	4' 04"	27.7
Passenger brakemen	7.6	5.8	23.7	10.5	12.2	16.2	5' 34"	3' 51"	31.0
Through freight engineers	9.7	5.8	40.2	11.1	12.4	11.7	7' 13"	4' 30"	37.7
Through freight firemen	9.6	5.8	39.6	11.0	12.2	10.9	7' 13"	4' 29"	37.9
Through freight conductors	9.7	5.8	40.2	11.2	12.6	12.5	7' 08"	4' 26"	37.8
Through freight brakemen	9.7	5.7	41.2	11.2	12.5	11.6	7' 08"	4' 23"	38.6
Local freight engineers	10.6	9.2	13.2	11.1	12.2	9.9	7' 43"	6' 44"	12.7
Local freight firemen	10.5	9.2	12.4	11.1	12.0	8.1	7' 42"	6' 43"	12.8
Local freight conductors	10.3	9.1	11.7	10.9	12.1	11.0	7' 40"	6' 40"	13.1
Local freight brakemen	10.4	9.1	12.5	10.9	12.0	10.1	7' 42"	6' 39"	13.7
Freight engineers (2 classes)	10.0	7.3	27.0	11.1	12.3	10.8	7' 22"	5' 27"	26.0
Freight firemen (2 classes)	9.9	7.3	26.3	11.0	12.1	10.0	7' 22"	5' 26"	26.2
Freight conductors (2 classes)	9.9	7.3	26.3	11.1	12.4	11.7	7' 20"	5' 25"	26.1
Freight brakemen (2 classes)	10.0	7.3	27.0	11.1	12.3	10.8	7' 22"	5' 22"	27.0
Yard engineers	8.6	8.3	3.5	9.0	9.4	4.4			
Yard firemen	8.5	8.3	2.4	8.9	9.3	4.5			
Yard conductors	8.5	8.1	4.7	8.8	9.4	6.8			
Yard brakemen	8.5	8.2	3.5	8.9	9.4	5.6			

Source: Computed from I.C.C. Statement M-300.

CAUSES OF INEQUITIES IN THE RAILROAD WAGE STRUCTURE

Classes of Employees	Increases in average earnings per hour worked, 1936 to 1958, produced by -									Total increases per hour worked 1936 to 1958
	Increases in pro-rata hourly rates	Less than 8 hour basic day rules	Overtime rule	Constructive allowance rules	Speed basis of pay	Graduated rates of pay rules	Pay for time not worked	40 hour work week adjustments	Miscellaneous rules changes	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Passenger engineers	$1.480	$ .672	- $ .037	.379	$2.020	$ .147	-	-	-	$4.661
Passenger firemen	1.395	.708	- .028	.285	1.957	.124	-	-	-	4.441
Passenger conductors	1.545	.070	- .004	.261	1.633	-	-	-	-	3.505
Passenger brakemen	1.492	.081	- .002	.220	1.754	-	-	-	-	3.545
Through freight engineers	1.530	-	.013	.491	1.559	.449	-	-	-	4.042
Through freight firemen	1.395	-	.016	.373	1.349	.402	-	-	-	3.535
Through freight conductors	1.483	-	.018	.460	1.529	.184	-	-	-	3.674
Through freight brakemen	1.445	-	.016	.391	1.443	.190	-	-	-	3.485
Local freight engineers	1.534	-	.102	.295	.374	.186	-	-	-	2.491
Local freight firemen	1.395	-	.091	.213	.320	.183	-	-	-	2.202
Local freight conductors	1.483	-	.096	.253	.368	.125	-	-	-	2.325
Local freight brakemen	1.445	-	.099	.209	.332	.121	-	-	-	2.206
Yard engineers	1.496	-	.064	.216	-	.023	$ .059	$ .372	$ .104	2.334
Yard firemen	1.505	-	.059	.148	-	.024	.055	.308	.027	2.126
Yard foremen	1.436	-	.053	.222	-	-	.062	.360	.146	2.279
Yard helpers	1.405	-	.058	.166	-	-	.055	.328	.084	2.096
Nonoperating employees	1.467	-	.029	-	-	-	.149	.258	-	1.903

Mr. WOLFE. Thank you, Mr. Hollmann. I am ready for questioning, Mr. Chairman. My voice will improve, I am sure.

The CHAIRMAN. That does conclude the statement you wish to present?

Mr. WOLFE. It does; yes, sir.

The CHAIRMAN. I believe permission was given to you at the outset to include your entire statement in the record and I included the appendix.

Did you mean the appendix to be included for the record, too?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. Mr. Hallmann, do you intend to participate in the answers?

Mr. HALLMANN. No; I do not.

The CHAIRMAN. I suppose it might be appropriate at the outset, then, to suggest that Mr. Loomis might want to move back up to the witness table.

To avoid further misunderstanding, if there be any, we will proceed today if it is agreeable with members of the committee, as we did yesterday, giving each one approximately 5 minutes on the first round and then on the second round there will be more opportunity for extended questions if found necessary or desirable by the members.

Mr. Staggers?

Mr. STAGGERS. You have in your statement here talked about different things, Mr. Wolfe, on wages and rules and other things, elimination of jobs and so forth.

Did the organizations, as you call them, ever suggest that subcommittees be established on these various matters to work out any agreements on them?

Mr. WOLFE. I think that at one time we did establish certain subcommittees; yes, sir.

Mr. STAGGERS. On these different issues?

Mr. WOLFE. On some of them; yes, sir.

Mr. STAGGERS. Was there ever any report from those subcommittees back to your full committee?

Mr. WOLFE. I think that was when we were in mediation.

Mr. STAGGERS. I do not understand. Did the subcommittee report back on these questions?

Mr. WOLFE. Certain proposals were made, were exchanged by the subcommittees, and reports were made to the full committee; yes, sir.

Mr. STAGGERS. I was wondering. You have wages, rules, procedures and elimination of jobs. Were any of these proposals worked out that were agreeable to both sides?

Mr. WOLFE. There was no agreement reached; no, sir.

Mr. STAGGERS. On none of these subjects?

Mr. WOLFE. No, sir.

Mr. STAGGERS. I will take the rest of my 5 minutes in a few minutes and pass now.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. Mr. Wolfe, I am sorry I was not here when Mr. Loomis made his statement earlier this morning, but I understand you are supporting the present resolution without dissent.

Mr. WOLFE. Yes, sir.

Mr. BENNETT. Do you take the same position that the Secretary of Labor has taken, that this is not compulsory arbitration in the sense that we usually regard that term?

Mr. WOLFE. Yes, I do.

Mr. BENNETT. What do you call it? What kind of phraseology would you apply to this procedure?

Mr. WOLFE. That the Interstate Commerce Commission under the resolution would be permitted, if the parties failed to agree, to establish interim rules for a limited period, and during that period——

Mr. BENNETT. I understand. I did not want you to describe what the bill does because I read that myself.

I wanted to get your viewpoint on the compulsory part. Is this some form of compulsory arbitration or is it not?

Mr. WOLFE. In my opinion it is not.

Mr. BENNETT. Is it compulsory? Are the provisions of this resolution compulsory as far as either of the parties are concerned?

Mr. WOLFE. For that period stated in the resolution the interim rules would be binding upon both parties.

Mr. BENNETT. And they would be compulsory, would they, or do you hate that word "compulsory"?

Mr. WOLFE. I have never disliked it. Some of my friends have.

Mr. BENNETT. You hesitate to use it in this context of this bill.

Mr. WOLFE. I do not view it as appropriate insofar as this bill is concerned.

Mr. BENNETT. The bill prohibits the unions from striking, does it not?

Mr. WOLFE. Yes, it does.

Mr. BENNETT. Is that not compulsion?

Mr. WOLFE. To the extent that they are not permitted to strike I don't consider that compulsion. It is prohibition, perhaps.

Mr. BENNETT. It prohibits the railroads from putting into effect their rules?

Mr. WOLFE. Yes, it does.

Mr. BENNETT. Without the consent of the Commission. Is that not compulsion. I do not want to go into this on a light vein, Mr. Wolfe. I think it is a serious matter. Everybody talks about being opposed to compulsory arbitration and yet we have something before the committee which has all of the earmarks of being compulsory in all of its aspects as far as the parties to this agreement are concerned.

Yet the Secretary of Labor said yesterday he did not think it was compulsory arbitration. All he would say is that it is binding. I find it difficult to see the difference between something that is binding and something that is compulsory on the parties.

It is just a play on words, as I see it. But you do not agree?

Mr. WOLFE. No, sir; I do not.

Mr. BENNETT. Are you for the bill in its entirety?

Mr. WOLFE. I think Mr. Loomis indicated certain exceptions.

Mr. BENNETT. I am asking you. Are you for the bill in its entirety or not?

Mr. WOLFE. I think there are at least two things that deserve very profound consideration. One of them, as explained by Mr. Loomis, and which I am sure he will explain more thoroughly if you desire, is that we believe that 120 days is sufficient and it should be definite and it should not be left open for undue delay.

I think Mr. Loomis will clarify this. The other deals with the application of section 5(2)(f) as related to the recommendations of the Presidential Railroad Commission and Emergency Board No. 154.

Mr. BENNETT. This dispute has been in the hands of labor experts in the Government for the last couple of years, who have given it careful study and made every effort possible to bring the parties together and resolve the controversy and have been unable to do so.

Since the labor experts have not been able to solve this problem, the people most informed and most experienced in this area have not been able to cope with it satisfactorily, you favor a proposal of handing the whole issue and giving final authority to a group of amateurs in this field; namely, the Interstate Commerce Commission.

Is that a fair statement of your position?

Mr. WOLFE. Not the characterization of amateurs, I don't think. They have had a great deal of experience.

Mr. BENNETT. Do you characterize the members of the Interstate Commerce Commission as experts in the field of labor negotiations and the settlement of labor disputes?

Mr. WOLFE. I think as far as the railroad industry is concerned, they have a greater background of knowledge than perhaps could be found in any other group.

Mr. BENNETT. But until this bill was presented and unless this bill is passed, the Interstate Commerce Commission has never heretofore had any authority to settle any labor dispute; is that not correct?

Mr. WOLFE. They have studied the rules and so forth.

Mr. BENNETT. I know they studied them. Is it not true that they have never had authority to settle a labor dispute before?

Mr. WOLFE. They make recommendations.

Mr. BENNETT. Is it true that they have never heretofore had authority to settle a labor dispute before?

Mr. WOLFE. I do not recall that they have had authority.

Mr. BENNETT. That is all, Mr. Chairman.

Mr. STAGGERS (presiding). Mr. Rogers of Texas.

Mr. ROGERS of Texas. Mr. Loomis, I am sorry I missed your full statement but I gather that your position is that you feel that 120 days should be a fixed and definite term and that there should not be an open end behind it.

Mr. LOOMIS. That is correct, Mr. Rogers.

Mr. ROGERS of Texas. Now with regard to 5(2)(f), I presume that your discussion on that was directed toward the possible conflict that could come if there was literal application of the language of 5(2)(f) of the Interstate Commerce Act to the situation we are dealing with here?

Mr. LOOMIS. Of the second sentence of section 5(2)(f); yes, sir.

Mr. ROGERS of Texas. In the President's recommendations in his message on page 6 of Document No. 142, I notice that he uses the language beginning at a semicolon down there—

> and it shall, with the advice of the Secretary of Labor, require fair and equitable arrangements to protect the interests of the affected employees, giving proper weight to the protection provisions of section 5(2)(f) of the Interstate Commerce Act and those recommended by the Presidential Commission and Emergency Board reports.

You do feel, Mr. Loomis, that that language standing alone is sufficient to indicate that the President also recognized the conflicts that

you are talking about and did not intend for literal application of 5(2)(f)?

Mr. LOOMIS. That would be my interpretation of the President's message; yes, sir.

Mr. ROGERS of Texas. But you feel that ought to be spelled out either in an amendment to this act or in the congressional history of these hearings so that there would be no misunderstanding for further dispute later on?

Mr. LOOMIS. That is correct. The misunderstanding occurs because of the use in the actual joint resolution of the words "as provided in section 5(2)(f) of the Interstate Commerce Act," whereas the President's message is "giving proper weight to the protective provisions of section 5(2)(f) and those recommended by the Presidential Commission and the Emergency Board."

Mr. ROGERS of Texas. Thank you very much, Mr. Wolfe, I notice your statement is quite lengthy and it is very difficult to go over it very quickly, but I notice that everything that was pointed out in that statement with regard to these matters that were discussed, there was an ending that said that the carriers agreed to these recommendations, the organizations rejected them.

My question is this: Were there any of the matters that were in dispute that were agreed upon between the carriers and the organizations in these discussions?

Mr. WOLFE. No, sir; there were not.

Mr. ROGERS of Texas. Were there any of the matters that came up for dispute that had been the subject of recommendation by the Presidential Commission that the organizations agreed to and the carriers rejected?

Mr. WOLFE. No, sir; there were not.

Mr. ROGERS of Texas. Were there any of the recommendations that the organizations agreed to?

Mr. WOLFE. They did not.

Mr. ROGERS of Texas. Were there any that the carriers rejected?

Mr. WOLFE. No, sir; we did not reject anything. We accepted everything recommended whether it would be favorable or unfavorable to our interests.

Mr. ROGERS of Texas. Thank you, sir. Thank you, Mr. Chairman; that is all I have.

The CHAIRMAN (presiding). Mr. Springer?

Mr. SPRINGER. Mr. Wolfe, in your capacity here today, whom do you represent?

Mr. WOLFE. The railroads that are involved in this proceeding and from which we have power of attorney and have had since before November 2, 1959.

Mr. SPRINGER. Are your interests parallel with Mr. Loomis? Your interests are identical?

Mr. WOLFE. Our interests are identical.

Mr. SPRINGER. Let me ask this to be sure for the record. House Joint Resolution 565 has your approval, except as to the two matters raised and objected to be Mr. Loomis. Is that a correct statement?

Mr. WOLFE. I think that is correct.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Thank you, Mr. Chairman.

I would like to clarify just one statement made by Mr. Wolfe just now in answer to Mr. Rogers' statement.

I have in my hands the report to the President on the railroad rules dispute dated July 19, 1963, and on page 7, the last paragraph:

> In the postemergency board negotiations, the brotherhoods made an offer to agree to a reduction in certain categories of jobs (on an attrition basis), which they estimated would include 5,500 jobs of 32,000 firemen jobs in freightyard services.

This is a quote from the report.

> The carriers rejected this offer for various reasons.

I just want to get the record clear that there was one rejection by the carriers.

Mr. WOLFE. There were a great many rejections.

Mr. FRIEDEL. By the carriers?

Mr. WOLFE. There were a great many rejections by both sides. In fact, there was nothing but rejections of offers made by the parties to each other.

My answer to Mr. Rogers pertained to and was circumscribed to the recommendations of these various investigating bodies.

Mr. FRIEDEL. I just wanted to get that clear.

Mr. ROGERS of Texas. Would the gentleman yield for one observation?

Mr. FRIEDEL. Yes.

Mr. ROGERS of Texas. Mr. Chairman, the gentleman from Maryland referred to the remarks of the gentleman from Texas as a statement. I want to correct it on the record that it was a question I asked.

The CHAIRMAN. Without objection, the record will be so corrected.

Mr. FRIEDEL. Mr. Wolfe, I have in my hand the Association of American Railroads statement where they claim that one of the major issues before the committee is the question of firemen on freight diesels where there is a third man in the cab.

Do they have three men in a freight engine cab?

Mr. WOLFE. In the freight service there is the locomotive engineer, the locomotive fireman, and the forward brakeman.

Mr. FRIEDEL. I am glad to clear that up. I thought it was two.

Mr. WOLFE. In passenger service there are only two. Even the high-speed trains attaining speeds of up to a hundred miles an hour or more.

Mr. FRIEDEL. There will be no change in firemen as far as passenger trains are concerned?

Mr. WOLFE. No, sir; there will not.

The CHAIRMAN. Before you read that would the gentleman permit an interruption?

Mr. FRIEDEL. Yes.

The CHAIRMAN. You say in freight trains there is an engineer, a fireman, and what kind of brakeman?

Mr. WOLFE. The forward brakeman or head brakeman, a member of the train crew.

The CHAIRMAN. In States with full crew laws what is the situation?

Mr. WOLFE. In some States there are more than a conductor and two brakemen as required by statute. This extra brakeman, the third man, could be in the cab of the diesel or he could be in the caboose.

The CHAIRMAN. In other words, then, to carry out to the full extent the question of Mr. Friedel, in some instances at times you have the engineer, the fireman, and two brakemen in the cab of the engine?

Mr. WOLFE. That is quite possible where there is a full crew requirement or an excess crew requirement.

Mr. FRIEDEL. In the States that have that law, would there be any changes in the States laws as far as full crews are concerned under your agreement?

Mr. WOLFE. I think Mr. Wirtz indicated yesterday that that was not the intention of this resolution.

Mr. FRIEDEL. To proceed further, and I do not want to take too much time, firemen will be retained on passenger trains. The Commission recommended that 27,000 firemen now in road and freight or yard service with 10 or more years' seniority be kept on with full job rights until retirement, death, or attrition ends the job.

The 13,000 firemen with less than 10 years' seniority would be phased on 3 to 12 months' notices receiving dismissal pay ranging up to $13,380 while keeping their outside income.

I would like to know where you get the figure of $13,380.

Mr. WOLFE. That is 60 percent of average earnings for a period of 36 months.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

I think you have given a full and complete detailed statement of all that has transpired in the past, with this exception: You have not stated whether this particular proposal had previous consideration in your consultations either with the commissions that were appointed or with the parties at issue.

Mr. WOLFE. The proposal of the resolution, Mr. Younger?

Mr. YOUNGER. Yes, sir.

Mr. WOLFE. No, sir. It came as a complete surprise to me. I knew nothing about it until the day it was presented to the Congress.

Mr. YOUNGER. In all of the negotiations it never occurred to you or to the representatives of the carriers that the ICC would be the logical Commission to handle this very knotty problem?

Mr. WOLFE. We made no such suggestion, and so far as I am concerned, I did not consider it; no, sir.

Mr. YOUNGER. Is that true of you, Mr. Loomis, also?

Mr. LOOMIS. Yes, sir.

Mr. YOUNGER. Are you familiar with the voluntary compulsory arbitration agreement which the Pan American World Airways has with the Brotherhood of Railway and Steamship Clerks and Freight Handlers?

Mr. WOLFE. I know something about it.

Mr. YOUNGER. I believe the Southern Pacific has a similar agreement with this brotherhood recently agreed upon.

Mr. WOLFE. The Southern Pacific did recently enter into an agreement with the Brotherhood of Railway Clerks, and I think that certain unresolved issues were to be submitted under the terms of the agreement to arbitration.

Mr. YOUNGER. Was the method of agreement reached between the employer here and the Brotherhood of Railway and Steamship Clerks and Freight Handlers ever mentioned or was it considered in your

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negotiations with the brotherhoods involved in this particular resolution?

Mr. WOLFE. As I stated before, the substance of the resolution was not known to us during our negotiations.

Mr. YOUNGER. That is not the question, Mr. Wolfe.

This agreement that has been made between the Southern Pacific and the Brotherhood of Railway and Steamship Clerks and the agreement executed between the Pan American World Airways and the brotherhood involves a voluntary compulsory agreement.

Was such an agreement ever mentioned or discussed in your negotiations with the brotherhoods, mentioned in this resolution, and those that are in conflict at the present time?

Mr. WOLFE. I think the Pan American agreement was mentioned. I do not recall any mention of the agreement between the Southern Pacific and the Brotherhood of Railway Clerks.

Mr. YOUNGER. In the mentioning of it, did the brotherhoods completely reject the principle involved in this agreement?

Mr. WOLFE. They completely rejected the principle of finality however arrived at, but not necessarily on the basis of the Pan American agreement.

Mr. YOUNGER. Do you believe the carriers would agree to entering into such an agreement as this?

Mr. WOLFE. The principle of it would certainly be acceptable; yes, sir.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. Thank you, Mr. Chairman.

Before I get further confused in these hearings, I was wondering what a "voluntary compulsory agreement" is.

Mr. WOLFE. I don't think I used that term.

Mr. MACDONALD. You did not use it in your answer so I hope you understood the question. The question was put by the gentleman from California who used just that terminology.

Mr. YOUNGER. Would the gentleman yield?

Mr. MACDONALD. Yes.

Mr. YOUNGER. A voluntary compulsory agreement is a compulsory agreement entered into voluntarily by two disputing parties. Here you have an agreement between the Pan American World Airways and the brotherhood which does call for ultimate compulsory arbitration when they have exhausted their normal negotiations and sets up how it is to be done.

Mr. MACDONALD. Is that your understanding, sir?

Mr. WOLFE. My understanding——

Mr. MCDONALD. Or was it your understanding when you answered the question?

Mr. WOLFE. It is a difficult question to answer. I would like to give you my observation, if I may.

Mr. MACDONALD. I would be happy to have you do so. I asked you the question.

Mr. WOLFE. This is an agreement voluntarily entered into between the parties which contains an agreed-upon provision which brings about finality. That is all it is.

Mr. MACDONALD. Finality rather than compulsion? It was not a statement, as Mr. Rogers indicated. It was a question. Is that so, sir?

Mr. WOLFE. I gave you my understanding and I think it conforms with your own.

Mr. MACDONALD. I read your very weighty statement and I will take it to the office to further understand it. I would just like to ask this: Yesterday it was testified that there were some issues that had been bargained upon by the two parties.

Would you say that these issues were argued and bargained upon in good faith?

Mr. WOLFE. Well——

Mr. MACDONALD. In the meaning of the usual terms in labor relations?

Mr. WOLFE. Yes. I think we bargained for many, many days and months.

Mr. MACDONALD. I go further any say years, 4 years.

Mr. WOLFE. I was going to say that.

Mr. MACDONALD. One of the things you try to prove in an unfair labor practice case, as I understand it, is that if either side takes a perfectly adamant position as I understood your previous testimony to the questions of Mr. Rogers, that between the parties there never was any agreement about anything; is that correct?

Mr. WOLFE. I think that is correct.

Mr. MACDONALD. You had not actually agreed about anything with the organizations. Would you say that was a sign of not good-faith bargaining?

Mr. WOLFE. We did agree to submit the issues to the Presidential Commission. At least on that there was agreement.

Mr. MACDONALD. You agreed to submit it to further governmental control, let us say, but you never agreed among yourselves on any of the issues. You did not say, "All right, we won't lay off," to use Mr. Friedel's illustration, "1,308 firemen. We will lay off only 1,500."

There was never any meeting of the minds concerning the actual issues involved in this case, was there?

Mr. WOLFE. No, sir.

Mr. MACDONALD. Wouldn't you say after 4 years that would be some indication of not very good-faith bargaining?

Mr. WOLFE. I would certainly say that no progress was made and that at least one of the parties, namely, the unions, paid but little attention to the recommendations that were made time and time again.

Mr. MACDONALD. When you say "recommendations," recommendations by whom?

Mr. WOLFE. The Presidential Commission.

Mr. MACDONALD. I am not talking about that. I am trying to stay within the framework of usual bargaining between employees and employers.

Mr. WOLFE. We agreed not to lay off firemen with more than 10 years' service, to all the protection provisions. Later on the Emergency Board recommended that even those with less than 10 years' service——

Mr. MACDONALD. And was this agreement made with the union prior to governmental aid in trying to settle the issue?

Mr. WOLFE. No; it was made in bargaining subsequent to the report of the Commission and the Emergency Board.

Mr. MACDONALD. But not before?

Mr. WOLFE. Not before. I can explain that.

Mr. MACDONALD. If you could make the agreement after the Government had perhaps pointed out the difficulties you were going to get yourselves into, why couldn't it be entered into before?

Mr. WOLFE. Because the unions insisted that the issues were so complex and so voluminous that they could not be disposed of under the processes of the Railway Labor Act.

They insisted that these issues be submitted to a Presidential Commission, and they waived and asked us to waive negotiating between the parties until the Commission had acted.

In a letter dated September 7, 1960, signed by the five chief executives and addressed to the chairman of the conference committees, they said:

> You will observe that we have suggested waiving the procedures of the Railway Labor Act requiring conferences on the respective properties so as to permit joint handling of the proposal in national conferences concurrently with the carriers' notices of November 2, 1959.

Mr. MACDONALD. I appreciate your answer. I do not want to take up the time of my colleagues further or unduly, so could I ask you just this: Yesterday it was testified, I believe by the Secretary, that there were some issues that are involved in this joint resolution that had never been bargained upon.

Mr. WOLFE. I do not agree with that statement.

Mr. MACDONALD. Were you here in the room?

Mr. WOLFE. Yes; I was.

Mr. MACDONALD. Did you hear the statement made?

Mr. WOLFE. Yes; I did.

Mr. MACDONALD. I am not going to try to arbitrate between you and the Secretary of Labor. I will just ask you in my closing question, What are the reasons that the railroads whom you represent, I take it, and Mr. Loomis does—do you represent all the carriers?

Mr. WOLFE. Yes; I do.

Mr. MACDONALD. What are the reasons that you now support this resolution?

Mr. WOLFE. We want to bring this dispute to a conclusion at least on an interim basis without the necessity of a strike which could do irreparable damage to the public interest.

Mr. MACDONALD. Which is the interest of this committee.

Mr. WOLFE. That is right.

Mr. MACDONALD. If you have that feeling now, did you not realize during this 4-year period that was an ultimate result of not bargaining, not agreeing with one single issue that the railroad organizations presented to you?

Mr. WOLFE. I do not think that collective bargaining necessarily presupposes that one party must capitulate entirely and that one party must disregard entirely the recommendations such as have been made here. That is the only way an agreement could have been made.

Mr. MACDONALD. Is there anything contained in this resolution that was not raised to you in the bargaining between the organizations and yourselves?

Mr. WOLFE. I doubt if there is anything contained in the resolution that was raised. Your question is not clear to me.

Mr. MACDONALD. You are giving power, are you not, to the ICC to resolve this dispute? This dispute, I would gather, would encompass all the areas of disagreement which you carried on for 4 years.

Mr. WOLFE. If they are submitted by one or the other of the parties.

Mr. MACDONALD. From my limited knowledge of bargaining, I would think that would be the ordinary case of events.

Mr. WOLFE. Yes; I would think so.

Mr. MACDONALD. Therefore, you are perfectly willing now to go into bargaining about things that in the past took you 4 years and which you did not bargain with the unions, because you have said yourself that there was not agreement on any point between the organizations and yourself? I am just wondering what changed your mind?

Mr. WOLFE. We did bargain thoroughly.

Mr. MACDONALD. You talked. Let us put it that way, you talked but you never gave in on one single issue.

Mr. WOLFE. Yes. Our original notices could not be recognized now as a result of the concessions we made, as a result of all of these recommendations.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will adjourn until 2 o'clock.

(Whereupon, at 12:15 p.m., the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p.m., Hon. Oren Harris, chairman of the committee, presiding.)

The CHAIRMAN. The committee will be in order.

Mr. Devine, do you have any questions?

STATEMENTS OF DANIEL P. LOOMIS, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, AND J. E. WOLFE, NATIONAL RAILWAY LABOR CONFERENCE—Resumed

Mr. DEVINE. Yes, Mr. Chairman.

Mr. Loomis, prior to your decision this morning when you agreed to extend this period for another 30 days, you sent out notices of the rules changes; is that correct, again?

Mr. LOOMIS. That is correct. Mr. Wolf's committee.

Mr. DEVINE. Was this the original notice or does this incorporate some of these recommendations that have come along the line?

Mr. LOOMIS. Each notice that has been sent out, and this is for technical legal reasons, has been the original notices formally served under section 6 of the Railway Labor Act.

It has always been accompanied, as Mr. Wolfe can verify, by a statement on the part of him and his committee that they were perfectly willing to take the Presidential Railroad Commission recommendations or the Emergency Board recommendations.

But for technical legal reasons the notices actually put out are the formal section 6 Railway Labor Act notices. It was the feeling if any other notice were put up as a technical matter it could be enjoined.

I think Mr. Wolfe can explain that the original suit brought was to enjoin a notice to put into effect the recommendations of the Presidential Commission.

Mr. DEVINE. Being one of the many lawyers on this committee, I think I understand the legal technicalities involved in that. I am not sure the members of the brotherhoods understand that.

Mr. WOLFE. They should. It was their suit that caused us to withdraw the original promulgation which would have made effective the Presidential Commission recommendations.

They understood why we withdrew that promulgation and served the second round based on our November 2, 1959, rules proposal.

Mr. DEVINE. Then for purposes of the record, would it be correct to assume that notwithstanding the most recent set of rules that you have again published that the American Association of Railroads still is willing to accept the recommendations of both the Presidential Commission and the Emergency Board, inclusively, as of today?

Mr. WOLFE. The representatives of the carriers are willing to do exactly what you have just stated.

Mr. DEVINE. Thank you. I wanted that to be clear for the record. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Dr. Wolfe, am I correct in understanding from your statement that you estimate that if the rule changes that the carriers recommended in November 1959 were put into effect that it would result in an estimated savings of over $600 million per year in operating expenses for the class I line-haul railroads?

Mr. WOLFE. That is correct.

Mr. JARMAN. I suppose my next comment would be more in the nature of a statement than a question. I will say very frankly that I am impressed with your statement this morning representing the carriers that the record will reflect that the carriers have in an effort to achieve a peaceful resolution of this dispute departed from their own contention as to what the rules changes should be, and that you have accepted the recommendations of the Presidential Railroad Commission, of Emergency Board No. 154, the suggestions of the President and of the Secretary of Labor as to what the settlement should be.

Finally, notwithstanding the fact that you conclude that if these rules changes recommended by the Commission were put into effect the carriers would probably have a temporary increase in current operating costs, the carriers have accepted these recommendations.

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

Mr. JARMAN. As I say, I intended that more in the form of simply a comment on my part. To me, that is an impressive history in these proceedings.

I will be interested in any rebuttal information or statement that can be presented by the brotherhood witnesses here, but I think that is a strong affirmative, positive statement by you representing the carriers today.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Thank you, Mr. Chairman.

In your statement, neither of you gentlemen refer to the Lea Act approach?

Mr. WOLFE. No, sir; we did not.

Mr. KEITH. Is it primarily because you feel it would have little chance of enactment?

Mr. WOLFE. Actually, I am not too familiar with that legislation. Mr. Loomis?

Mr. LOOMIS. I am not entirely familiar with the Lea Act. Is it the so-called Petrillo law?

Mr. KEITH. Yes, it is the Petrillo law.

Mr. LOOMIS. I would say some consideration has been given to that. Our feeling is that would be a long and difficult task that would take a long time to accomplish.

In the meantime, you would have a railroad strike and the party would be over, so to speak. It seems to us—I am referring now to the original draft which is the only one I have read recently back in the drafting of Taft-Hartley, the original House draft—that what that did in effect was to provide for compulsory arbitration on a case-by-case basis.

Mr. KEITH. No.

Mr. LOOMIS. In the Federal courts.

Mr. KEITH. I would like to correct that impression.

What that did, as I understand it, was to prohibit a strike for payment for services that were not in fact rendered.

Mr. LOOMIS. That is right, but each particular case would have to be disposed of separately in the Federal courts. In fact, if I recall rightly, there was some confusion about how a decision would be arrived at.

Mr. KEITH. That is correct. The point I was disagreeing with you on was with reference to compulsory arbitration.

Mr. LOOMIS. If the court decides it, it is certainly compulsory. I say a form of compulsory arbitration. If it is in the Federal court that is certainly compulsory.

Mr. KEITH. But it is not the result of arbitration but the result of reasonable men reaching a decision as to what constitutes employment for which compensation should be received.

My point is that we have a potential shipping strike. The shipping industry has come in and asked for compulsory arbitration. On Tuesday of next week we will hear from the Secretary of Commerce on this subject and on Wednesday from Secretary Wirtz.

Mr. LOOMIS. You already heard from me.

Mr. KEITH. The problem that is facing industry as a whole throughout the country is not different from that which is facing your industry.

This then, is a piecemeal approach to a part of the problem. It seems to me that the unions should not be denied their right to strike, but they should not strike for benefits that cannot be justified because of outmoded work rules.

So I am against compulsory arbitration, but a more positive approach to it would be, it seems to me, to restrict their rights to bargain on the basis of featherbedding jobs.

Mr. DEVINE. Will the gentleman yield?

Mr. KEITH. I will be glad to yield.

Mr. DEVINE. Mr. Loomis, in connection with the questions by the gentleman from Massachusetts, Mr. Keith, in connection with the Lea Act, I know you have been quite busy in the last 24 or 48 hours with this particular H.R. 565, have you had an opportunity to examine H.R. 7718 which I introduced yesterday?

Mr. LOOMIS. I heard about it at lunch, Mr. Devine, but I have not seen it.

Mr. DEVINE. This in effect applies the provisions of the Lea Act and would put in the provisions of 154 with the exception of the Emergency Board's recommendation for binding arbitration in disputes.

Then it also lists the provisions of the Lea Act which was passed in 1946, as you are aware, relating to the *Petrillo* case with some modifications and applies it to the Railway Labor Act, except it does not carry criminal provisions.

It does provide for the injunctive provision. So in your deliberations during this period of 30 days you might take a look at this particular approach.

Mr. LOOMIS. We certainly will. What I stated were our present views.

Mr. DEVINE. Thank you for yielding to me.

Mr. KEITH. No further questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. Moss. During the period of 30 days agreed to by the railroad in order to permit the committees of Congress to legislate more carefully and deliberately, is it the intention to seek to continue negotiations between the railroads and the brotherhoods?

Mr. WOLFE. I told Mr. Reynolds yesterday that we were perfectly willing, in fact anxious, to do anything possible to bring this dispute to a conclusion. He told me that he intended to discuss the subject with the representatives of the unions today and communicate with me later.

Mr. Moss. Of course, we have this now after 4 years of negotiation.

Did that negotiation start with the various conferences of railroads and the brotherhoods in those areas, or did it start with individual railroads?

Mr. WOLFE. The Railway Labor Act contemplates that notices such as those here involved will be served by a carrier upon the representatives of its employes, or by representatives of a union upon a carrier.

The act requires further that the initial conference, that is the date for such confernce, be agreed upon within 10 days and the conference must be held within 30 days.

Our notice of November 2, 1959, requested that the request therein contained be handled on a concerted basis. Subsequently when the unions filed their notice they asked, and we agreed, to waive handling on the individual properties.

Earlier this morning I read from the letter they wrote us requesting that it be so handled. So the negotiations as the result of a mutual understanding and mutual desire of the parties was at the national level and not at the local level.

Mr. Moss. Had there been any negotiations prior to that mutual agreement?

Mr. WOLFE. The letter of November 2, 1959—that is, the letter transmitting the notice—requested concerted handling and not han-

dling on the properties. That is customary handling in the railroad industry where the dispute which arises out of a section 6 notice is to be handled at the regional or national level.

If you wish, Mr. Moss, I will be glad to read it again.

Mr. Moss. No; I tried, I must admit this morning, with some difficulty to follow your testimony because the statement supplied to the committee was a different statement than the statement that was read.

In relating the text I have to the text read by your representative and at the same time relating that to the supplement, I found it most difficult.

In fact, I was wondering if it was your intention—I recognize the difficulties confronting you in this rather hurried time to prepare in advance the text of that and have it available to us—is it your intention to have that text available to us?

Mr. WOLFE. Yes; absolutely.

Mr. Moss. Do you know when it would be available? The text actually read by your representative this morning?

Mr. WOLFE. It will be in the transcript.

Mr. Moss. I know it will be in the transcript. I was just wondering if it was available anywhere else?

Mr. WOLFE. What we did, Mr. Moss, and perhaps I didn't express myself clearly when I explained it. The text was simply a summarization of what we considered the highlights, the most interesting parts of the documents which were furnished you.

Mr. Moss. In this instance it was my impression that the summary was more extensive than the text, at least in the portions which did not conform to the text. It is for that reason I encountered difficulty in following it as carefully as I would like to have followed it.

Mr. WOLFE. We tried to make it as clear and as simple as possible.

Mr. Moss. You indicated in the testimony this morning that the original proposal, the November 1959, rule proposals, would result in the reduction in cost of approximately $600 million a year; am I correct?

Mr. WOLFE. You are correct.

Mr. Moss. You indicated as a result of the Rifkind report, and the subsequent Board 154 report, that it was doubtful in your mind whether or not immediately the recommendations would not actually result in an increase in cost rather than the reductions anticipated in the original rule.

Mr. WOLFE. I did make that statement.

Mr. Moss. Have you a summarization, a breakdown, not infinite detail but sufficient to comprehend, of the cost factors upon which you base that conclusion.

Mr. WOLFE. I do not have those figures available, but I think I can explain them in sufficient detail so that you will understand.

Mr. Moss. In view of the fact that I am under the 5-minute rule under this first round, I would like to request, Mr. Chairman, that information be supplied to the committee for the record, and that the record be held at this point to receive it.

Mr. WOLFE. We would be glad to give you that information.

Mr. Moss. Thank you. I think I have used up my 5 minutes.

(The information requested follows:)

WASTE OF MANPOWER AND MONEY RESULTING FROM OBSOLETE RULES, LAWS, REGULATIONS, AND PRACTICES GOVERNING THE COMPENSATION, USE, AND ASSIGNMENTS OF RAILROAD OPERATING EMPLOYEES

Estimates for the year 1961—Class I line-haul railroads

Categories of costs	Average number of unneeded employees		Wages and payroll taxes	
	By categories	Cumulative	By categories	Cumulative
(1)	(2)	(3)	(4)	(5)
1. Use of firemen in road freight and yard service	32,700	32,700	$270,153,000	$270,153,000
2. Use of unneeded road trainmen and yard switchmen	18,800	51,500	148,156,000	418,309,000
3. Assignment of road and yard operating employees to motor cars and self-propelled maintenance and shop equipment	550	52,050	4,741,000	423,050,000
4. Obsolete basic day (mileage) and road assignment rules	13,800	62,550	127,972,000	520,712,000
5. Separation of road and yard service assignments	4,100	65,100	35,556,000	546,109,000
6. Duplicate time payments			45,714,000	575,823,000
7. Earnings guarantees			17,175,000	586,987,000
8. Higher than standard rates of pay			7,807,000	592,062,000

NOTE.—Savings in the cost of owning and maintaining engines and other equipment and facilities not included.

Estimated Costs and Savings: 1st Year After Recommendations of PRC and EB 154 Are Made Effective—Class I Line-Haul Railroads

INCREASED COSTS

I. Wage structure, increase of 2 percent of gross payroll of $1,561,381,831	$31,227,637
II. Suitable lodging or an equivalent allowance for road crews released from duty at other than home terminal for 5 hours or more. Estimated costs are not available, but would be a fairly substantial amount	(1)
III. Paid holidays for road and yard service employees paid on a daily basis. Yard employees already receive paid holidays. The cost of holidays for road employees paid on a daily basis, and the wage adjustments for yard employees related to paid holidays are included in the 2-percent increase in item I	(2)
IV. 1. Total increase in compensation	$31,227,637
2. Additional taxable compensation, 25 percent	$7,806,909
3. Payroll taxes, at 11.25 percent	$878,277
4. Total, including payroll taxes (1 plus 3)	$32,105,914

See footnotes at end of table, p. 547.

Estimated costs and savings: 1st year after recommendations of PRC and EB 154 are made effective—Class I line-haul railroads—Continued

SAVINGS

V. Firemen in freight and yard service:	
1. Firemen employed after Nov. 2, 1959 (par. 2b(2) of EB 154 recommendations). 83 percent of 3,290 men equals the number of positions which would be discontinued for an average of 6 months during the 1st year	[3] 2,730
(a) ½ of 2,730 positions=1,365 positions, at $7,470.02	$10,196,577
(b) Taxable compensation (94.1 percent)	$9,594,979
(c) Payroll taxes, at 11.25 percent	$1,079,435
(d) Total, including payroll taxes ((a) plus (c))	$11,276,012
2. Firemen employed on an irregular basis in recent times (par. 2b(3) of EB 154 recommendations). 50 percent of 5,965 men equals the number of positions which would be discontinued for an average of 4 months during the 1st year	[3] 2,983
(a) ⅓ of 2,983 positions=993 positions, at $7,470.02	$7,417,730
(b) Taxable compensation (94.1 percent)	$6,980,084
(c) Payroll taxes, at 11.25 percent	$785,259
(d) Total, including payroll taxes ((a) plus (c))	$8,202,989
(e) Less severance allowance equal to 60 percent of the individual's average earnings during preceding year (estimated at 60 of 50 percent of $7,470.02 for 2,983 men)	$6,684,921
(f) Net savings ((d) minus (e))	$1,518,068
3. Natural attrition of all other engine-service employees (par. 2b(1) of EB 154 recommendations). An estimated 3,000 positions would be discontinued for an average of 4 months during the 1st year:	
(a) ⅓ of 3,000 positions=1,000 positions, at $7,470.02	$7,470,020
(b) Taxable compensation (94.1 percent)	$7,029,288
(c) Payroll taxes, at 11.25 percent	$790,795
(d) Total savings ((a) plus (c))	$8,260,815
4. Total, freight and yard firemen, 1, 2, and 3	$21,054,895
VI. Crew consist: Elimination of unneeded men on an attrition basis (pars. 2(a) and 2(b) of EB 154 recommendations:	
1. Attrition rate of 5 percent on 117,566 positions (divisions 111–120, inclusive)	[3] 5,878
2. 50 percent of unneeded positions are required by State laws, leaving 50 percent subject to attrition	[3] 2,939
3. The procedures recommended by the PRC and EB 154 would require 5 to 6 months to effectuate, and the unneeded positions would be discontinued on a gradual basis during the last 6 months. 50 percent of 2,939 positions for an average of 3 months	[3] 735
4. 735 positions, at $7,262.40	$5,337,864
5. Taxable compensation (78.3 percent)	$4,179,548
6. Payroll taxes, at 11.25 percent	$470,199
7. Total savings, including payroll taxes ((4) plus (6))	$5,808,063
VII. Combination of road and yard service. About one-eighth of the savings, estimated by the carriers to be the full cost of the rigid separation between road and yard service, could be realized during the 1st year:	
1. 12.5 percent of $32,789,018	$4,098,627
2. Taxable compensation (75 percent)	$3,073,970
3. Payroll tax, at 11.25 percent	$345,822
4. Total savings, including payroll taxes ((1) plus (3))	$4,444,449
VIII. Summary of net increase in costs during 1st year after recommendations of PRC and EB 154 are made effective:	
1. Gross increases in payroll (including taxes)	$32,105,914
2. Reductions in costs:	

	Compensation	*Net (including payroll taxes)*	
(a) Firemen	$25,084,327	[4] $21,054,895	
(b) Crew consist	5,337,864	5,808,063	
(c) Road yard	4,098,627	4,444,449	
			31,307,407
Total	34,520,818		
3. Unadjusted net increase			798,507
4. Less reduction in gross increase account payroll savings in item 2:			
(a) 2 percent of compensation savings of $34,520,818		$690,416	
(b) Payroll taxes, 11.25 percent of 25 percent of (a)		19,418	
			709,834
5. Adjusted net increase			[5] 88,673

[1] Not available.
[2] Included in item I.
[3] Positions.
[4] Reflects increase in costs occasioned by severance allowances estimated at $6,684,921 (item V 2(e)).
[5] The estimated increase of $88,673 in operating expense that would result from 12 months' operation under the rules and rules changes recommended by the Presidential Railroad Commission and Emergency Board No. 154, shown on the preceding page, does not include the cost of providing lodging or equivalent allowances for road crews at other than their home terminals; or the cost of moving expenses, protection against loss from sale of homes, and allowances for wage loss directly attributable to time involved in relocation, recommended by the Commission and the Emergency Board as protective provisions for employees required to move their homes; or the cost of retraining, tuition costs of training of the type provided under the Veterans' Readjustment Assistance Act of 1952, or the cost of administering a national hiring pool; or the cost of training engine-service employees; or the cost of supplemental retirement benefits; or the cost of earnings guarantees for incumbent employees who might be affected by changes in the wage structure (as recommended by Emergency Board No. 154); or expense involved in preparing special studies and pursuing the special referee procedures recommended both by the Commission and the Emergency Board.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Wolfe, regarding the safety features of this controversy, how many members of a train crew are, by the present regulations, required to be in the engine of a diesel engine while the train is in operation?

Mr. WOLFE. On almost all railroads, in fact standard operating rules require that the brakeman, the fireman, and the locomotive engineer call to each other the aspects of each signal they are approaching.

If the rules are complied with, which I think they are, there will always be three men in the cab of a locomotive in freight service except when they are picking up or setting out a car.

Mr. CURTIN. Picking up or setting out what?

Mr. WOLFE. A car. Then the brakeman is on the ground handling the switch. But the rule stipulates that any time the engineer loses sight of that man on the ground, whose signals he is following, he must come to a stop.

Mr. CURTIN. Are the regulations the same for freight trains as for passenger trains?

Mr. WOLFE. In passenger trains there is never more than two men in the cab.

Mr. CURTIN. Under the present regulations?

Mr. WOLFE. Yes, sir.

Mr. CURTIN. And they are the engineer and fireman?

Mr. WOLFE. That is correct.

Mr. CURTIN. Under the proposed new regulations, how many people would be in the cab of a diesel engine on a passenger train while that train is in operation?

Mr. WOLFE. Two men.

Mr. CURTIN. Who would they be?

Mr. WOLFE. Engineer and fireman.

Mr. CURTIN. Under the proposed new regulations, would the fireman be removed from the cab of the engine on a passenger train?

Mr. WOLFE. No, we are not asking that firemen be removed from any locomotive in passenger service.

Mr. CURTIN. Does that apply to both passenger and freight trains?

Mr. WOLFE. Freight trains we are asking that the fireman be removed because there will still be two men in the cab.

In other words, we only have two men in the cab of passenger trains attaining speeds up to a hundred miles, but we have three in the cabs of freight trains that operate probably at half that speed.

Mr. CURTIN. So that under the proposed new rules there would always be at least two persons in the cab of a diesel engine, both on freight and passenger trains while in operation?

Mr. WOLFE. That is right on every road movement.

Mr. CURTIN. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Wolfe, I would be interested in knowing if the rule has been changed with reference to the operating crews on the passenger trains. By that I mean was there not a day back during the old coal burners and the steam engines when you had three men in the cab of a passenger train?

Mr. WOLFE. No, sir; we have never in the history of railroad operation had more than two men in the cab of a passenger locomotive. I may add that during the days of the hand-fired operation that meant that there was only one pair of eyes looking forward for perhaps 75 or 80 percent of the time.

Mr. KORNEGAY. You never had the brakemen up front?

Mr. WOLFE. I have been in the railroad industry for 45 years, and I never knew of their being more than two men in the cab of a locomotive in passenger service.

Mr. KORNEGAY. What has been the reasoning through the years for the need of a brakeman on the front of the freight train?

Mr. WOLFE. Originally the fireman spent most of his time on the deck at the business end of a scoop shovel putting coal in the firebox. There were therefore two men performing the lookout function and only two. Now that the fireman does practically nothing there are three men looking forward at all times when the locomotive is moving in a road movement.

Mr. KORNEGAY. Does the length of the train have anything to do with it?

Mr. WOLFE. In my opinion, no. You are looking forward although you do look backward on curves to see if there is a hotbox or dragging equipment or anything like that. But the engineer looks backward on his side and the forward brakemen can look back on his side.

Mr. KORNEGAY. Mr. Loomis, I understand that you had certain recommendations to make in connection with Resolution 565 this morning.

Mr. LOOMIS. Yes, sir.

Mr. KORNEGAY. I am sorry, I did not hear them all. I understand that you did make one with reference to the phrase which is found in section 2 on page 3 of the resolution "or as soon thereafter as is practicable."

Mr. LOOMIS. Yes, sir.

Mr. KORNEGAY. What was your recommendation?

Mr. LOOMIS. To take out that phrase.

Mr. KORNEGAY. In other words, have it state a straight 120 days?

Mr. LOOMIS. A flat 120 days. As I recall it, the Secretary of Labor indicated that would also be perfectly satisfactory to him.

Mr. KORNEGAY. I asked him that question and he sort of deferred to the ICC. I got the impression he had no quarrel with it but he felt it would be presumptuous of him to make a flat statement about it.

In your opinion, if this resolution or one substantially in its form is passed by the Congress, will an application or applications be filed shortly thereafter?

Mr. LOOMIS. Yes, sir.

Mr. KORNEGAY. Would that application or applications include all of the work rules that are in controversy?

Mr. LOOMIS. If you don't mind, I think that is a little more Mr. Wolfe's question.

Mr. WOLFE. No, sir; it would only include the manning issues. The other issues under the proposed resolution would be subject to 60 days collective bargaining between the parties. If that failed to bring the dispute in those areas to a conclusion, then either party may make application to the ICC for an interim rule.

Mr. KORNEGAY. Is it your feeling that once the manning issues are settled that many of the others will sort of fall in place.

Mr. WOLFE. That is probable. I sincerely hope that they do.

Mr. KORNEGAY. Thank you very much.

Mr. WOLFE. Yes, sir.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. LOOMIS. Mr. Kornegay, you understood I did raise another point about section 5(2)(f).

Mr. KORNEGAY. Yes, I have that down but I am afraid time will not permit me to get into it.

May I ask him one more question?

The CHAIRMAN. Yes.

Mr. KORNEGAY. Let me ask you a question about that section. There has been a lot said about it. But to bring this down to language that I can understand, as I understand the conflict, section 5(2)(f) provides first that the Commission in cases of this sort require fair and equitable arrangement to protect the interest of the railroad employees affected. That is the general provision.

Mr. LOOMIS. Yes, sir.

Mr. KORNEGAY. And then it goes on to state that in any order issued by the Commission it will provide that during a period of 4 years from the date of the order such transactions will not result in the employee being in a worse position with respect to his employment.

It then goes on to say that they shall not be required, however, to continue for a longer period than the period during which such employee was an employee of such carrier or carriers prior to the effective date of such order. It sets a 4 year maximum as I interpret it.

Mr. LOOMIS. That is right.

Mr. KORNEGAY. Anyone in the employment of the railroad for less than 4 years, would be entitled to the first section, fair and equitable arrangements.

If he had been there for 3 years, I take it under section 5(2)(f) he would be entitled to 3 years.

Mr. LOOMIS. For 3, 2, or 1 years?

Mr. KORNEGAY. The first Presidential report had a maximum of 3 years, is that right?

Mr. LOOMIS. That is right. It was not a hundred percent of earnings. It was a lesser figure.

Mr. KORNEGAY. Sixty percent of earnings. But that is the problem at hand in reconciling the two provisions in the law.

Mr. LOOMIS. That is right.

Mr. KORNEGAY. I think I understand it.

Thank you, sir.

The CHAIRMAN. The committee will be in recess for about 20 minutes.

(A short recess was taken.)

The CHAIRMAN. The committee will come to order. Mr. Nelsen, do you have any questions?

Mr. NELSEN. Yes, very briefly. I noticed, Mr. Loomis, this morning that you referred to the language on page 3 where 120 days is referred to and if the language as soon thereafter as is practicable. As I understand it, you felt that language should be stricken, is that right?

Mr. LOOMIS. Yes, sir.

Mr. NELSEN. Yes sir, I inquired about it, about the 120 days in view of the urgency of action and in view of the great mass of detail that is presently in the hands of the ICC. It would seem to me that even 120 days is quite a long time. Do you have any objection or observation relative to that?

Mr. LOOMIS. I think it is quite a long time but we are not objecting to it.

Mr. NELSEN. On another question, the ICC will review the items in dispute, as I understand it, and their decision is binding for 2 years.

Mr. LOOMIS. That is my understanding.

Mr. NELSEN. The railroads have no way of assuming that the ICC will approve the work rules of the Presidential Commission?

Mr. LOOMIS. That is right.

Mr. NELSEN. If they do not approve the work rules you have now no way of knowing at this point whether or not there will be any solution to the problem?

Mr. LOOMIS. That is right.

Mr. NELSEN. I have no further questions right now, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

First of all it has come to my attention I think it was in 1956 there were work rule changes filed by the labor organizations involving the Sante Fe Railroad and this has been subject of arbitration. I am wondering if this resolution would have any effect upon that filing.

Mr. WOLFE. I don't have any information about a notice that was filed on the Santa Fe in 1956. I know that there was litigation in Chicago in regard to a notice that was filed which contained at least certain demands that are similar or related to some of the demands that are involved in the present dispute. There was no arbitration, however.

Mr. CUNNINGHAM. I understand it was a continuing matter of negotiation. You don't know whether that particular case would be affected by this resolution one way or the other?

Mr. WOLFE. I think if there are issues involved that are similar to those involved in this dispute that the resolution would have an effect on those issues.

Mr. CUNNINGHAM. They would come under this bill?

Mr. WOLFE. Yes, I think so.

Mr. FRIEDEL. If the gentleman would yield, it is my impression that Mr. Wirtz said that if it was mutually agreed between management and labor that they can bring in other factors.

Mr. WOLFE. I think the resolution, Mr. Friedel, would apply to similar disputes that are pending or might be served during the 2-year period. In other words, it won't accomplish very much if this is exactly the same issue, the same rule to the interim rule is to be in existence 2 years, if the carrier could change that rule or a union could change that rule during the 2-year period.

Mr. CUNNINGHAM. Mr. Wolfe, I think everybody agrees that this legislation was hastily drawn. As a matter of fact, the Congress on Monday met at 12 and recessed at 6 minutes after 12 and reconvened at 5:14 or something like that, so that this bill could be prepared for introduction. Now, have you people gone over this carefully with your technical people to understand whether there are unworkable

provisions in the bill or that it is clearly defined as to what it is intended to do.

Mr. WOLFE. We have studied the resolution very carefully. Our lawyers have studied it, our committees have studied it. With the exceptions noted by Mr. Loomis for this record it is our conclusion that it will as a temporary measure solve this present problem.

Mr. CUNNINGHAM. The reason I ask that is that we had Mr. Wirtz here yesterday, and of course he is a very capable and knowledgeable man and highly respected, but when members of the committee asked certain pertinent questions as to what a phrase or a section or some wording meant, he was a little vague in my opinion as to how this would be interpreted. But you have no skepticism about the interpretation; is that correct?

Mr. WOLFE. With the exceptions noted I do not personally have any doubt as to the fulfilling of the purpose for which it is intended.

Mr. CUNNINGHAM. Yes, sir; I asked Mr. Wirtz about a provision which I personally would be opposed to and that is on page 3, line 12. The Commission may establish a special advisory panel to assist in the discharge of the functions conferred upon it by this joint resolution. It seems to me this is a rather dangerous provision. If this resolution passes and could be carried out without bias, prejudice, or favoritism, it seems to me this provision must be eliminated. It seems to me that ought to be eliminated, because the ICC might appoint such a special advisory panel and whatever they decide the ICC would accept because of their present heavy burdens.

This special advisory panel could be weighted against the carriers' best interests or it could be weighted against the brotherhood's best interests. I think it is a dangerous provision.

Mr. WOLFE. I agree with you that should not be in this resolution. It was my understanding, although I lack knowledge of congressional procedure, that the Secretary indicated on questioning on several occasions that it was agreeable to strike that. I thought there were a number of members of this committee that asked the question.

Mr. CUNNINGHAM. I proposed it in the first instance and he did give the impression to me that he might want to see that stricken out. My question, would you go along with that?

Mr. WOLFE. We not only go along with it, Mr. Cunningham, but we urge that you do it.

Mr. CUNNINGHAM. The ICC has to go through quite a rigmarole and investigation and confirmation by the other body. A panel like this could be just anybody. It could conceivably be that all of these decisions that are possible under this could be carried out by the panel and simply rubber stamped by the ICC. I think it is a very unwise provision. I believe that is all, Mr. Chairman.

Thank you.

The CHAIRMAN. Mr. Loomis, I would like to have a correct understanding myself. If there is any misinformation or misunderstanding about this it needs to be cleared up. I was not under the impression that this was such a hastily prepared proposal, or that Congress necessarily declared a recess at a certain time and came back in session for the reading of it later in the day. That recess was merely for the purpose of developing the proposal.

Mr. LOOMIS. Frankly, Mr. Chairman, I don't know. I don't know when it was drawn.

The CHAIRMAN. You were at the White House that morning?

Mr. LOOMIS. I was not. Mr. Wolfe was.

The CHAIRMAN. Mr. Wolfe you were at the White House that morning, were you not?

Mr. WOLFE. Yes, sir; I was.

The CHAIRMAN. Didn't the President tell you that he had the proposal drafted then?

Mr. WOLFE. At the time we were there, that is representatives of both labor and management he devoted most of his time to asking questions about our progress and our lack of progress. Then he asked us to leave but be on a standby call of 20 minutes. When an hour passed he called me and asked me to come over there, which I did. He told be that this legislation was to be sent to the Hill and he described it very briefly. I asked a few questions and then I made the statement that if it had been decided to go to the Hill that afternoon that unquestionably my visit at his invitation was simply so he could impart that information to me. That is all I know of it.

The CHAIRMAN. There were a good many of us from both the House and Senate there at 11:30.

Mr. WOLFE. Yes, sir.

The CHAIRMAN. It had been decided and they had the proposal at that time.

Mr. CUNNINGHAM. If the gentleman would yield, this is certainly a far-reaching proposal and I know it was drawn in a hurry. But even if it took a week that is still a hurry up job for a piece of legislation of this significance in my opinion.

The CHAIRMAN. Of course every member is entitled to his own opinion about it. I think it is a very simple proposal after once the policy was decided upon. But when you prepare a message that has some 5,000 words to it and copy of the resolution to go along with it, and you have to put it through all the mechanical equipment to get the innumerable copies that you have there, it takes time to get that kind of work out. That was the reason we were delayed in the House the other afternoon awaiting the prepared legislation.

I think there is something to the matter of this being important legislation, and it is referred to as an intriguing proposal. But nevertheless as the President advised us at that time and they advised you, they were using section 5 of the Interstate Commerce Act as a vehicle to reach the problem just as the Congress used it at the outset 23 years ago in order to deal with the problem where job security was involved in connection with consolidations and mergers.

It was just an extension of what has been the law over a long period of time to deal with comparable and similar problems. That is the way I interpret it. It seems to me it is a rather simple approach even though, as the gentleman appropriately says, it is far reaching and of high importance. It is very easy to understand.

Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Gentlemen, I am concerned about some questions that were raised in connection with the legislation, particularly with the possibility of

postponement of the impact of the legislation because of judicial review. I am wondering if you are in any way apprehensive about the rules which would be promulgated by the ICC going into effect because of the possibility of judicial review, and whether or not this would create delays which would be harmful.

Mr. LOOMIS. I think I would answer that by saying that we do have some apprehension, however, we have also some uncertainty as to the constitutionality without judicial review.

Mr. DINGELL. I am not trying to postpone or to prevent judicial review. There have been instances in the enactment of legislation where the Congress has provided for an expedited form of judicial review. I am wondering if it would be wise in connection with this legislation to provide for review other than initial review in the district court. I am not clear in my own mind whether this legislation provides for review initially in the district court, whether it would provide for review before a three judge court, as it is done in some instances, or whether review would be available through the circuit court of appeals.

Mr. LOOMIS. Our understanding is that it would be reviewable by a court just as Commission orders normally are and then would be directly to the Supreme Court.

Mr. DINGELL. I recognize that I am catching you a little flatfooted here. Is that the most expeditious review available under this?

Mr. LOOMIS. Generally speaking, I think so.

Mr. DINGELL. Do you have counsel available in the room that might choose to comment on this point?

Mr. LOOMIS. My own is tied up somewhere else.

Mr. NEITZERT. Yes; Mr. Loomis' statement is correct.

Mr. DINGELL. Is there a more expedited form of review that we can provide for under this legislation?

Mr. NEITZERT. I don't believe so, not a practicable one that would be faster other than that is provided in the statute.

Mr. DINGELL. Approximately how long do you conceive that it would take to judicially review——

The CHAIRMAN. If the gentleman permits, if he is going to testify we will have to have him identified.

Mr. LOOMIS. Mr. Howard Neitzert who is counsel for Mr. Wolfe's National Railway Conference and the conference committees.

Mr. DINGELL. You have indicated that there is no more judicious review than that which is already provided in the statute. Can you tell me how long approximately review would take?

Mr. NEITZERT. If you could convince the Supreme Court that it was a matter of sufficient importance in order to expedite the case it would be possible from the time that the suit was filed in the district court until the Supreme Court decision to handle the matter in my opinion within 7 or 8 months.

The CHAIRMAN. Would the gentleman permit?

Mr. DINGELL. I would be delighted to yield to the chairman.

The CHAIRMAN. Wouldn't it be a question whether certiorari would be granted?

Mr. NEITZERT. No, sir.

The CHAIRMAN. It would not take 7 months if the Supreme Court tendered an application for certiorari?

Mr. NEITZERT. I don't think it would go up on certiorari. I believe there is an appeal of right from a three judge court that could be raised on the review of Commission orders in this case.

Mr. DINGELL. Then the question, the next question is, under the circumstances do you feel that the 7-month delay would be unduly prejudicial to the legislation or do you feel that it would be necessary for the committee to provide some lesser or longer period with regard to the time for the statute to be in effect and with regard to the orders of the ICC with regard to the orders of the work rules, et cetera?

Mr. NEITZERT. Now you are not asking me a legal question. You are asking me a question of policy which I would like to defer to Mr. Wolfe or Mr. Loomis.

Mr. DINGELL. I would be happy to have any of you gentlemen answer. Under the circumstances we have now discussed with regard to approximately 7 months for review, do you feel that a 2-year period is adequate to the statute both insofar as the duration and time in which the statute would be in effect and also insofar as the orders of the ICC with regard to work rules would be in effect?

Mr. WOLFE. A delay of 7 months added to the 4 months or 120 days would certainly not be a good or sound situation. I don't think there is any question about that. But as I understand it, and I am not a lawyer, a stay of the application of the interim rule would be discretionary with the court. Am I right about that?

Mr. LOOMIS. Yes.

Mr. DINGELL. I am sure that is so. My question goes to the duration of the statute which is 2 years and also the rules which would be issued by the ICC with regard to crew consist and things of this sort. It is the 2-year period that I would like particularly to direct your attention to.

Mr. WOLFE. I believe that we consider that interim proposition is such as this, that 2 years is about as far as we should go.

Mr. DINGELL. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sibal.

Mr. SIBAL. Thank you, Mr. Chairman.

Mr. Wolfe, in your statement this morning you indicated that you had not been consulted by the administration as to what the proposal would be more the recommendation would be which was sent to the Congress, is that right?

Mr. WOLFE. That is right.

Mr. SIBAL. And that the substance of this was a surprise to you?

Mr. WOLFE. That is right.

Mr. SIBAL. Was it a pleasant surprise?

Mr. WOLFE. Anything that would prevent a strike with all of the unpleasantness attendant therewith was acceptable to me. I don't think pleasant is exactly the word I would use. But I do think that this is more pleasant, in my opinion, than a strike.

Mr. SIBAL. Certainly you must have had some speculation in your own mind in discussions with your associates as to what the legislation which we were all awaiting might contain? What did you expect would be the substance of the proposed legislation?

Mr. WOLFE. The President and the people with whom I talked were very careful to not at any time divulge, at least to me, what they were thinking about. But I think it is more or less public knowl-

edge that at that time we thought that there ought to be a one-shot arbitration bill.

Mr. SIBAL. What agency or board or group of people did you think would probably make up the arbitrating authority?

Mr. WOLFE. To be selected by the parties, and if they failed to do so the neutrals or the members of the board would be selected by some designated person or agency.

Mr. SIBAL. Which would be the more normal way of selecting an arbitrating agency, is that right?

Mr. WOLFE. That is what the Railway Labor Act provides for if the parties agree to arbitrate.

Mr. SIBAL. The ICC we understand from previous testimony has had extensive experience with the work rule question. Is this true?

Mr. WOLFE. They have had experience.

Mr. SIBAL. But you would not describe that as extensive?

Mr. WOLFE. I don't think that I am competent to answer. In many of the line abandonment cases, coordination cases, and transactions of that nature, seniority rules and other rules have been involved and certainly they should understand them.

Mr. SIBAL. Would you say that by now they would have developed an attitude toward this question?

Mr. WOLFE. What do you mean, Mr. Sibal?

Mr. SIBAL. If a particular individual or group of individuals have dealt with an issue in various forms over a period of time, would you say that it is likely that they may have developed an attitude where the equities exist in the issue and where the balance of the weight of evidence is?

Mr. WOLFE. No; I think that the ICC would weigh the evidence carefully and the decision would be based on the merits of the proposition wherever it might reside.

Mr. SIBAL. And any previous experience that the Commission and individual Commission members had on this question would not enter into their thinking as they made their decisions?

Mr. WOLFE. I don't think it would.

Mr. SIBAL. This would be a matter of dependence upon the individual's ability to limit his consideration to the evidence which has come to him since the ICC received the authority of this legislation; is that right?

Mr. WOLFE. I think the members of the Interstate Commerce Commission are competent to pass on questions of this nature, and it is my belief and my hope that they would be entirely neutral and their interim rules would be based on their judgment of what was right and proper.

Mr. SIBAL. How much money has the ICC guaranteed the railroads under the guarantee loan program?

Mr. WOLFE. I do not know.

Mr. SIBAL. Do you know whether or not they have guaranteed money to the railroads?

Mr. WOLFE. I am reasonably certain that there are two or three either New England railroads or eastern railroads that have been—that have secured loans guaranteed by the Government.

Mr. SIBAL. Do you think their responsibility in that program which Congress has given them as the guarantee agency could be completely divorced from any consideration of the merits of this particular issue?

Mr. WOLFE. Yes; I think it could be divorced.

Mr. SIBAL. You don't think the two are related at all?

Mr. WOLFE. No; not at all. There is no personal guarantee.

Mr. SIBAL. No; I know that. But there is a matter of policy within the agency. Would you say that?

Mr. WOLFE. So far as this resolution is concerned I think it is pretty well spelled out what the governmental policy would be, and that is that these interim rules would be based on the records that are referred to.

Mr. SIBAL. Thank you, Mr. Wolfe. Thank you, Mr. Chairman.

The CHAIRMAN. The guarantee loan provisions of the railroads has expired; is not that right?

Mr. LOOMIS. That is right.

Mr. HARRIS. The only proposition before the Congress to extend it is to give that authority to the Department of Commerce?

Mr. LOOMIS. I believe that is correct, Mr. Harris. I can't state it positively but that is my understanding.

The CHAIRMAN. Mr. Rogers of Florida.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

How many issues do you think can be settled through this procedure with interim orders? Would you guess?

Mr. WOLFE. I think all the manning issues would be governed by an interim rule. Then the parties would negotiate and I hope dispose of most or all of the other issues which are closely related. They are all compensation rules in one form or another. Then I sincerely hope that perhaps by agreement at least some of the manpower issues may be disposed of before this resolution by its own terms would expire.

Mr. ROGERS of Florida. So you are optimistic that this can perhaps offer a solution?

Mr. WOLFE. Yes, sir, I am.

Mr. ROGERS of Florida. You mentioned that you thought previously you preferred a compulsory arbitration on a one-shot basis. After having this proposal, is that still the feeling of the railroad executives?

Mr. WOLFE. We realized, as Secretary Wirtz said, there are certain terms that have become unmentionables and arbitration seems to be one of them. Our primary interest has been a disposition of these issues in an equitable manner without making the public the sacrificial goat. To that extent we accept and endorse this resolution.

Mr. ROGERS of Florida. What reservations do you have about the resolution other than the two you mentioned?

Mr. WOLFE. I believe there were three. There was one added, Mr. Chairman—Mr. Rogers, and that is the sentence beginning at line 12 of page 3 and extending to line 15. That is the special advisory panel. We share the view expressed by Congressman Cunningham and others that the so-called special advisory panel could lead to evils that we do not think either party would want.

Mr. ROGERS of Florida. Are there any other reservations besides these three?

Mr. WOLFE. No, sir; those are the only three that have been called to my attention.

Mr. ROGERS of Florida. You prefer this to seizure, I presume?

Mr. WOLFE. Yes, sir; because seizure would not settle anything.

Mr. ROGERS of Florida. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Wolfe, I want to get this clear in my mind. It was asked earlier. The work rules you were about to put into effect, did they include the recommendations of the Rifkind Commission and also the special Government board?

Mr. WOLFE. The original promulgation was nothing more than the Rifkind recommendations in contract language. We were enjoined or rather we were not enjoined by the court, but we withdrew that promulgation to avoid prolonged litigation. We then substituted a promulgation based on our original notice. At the same time we made it perfectly clear then that the Rifkind recommendations were acceptable to us and we urged that a settlement be made on that basis. Now as of this day I say to you that the Rifkind recommendation, the recommendations of Emergency Board No. 154, the suggestion of Secretary Wirtz insofar as they are applicable, we are perfectly willing to make an agreement along those lines. But the promulgation because of technical legal problems is our original notice. I hope that was responsive.

Mr. BROYHILL. Yes, it was. If it were not for these legal questions and problems, you would be willing to include the Rifkind Commission recommendations and Emergency Board No. 154 recommendations into your work rules?

Mr. WOLFE. Yes, sir, we would.

Mr. DINGELL. Would the gentleman yield?

Mr. BROYHILL. Yes, sir.

Mr. DINGELL. If it is not premature, would you be able to indicate to this committee at this moment what work rules you propose to bring before the ICC if the legislation in House Joint Resolution 565 is passed?

Mr. WOLFE. We would propose to apply for the interim rules on each of the manpower issues.

Mr. DINGELL. I am wondering if you could give us an idea of what you propose to request from the ICC. I assume that you would intend to issue the Rifkind Commission suggestions as modified by subsequent governmental activity including the Emergency Board No. 154 and also the recommendations of Secretary Wirtz?

Mr. WOLFE. Mr. Dingell, you couldn't apply all of them. In other words, one had a specific solution, the second may have modified it to a certain extent and the third may have embraced parts of both. But our application would be based upon a particular recommendation or a combination of those recommendations. It would not be our original proposal.

Mr. DINGELL. Thank you very much. I thank the gentleman.

Mr. BROYHILL. Since this legislation covers only the present controversy, would it not be possible for a new dispute to arise between the parties and a work stoppage result even though this legislation were passed?

Mr. WOLFE. On issues other than those involved in the present dispute, it would be possible. But as we interpret the resolution it would not be possible where issues similar to these might be involved. In other words, the interim rule covering a particular subject would be effective and subject to enforcement in the courts for a period of 2 years from the effective date of the rule.

Mr. BROYHILL. What if the pending dispute is not resolved in this 2-year period? What then? Will you be asking for extension of this legislation?

Mr. WOLFE. It is difficult to look forward 2 years and then say what you may or may not do. But I can tell you what I hope the result is, and that is that before the end of 2 years the parties will themselves have disposed of these issues in conference within the procedures of the Railway Labor Act.

Mr. BROYHILL. My final question is, would not the party that would be favored by any ICC interim rule be reluctant to bargain and thus the doors of bargaining would be closed for all practical purposes?

Mr. WOLFE. I think responsible people to whom this resolution would be applicable must certainly realize that by the end of 2 years they ought to have their problems solved. They are going to have to solve them sometime, and this is the only temporary relief to protect the public interest as we understand it.

Mr. BROYHILL. You are saying that if the railroads were favored by any ICC interim rule that you would still be willing to bargain?

Mr. WOLFE. We will be willing to bargain under any circumstances. But when I say bargaining, I mean bargaining in its true and accepted sense, that both parties sit down and in give and take negotiate and try to dispose of these issues in a manner that is favorable to both of them. Give and take, as I understand, doesn't mean that one party gives and the other party takes. They both give and they both take.

Mr. BROYHILL. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mr. Rostenkowski?

Mr. ROSTENKOWSKI. Mr. Wolfe, how close to agreement do you think you have gotten in the last 4 years? Was there any time in the last 4 years where there was near agreement?

Mr. WOLFE. No, sir, not where the manpower issues are concerned. We were never within miles of each other. We understand the union's stand for all practical purposes on their original notice.

Mr. ROSTENKOWSKI. Then do you share Secretary Wirtz' observation that this key or the main key can open the drawer to many other keys that will open up the negotiations to an ultimate agreement?

Mr. WOLFE. Yes, I do. I will explain. I think the manpower issues are the key. If they were disposed of, then the other issues should pretty much fall into line. In our negotiating experience we have solved many problems just as difficult as these problems. I think, as the Secretary said, once we find the key to open the door, we will find other keys within.

Mr. ROSTENKOWSKI. But you are talking about the main key which is the manpower issue?

Mr. WOLFE. Yes. sir.

Mr. ROSTENKOWSKI. How far have you bent in this area on the manpower issue?

Mr. WOLFE. I beg your pardon?

Mr. ROSTENKOWSKI. How far has management bent in this area?

Mr. WOLFE. I will tell you what we did. Originally when we served our notice we thought, and we still think, that management ought to have the right in this industry as it does in almost all other industries

to determine its own manpower needs. Our section 6 notice contemplated that that right would be restored. But the Commission said no. Two-thirds of your firemen you must retain subject only to attrition, and generous provisions were made for the other one-third. We receded immediately from our original position. Then when the Emergency Board further modified the Commisison's recommendations and thus drew us further away from what we thought was right at the outset, we accepted that. Then when Secretary Wirtz even went further we accepted that. So we are thousands of miles away from our original proposal. The unions, in my opinion, are right where they started with their original proposal.

Mr. ROSTENKOWSKI. You still are of the opinion, as is the Secretary, that this countdown period of strike or not to strike, the enactment of this legislation, the extension of 2 years, and the ICC having the authority to work out your problems, that in the 2-year interim period recommendations by the ICC will be able to solve the problems that have been in existence for the last 4 years?

Mr. WOLFE. Yes, I do and I want to explain that because I don't think that question has even been asked before. Either by the Senate committee or by this committee. If the Interstate Commerce Commission in its interim permits the carriers to relieve firemen in certain classes of service, maybe the younger ones, there will be a period of demonstration that that class of service can be and is being operated safely, efficiently, without placing undue burden on any other employee. That then there will be a realization on the part of the parties at interest that it should be done and we can come to an agreement.

It is pretty hard to dispute something that is right before you, that you are living with, that you see every day.

Mr. ROSTENKOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. I wanted to ask you a question, about the 2-year period. Perhaps you have answered it. Do you have an opinion as to whether or not 2 years is the right term that should be in this measure?

Mr. WOLFE. I think it is as right as anything that could be suggested, Mr. Brotzman.

As Secretary Wirtz said, in his proposals he used the 2-year period for study and continued negotiations. That was the one part of his proposal that the parties seemed to be not too far apart on.

Mr. BROTZMAN. From listening to your preliminary testimony this morning it would seem that time might be of the essence. I think your answer in response to one question as to why you were for this resolution was because you wanted to see an end to this discord and this problem. I was wondering if 1 year would appeal to you as well as 2 years, because it would seem to me that 1 year would make it half as long.

Mr. WOLFE. We do have the question that was raised earlier about the 120 days and we urge that it be limited to 120 days. With a record already made and two trials before, that ought to be enough. But nevertheless it is 4 months.

Then there is the question of seeking judicial review and the possibility of a further dissipation of time which brings you perhaps nearly to 1 year. If that should take place, then benefits of this—of a period of demonstration would not be available to the parties.

Mr. BROTZMAN. Will you turn to section 7 of the act for just a moment? As I understand your testimony this morning you have endorsed the resolution with two proposed amendments. Striking the words, "or as soon thereafter as practicable," in section 2, and then you disagree with the proposition referring to section 5(2)(f) in part. What does this section 7 do?

Mr. LOOMIS. That removes the prohibitions of the Norris-LaGuardia Act against the issuance of an injunction in a labor dispute and it makes applicable the provisions applying to the enforcement of orders of the Interstate Commerce Commission. I think this particular section removes the applicability of the prohibitions of the Norris-LaGuardia Act.

Mr. BROTZMAN. As to actions arising under sections 5 or 6?

Mr. LOOMIS. That is right.

Mr. BROTZMAN. The Norris-LaGuardia applies to prohibiting injunctions in strikes, is that right?

Mr. LOOMIS. Yes, that is right.

Mr. BROTZMAN. It would seem to me that actions might arise under other sections than 5 or 6, would that not be correct? Appeals and so forth?

Mr. LOOMIS. There may be appeals, yes.

Mr. BROTZMAN. That original action I suppose is what this is referring to?

Mr. LOOMIS. That is my understanding.

Mr. BROTZMAN. I have no further questions.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. I have only a parochial question, Mr. Chairman. The major service to my home county in San Diego, Calif., is provided by Santa Fe Railroad. Back in 1956 there began a private work rules hassle on that road which was initiated not by management but by the brotherhoods. This led to a strike vote which was suspended by injunction in 1960. I have been asked to ascertain your view as to what effect, if any, this resolution would have on that pending dispute?

Mr. WOLFE. Yes, sir; I answered that question during your absence but I will be happy to undertake to do it again. If there are issues involved in that dispute which are similar to the issues involved in the dispute now before you, and the Commission hands down an interim rule, that interim rule will be effective for 2 years from the date of its first application and that would supersede or dispose of any similar dispute whether it may have been initiated by a carrier or by a union.

Mr. VAN DEERLIN. Thank you, Mr. Wolfe.

Mr. BROYHILL. Could I ask you also, if the gentleman will yield to me, in relationship to the same question whether or not Southern Railway would be involved in this legislation? They are not a party to this dispute.

Mr. LOOMIS. It is our understanding that this resolution applies to the instant dispute and to those that are parties to it. It would have no effect whatever either way upon the Southern Railway.

Mr. BROYHILL. Thank you.

The CHAIRMAN. Mr. Staggers.

Mr. STAGGERS. In connection with the last question, I would like to follow it up just a little bit. Mr. Broyhill brought up the Southern system. They have made some settlements on their own or made some disposition of their manpower and maybe there are to be some court injunctions. Is that true or not?

Mr. LOOMIS. I can answer you to the best of my knowledge and authority on it. My understanding is that with respect to the firemen issue there is presently an injunction out against the Southern either until the National Railroad Adjustment Board has decided the dispute submitted to it or until the Southern's own local notice which was not a part of the national case is progressed through the steps of the Railway Labor Act.

I do not understand that would be affected in any way by the resolution that is before you.

Mr. STAGGERS. That would still come under the Railway Labor Act, as I understand it. I was interested about the case in California. Would this supersede any of the State laws with respect to full crews and so forth?

Mr. WOLFE. As we understand it, and this understanding is largely the result of our hearing what Secretary Wirtz testified to yesterday, it would not preempt any State full crew laws.

The CHAIRMAN. Would the gentleman yield at that point?

Mr. STAGGERS. Surely.

The CHAIRMAN. In your negotiations and bargaining with the employees your proposals and the counterproposals, at any time was it ever discussed as to whether or not the full crew laws of the various States would be interfered with or superseded or attempted to be modified?

Mr. WOLFE. In our discussions, Mr. Chairman, we did discuss the comments made by the Presidential Commission respecting the statutes that now exist in about 17 States. Pardon me just one second, if you please. The Commission touched on this very briefly, and if I may, Mr. Chairman, I would like to read it into the record.

The CHAIRMAN. Identify what commission you are talking about.

Mr. WOLFE. It is the Presidential Railroad Commission and it appears at page 63 of the Commission's report.

> It is obvious, of course, that the ability of the carriers, whether acting unilaterally or otherwise, to affect changes in crew consists will be limited by applicable State crew consist laws or regulations as long as such laws or regulations continue to exist. As noted above, most of the legislation of this kind was enacted prior to 1920. These laws apparently failed to envision modern railroad operations. We feel that our recommendations with respect to this issue should have nationwide application. We recognize there will be difficulty in applying the rule recommended by us in States where full crew laws have been enacted How the restriction of those laws may be lifted, however, is a matter which goes beyond our charge.

During the time we were negotiating with the assistance of the Secretary of Labor and the Assistant Secretary of Labor, a settlement of the crew consist issue, and we suggested that the parties agree to jointly seek the passage of legislation which would eliminate and repeal all existing State full-crew laws and crew administrative regulations.

The CHAIRMAN. Was that agreed to?

Mr. WOLFE. It was not; no, sir. But it sounded like a very sound proposition.

The CHAIRMAN. Mr. Staggers, you may proceed.

Mr. STAGGERS. I think it was an interesting observation. I would like to go into the question of Mr. Sibal about the ICC. As I understand it, $190 million has been guaranteed in loans to 31 different railroads in the country.

Mr. LOOMIS. I could not say either way, Mr. Chairman.

Mr. STAGGERS. It is my understanding that there are 25 million loans now applied for prior to June 30 which are pending.

Mr. LOOMIS. I have seen figures but I do not have that in mind.

Mr. STAGGERS. Another thing I would like to comment on is since the advent of the diesel engine the safety factors in the railroads were 28 point something and have gone up to 45 point something. That is, the safety factor since the advent of the diesel engines. Can you comment on that?

Mr. LOOMIS. Not offhand; no, sir.

Mr. WOLFE. No; I do not readily identify those figures at all. I think the evidence before the Presidential Commission indicated a steady improvement.

Mr. STAGGERS. You mean in the safety factor?

Mr. WOLFE. Yes, sir.

Mr. STAGGERS. I believe that is where I got my figures and I will check them. At the same time the industrial safety average was going down 17 percent across the board. I will check those figures and I wish you would, too.

Mr. WOLFE. I would be happy to.

Mr. STAGGERS. Since the advent of the diesel engine. I believe that is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Yesterday I was discussing with Mr. Wirtz the Adamson Act which as you know provided for the 8-hour rule. In that act there was a provision that if the 8-hour rule became an additional expense to the carriers—first a panel was to be appointed to observe that—the ICC would be permitted to increase the rates. In this resolution there is provision for the protection of the employee should the ICC say to you that your work rules are good and they can be enforced. Then the worker who is out of employment is provided for. However, if the ICC order is against you, and you say that these needless workers are costing $50 million a month, certainly the railroads are entitled to some protection on that score equal to the protection on the other side. Would you comment on that?

Mr. LOOMIS. In the first place, Mr. Younger, as you recall it—and the part of the Adamson Act I have here is that now effective and not the original and complete act—my recollection is that was in President Wilson's statement to the Congress rather than in the act itself.

I am not sure of that but that is my recollection. It was not necessarily part of the law but it was in President Wilson's statement to the joint session on August 29, 1916. I think what you have here in the present situation is that the Commission would not necessarily impose greater expense on the carriers than they are now suffering.

That in the present posture of rate matters, and particularly if you grant our petition to make us more competitive, we will be able to look after ourselves on that score.

Mr. YOUNGER. You feel it would not be necessary to have any provision in this resolution for that purpose?

Mr. LOOMIS. No; I think it would not be necessary.

Mr. YOUNGER. In the latest issue of the Independent Editorial Services, Ltd., dated July 23 I notice this paragraph:

> On more than one occasion Transport Leader Mike Quill has intimated that the nationalization of carrier systems would be the best solution in fighting the loss of jobs due to modernization and elimination of featherbedding. Under nationalization strikes would be outlawed. This fact may arise when Congress acts on compulsory arbitration and other schemes to cope with the railroad crisis.

In your negotiations, Mr. Wolfe, has there been any idea gained on your part at conversations or refusals to agree and so forth that there was any desire on the part of any participants to nationalize the railroads or to put the railroads in such financial conditions that the Government would have to take them over?

Mr. WOLFE. I don't think, Mr. Younger, that there is any desire on the part of the unions to put themselves out of business. I think that is what nationalization would do. However, continued demands or resistance to progress and proper changes could lead to that undesirable result. But I do not think that the unions would want that. In fact I am sure they would not.

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

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Wolfe, on page 7 of the report of the President on the railroad dispute, I see that all firemen except those hired recently or those working only irregularly would continue. What is meant by the word "irregular" or is there any set standard of what "irregular" is?

Mr. WOLFE. Yes; that is taken out of the report and recommendations of Emergency Board No. 154. It is intended to mean firemen who have acquired seniority by virtue of having worked 30 days or more. They retain that seniority perpetuity. But many of them were employed because of some peak in the business of a particular carrier.

They earned the primary source of their livelihood working elsewhere. The Emergency Board said that the phrase, "irregular employment," applied to those whose earnings in the railroad industry did not provide the source of their livelihood. In our proposition, we took what the leading economists, some of them, on various committees advisory to the governmental agencies held to be the minimum to support a normal family. That is, the necessity of life. We split that in half. We said if they earn more than this amount then they are not irregular. If they earn less they are irregular. But when we submitted that we emphasized that that was put out for bargaining purposes. If there was a better way of identifying those who might be considered as irregular we would be happy to entertain any suggestion along those lines.

Mr. FRIEDEL. Was any thought given to whether they worked 3 months of the year, 1 year, 4 months another year, 5 months in the last 5 years, or something like that?

Mr. WOLFE. All of those things were considered; yes, sir. But as the unions rejected all of these proposals whatever we said proved to be strictly academic.

Mr. FRIEDEL. There is a word not popular in this hearing, "compulsory arbitration." Am I correct in believing that this bill differs from compulsory arbitration because they can go to courts even after the ICC hands down an interim report?

Mr. LOOMIS. I think there what the difference is that compulsory arbitration settles and disposes of a dispute and decides it with finality. This bill or joint resolution does not do that.

Mr. FRIEDEL. Because it has recourse to courts?

Mr. LOOMIS. The resolution has—it lasts only 2 years, and secondly only interim orders can be entered by the Interstate Commerce Commission. And third, then it expires. It also presupposes continued negotiations, too, which you would not have in the case of compulsory arbitration. That would settle the whole matter, compulsory arbitration.

Mr. FRIEDEL. We have heard a lot about the importance of the bill. I would like to know, and I think the committee would be glad to know, what effect this would have not only on the railroads but the brotherhoods and the growth of our country.

Has any thought been given to that? Were any figures mentioned as to what it would do in hurting the country?

Mr. LOOMIS. You mean a strike?

Mr. FRIEDEL. Yes.

Mr. LOOMIS. I believe the Secretary promised to furnish some information on that to the committee.

Mr. FRIEDEL. I am interested in that and I would like to get it for the record some way, to know what effect a strike might have if this legislation is not passed.

I just can't get any figures. I think the public ought to know what might happen or what could happen.

Mr. LOOMIS. I can give you, I think, a partial answer based on information I have which would not be anywhere nearly as complete.

Mr. MOSS. Would the gentleman yield?

Mr. FRIEDEL. Yes.

Mr. MOSS. The Secretary yesterday agreed to supply to the committee that information.

Mr. FRIEDEL. I understand so. I knew we will get it eventually.

Mr. MOSS. Some of it is in the President's message. The balance the Secretary agreed to supply.

Mr. LOOMIS. Based on information supplied to me I can give you a partial answer. The steel mills, the automobile manufacturers would shut down the first or second day.

The CHAIRMAN. What is that?

Mr. LOOMIS. The steel mills, the automobile manufacturing plants would be likely to shut down the first or second day. That is the advice they have given to me. And the coal mines, I think, would also be shut down the first day. I am advised by one of the large shippers who is interested particularly in sugar, and he refers particularly to California, that long-haul rail perishable products shipments would be affected immediately.

He also refers to the fact that sugarbeets are now ready to harvest, that they want to ship them on account of the sugar shortage.

That the California fruit and produce processers badly need the new sugar to preserve the perishable crops now being harvested.

If there were a strike all of that would be disastrously affected. That is the best I can do for you in an offhand way, Mr. Friedel.

The President made a statement, of course.

The CHAIRMAN. Would the gentleman yield?

Mr. FRIEDEL. Yes, I yield.

Mr. LOOMIS. I was going to call attention to the President's own statement which is in the record.

The CHAIRMAN. Yes; I think it was suggested it would reach, as far as employment is concerned, in relatively a few days or a short time, 6 or 7 million employees.

Mr. LOOMIS. Yes.

The CHAIRMAN. I had in mind also yesterday when I asked them to give us 30 days to try to work out something, I had a report that if the railroads shut down on Tuesday of next week, practically the entire cantaloup crop of the country would go by the board. The cantaloup-producing area it is coming into the market now and it would hit the peak of it and all of that would be lost. That is only one segment of our economy.

It gets into other perishables as well.

Mr. LOOMIS. I take it from the telegram I just took out of my pocket that the author of that thinks the sugarbeet crop would also be lost.

Mr. YOUNGER. On that point I have just one question.

Mr. Wolfe, has there been any information given to you by the brotherhoods as to what trains they would service in case they did strike?

Mr. WOLFE. There is a letter addressed to us which has a comment about operating commuter trains and certain passenger trains, and also trains that the President of the United States might ask us to operate. As to the commuter service, they proposed that the wages and employees would earn would be turned over to some designated charity and that all revenues likewise be turned over to a charity. But when we analyzed that we took it for granted that it was a public relations proposition and not one built on realities. Because the union most certainly could not commit an employee to give up his wages. We figured out that the net result would be that some charity would be helped considerably and later on we would pay the employee because it is his money.

Moreover there are practical difficulties. The vast number of supporting employees would not donate their wages, I am quite sure. Therefore, we considered their proposition to not be one that they expected anybody to take seriously.

Mr. YOUNGER. Thank you.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. Mr. Wolfe, am I correct in understanding that there will be no strike next week because of an understanding reached to extend the time for the enforcement of the work rules?

Mr. WOLFE. Yes, sir. Wherever notices were posted they have been taken down or will be taken down because immediately after Mr. Loomis gave his assurance to the chairman and the members of this committee we sent a Western Union message to all of the railroads to that effect.

Mr. RHODES. Mr. Wolfe, to what extent have railroads hired new employees in recent years?

Mr. WOLFE. I think that the record is somewhat amazing. I think that we have hired as many as 6,000 trainmen and yardmen throughout the entire country. When we talk about hiring employees, you get into some rather perplexing areas.

In certain parts of the country the maintenance season is concentrated in just a few months. I am speaking of the Northern, Northwest, and parts of the Midwest, where the maintenance season where you can work the track; that is, the ballast, your rail and your ties, you just can't do it when the ground is frozen.

So there are seasonal occupations that represent a considerable number of men. The new hires of employees who are more or less permanently attached is pretty well regulated by normal attrition.

Mr. RHODES. How long would it take through a program of attrition to solve your main problem?

Mr. WOLFE. So far as the firemen are concerned, if the unions would agree to a retirement plan such as suggested by the Presidential Railroad Commission, and if the locomotive engineers would take the 5-day workweek in yard service as the other organizations have, we estimate that it would take from 9 to 12 years through the process of attrition to get rid of these unnecessary employees.

Mr. RHODES. There is one other question, Mr. Wolfe.

How would dismissed railroad workers with less than 10 years of service be affected by the loss of their railroad retirement?

Mr. WOLFE. If those people who you might consider as having become attached to the industry, that is, those with 3, 4, or 5 years of service, or more, if they have had more than 10 years seniority their retirement would not be affected at all, because they would work out their natural working life without being affected in any way.

Mr. RHODES. But you say that those with more than 10 years of service would not be affected by your new work rules; is that correct?

Mr. WOLFE. That is right.

Mr. RHODES. How about those that have 8 or 9 years?

Mr. WOLFE. Mr. Rhodes, under Emergency Board 154's recommendation they would also be subject to attrition, but the carrier would be permitted to offer them comparable employment, and they would be guaranteed their average earnings for a period of 5 years.

So their railroad retirement would not be affected. It is only those recently employed and those whose employment was irregular, as I just described it, who might be affected.

Mr. RHODES. Those with 8 or 9 years of service who would leave the railroad industry, how would they be affected?

Mr. WOLFE. They would not leave the industry unless they wanted to.

Mr. RHODES. I mean if they voluntarily leave the industry what happens to their railroad retirement that they have built up in 8 or 9 years?

Mr. LOOMIS. Mr. Rhodes, I cannot give you the details, but there are provisions as between the Railroad Retirement Act and the Social Security Act for interchange and interplay. So that you get one or the other and get full credit. I can't give you the details but there is provision for a man who leaves the railroad industry under

certain provisions, as I understand the law, to still collect railroad retirement but might also collect some social security.

Under other provisions he would be transferred if he left the railroad industry to the retirement provisions of social security, or if he came into the railroad industry he would be transferred to the railroad retirement.

I do not have the details at hand but the acts do contain provisions for that interplay.

Mr. RHODES. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman, do you have any further questions?

Mr. BROTZMAN. I have one, Mr. Chairman.

Should House Joint Resolution 565 be enacted, how significant would be the assistance derived under the Manpower Development and Training Act of 1962 on this question of retraining and payments? Have you made any analysis of that?

Mr. WOLFE. No, sir; I have not.

Mr. BROTZMAN. You are aware of that provision?

Mr. WOLFE. Yes, I am aware of it.

Mr. BROTZMAN. Do you think it would do anything substantial?

Mr. WOLFE. We have to keep in mind that all these employees are going to have generous severance allowances and the carriers have obligated themselves to pay 75 percent of their tuition if they wish to further their education.

Mr. BROTZMAN. Do you have any concept as to how the Manpower Development and Training Act would work in conjunction with such a program?

Mr. WOLFE. Not offhand, I do not.

Mr. BROTZMAN. Do you have, Mr. Loomis?

Mr. LOOMIS. No, sir; we never had time to study it.

Mr. BROTZMAN. You never got that far in the bill?

Mr. LOOMIS. I know the provision in the President's message but we really never had time to study the details of the Manpower and Training Development Act and just how it would apply.

There is a reference to it in the President's message.

Mr. BROTZMAN. Do you know any other Federal statutes that might have application in this area? I am referring now, it says Manpower Development and Training Act of 1962, or other Federal statutes.

Mr. LOOMIS. Under certain circumstances there are provisions of the Railroad Unemployment Act that might be applicable.

Mr. BROTZMAN. Thank you.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Wolfe, I requested earlier from you the summary of the costs. I wonder if I could ask for a projection of the point where you would start to effect a saving rather than an increase, or the increase suggested in your statement this morning?

Mr. WOLFE. I am not sure that it is possible to do that. The cost or the continuing cost will be controlled to a great extent by the rate of attrition and almost entirely by the type of rule that may be imposed.

If the Presidential Commission recommendations were to be adopted in whole then we would have a basis from which to start.

Mr. Moss. I think we could perhaps agree, however, that for your projections of the type suggested by the statement this morning you are going to make necessarily certain arbitrary assumptions.

Mr. WOLFE. Absolutely.

Mr. Moss. I would merely ask for an extension of those same assumptions a little further into the future, 2 years perhaps. Having made them, the projections should not be too difficult.

At some point under those assumptions you would change from a picture of increased cost to a picture of declining or reducing cost, would you not?

Mr. WOLFE. When you asked for this information and I told you we would give you the best information we have available, I had in mind that we can show you clearly exactly what costs will be imposed upon the carriers. We can give you certain ideas as to how long we think those costs may run if they were based on this kind of a rule or that kind of rule or a combination of two or more rules. But until we know exactly what sort of a rule we are going to have, it is going to be a rough estimation both as to time and money.

Mr. Moss. I believe that I qualified my request to indicate the acceptance by me of that fact.

Mr. WOLFE. Yes, sir; I think you did.

Mr. Moss. It was not to be precise at this time.

Mr. WOLFE. We are going to do the best we can do to give you the information which will be helpful to you.

Mr. Moss. Mr. Wolfe, the committee sitting here I think, is most anxious to have possession of all pertinent facts and the testimony received so far both from you and the Secretary has been most helpful in giving us further factual information on the history of the past 4 years and the nature of the proposals.

But basically, the question before this committee is not to determine what work rules should be, is it?

Mr. WOLFE. No, sir; it is not.

Mr. Moss. The first determination really is whether a strike would impose such onerous burdens on our economy as to be unthinkable.

Mr. WOLFE. I agree with you.

Mr. Moss. If we proceed on the premise that it would, then we seek by some means to achieve continued operation while permitting negotiation to continue between the affected parties; is that correct?

Mr. WOLFE. Are you speaking of our objectives here?

Mr. Moss. The objectives?

Mr. WOLFE. Or the objectives of the resolution?

Mr. Moss. You have endorsed the objectives of the resolution?

Mr. WOLFE. Yes, sir; we have.

Mr. Moss. You are appearing, it is my understanding today, in support of that resolution?

Mr. WOLFE. That is correct.

Mr. Moss. Therefore, they become common objectives, do they not, the resolution and your own group in appearing here in support of it?

Mr. WOLFE. I think that is right.

Mr. Moss. Now if that is the case then by the action of this committee we should not seek to confer any degree of finality upon anything achieved as the result of the actions of this committee.

That is to continue to be within the scope of collective bargaining; is that correct?

In other words, you are not seeking here, nor does the resolution, any elements of compulsion other than purely interim compulsion while the mechanics of bargaining continue?

Mr. WOLFE. I so understand the resolution.

Mr. Moss. Then this question of full crew laws must of necessity be continued subject to the laws of the States and no preemption expressed in the resolution we take, because if it were we would be granting a right beyond that which would have been achieved by any collective bargaining procedure?

Mr. WOLFE. I don't know, you may be getting beyond my field.

Mr. Moss. I do not think so, Mr. Wolfe. I believe you are a most knowledgeable individual.

Mr. WOLFE. Thank you, sir.

Mr. Moss. And a most competent one. You cannot at the moment conceive of any method whereby you could affect the full crew laws of the 17 States by collective bargaining procedures.

Mr. WOLFE. I agree to that. We cannot negotiate the elimination of a statute irrespective of how intolerable or unjustified it may be.

Mr. Moss. That is right. It is true that some of these statutes have not been dormant as far as any further action or consideration of them is concerned for the period back in the 1920's as the Presidential Commission report would indicate.

I believe in the case of California that the most recent change of these laws, the full crew laws, occurred either in 1962 or 1961 and dealt specifically with one of the issues most basic to the differences of the railroad workers and railroad management.

Mr. WOLFE. I am not familiar with that but I think Mr. Loomis is.

Mr. Moss. I believe Mr. Loomis is There was the deletion of the word "steam" and the substitution of the term "diesel."

Mr. LOOMIS. As I understand it, there was written into the act the existing provisions of the agreement between the firemen's organization and the carriers with respect to the manning of diesel locomotives.

I think the language, if I recall correctly, is almost identical, if not absolutely identical, with the language in the collective bargaining agreement.

Mr. Moss. I am correct, am I not, that this was either in 1962 or 1961?

Mr. LOOMIS. It was recently, at least.

Mr. Moss. So it has been a matter considered by the legislature of that State within very recent times?

Mr. LOOMIS. I would say certainly within 4 years.

Mr. Moss. I am not passing at this moment any judgment on the wisdom of the action of the legislature.

Mr. LOOMIS. I understand.

Mr. Moss. But I am trying to bring into prespective the questions before this committee and what is actually sought and what appears to be sought here is, one, a means to continue operation while the normal processes of collective bargaining work to bring about that finality which I believe both labor and management hope ultimately to achieve.

Mr. WOLFE. Yes, sir.

Mr. Moss. Thank you.

The CHAIRMAN. Mr. Wolfe, there has been a good deal of discussion today about the extent of the bargaining between your group and the brotherhoods.

It is your contention that there was extensive bargaining with the brotherhoods on all issues until 1959, and then following that period of time you explained in some detail this morning that all of the activity from the time the notice was given was as you considered a part of the bargaining between the organizations and yourself; is that right?

Mr. WOLFE. Yes, sir; it is. As explained in considerable detail in my statement.

The CHAIRMAN. Yes, that is the reason I asked the question. You explained it in considerable detail.

Mr. WOLFE. Yes.

The CHAIRMAN. I want to know if you have actually sat down and bargained with the organizations since the issues were joined by the notice and the provisions of the Railway Labor Act invoked beginning in 1959 or after 1959?

Mr. WOLFE. We have; yes, sir.

The CHAIRMAN. Have you bargained on all of the innumerable issues since that time in 1959 or 1960?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. Or have you just picked out certain of the issues which have been brought to a head here during the course of the hearings and limited your efforts to those particular issues?

Mr. WOLFE. Since the Presidential Commission report and the Emergency Board report our negotiations or bargaining were to a great extent in the field of the manning problems, although we did talk and exchange proposals on the interdivisional issue, the combination of road and yard issue, and there have been discussions about the so-called fringes which, of course, grew out of the union's proposals which we accepted.

I would say that there has been very extensive collective bargaining. But the issues referred to in this resolution in section 6 were not in the past 90 days given the same intensive treatment as the manpower issues.

The CHAIRMAN. Were those negotiations carried on between you and the organizations or were they carried on between yourselves with the Secretary of Labor or some other person as mediator?

Mr. WOLFE. We met about a hundred times or something like that—it is in the record—and a part of the time the parties were together or represented by subcommittees in almost all instances.

On occasions the Secretary of Labor, the Assistant Secretary, one or two members of the Mediation Board were present.

On other occasions, at the suggestion of either Secretary Wirtz or Assistant Secretary Reynolds the parties met by themselves.

The CHAIRMAN. Do you agree that the manning issues and practices in the operation of the trains are the crux of this problem?

Mr. WOLFE. I think there is a probability of that. At least in the negotiations. I thought if we could get them out of the way that the probability of disposing of the others would certainly be improved.

The CHAIRMAN. Do you believe that if the problem of crew consist and the firemen issue could be settled that all of the other issues could be settled by collective bargaining?

Mr. WOLFE. I think there is a pretty good chance of it.

Mr. FRIEDEL. Would the gentleman yield to me?

The CHAIRMAN. Yes.

Mr. FRIEDEL. At that point, do you think you could settle the thing about the conductors?

Mr. WOLFE. Really, Mr. Friedel, there is not much of a problem where conductors are concerned. The only chance of a conductor losing a job that I know of is the very limited number involved in the operation of self-propelling machines. There will always be a conductor on every train.

Mr. FRIEDEL. I mean on the longer runs. I understand one of the objections by the conductors is they now go 150 miles in 1 day and you want to raise it to 210 miles a day.

Mr. WOLFE. There would be a possibility of a very limited reduction there. But when we talk about interdivisional runs that is not correct. Except where constructive mileage is involved, and that is very negligible. However, the order of railway conductors and brakemen do represent brakemen on one large railroad.

So they have an interest in the brakemen or trainmen the same as they have in conductors.

The CHAIRMAN. But you do feel that if these two major issues could be broken, it would pave the way, you think, through actual collective bargaining so that the rest of the issues could be resolved?

Mr. WOLFE. I think there is a probability that they would be. The Secretary of Labor is very optimistic about it.

The CHAIRMAN. Yes, that is the reason I asked the question. He made that statement.

Mr. WOLFE. Yes, sir.

The CHAIRMAN. I was trying to see if you agreed with him. In your statement this morning at page 68, under the heading of "Manning Motorcars and Self-Propelled Machines," you make the statement that there are nearly 573 engineers, firemen, conductors, and brakemen, operations in shops and maintenance of way use self-propelled cars and so forth.

Will you explain that a little bit more as to what you mean?

Mr. WOLFE. Yes, sir; I will. For many, many years we did not use operating employees with machines. Today, as was the practice ever since those machines were in operation, which dates back to the turn of the century, employees represented by the Brotherhood of Maintenance of Way Employes actually operated those machines.

As a result of awards of the Adjustment Board, the threat of strike, and other pressures, agreements have been made that require the use of operating employees. There is no uniformity.

On one railroad you may have to use a locomotive engineer even though a maintenance-of-way man operates the machine. On a neighboring railroad the engineers may not have forced the issue and you do not use an engineer.

The CHAIRMAN. What does the engineer do when you use him?

Mr. WOLFE. He does absolutely nothing. Many railroads permit him to stay home. He is a hindrance rather than a help.

The CHAIRMAN. I think I know what a weed burner is and a self-propelled crane. If you have a self-propelled crane, that means the maintenance man operates the crane; is that right?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. Are you saying that there is an engineer, a fireman, a conductor, and brakeman all there to operate that thing?

Mr. WOLFE. Firemen participate only on very rare occasions. What I mean by that, very few railroads have to use a fireman. But on a great many railroads you have to have an engineer and he does not operate the machine, he does nothing in connection with the operation. He wouldn't know how to operate it.

Furthermore, the maintenance-of-way man has by contract the right to do it.

The CHAIRMAN. Do you have a brakeman to help operate it, too?

Mr. WOLFE. No, sir. The brakeman under certain conditions may do some flagging. But that same operation, that is the flagging, is done by maintenance-of-way employees and has been for many years.

The CHAIRMAN. Flagging, that means that crane is on the track?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. You have to have a flagman?

Mr. WOLFE. Many railroads protect by train order in one direction. But it is the same situation, if a section gang takes out a rail.

The CHAIRMAN. Yes; I know. I am getting down to the point that you said engineers, firemen, conductors, and brakemen. I am trying to ask you if they have brakemen, if they have engineers, and if they have firemen.

What could a conductor do in the operation of that machine?

Mr. WOLFE. Nothing that I know of.

The CHAIRMAN. Is he there?

Mr. WOLFE. Yes; he is there.

The CHAIRMAN. You mean if you have a self-propelled crane that is doing some work or a weed burner under these rules a conductor is there as a part of the operation?

Mr. WOLFE. He is there but not as a part of the operation.

The CHAIRMAN. What does he do to earn his pay?

Mr. WOLFE. In my opinion, he doesn't do anything to earn his pay.

The CHAIRMAN. He must do something. He must check in.

Mr. WOLFE. I think he probably does and registers his watch.

The CHAIRMAN. I am just trying to get in my mind just how far this goes or just what the actual facts are in connection with it.

What is the average annual wage of an operating employee?

Mr. WOLFE. Combining these five, I would say somewhere around $9,000 a year.

The CHAIRMAN. Do you mean by that that 575 people that you are talking about in this group—I recognize you are talking about 575 out of 200,000, are you not?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. Nevertheless, that would, I assume, mean something over $5 million a year?

Mr. WOLFE. In 1962, Mr. Chairman, the average was $8,120.

The CHAIRMAN. That means of the brakemen and engineers, firemen, and conductors?

Mr. WOLFE. Yes, sir; that is correct.

The CHAIRMAN. Now, then, carrying this a little further on these actual operations, what is this problem about a brakeman or operating employee going so far one day in getting his mileage and staying overnight and coming back the next day? I do not know whether the schedule or just what the technical term is, that he has completed his work for a period of time until it comes around again.

Can you explain that?

Mr. WOLFE. I think, Mr. Chairman, you are speaking of mileage regulations. I think all agreements applicable to engineers and firemen, for example, have certain maximums measured in miles that the employee may not exceed. Generally speaking in passenger service for enginemen, the maximum is about 4,800 miles a month.

Now it is possible for that engineer to make that mileage in some cases in 10 days. But 15 is not uncommon. When he reaches that maximum then he may not work any more during that month.

The CHAIRMAN. And there is an issue between your industry and the brotherhoods. The brotherhoods contend, as I understand, that they will have to go so many miles and they have accomplished that period of time or distance and then they have to stand their own expenses in the layover and so forth before they get to go back?

Mr. WOLFE. That was an issue, as you stated, before the Commission.

The CHAIRMAN. You claim that they go down and make their mileage in one day and make the mileage back the next day or a combination of it and in 10 or 15 days they have accomplished all of their work for that month and they do not do anything else for the rest of the month?

Mr. WOLFE. In addition, the Commission recommended——

The CHAIRMAN. Is that your side of it?

Mr. WOLFE. That is part of it.

The CHAIRMAN. I was simply trying to find out if that was true.

Mr. WOLFE. Yes, sir. The Commission recommended that the carriers assume the cost of lodging. Either provide suitable lodging or pay the equivalent cost to the employee. That is something new. There has been certain wage adjustment to compensate for away-from-home expenses.

In 1943, President Roosevelt awarded a certain amount in lieu—a certain increase in wages—in lieu of expenses away-from-home.

The CHAIRMAN. Those are some of the innumerable issues involved in the work rules that are at issue here.

Mr. WOLFE. Yes, sir. Those things and others are involved in what we refer to as the pay structure issue.

The CHAIRMAN. Now, Mr. Wolfe, is it not a fact that the real problem here involved, which if it could be broken, would in your judgment and in the opinion of the Secretary of Labor, lead to a settlement of the problems—is it not a matter of changing conditions and what is referred to as technological developments that is bothering everybody?

Mr. WOLFE. I think that is a certainly present and probably of greater importance than any single other cause.

The CHAIRMAN. And that leads to the crux of the issue which is the issue here, and that is job security?

Mr. WOLFE. Job security is certainly an issue.

The CHAIRMAN. In other words, job security is tied up indelibly and completely with the question of the fireman's problem and then with the question of the crew consist?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. In other words, then, what is proposed here is to deal with the same fundamental problem by the Interstate Commerce Commission that the Congress said that the Commission should deal with some 20 years ago?

Mr. WOLFE. I think that is correct.

The CHAIRMAN. What is the date of section 5 of the Interstate Commerce Act?

Mr. WOLFE. 1940.

The CHAIRMAN. In other words, for 23 years it has been the policy of this country by an act of Congress, and the policy of the Congress, that matters involving job security and such as are really the crux of the problem here, that the Interstate Commerce Commission should have the responsibility to determine those issues?

Mr. WOLFE. That is correct.

The CHAIRMAN. In other words, there is no new innovation here at all, but it is an extension of what has been the national policy for 23 years?

Mr. WOLFE. Yes, sir.

The CHAIRMAN. Now I would like to ask you this question: Would the provisions of House Joint Resolution 565 apply to changes in work rules involving the manning of train and engine crews of a carrier not a party to the notices of November 2, 1959?

Mr. WOLFE. Our lawyers tell me that it would not apply.

Mr. LOOMIS. That is our understanding.

The CHAIRMAN. Is that your interpretation, Mr. Loomis?

Mr. LOOMIS. Yes, sir.

The CHAIRMAN. In other words, then the provisions here would not be applicable insofar as the Southern Railway is concerned?

Mr. LOOMIS. That is correct.

The CHAIRMAN. Now will you turn to the resolution, 565, on page 4?

Mr. LOOMIS. Yes, sir.

The CHAIRMAN. Before we get to that, I believe Mr. Cunningham raised the question beginning on line 12, 13 and 14.

Do you have any position with reference to the need or necessity for such a special advisory panel?

Mr. LOOMIS. We do not think so.

The CHAIRMAN. If I understood the Secretary correctly yesterday he would not object if that was eliminated.

Mr. LOOMIS. That was the way we understood his statement.

The CHAIRMAN. I would raise the question: What does it mean for such a special advisory panel to "assist"?

Mr. LOOMIS. I would say, Mr. Chairman, that we have no clear understanding of it. At first I thought it might refer to something like the Commission uses in the employee boards and the hearing examiners.

I am not sure that interpretation was correct. But I would suppose that insofar as hearing examiners are concerned, that would be applicable under existing procedures without the necessity for any further provisions.

The CHAIRMAN. That would come under the Administrative Procedures Act, anyway.

Mr. LOOMIS. Yes.

The CHAIRMAN. I was thinking if such an advisory group might be helpful at all, it would be better to say to advise instead of to assist. I cannot but feel that might have some connotation that the Commission might actually delegate certain authority.

Mr. LOOMIS. We have the same fear.

The CHAIRMAN. Now on page 4, I brought this out with the Secretary yesterday as to what was meant by it.

You have, I assume by what you had to say this morning, indicated you agree with the Secretary, that if there appeared to be a conflict between the recommendations referred to and 5(2)(f) that 5(2)(f) would be prevailing.

Mr. LOOMIS. I think his interpretation of the wording was correct. We do not agree that it should properly be included.

The CHAIRMAN. I understand that. I cannot but have some feeling the way this whole thing has developed over the period of time in discussions that perhaps that was not originally intended. I may be wrong about it. But that is the way it turned out.

Mr. LOOMIS. I would draw that conclusion from the language that the President himself used on page 6 of his message. In his language he said, "Giving proper weight to the protection provisions of section 5(2)(f) of the Interstate Commerce Act and those recommended by the Presidential Commission and Emergency Board reports."

The CHAIRMAN. Somewhere in the discussion, I get the impression that was the intention. I think there is an ambiguity at least, if not a direct conflict. I am inclined to think as I told the Secretary yesterday, that it ought to be cleared up. I told him that we would be talking with him about it again later.

Since you raised the point this morning for the committee, I would welcome any suggestion that you may have, and you can supply that to the committee. You raised objection to it but you did not, as I understood, offer anything to correct it.

Mr. LOOMIS. No; but we would be very glad to offer something. It first comes to mind that the language that the President used might be appropriate but we would like to consider it a little further and then offer a suggestion.

The CHAIRMAN. You may file such additional suggestion for the benefit and consideration of the committee.

Mr. LOOMIS. Thank you, sir.

The CHAIRMAN. Mr. Macdonald?

Mr. MACDONALD. I have just one question. Thank you, Mr. Chairman.

Now I am very confused, Mr. Wolfe, about your testimony concerning everything within the resolution. As you perhaps recall, I asked you the question this morning if you had read the testimony of the Secretary yesterday, that not everything in the resolution had been bargained about and you said that the Secretary had been in error in that statement.

Now in answer to the distinguished chairman, Mr. Harris, you said that section 6 and perhaps section 7 had not been a part of the collective bargaining negotiations. At which time were you correct? Which time should I believe what you say?

Mr. WOLFE. I think you should understand what I said.

Mr. MACDONALD. I would like to. I have been trying to all day.

Mr. WOLFE. I will try to make it clear. There has been bargaining in all subjects.

Mr. MACDONALD. Then what you said this morning was incorrect?

Mr. WOLFE. I don't think I said that this morning. I would like to look at the record. In fact, I am sure I didn't say it. Before the Commission there was bargaining on everything, hundreds of pages, witnesses on everything. Then when we were in mediation we discussed everything, but some things to a greater extent than others.

Now perhaps the misunderstanding arises and it is probably my fault, in regard to what the Secretary said and I said about the negotiations during the period he was participating.

Now during that period most of our time was confined to the manpower issue, although the other issues more or less were likewise discussed. On some of them there was an exchange of proposals.

If I have not made it clear this time it is because I am not expressing myself as I should. But I certainly want to make it clear.

Mr. MACDONALD. Then your answer to the chairman actually was that indeed, section 6 on page 5 of the joint resolution, was discussed fully?

Mr. WOLFE. Throughout this period from November 2, 1959, there has been discussion of everything. In my opinion, thoroughly. But during the period and I want to emphasize this, that Secretary Wirtz was involved, there was some discussion but it was limited discussion in connection with the pay structure propositions. I think that is what he had in mind.

Mr. MACDONALD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Wolfe and Mr. Loomis, for your presentation here and the information that you have given to the committee. We are glad to have the knowledge that you have imparted to us out of your experience on this subject.

The committee will meet in the morning at 10 o'clock at which time the representatives of the members of the Interstate Commerce Commission will be here. We had previously indicated that perhaps the brotherhoods would start in the morning but this afternoon it was worked out that the ICC would come tomorrow. We will take them and then on Monday we will proceed with the brotherhoods' testimony.

Thank you very much, gentlemen.

Mr. LOOMIS. Thank you, Mr. Chairman.

Mr. WOLFE. Thank you.

(Whereupon, at 5:05 p.m., the committee recessed, to reconvene at 10 a.m., Friday, July 26, 1963.)

RAILROAD WORK RULES DISPUTE

FRIDAY, JULY 26, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order. This morning, in continuing the hearings on House Joint Resolution 565, we have the Chairman and other members of the Interstate Commerce Commission. Do we have all the members here?

I believe we do, gentlemen.

STATEMENT OF HON. LAURENCE K. WALRATH, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY VICE CHAIRMAN ABE McGREGOR GOFF, AND COMMISSIONERS HOWARD FREAS, KENNETH H. TUGGLE, RUPERT L. MURPHY, CHARLES A. WEBB, AND PAUL J. TIERNEY; GENERAL COUNSEL ROBERT W. GINNANE; VERNON V. BAKER, DIRECTOR, BUREAU OF FINANCE; HENRY WHITEHOUSE, OFFICE OF THE CHAIRMAN; ROBERT T. WALLACE, LEGISLATIVE COUNSEL; SAM L. LANGERMAN, ASSISTANT TO THE CONGRESSIONAL LIAISON OFFICER; STANTON P. SENDER, OFFICE OF THE GENERAL COUNSEL; LEONARD S. GOODMAN, OFFICE OF THE GENERAL COUNSEL; AND MARGARET T. SCHWAB, OFFICE OF THE CHAIRMAN

Mr. WALRATH. Mr. Chairman, would you like me to identify them?

The CHAIRMAN. I think you should identify them for the record and any of the staff that is with you so if they are called upon we will know who they are.

Mr. WALRATH. Yes, sir.

I suggest that it might be helpful if the commissioners would rise and I will announce them so that members of the committee will see them.

Our Vice Chairman, Abe McGregor Goff, Commissioner Howard Freas, Commissioner Kenneth H. Tuggle, Commissioner Rupert L. Murphy, Commissioner Charles A. Webb, and Commissioner Paul J. Tierney.

On my right seated at the table is our General Counsel, Robert Ginnane. On my left Director Vernon Baker, Director of the Bureau of Finance. I would also like to identify Robert Wallace, our legis-

lative counsel. There are other people and members of our staff in the audience and with your permission, sir, I will give the reporter a list of those present.

The CHAIRMAN. You may do so.

You have a statement, do you not?

Mr. WALRATH. Mr. Chairman, I have a statement. I would be reluctant to call it a prepared statement in the normal sense because this picture has been changing so rapidly that I would like the privilege of interpolating and adding to it and commenting on it, as I go.

The CHAIRMAN. You may proceed as you desire.

Mr. WALRATH. With your permission I would ask that the reporter might copy the first page and the first two lines on the second page. It simply identifies me and the issue before us.

The CHAIRMAN. Very well.

Mr. WALRATH. Mr. Chairman and members of the committee, my name is Laurence K. Walrath. 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 on the Commission's behalf to testify on House Joint Resolution 565, the stated purpose of which is "to provide for the settlement of the labor dispute between certain carriers by railroad and certain of their employees."

The specific provisions of House Joint Resolution 565 have been commented upon at length in prior testimony before the committee. In this circumstance, and in order to avoid duplication, we shall endeavor to confine our comments principally to matters relating to the role assigned to the Commission under the resolution.

At the outset, Mr. Chairman, we desire to make our position on the merits of this broad proposal perfectly clear—and I think it could fairly be summed up in these words: Although we do not seek delegation of the task here in issue, nevertheless, as an agency of the Congress, we are prepared to accept the responsibility if the Congress agrees with the President that House Joint Resolution 565 is the proper solution.

There can be no question that the seriousness and urgency of the situation is precisely as the President has so clearly stated it in his special message on Monday. Our Commission, within the scope of its responsibilities under the national transportation policy, has been as concerned with the consequences of irreparable damage to the public interest which would follow a shutdown of rail operations as is the President and the Congress. We would do anything properly within our power to alleviate and minimize such damage, as evidenced by our carefully planned and publicly announced emergency measures of several weeks ago when a rail strike then appeared imminent; yet nothing we could then or now plan under existing laws would avoid the consequences outlined in the President's message transmitting this resolution for your consideration.

I should say at this point, Mr. Chairman, that late yesterday the President's Economic Advisers testified in the Senate and presented an analysis of the economic and social impact of a rail shutdown. Although we have only the prepared statement given there we find no reason to disagree with their estimates, and would invite attention to even another probable result of such a shutdown. We think it would provide an additional impetus to the expansion of private carriage,

suggesting to rail shippers that perhaps they should get their own fleet of trucks and try to move their own traffic to avoid recurrent shutdowns. All of us, including this committee, are certainly concerned with the seriousness of the problems affecting our common carrier system in general. I pose this simply as another deteriorating factor.

In these circumstances, the Commission can only say to you that if the Congress approves the legislation now before you we will make every effort to meet the heavy responsibility this would place in the ICC and will by every proper and authorized means expedite a determination of any rule changes submitted for action.

To this end, and within the brief period allowed, we have made an intensive study of the specific provisions of House Joint Resolution 565. In general, we believe that these provisions are workable and adequate to accomplish the intended objectives of the resolution. A number of questions of a clarifying nature have, however, already been raised which prompts us to invite attention to ways in which the proposed measure might be improved and clarified. To some extent the legislative history may clear these up, but we think it of extreme importance to the public interest that these not be left in a state of uncertainty. This, of course, is quite apart from the merits of the issues sought to be resolved.

First, a question has arisen concerning the scope of the term "work rules involving the manning of train or engine crews * * *" which may be made the subject of an application under section 1. One view is that this would encompass only those proposals which involve the use of firemen on other than steam power engines and the consist of crews including the manning of motorcars and self-propelled vehicles.

Specifically, if we accept the summary in the tripartite agreement of July 19, the term "work rules" would include the following items: the employment of firemen, crew consist, and manning the motorcars and self-propelled vehicles. Then we would get to an area where there is some uncertainty, as shown by the testimony given by Secretary Wirtz before the Senate Commerce Committee, and I believe before this committee, it appears that the intention of the drafters was to include the additional subjects of interdivisional runs and the combination of road and yard work. Understandably, it is important that any possible misunderstanding of our jurisdiction under section 1 be removed.

This matter was the subject of considerable discussion yesterday in my appearance before the Senate committee. Chairman Pastore received word from Secretary Wirtz and read into the record the fact that this was indeed the drafters' intention. I said in substance, as I would like to say to you, that if the Congress accepts this legislative intent, then we urge that it be made quite clear so that jurisdictional disputes over our authority under sections 1 and 4, on the one hand, and section 6 on the other, be avoided. Mr. Reynolds from the Department of Labor is here in the audience, and has indicated to me he would be glad to state in this record the intention of the drafters.

The CHAIRMAN. I think we probably will develop this later on at a more appropriate time after we have concluded other testimony.

Mr. WALRATH. Yes, sir. Proceeding now to other areas where we are suggesting clarification, section 1 of the resolution further provides

that changes in work rules within the scope thereof shall become effective upon approval or modification by the Commission "in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act." We construe the latter phrase as incorporating by reference the general procedures which are applicable to section 5 but which are authorized in other sections of the act, principally section 17. As so construed, the Commission would be authorized to prescribe special procedures for expenditious disposition of an application filed under section 1 of the joint resolution. However, since section 6 specifically provides for "special procedures" involving proposals submitted under that section, it might be argued that absence of a similar provision in section 1 was deliberate and intended to prevent adoption of special procedures. We do not believe that such was intended. Any possible doubt in the matter would be removed by inserting the phrase "and pursuant to general or special rules of procedure prescribed pursuant to the provisions of section 17 of that act," after the words "Interstate Commerce Act," in section 1. Then there would be no question that we could adopt expeditious rules to meet the situation.

Turning to another subject, question has been raised as to whether an order entered by the Commission under authority of the joint resolution would be subject to judicial review; and opinions have been expressed, with which we agree, that our orders would be subject to such review in the same manner as other orders of the Commission.

I think it is doubtless clear on your record, Mr. Chairman, that all opinion expressed has been to this effect.

In this connection, and in order to prevent possible multiple suits in various Federal district courts, we urge that a clause be added to section 7 providing that any suit to set aside an order of the Commission entered pursuant to authority granted by the resolution must be brought in the U.S. District Court for the District of Columbia.

I might add that there is no magic in the selection of that particular district, it could be the district courts of Illinois or any other place. But the point we wish to urge is that it be confined to one place. Our reasons are these: There are involved here most if not nearly all of the class I railroads of our country and others. There are involved specifically five brotherhoods. Any ruling that we might make may bring about different views of different parties involved and each would certainly be entitled to his day in court if he wished. But if every interested party should choose to file suit in the jurisdiction convenient to it, we might and very probably would have a multiplicity of suits, many of which would involve the same issue. It these suits were confined to one Federal court district, then when the same issues are involved they could be consolidated and treated in one case.

Where there were different issues—and I want to say quickly there is no intention on our part to deny anyone his day in court for the review of our decision—they would be treated differently. In the interest of expedition, and to avoid a multiplicity of suits which would cause great inconvenience and expense to the parties and the Commission contrary to the public interest, we urge that you confine legal review to one Federal court district.

Turning to another subject, the President's message states that the Commission shall "with the advice of the Secretary of Labor" require fair and equitable arrangements to protect the interests of affected

employees. We understand that a suggestion has been made that such provision be written into the joint resolution. However, in view of the fact that a question has been raised concerning the nature of that help, the Commission does not endorse this suggestion. A specific provision in the resolution of the nature indicated might be construed as requiring or permitting the participation of the Secretary of the decisional process. Such participation by a member of the executive branch would involve a departure from our traditional role as an agency of this Congress and, with respect to any action we might take under the proposed measure, might reflect unfavorably on the independence of our action.

Before concluding my opening statement, I should like to thank the Secretary of Labor for his kind words concerning our reaction to the very startling developments of the past weekend. If from his gracious expressions anyone should gain the impression the ICC had any part in the policy decision, I am sure he would agree that we did not.

One point that the Secretary clarified here and in the Senate concerns the last phrase of the resolution stating that the Interstate Commerce Commission may from time to time submit interim reports to the President on its actions pursuant to the resolution. I understand the Secretary has suggested that in keeping with our position as an agency of this Congress our reports should be directed to the Congress. We join in that suggestion.

Just one final comment. The subject resolution has received our continuing study throughout this week, and we have tried to keep up with the developments during the hearings. We may have overlooked some problems that exist in this resolution. As an example yesterday a question came up in the Senate concerning the expiration time for findings which we might make under section 6 of the resolution. Specifically, the question raised was whether our findings under section 6 would continue for the same period of time as our findings under section 4, and whether Federal court enforcement would still be available.

It is not clear from the resolution as it is now drafted. I think this matter should be cleared up. We are informed that research on the subject is being conducted by the Secretary of Labor. We simply call it to your attention as a matter which we think should be made quite clear either by modification of the legislation or by a very clear expression of legislative intent. At this point, Mr. Chairman, I thank you for the opportunity of appearing and expressing our views. I will be glad to try to answer any questions.

The CHAIRMAN. Thank you, Mr. Chairman. That concludes your statement, does it not?

Mr. WALRATH. Yes, sir.

The CHAIRMAN. Does any other member of the Commission have any comment?

(No response.)

The CHAIRMAN. Is the Commission unanimous in its presentation here today?

Mr. WALRATH. I believe, sir, that they back me fully in what I have said; yes, sir. I should have stated it another way. I think I speak for them in what I have said.

The CHAIRMAN. If there is any question in your mind, there are a number of them here, we will let them speak for themselves.

Mr. WALRATH. They are welcome to add or correct anything I have said.

The CHAIRMAN. The point is you did have this matter before the Commission?

Mr. WALRATH. We have had it before us all week, sir.

The CHAIRMAN. In your meetings with the Commission there is no division among the Commission regarding the presentation here this morning?

Mr. WALRATH. I think not, sir. Let me ask [turning to those present]. They evidence complete agreement. I might add that several Commissioners are away on business of the Commission and necessarily could not be here. Because of the importance of these hearings, I am sure that each of the 11 Commissioners would want to be here if it were possible. One of our Commissioners is ill but getting along very nicely. He necessarily has to be absent.

The CHAIRMAN. I am sorry to hear of the illness of one of the members and we wish him a speedy recovery and his return to his duties and responsibilities. Mr. Chairman, do you consider that the ICC from experience and from the standpoint of your organization is capable of coping with this problem?

Mr. WALRATH. Mr. Chairman, this issue is certainly not the purpose for which we were created. That is very clear. We do not pose as experts in labor-management relationships or in collective bargaining. Nevertheless, I think we are capable of performing the function that is proposed. I base that answer on the fact that in merger applications under section 5 we have been concerned not only with fostering a sound transportation system but also with formulating protective conditions for labor displaced by changes in transportation, and through managament decisions, we are also charged with a very heavy responsibility in the safety area which in turn involves the employment practices of carriers.

To that extent we have had extensive experience. Again I say that while we do not pose as experts in labor-management relations, we have had experience and capability in the area of employment practices bearing on safe operation and in imposing job protective conditions. As I understand it these matters are fundamental to the issues that would be before us.

The CHAIRMAN. Then you do think that this is a problem that is somewhat comparable and an extension of the provisions insofar as the responsibility of the Commission is concerned of section 5 of the Interstate Commerce Act which has been in effect for over 20 years.

Mr. WALRATH. I think you expressed it very well, Mr. Chairman. It is somewhat comparable. Bearing in mind that we are seeking to provide interim relief. I think the answer to your question would be "Yes."

The CHAIRMAN. Do you care to express in your own opinion whether you have considered the job protection provisions of section 5 of the Interstate Commerce Act, and the procedures set up for a resolution of the problems provided in that section, to be what is commonly and generally called compulsory arbitration.

Mr. WALRATH. We have heard a great deal about compulsory arbitration this week, Mr. Chairman. I think I would not be an appropriate witness to evaluate the extent to which the instant measure contemplates such arbitration.

Mr. CHAIRMAN. Just a minute, I am not asking you what we have before us. I am asking about the present law.

Mr. WALRATH. Yes, sir.

The CHAIRMAN. Under the provisions of section 5, and particularly section 5(2)(f) that has been referred to in dealing with job security of employees under certain conditions, do you consider that provision in the Interstate Commerce Act and the procedures under the act and the Administrative Procedures Act, judicial review and so forth, to result in what is generally construed in this country as compulsory arbitration?

Mr. WALRATH. I had not thought of it in that sense. I am aware of the manner that section 5(2)(f) is included in the resolution. That section is mandatory with respect to the minimum protection required thereunder. To that extent it is binding.

The CHAIRMAN. Is there any other provision of the Interstate Commerce Act regarding any adjudication that might arise under the provisions of that act that has a compulsory solution?

Mr. WALRATH. Yes, sir.

The CHAIRMAN. The act beginning in 1887 and other regulatory acts contain provisions of law and guidelines set up for resolving of economic issues and other issues under guidelines that Congress set up and referred to as regulatory procedures. Some call it quasi-judicial proceedings. They all have a final, if it goes to that, judicial determination.

Mr. WALRATH. Yes. Mr. Chairman, I would like to put it in context of regulation rather than arbitration. To the extent that the statute provides these minimum requirements it is binding, but this is a policy determined by the Congress rather than arbitration. I draw some distinction between the two.

The CHAIRMAN. That is precisely what I was trying to see if you do. I am trying to point out there is a difference between regulatory procedures and a firm solution and arbitration as it is known in this country.

Mr. WALRATH. Yes.

The CHAIRMAN. I have used more than my time.

Mr. WALRATH. In talking of arbitration I think in terms of the parties trying to agree and then someone settling the dispute for them. While it is true that temporarily we would be called upon to do that, the purpose and design of the resolution would not be to place with us the decisions of these matters for any time other than an interim period. It appears to contemplate regulation rather than arbitration. I do draw a distinction.

The CHAIRMAN. But any decision that you reach regarding this is subject to review and appeal and judicial adjudication?

Mr. WALRATH. Yes, sir. And the parties could make moot anything we have determined if they agree.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. If I understand you correctly, Mr. Chairman, I take it that you see a considerable difference in respect to compulsory arbitration applied to the authority that Congress has now written into the law. For example, section 5 respecting the job rights of employees and the authority that would be given to you by this legislation, to settle a labor dispute.

Mr. WALRATH. Yes, sir. You would be giving us a broader perspective if the resolution remains as it is. However, we agree with others who have said that there may be a conflict between what we might think in our independent judgment to be a fair and equitable settlement of the dispute between rail labor and management and the minimum protection under 5(2)(f). This appears to be inconsistent with the purpose of the resolution.

Mr. BENNETT. I was not referring to the interpretation placed on 5(2)(f) but rather the question that Mr. Harris directed to you from which I got the impression that he was trying to show that as a matter of fact you had as much authority to deal with compulsory arbitration in the present law under certain provisions which he mentioned as you would under the provisions of this act. Is that true or not?

Mr. WALRATH. No, sir, I didn't understand the chairman's question to imply that, nor my answer.

Mr. BENNETT. If his question did imply that, the answer would be no.

Mr. WALRATH. That is right, sir. I take it that our action under existing law would not touch the situation here. We would operate only in connection with the issues that come before us in mergers, consolidations and so forth, and here, of course, we do possess the power you and the chairman suggest.

Mr. BENNETT. This for the first time, if passed, would give the Interstate Commerce Commission authority to settle a labor dispute, would it not?

Mr. WALRATH. Yes, sir, in that sense you are right. We have no authority now to do so.

Mr. BENNETT. I am not in anything I have said here in these hearings trying to deprecate the good judgment and high caliber and competence of the men, including yourself, who are members of this Commission. But it is true, as you have pointed out, that none of the Commissioners or the Commission has special competence in the field of labor relations or the settling of labor disputes. Is that not so?

Mr. WALRATH. That is correct, sir. Up to this point we have been concerned with safety and the protective conditions under section 5(2)(f).

Mr. BENNETT. If Congress gives you this authority it will be a new experience for you to train a group of men manning an independent agency to settle labor disputes.

Mr. WALRATH. Only to the extent that we have been concerned with protective conditions for labor which would be displaced by management decisions.

Mr. BENNETT. I recognize that if the Congress gives you this authority you have to go ahead and do it or else resign your positions.

When the President recomemnds this, there is not much you can do except to go along with the recommendation. I have no criticism of any Commissioner. I merely question the advisability of Congress passing legislation to give to an independent regulatory agency authority to settle a labor dispute. Mr. Chairman, do you share the reluctance of others who have testified here about referring to this as compulsory arbitration or would you rather not talk about that at all?

Mr. WALRATH. Since that is a word or phrase of art I would be reluctant to say what is compulsory arbitration. Certainly if we acted on rules which were submitted to us we would in effect make a judgment and our rules would be binding for 2 years unless changed by agreement of the parties or by action by the court.

Mr. BENNETT. It must be more than a phrase of art. It must be something artful to suggest some kind of subterfuge from the way everybody who has testified so far has shied away from relating the phrase to the legislation we are considering.

It reminds me of the old duck hunter at home when they asked him how he identified a duck, "if he swims like a duck, flies like a duck, and waddles like a duck, I call him a duck." I think it is a homely comparison, perhaps, but I think it applies to the situation here.

I have just one other question. If you get this authority to go ahead with the hearing, would it be your plan to hear these matters on an industrywide basis or on a company basis?

Mr. WALRATH. Under this resolution, I think we would be confined to the issues that were posed by the proposals of management in 1959 and the proposals of labor in the fall of 1960, which in each instance were industrywide, as I understand it. In my opinion that is the context in which we would hear them.

Mr. BENNETT. That is all.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Chairman, I think you covered the questions that I would ask.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Chairman, first I want to congratulate you on limiting your statement to eight pages. I did not get so tired listening to you but I think I absorbed everything you had to say. Which comes back to the fact that a great deal is to be said for brevity when you come before a congressional committee to make a point.

You are an independent agency, are you not?

Mr. WALRATH. Yes, sir.

Mr. SPRINGER. Each and every member of the Commission is appointed independently for a number of years and not removable except for misfeasance or malfeasance of office; is that true?

Mr. WALRATH. That is true.

Mr. SPRINGER. And you are elected by the member of the Commission and not appointed by anybody?

Mr. WALRATH. That is correct, Mr. Chairman.

Mr. SPRINGER. Now, Mr. Chairman, there is a great feeling which has been expressed, I think, by congressional members that I have talked to, that you are in danger of getting a political decision instead of a Commission decision. I do not believe that myself.

You are going to be pressured and probably contacted or try to be contacted by everybody from the White House down through the parties by different and independent means.

Are you going to take into consideration in any of these attempts to contact you with reference to making a decision?

Mr. WALRATH. Mr. Springer, it is the firm position of the Commission and our understanding of the resolution before us, that you would expect and have a right to expect a completely independent and uninfluenced decision on our part if you give us this authority.

That is the very reason why we join with those who share some fear about misconstruction of the language concerning a special advisory panel. It is why we urge against the suggestion that advice from the Secretary of Labor be written into the resolution because such language could be construed as a means through which our independent judgment might be diverted.

I am not aware, sir, of any spirit of that sort. This week I have had a number of conversations with the Secretary of Labor and his Solicitor General concerning technicalities but received no suggestion of any sort that they would attempt to influence our judgment.

The Commission itself would want it quite clear that if we are given this authority you would expect from us action as an independent agency and not receive advice behind the door.

We would welcome any technical help from any source on a record available to all parties concerned.

Mr. SPRINGER. Mr. Chairman, will you decide this on the evidence, your best judgment, and in the public interest?

Mr. WALRATH. Exactly that, sir.

Mr. SPRINGER. Will all the other Commissioners do it on the same basis?

Mr. WALRATH. That is exactly what they wanted me to make quite clear to the committee. That is the way in which we traditionally work.

Mr. SPRINGER. May I say that everybody connected with this from the newspapers on down is going to be watching whether or not this thing comes out as a political decision and whether it comes out as a Commission decision based on all the facts and your best judgment of what the public interest dictates considering the interests of the parties and the law that is applicable thereto.

Mr. WALRATH. We have had a full week of soul-searching and we realize it is a very heavy responsibility as your question suggests. We must act independently or our decision would not serve the public interest.

Mr. SPRINGER. Mr. Chairman, I have this question.

Mr. FRIEDEL. Would the gentleman yield?

Mr. SPRINGER. Yes, if I can have a minute of your time.

Mr. FRIEDEL. What do you mean by political decision or political influence? I do not know what you refer to.

Mr. SPRINGER. I am referring to the general terms to somebody in politics. I am not referring to any particular party or the White House or someone else.

Mr. FRIEDEL. Are you speaking of political influence or a political decision?

Mr. SPRINGER. I am talking about a political decision as the result of political influence. Maybe that is a better way to say it.

Mr. Chairman, the resolution states that a decision shall be made in 120 days or as soon as practicable thereafter.

Would you have any objection to limiting this to 120 days?

Mr. WALRATH. We would like to see the language remain as it is. I would like to explain to you why. First, we would hope that we could dispose of it sooner than that, again bearing in mind the public interest and the necessity of an early solution of the dispute.

I think it would depend entirely—and on this we are only speculating—on the type of presentation that the parties gave us. Whether the issues are narrowly defined, whether or not they could with propriety stipulate as to facts, and whether, on the other hand, we would have to study all of the tremendous record that has been built, some 15,500 pages of testimony and equally as many pages of exhibits.

My General Counsel reminds me there are some 20,000 pages of exhibits. Together with any additional evidence that either of the parties might properly want to present.

If that sort of analysis is involved, then it is not that we would drag our feet or shirk the work but it becomes simply a question of time to absorb and base a judgment on that kind of a record.

I would like to point this out, sir. Our decision will be subject to review in the court and will have to be made with proper deliberation and with due process. Otherwise we will simply invite a reversal in court and a stay of anything we have done. Then we will have performed an empty act.

We hope to reach a decision within 120 days or less. But if we are required to do so a situation might develop where, after having done our level best to study the mass of evidence and to consider the very serious arguments pro and con we might be unable, due to an inadequate record, to reach a considered decision which would stand up under a court test.

I don't think that the Congress would want to place us in that position.

Mr. SPRINGER. Mr. Chairman, I dislike to interrupt your long answer here, but is it not the instruction of this statute if enacted that this business shall take precedence over all other business pending before your Commission?

Mr. WALRATH. That is correct, sir. We would treat it in that fashion.

Mr. SPRINGER. I will tell you one reason that brings me to this point and I am not condemning you as a Commission because it is just as true in others.

You have one that I just happened to have called to my attention accidentally where the decision of the examiner has been on file for a year and it took him a year to get ready. It look 2 years. If this takes precedence over all other business—I never sat in a case as a judge that I could not decide in 4 months and hear all the evidence that is proper.

You are not going to read all 20,000 pages or exhibits. But you will have a pretty good digest made by your staff so you can do this job. I think this is one of the most important elements that we get a decision within a reasonable length of time and get on with this business or else the statute will have expired.

Mr. WALRATH. I am in complete agreement with everything you have said, sir. We would treat it that way. I am saying that even to analyze and digest some 35,000 pages of testimony, no matter how many people you put on it, would take some time.

I am reminded that until the rules are formally proposed for our consideration we will not know how many issues are involved. If the issues have actually been narrowed as has been said on this record and in the tripartite agreement it might be an easier task than it was at the outset with the Presidential Commission.

I don't know how much of that record we have to consider. I am not arguing against the expedition that you suggest. In fact, if we are given the clear freedom to institute special rules of procedure, we would not contemplate having this heard and passed upon by a hearing examiner. Rather the matter would be submitted directly to the Commission for decision once the record is analyzed and before us.

I think again it would depend entirely upon how the parties approached this. Whether or not they were in agreement on basic facts, and whether we could actually make our judgment only on the facts in dispute and base our decision on the weight of that evidence.

I am not trying to evade. We would do exactly what the resolution says, give the top priority and work just as diligently and hard as we possibly could to get the job done, not only in our interest but in the interest of the public.

Mr. SPRINGER. I thank you for your answer, Mr. Chairman. That is all.

The CHAIRMAN. Mr. Rogers of Texas.

Mr. ROGERS of Texas. Mr. Walrath, the Interstate Commerce Commission makes quite a number of decisions each year?

Mr. WALRATH. 7,900 last year, Mr. Rogers.

Mr. ROGERS of Texas. You have been doing that for a long time.

Mr. WALRATH. Yes, sir; of course, it is increasing each year.

Mr. ROGERS of Texas. Do you make those on the merits of the issues involved or on the political matters?

Mr. WALRATH. Entirely on the merits.

Mr. ROGERS of Texas. If you are burdened with the responsibilities referred to in this resolution or any other responsibilities, do you have any anticipation of changing that policy?

Mr. WALRATH. No, sir.

Mr. ROGERS of Texas. You have given no one reason to believe that you might make a political decision contrary to the policies you have followed in the past, have you, Mr. Walrath?

Mr. WALRATH. No. I hope I have made it quite clear there has been no suggestion from any source that it would be expected that we would be influenced in our decision.

Mr. ROGERS of Texas. Let the record show that the gentleman from Texas feels that you have made decisions on the merits in the issues involved in the past and will continue to do so in the future.

Mr. WALRATH. I thank you, sir.

Mr. ROGERS of Texas. I understand from your testimony in the other body, Mr. Walrath, that you made it very clear that you are an independent agency and you want that understood. That you do not want to be placed in a position by this resolution or any other of being the alter ego of some other individual or some other agency or group.

That is correct, is it not?

Mr. WALRATH. That is correct. I take it that the President in his message recognized that we would act as an independent agency. There has been no suggestion that it be different.

Mr. ROGERS of Texas. I understand that you made it very clear that if this is to be placed in your shop, this responsibility that you want the latitude to pursue it and try to resolve it as you see best; is that correct?

Mr. WALRATH. Yes, sir.

Mr. ROGERS of Texas. Mr. Walrath, as I see this matter as it has been presented, this resolution would actually call upon you as a body to simply provide the approval of rules to be used during the time of collective bargaining but not to exceed 2 years.

Is that your understanding?

Mr. WALRATH. Approval, modification, or disapproval, as it might require. But certainly when something was approved, as you say, it would be effective no longer than a period of 2 years. It is hoped that the measure would encourage continued bargaining and at any moment the parties could supersede anything we had found proper.

Mr. ROGERS of Texas. There is reference made in the resolution as you are aware of, I am sure, and treating the subject, as I understand it, with regard to 5(2)(f) of the Interstate Commerce Act. If that language that is in the bill now, Mr. Walrath, stays in that bill, I would assume that you would be bound by the wording in that section to apply that literally to whatever decision you made with regard to approving, modifying, or disapproving any rule request.

Mr. WALRATH. That portion as now written beginning on line 2 of page 4 and running for several lines is mandatory as we read it, Mr. Rogers.

Mr. ROGERS of Texas. That provision could actually control whether or not you approved, disapproved, or modified a requested rule, could it not?

Mr. WALRATH. It could certainly affect it; yes, sir.

Mr. ROGERS of Texas. Under the circumstances and under the responsibilities that would be placed on you by this resolution, do you feel that you should have a freer hand so that whatever rules you did adopt you could apply the protective measures that would be in keeping with those rules to properly protect the employees rather than to be confined to one set of guidelines?

Mr. WALRATH. My answer will be affirmative. To leave the resolution as it is now drawn and yet expect us to make independent judgment based on the merits of whatever is presented to us, might be inconsistent.

In fact, we had earlier thought of raising this question before you but we realize it has been raised very clearly in your record and also in the other body.

I made this point yesterday under questioning; if the Congress wished to do so, it could eliminate the mandatory feature of section 5(2)(f) and instead require us to give it due consideration. However, the reason we didn't comment on 5(2)(f) directly is that we felt that it was in the resolution by design and that any alteration of the language was a matter for the Congress to decide. However, it would be very simple to give us complete flexibility. The resolution

could be amended to require us to give due consideration to the provision of 5(2)(f), along with other matters.

Mr. ROGERS of Texas. This is a rather sizable responsibility you are asked to assume, is it not?

Mr. WALRATH. It is a tremendous responsibility.

Mr. ROGERS of Texas. Do you feel you ought to have proper latitude where you can try to resolve the situation in the best interests of everyone concerned, including the country?

Mr. WALRATH. Yes, sir; we would ask for as much discretion as the Congress is willing to give us.

Mr. ROGERS of Texas. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Walrath, one of the unsolved mysteries of this resolution is that the record shows that the ICC has for 23 years solved labor problems. Much of the testimony, both of the Secretary and the others, said that you have gathered a lot of expert experience in settling labor problems.

This morning you say that you are not a labor negotiating body and you have not had that experience. Is that true?

Mr. WALRATH. I draw a distinction, Mr. Younger, between negotiating labor problems and making appropriate findings in the public interest to promote safe operations and lessen the effect of labor displacement.

We have had vast experience in the latter area. We have had no experience and no authority to gain experience in the field of negotiation and arbitration.

Mr. YOUNGER. When were you brought into this situation?

Mr. WALRATH. When the President sent his message and resolution up to this body.

Mr. YOUNGER. Were you consulted in regard to the wording of the resolution and preparation of the resolution?

Mr. WALRATH. To this extent, Mr. Younger, and perhaps as soon as it was possible. At 1:25 on Sunday afternoon just passed, I was permitted to share the confidence of the Secretary of Labor.

I don't want to belabor the point because my answer to you is not critical of those who drafted the resolution. I think they had a number of solutions under consideration and perhaps it was not crystalized sufficiently. But at 1:25 p.m. on last Sunday, the Secretary himself called me and that was my first knowledge the ICC was under consideration.

It was not until the next day, because the decision had not actually been made as I understand it, that I was able to share the information with the Commission.

Mr. YOUNGER. Were you consulted or any of your staff consulted in the preparation of the resolution?

Mr. WALRATH. Late Sunday afternoon we were requested and did furnish some of our key staff people to work with the Secretary of Labor and his Solicitor General.

To that extent, yes, sir. We were given an opportunity Sunday afternoon to talk with them on a technical level, not on a policy level.

Mr. YOUNGER. That is one of the mysteries about this. You have had this responsibility for 23 years and all during the 4 years of

negotiation and bargaining no one has suggested that this case be assigned to the ICC or on any of the previous difficulties in the railroad labor field.

That is one of the things that remains still a mystery as to how it happened to be developed.

As I understand, you would like more than 120 days.

Mr. WALRATH. I would hope we could do it in 120 days. My suggestion was that we would like to have the language left as it is. Actually we were not consulted on the 120-day feature. There may be some misunderstanding about that. The Secretary himself agrees that if such an impression were given it is incorrect. We think the 120-day provision, together with the accompanying clause "or as soon thereafter as practicable" is a good and sound provision. If, however, it is the judgment of the Congress that a fixed period of time is required, then in all fairness, and in order that we can make a considered and sound judgment, we suggest that we be given more than 120 days.

We like the provision just as it is. We could operate as it is.

Mr. YOUNGER. I think we must have a cutoff date.

Mr. WALRATH. Yes, sir.

Mr. YOUNGER. Bear in mind 120 days is 4 months.

Mr. WALRATH. Yes, sir.

Mr. YOUNGER. If we increase it to 150 or 180, you get 6 months. All of the work of the ICC has to remain aside.

As I understand, you have to give priority. There will be no decisions on railroad mergers or rate reductions or rate increases or all the problems that you have will remain unsettled pending your decision on whatever either the employees or the carriers submit to you for your consideration.

Is that right?

Mr. WALRATH. No, not quite right. I don't understand it that way. I read the phase "priority over all other matters" to mean that we would not let anything else interfere with the disposition of the work rules dispute. We would give that matter priority attention to the extent required. We have, you know, some 2,400 employees.

I would think that much of our normal work would go ahead. True, this legislation would require the very best talent we have. I would hope that we could in some fashion, and on the record, obtain from any other agency information that might be helpful to us.

I am getting a little aside from my point. My point is that much of our work could go on without interference. If at any time it interfered, yes, I would agree with you that the other work would have to be laid aside.

Mr. YOUNGER. I have one other question.

I read a report of your testimony before the Senate committee yesterday. You would have before the ICC no problem until one of the parties made an application; is that correct?

Mr. WALRATH. We would have no formal problem, certainly. If this legislation is adopted we would undertake to do preliminary work to inform ourselves in more detail.

Mr. YOUNGER. You will have no problem on which you can render a decision until an application is made?

Mr. WALRATH. That is correct, sir.

Mr. YOUNGER. You testified yesterday that the Commission would not be bound by the work rules, the limits of the work rules or the proposals of the brotherhoods. That you could grant more or you could grant less than the extremes in the application or that was awarded by the various Commissions or suggestions by the various Commissions.

Mr. WALRATH. That is my understanding. You are correct as to what I said. If you give us this task, I think you would expect us to reach an independent judgment on what is fair and proper as to rules to be put into effect, bearing in mind only that our authority is confined to the issues encompassed within the proposals of 1959 by the carriers and the issues posed by the proposals by the brotherhoods in 1960.

Mr. YOUNGER. Yes; but if they make an application on their work rules, if I understand you correctly, you could go beyond the work rules as proposed by the carrier in your order.

Mr. WALRATH. We would be confined only by the issues or subject matters themselves. The answer to your question is "Yes."

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

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Walrath, in your statement on page 7 you said you would not want to have duplicate suits filed all over the United States. You would like to limit it to the District Court of the District of Columbia.

Would that be constitutional?

Mr. WALRATH. I think if the Congress provided a day in court it could limit such hearing to a particular place. I say that on the advice of counsel who have considered that question. Yes; it would be constitutional.

Mr. FRIEDEL. I have one other question. You did make a statement that you would like to draw on help from other agencies. On page 3 of the bill, line 13, or starting with the end of 12, "the Commission may establish a special advisory panel."

Mr. WALRATH. Mr. Chairman, I cannot hear Mr. Friedel because of conversations in the background. I am sorry, Mr. Friedel, I simply could not hear what you were saying.

Mr. FRIEDEL. Page 3 of the bill on line 13.

The Commission may establish a special advisory panel to assist in the discharge of the functions.

It was suggested that we use the word "advise" instead of "assist."

You made a statement you would like to draw on help from other agencies. Would such a panel be helpful or not?

Mr. WALRATH. I take it that such phrase was put in the resolution with the intention of being helpful to us. I am also aware that it might be construed as a means of influencing our decision.

I said that I join with those who were suggesting that it might be taken out.

As to drawing on others for help, I could illustrate what we mean very simply. We understand that there are pilot studies now in existence dealing with retraining programs.

That is, pilot programs for retraining. Obviously we have had no reason to concern ourselves with the progress of such pilot studies.

I would hope that if retraining becomes one of the issues, we could with propriety seek information about those studies—what those training programs consist of and what their cost may be and so forth, and without the implication that we are being told how to decide the case. In that sense we hope that we could have access to any information that exists in or outside the Government. But if it be material to the issues we would want it put on the record and not brought to our attention in a closed-door conference.

Mr. FRIEDEL. In other words, the Commission may establish a special advisory panel but that would be up to you?

Mr. WALRATH. Yes.

Mr. FRIEDEL. I thought by taking the word "assist" out and putting in the word "advise," it might be helpful?

Mr. WALRATH. The word "advise" might lend itself to another construction, as being influencing.

Mr. FRIEDEL. That is all.

Mr. WALRATH. There is no question that we will need a great deal of help from other agencies of the Government to make an intelligent decision on some matters which are not within our experience, such as the retraining program.

Mr. FRIEDEL. Is there anything in the bill that would allow you to do that?

Mr. WALRATH. I think, absent any prohibition in the bill, we could obtain such instance. We would see that it was obtained properly and not subject to misconstruction.

As I say, I think the purpose of the drafters was to be helpful and not to influence us.

Mr. FRIEDEL. That is my belief, too.

Mr. WALRATH. That is the sense in which we would accept the resolution as drawn. I am simply recognizing the practicalities of the thing, that the subject language might lend itself to misconstruction. If so, I would rather have it out.

Mr. FRIEDEL. Mr. Walrath, I appreciate that any decisions that you may make, or your Commission, will not be on a political basis but will be in the public interest as you have always done as an independent agency.

Mr. WALRATH. Thank you, sir.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Walrath, you referred in your statement to the President's message wherein he mentioned how you would perhaps function with the advice of the Secretary of Labor. I do not presently see this suggestion in the resolution. But assuming that this proposed legislation, as enacted, would have such wording in it, and then assuming that the Secretary of Labor should so advise you, what would be your idea as to his function in any controversy?

Mr. WALRATH. Under those assumptions, Mr. Curtin, I would think we would be free to call upon him for advice of a technical nature, just as we offered to give him in the limited time available technical advice in the drafting of the resolution. We would not invite or accept his advice on substantive matters.

There again we realize the suggestion that the word "advise" be added to the bill is no more than an intention to enable the Secretary

to be as helpful as possible and not to influence our decision. However, I made clear, I think, that we would not support the suggestion that it be written in because I think it could be misconstrued. Not by us but by others who might not have the confidence in us that this committee has.

Mr. CURTIN. Whose opinion would prevail, should there be some irreconcilable difference between what the Commission feels should be done and what the Secretary of Labor thinks should be done?

Mr. WALRATH. I can't see anything that is irreconcilable there because we would simply exercise our independent judgment regardless of his views.

Mr. CURTIN. You would simply consider his opinion as advice only?

Mr. WALRATH. Yes, sir.

Mr. CURTIN. I understand you like the wording of section 2 where it says you will act within 120 days "or as soon thereafter as is practicable."

You think that is all right?

Mr. WALRATH. Yes. I ask for retention of that language only to enable us to meet a situation, which we hope would not occur, where, because of the volume of testimony to be analyzed, we might need the extra time to reach an informal decision. I would hope we could decide the matter within the 120-day period.

Mr. CURTIN. Supposing those words "or as soon thereafter as is practicable" were eliminated and a cutoff date was put in the legislation, what do you think that cutoff time should be?

Mr. WALRATH. Then I would make a suggestion of 180 days. That is purely arbitrary. I would hope still, Mr. Curtin, that we could do it in less than 4 months.

As has been pointed out, with the priority given in the resolution we would act as quickly as we could in order to return to our normal routine work and not let other interests suffer. Many of our pending cases are of tremendous importance also.

Mr. CURTIN. Thank you, sir. That is all, Mr. Chairman.

The CHAIRMAN. Since there has been a comment about it from time to time, I would like to join at least in some of the indications or expressions here, Mr. Chairman, that if a matter as far reaching and important as this is to be determined by the Commission, I would not want any language in the resolution on the question of advice and counsel to be construed that after the record is made that you could be talked to behind the door in ex parte proceedings.

I think the record this committee has developed over the years has made it very explicit in this and other matters in the joining of the issues. Making the record is one thing. But when decisions are to be made as several members already expressed their feeling about it, I certainly would want to confirm what you have said.

It would be expected that these decisions would be made by the members of the Commission in their own independent judgment from the record that has been presented.

Mr. WALRATH. I had not raised this point, Mr. Chairman, but you know I am about to send you an official communication advising of the adoption of our modified code of ethics which now deal specifically with ex parte communications.

To act contrary to the statements you have just made would be in violation of our own rules.

The CHAIRMAN. I just wanted to make it clear so that there would be no misunderstanding about it.

Mr. WALRATH. I am in complete accord with your statement.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. I have no questions.

The CHAIRMAN. Mr. Sibal?

Mr. SIBAL. Thank you, Mr. Chairman.

Mr. Chairman, as I understand it, you were advised by 1:25 last Sunday afternon that this hot potato was going to be dropped in your lap; is that right?

Mr. WALRATH. Yes—that it might be.

Mr. SIBAL. Later on that afternoon, you were asked to provide some technical staff?

Mr. WALRATH. It was suggested, and just as quickly as possible, I assembled a staff group consisting of our Associate General Counsel, Director Baker, and two other attorneys to render technical assistance. That was in the final stages of the draft resolution. However, it was changed even further before being sent to the Congress.

Mr. SIBAL. But the point I am trying to clarify is that the decision that the ICC would be the recommended agency to arbitrate this was made prior to that telephone call; is that correct?

Mr. WALRATH. I don't have that impression, sir. I think, at that stage, and I should not be the one to say this but you are asking my opinion. It was a suggestion which had been developed and later transmitted to the President. The decision had to be his.

Mr. SIBAL. By the President, you mean?

Mr. WALRATH. Yes. I am only judging from later developments. We all know from public information that the President was not actually in the city until Sunday evening. My conversation with the Secretary took place in the early afternoon.

Mr. SIBAL. What does that have to do with it?

Mr. WALRATH. I don't know, sir. I suppose nothing to do with it—I am showing the basis for my personal view.

Mr. SIBAL. Were you asked your opinion whether you had particular competence in this field?

Mr. WALRATH. No, sir.

Mr. SIBAL. Were you asked as to whether or not your present and past responsibilities—when I say "you," I mean the agency, of course—might conceivably put you in a difficult position as you assumed these new responsibilities?

Mr. WALRATH. No, I did not construe the conversation as a request for an opinion.

Mr. SIBAL. That really leads up to my basic question.

Was your opinion asked?

Mr. WALRATH. No, because, as I say, I don't think the decision had been made. It was merely under consideration.

Mr. SIBAL. If it had not been made, would that not be a logical time to give your opinion, before it was made?

Mr. WALRATH. I don't know, sir.

Mr. SIBAL. What is the total amount of the loans guaranteed under the program that used to be in effect by your agency?

Mr. WALRATH. Just 1 second, sir.

In round figures, $220 million of the authorized $500 million.

Mr. SIBAL. As I recall that program and correct me if I am wrong, the ICC guarantees loans to railroads who make a case, and an important element of that, as I recall under the legislation authorizing these loans and authorizing you to guarantee these loans, is that you have to have reasonable expectation that repayment will be made; is that correct?

Mr. WALRATH. That is one of the four required conditions or findings; yes, sir.

Mr. SIBAL. Would you be good enough to read those?

Mr. WALRATH. Yes, I will be glad to. Would you like all four of the criteria?

Mr. SIBAL. If you could do it without taking undue time. Is it lengthy?

Mr. WALRATH. No, sir. I believe I can shorten it.

Section 504 of the Interstate Commerce Act states that "no guarantee shall be made under section 503 unless," and then it lists four items, the fourth of which you mentioned, and perhaps that would suffice. This is the language of item 4—

unless the Commission finds that the prospective earning power of the applicant carrier, together with the character and value of the security pledged, if any, furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States.

Mr. SIBAL. Thank you very much. That loan program, I think, the chairman, yesterday, as we discussed this issue in the committee, raised the point had expired; is that correct?

Mr. WALRATH. This past June, except as to applications which were properly filed before the expiration date. We still have some pending.

Mr. SIBAL. You still have some pending?

Mr. WALRATH. Yes; I could tell you roughly the amount involved.

Mr. SIBAL. Will you, please?

Mr. WALRATH. The applications currently pending, all of which were filed ahead of the deadline, involve, in round figures, $35 million.

Mr. SIBAL. Would you anticipate, of necessity, that the action on those applications would have to be delayed until after your consideration of these responsibilities?

Mr. WALRATH. Not necessarily, sir. Our financial analysts are working on those, our staff is processing them. It wouldn't necessarily require the same people to do that job as would be required in the administration of the instant resolution.

Mr. SIBAL. You mean on the staff level?

Mr. WALRATH. Yes, sir.

Mr. SIBAL. But the decision would have to be made by the Commission?

Mr. WALRATH. Yes. If, by chance, rules changes were ready for submission to the Commission for decision at the same time a loan guarantee was ready for submission to the Commission for decision, I take it we would have to decide the rule change first.

Mr. SIBAL. Under section 2?

Mr. WALRATH. Yes, sir.

Mr. SIBAL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. Moss. No, sir.

The CHAIRMAN. Mr. Cunningham?

Mr. CUNNINGHAM. Mr. Walrath, when the Secretary of Labor was here, several members asked him about the interpretation of certain language which was rather unclear.

You have gone over this since you have gotten it this week and you have recommended suggested changes.

Mr. WALRATH. Yes, sir.

Mr. CUNNINGHAM. Do you think if these were adopted that there would be no fear of a cloudy piece of legislation that you would have to be involved in?

Mr. WALRATH. So far as we are aware of now, Mr. Cunningham. As I asked or intended to ask the chairman, we are continuing our study of the resolution, and while your record is open I would hope that, in the event we come across something else, you would permit us to submit an additional statement. But we are not aware at the moment of any questions so far as clarity, accuracy, and our ability to operate, are concerned except of course those points which we have previously mentioned or which have been mentioned by other witnesses.

Mr. CUNNINGHAM. Do you have any notion, taking an individual case of somebody filing an application for a rule change, say the carriers filed an application, would they be called in to explain their reasons and then would the opposing parties probably be called in to give their view in opposition?

Mr. WALRATH. Certainly, recognizing the necessity of due process, the views of both parties would be received in proper manner on the record.

However, we have urged that you give us flexibility in matters of procedure. We contemplate formulating special procedural rules and we would call all the parties together for a prehearing conference in an effort to find means of expediting our handling of the proceeding.

If you are talking about representations on the merits of the proposals, I would assume that the party proposing the rule would be prepared to support it on the record and not by "back-door" consultation.

Mr. CUNNINGHAM. My point was if either party proposes a rule change, the opposing viewpoint would be heard?

Mr. WALRATH. Yes.

Mr. CUNNINGHAM. In some way your attention would be given to that proposal?

Mr. WALRATH. Yes, sir. That is the reason we would rather not be limited too closely on the period in which we must decide such a heavy issue.

Mr. CUNNINGHAM. I note you are not too enthusiastic to have this burden placed upon you, but as good servants as you are, of course, willing to assume it.

Would you have any other suggestion as to how this issue might be resolved other than through this piece of legislation we have before us?

Mr. WALRATH. I am aware of the testimony of those who are more familiar than I with the alternatives available. I heard Secretary Wirtz on the afternoon of his appearance before your committee, and I know of no alternatives differed from those he expressed.

A decision by the Congress itself on the proper rules would be one alternative. Amendment of the railway labor acts and the Mediation Act to permit a binding decision would be another.

I share the view of those who have said that collective bargaining should continue. I think that is the proper and ultimate way to resolve these issues. I am not giving you a very artistic answer. I know of no other way of resolving the dispute, than the instant resolution or the other alternatives that have already been suggested.

Mr. CUNNINGHAM. Or to have a strike?

Mr. WALRATH. Yes, sir.

Mr. CUNNINGHAM. Mr. Sibal mentioned something that I had in mind, too. You don't have any spare time on your hands at the moment, do you?

Mr. WALRATH. We are a very busy agency, Mr. Cunningham.

Mr. CUNNINGHAM. I am sure we all know you are. This requires you to give top priority to these problems. I am concerned about what is going to happen to all of the other responsibilities that you now have and that take all of your time and probably you need a lot more time just to deal with the things that you now have before you.

Mr. WALRATH. Yes, that is true.

Mr. CUNNINGHAM. What are you working, a 24-hour day?

Mr. WALRATH. I have this week, sir. We all have this week. Of course, something will have to give. There is no shortage of work at the Commission. There is no free time.

Mr. CUNNINGHAM. Something will suffer?

Mr. WALRATH. Yes.

Mr. CUNNINGHAM. Some problem will suffer because of this emergency situation?

Mr. WALRATH. Yes, necessarily. But that doesn't mean that all work will stop, as I pointed out earlier. I would like to say this for the record, Mr. Chairman: I am assuming, and we have not raised this point, that funds will be made available to the extent needed for clerical personnel and that sort of thing. Our budget doesn't encompass such a matter as this. We don't know what the burden will be at this time.

I am assuming that if a financial burden results, we will have to talk with the Budget Bureau and then come to the Congress to seek funds.

On the other hand, additional money may not be the answer. This brings us right back to the implication of your question, Mr. Cunningham. To the extent that the people who are competent and trained in our methods and procedure are diverted from other matters, something necessarily will have to suffer.

Mr. CUNNINGHAM. When I originally read this resolution I was convinced that I was opposed to the provision for a special advisory panel for many reasons, including the fact that it could be construed as something that would bring outside influence to bear.

The Secretary of Labor agreed that it might be eliminated. As I understand it, you believe the same?

Mr. WALRATH. Yes, sir.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. WALRATH. Mr. Moss and I have been somewhat concerned with whether or not you will be able to do the job imposed upon you by House Joint Resolution 565 with existing staff and appropriations.

Can you do this without additional help?

Mr. WALRATH. That we don't know yet, because we don't know the nature of the proposal that might be submitted. I think the question is well taken. Perhaps I am naive but I am assuming that once we know the extent of the burden, we will be able to obtain financial help immediately. Certainly it is an additional and special duty that you would be placing upon us. But as I said earlier, I don't believe in a situation like this that money is necessarily the answer either.

The acquisition of skilled personnel is more important than the dollars made available to get them. I think we have a staff capable of doing the job. To that extent that those personnel are diverted, other work would have to suffer unless we could temporarily supplement our staff with supplemental funds.

Mr. DINGELL. I am advised, for example, that the staff involved in the Rifkind study and the other costs of that particular study amounted to something on the order of half a million dollars. Also, that the staffing space consumed by that study was approximately three floors in one of the larger buildings in town here.

I think for this reason the question is appropriate. While perhaps you are not ready to answer this morning, it is one which the committee has to consider and which you should be giving very serious thought to.

Mr. WALRATH. Yes, we have been aware of this problem, but with the advent of these hearings we have not been able to consider it carefully—nor have we been able to ascertain the nature of the issues that might be submitted and, therefore, the magnitude of the problem.

Mr. DINGELL. By way, perhaps, of a little bit of the construction of the legislation, on page 3, line 12, in section 2, appear the words "cumulative thereto" referring to evidence which you would not be required to receive.

Would you want to give the committee a brief construction of that language?

Mr. WALRATH. Yes. I think it is very clear that anything that was taken in the record of either the Presidential Commission or before the Emergency Board, would be a part of the record before us. There would be no necessity for introducing it.

We understand that both sides were heard on an established record. We would not have to go over that ground. If either of the parties asked to present evidence on a point that they had fully covered, we would have discretion under the resolution to deny the request upon finding that the evidence is cumulative.

Mr. DINGELL. In the consideration of work rules, displacement of workers and so forth, under this legislation, you have certain responsibilities imposed upon you, as I read the language of House Joint Resolution 565. Among those are the requirement that you consider the recommendations of Presidential Railroad Commission and Emergency Board 154 with regard to keeping people or keeping certain types of firemen help on to be displaced by attrition rather than by any decisive or meaningful form of action.

Am I correct?

Mr. WALRATH. Yes, I am aware that those were part of the recommendations.

Mr. DINGELL. I am very interested that we should have clear understanding of this point this morning. I assume that the Commission will have imposed upon it the responsibility of giving most careful attention and respectful consideration to certain recommendations with regard to eliminating firemen by attrition, payments for displaced workers and certain other recommendations of this type by those two agencies.

Am I correct?

Mr. WALRATH. No, sir. If I heard you correctly, you said we were required to accept.

Mr. DINGELL. I did not say you were required to accept. But you are required to give most careful consideration.

Mr. WALRATH. We are required in line 20, sheet 3, to give due consideration to those.

Mr. DINGELL. What do you construe, then, to be due consideration? I am not trying to tie your hands but this is a very important question.

Mr. WALRATH. I take it that we are not only to study and concern ourselves with those recommendations but with the evidence upon which they are based.

Mr. DINGELL. Would I be fair in saying that this language imposes upon the Commission the responsibility of construing these matters very humanely, wth verv careful consideration to job security, to payments for workers displaced, severance pay and matters of this sort?

Mr. WALRATH. Indeed so, yes.

Mr. DINGELL. It is your expectation, frankly, that the Commission will so consider these matters?

Mr. WALRATH. Yes. Not only these but safety, fairness, and equitability of the arrangements. It seems that your intention would be so clear if you adopt this that all of those you mentioned would be part of our responsibility.

Mr. YOUNGER. Would the gentleman yield?

Mr. DINGELL. I would be very happy to yield to the gentleman.

Mr. YOUNGER. I have just one question.

I think the Chairman in response to a question I asked, said that the Commission would not be bound by the limitations.

Mr. DINGELL. I understood the Chairman to so testify but I also understood he would lend great weight to these.

Mr. WALRATH. I should think we would give weight to these along with other considerations. I agree with Mr. Younger as to my previous testimony. I think what you are asking us to do is to take all of this into consideration and any other evidence that may be submitted by either of the parties and then have a considered and sound and fair judgment of what is fair and proper.

Mr. DINGELL. I recognize the importance of your independent judgment on this, Mr. Chairman. I fought very hard for the exercise of this by the various agencies.

Mr. WALRATH. Yes, I know you have.

Mr. DINGELL. I am very much concerned that it be abundantly plain upon the record, at least insofar as I am concerned, that I would expect that the findings of the Commission with regard to severance pay, with regard to tenure of workers, with regard to attrition, with regard to the other questions involving humanitarian considerations, that in

its consideration of these matters and in its findings on these matters that the Commission be not less liberal and less humane than with the findings of Emergency Board 154 and the Presidential Railroad Commission, this by way of creating legislative history. I would also commend to you the comments of the Secretary of Labor who had a great hand in the drafting of this matter.

Again, I am not trying to tie your hands or impair the freedom of judgment of your agency, but I think we are creating legislative history this morning, Mr. Chairman, and it is of the utmost importance to me that these matters be given the most humane consideration and the most respectful attention by your agency.

Mr. WALRATH. Certainly that. I also take it, Mr. Dingell, you are not asking us to prejudge it?

Mr. DINGELL. No, I am not. I am trying to establish a little legislative history.

I know I am coming very close to the end of my time but there is another item I would like to explore with you and that is the question of judicial review.

Are you satisfied or rather, you indicated in your statement that the court which should do the consideration of this matter is the U.S. District Court for the District of Columbia in order to have uniformity and a limited number of suits filed on each particular question.

Am I correct?

Mr. WALRATH. Yes. I hope I made it clear that there is no magic in the District of Columbia. It could be the district courts of Maryland or the district courts of Illinois or any given place.

Mr. DINGELL. I am particularly concerned that the judicial review be of the most expeditious sort. I think you would agree with that?

Mr. WALRATH. That is the reason for my suggestion, sir. In perfect good faith, with so many railroads involved as part of this industry approach, and with the five brotherhoods involved, they might for different reasons disagree with our findings in any given situation.

If they should each file actions in any court that was available to them, we might have judicial review pending in numerous places at once.

Even if the issues in the various courts are the same, there is no way under our judicial procedure to consolidate an action in the court of Illinois with an action in the District of Columbia court.

Therefore, it would be time consuming, expensive, and delaying. You might even have inconsistent decisions in the lower courts.

Mr. DINGELL. I recognize the wisdom of your judgment on this point. This would enable consolidation of actions and issues.

Mr. WALRATH. If it is in one jurisdiction, yes.

Mr. DINGELL. By going to the district court we are imposing the possibility of three reviews. The district court, the circuit court, and possibly the Supreme Court.

Mr. WALRATH. No, I didn't mean to imply that. When I said "district court," I mean the statutory three-judge court where our orders are reviewed.

It would be a review in a three-judge court, with an appeal to the Supreme Court without the intermediate circuit court of appeals.

Mr. DINGELL. Is that appeal of right or certiorari?

Mr. WALRATH. It is an appeal of right.

Mr. DINGELL. Let me ask you this:

The CHAIRMAN. I will have to suggest to the gentleman that his time is up. The Chair is being especially liberal this morning. But some of these members have other commitments and it is late.

Mr. DINGELL. Let me ask this one question.

Mr. Walrath, can you tell us whether there is any more expeditious form of review available here consistent with due process?

Mr. WALRATH. No, sir. I think this has proven satisfactory through the years.

Mr. DINGELL. Thank you.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. Mr. Walrath, would you explain to me some of the meaning of the language in section 6? I am still a little uncertain as to the meaning of "special procedures" as we find on line 18 of section 6.

Mr. WALRATH. The special procedures as contained in section 6 would give us latitude in departing from our normal rules of practice which have certain time limits within which papers are filed and replies are filed and so forth, and the normal procedure of referring it to a hearing examiner, a recommended report and exceptions filed to that, and then action by a division and then on to the Commission, and in lieu of that, there are special procedures we frequently employ in matters of emergency.

I have just jotted down several. It might include prehearing conference between the parties and the Commission or a representative of the Commission to narrow the issues, to obtain stipulations as to facts and expedited procedures and speeding up the process of filing replies. It might include a provision that evidence would be submitted in the first instance in written form father than orally. It could include, in a case of this importance I should think we would decide, to omit a hearing officer's report and take this directly to the Commission for decision. In other words, it would give us wide latitude. That is what we are asking be made clear as to section 1.

Mr. BROYHILL. Under section 6, is there any time limit for decision on any proposal that might be submitted to you for decision by one of the parties to this dispute?

Mr. WALRATH. I don't read any time limit there except the expiration of our authority. I suppose the only time limit is the expiration of the joint resolution.

Mr. BROYHILL. Would you suggest a time limit under section 6 for handling these unresolved issues?

Mr. WALRATH. I would not be in a position to judge that. I take it from the fact that it was drafted this way that these issues may lend themselves readily to a solution through collective bargaining. The hope is that they would not come to us. I notice the 60-day provision that would apply before they could bring them to us. I am afraid I would not be the one who could properly judge whether a time limit there is essential.

Mr. BROYHILL. However, under section 6, as I understand it, the words "deems appropriate" means that you could apply section 4.

Mr. WALRATH. In what respect? As to the time limit, there?

Mr. BROYHILL. No; I mean that you could apply section 4, this is an interim rule to go into effect to settle any unresolved issue. Is this your understanding?

Mr. WALRATH. The way I read that, the phrase, "deems appropriate" refers back to our "disposition by such special procedures." The question was raised yesterday as to what "disposition" means. Does that, for example, mean we either accept or reject the proposal or would we be able to modify it? I have tentatively expressed the opinion that disposition is just about as broad as the other phraseology under section 4. We can approve, modify, or disapprove. In other words, disposition would give us latitude there. But when you get to the phrase "deems appropriate" it seems to me it really relates back to disposition by such special procedures not confined to those set out specifically in this joint resolution as the Commission after consultation with the parties deems appropriate. Perhaps I missed you reference to section 4.

Mr. BROYHILL. What I am trying to arrive at is that you could put into effect an interim rule as we find in section 4?

Mr. WALRATH. Yes; dealing with the issues which would come under section 6.

Mr. BROYHILL. I feel that the public in general would like to see the work rules issue settled once and for all. Do you feel that this whole procedure that has been presented to us and the action that we are about to take would resolve the work rules issue once and for all?

Mr. WALRATH. No, sir. I would think work rules are an ever-changing situation. I doubt we will ever have a final solution because conditions change all the time. I take it it is just what this resolution says, we would settle them only for an interim period and then encourage the parties to continue to negotiate to arrive at their own agreement. They may agree 6 months or 2 months from now on a settlement, and conditions would change so that they themselves would want to change them 2 months or 6 months or a year later. I don't believe we will ever have a final decision, which I think lends itself to the preservation of collective bargaining as the real answer.

Mr. BROYHILL. Then are you saying that these issues are going to be left dangling over us and that a strike threat is going to be over our heads for some time to come?

Mr. WALRATH. No. I can't predict what may happen in the labor-management field. My answer was intended to say that if we resolve this and even if the parties accepted our resolution and did not want to change it, perhaps a year later conditions will be different and either or both would want to change. In that sense, I don't think we could settle it for all time to come, nor do I think an agreement between the parties could settle it for all time to come.

Mr. BROYHILL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

You say the Commission would be different?

Mr. WALRATH. Not the Commission. I said conditions.

Mr. ROGERS of Florida. I am sorry, I misunderstood you: Because this would be something I would be very much concerned with, that if the Congress were to pass this legislation it would certainly be on the good faith that the Commission would remain the same, certainly until these issues are presented and the Commission has had a chance to rule on them. I would hope that the Executive, and I think the good faith should be demonstrated with the Congress if

this is passed, would not be changing members of the Commission during the consideration of this very vital matter. I realize you have no control over that.

Mr. WALRATH. No. I had reference to conditions in transportation which change constantly.

Mr. ROGERS of Florida. I understand. But I am talking about members of the Commission. Certainly it would be my feeling that the Executive should display good faith with the Congress if we pass this in that regard. Let me ask this. You stated that if we placed into the law certain wordage that you outlined on page 6, that the Commission then could consider it directly rather than having to go through hearing examiners and so forth. On a matter as urgent as this it would probably be the intention of the Commission to hear this matter themselves.

Mr. WALRATH. Mr. Rogers, you are right. Actually we would read it as intending that we expedite in every way possible. The doubt is raised simply by specifically putting special procedures in section 6 and omitting them in section 4 which as you know would lend itself to a legal argument that was done deliberately and therefore we were confined to our normal rules of practice procedures.

Mr. ROGERS of Florida. Do you think we should state in the legislation that it is the desire of the Congress that the Commission itself hear these matters or give you this discretion with the intention that that be done?

Mr. WALRATH. I think we should have the discretion because much of the processing would have to be done, necessarily in the interest of expedition, before it reached the Commission level for decision. It would not affect orderly procedure, nor considered and sound judgment on the matter. I would prefer you not to change that, but certainly ask that you give us the privilege of establishing special procedures and make it clear that we have leeway to expedite in any way possible. I said in my statement that in a matter of this importance we think you would expect us to make the decision on the Commission level and not on the basis of a recommended report or even on a division report by three of the Commissioners. You would expect the Commission itself in the first instance to pass upon the rules.

Mr. ROGERS of Florida. This would be my feeling and I would hope the committees have this feeling, the committees of the Congress. I would say I do have a great deal of confidence in your Commission, and particularly I have a great deal of confidence in your chairmanship. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman, please.

Mr. BROTZMAN. Thank you, Mr. Chairman. Referring to the resolution itself, Mr. Walrath, I think the record is in some contradiction as to what the effect of an order entered by the Interstate Commerce Commission would be after the 2-year period has elapsed referred to in section 8. Simple logic dictates that whether you enter an order in 120 days or as soon thereafter as is practicable, which will be your right the way the resolution is presently drafted, it is evident to me that the 2-year period referred to in section 4 is going to extend further than the 2-year limitation upon the validity of this resolution.

Mr. WALRATH. I agree.

Mr. BROTZMAN. Simple logic dictates this to be correct.

Mr. WALRATH. Yes, sir; that is right.

Mr. BROTZMAN. I questioned the Secretary about this the other day and I wanted to refresh my recollection.

In one question, I say "after this time lapse the order entered at that time would not be valid; Is that right?" and Secretary Wirtz said, "That is right." I heard other of my colleagues ask what I thought was the same question and I thought he replied absolutely contradictorily to this answer.

I think you understand the problem.

Mr. WALRATH. Yes, sir.

Mr. BROTZMAN. I know you have been looking at this resolution very carefully, as you have stated, and that you have had the benefit of legal advice and counsel. My question is, What is your best opinion or judgment as to the validity of the act as it has to transcend the time of the resolution?

Mr. WALRATH. I didn't hear the last phrase.

Mr. BROTZMAN. The validity of the order has to transcend the time of the enabling resolution?

Mr. WALRATH. I would say as to matters under section 4 that there is no question as the language is now written that our order would be operative for a period of 2 years from the entry thereof unless the parties superseded it by an agreement. From the time it goes into effect, I should say. In other words, if we made it effective on a given day, then for 2 years from that day, I take it, it would be operative, even though it would, as you say, extend beyond the 2-year life of the resolution.

From the day our order became effective on issues under section 4 I think there is no question it would continue to be operative until the expiration of 2 years from the effective date of the order.

Mr. BROTZMAN. Mr. Chairman, from your statements today you have some concept of the volume of the evidence that is already available on this issue. As I envision your role you will have to review that and also take new evidence, if it is presented to you. So that it very well could be "practicable" that this could take longer than 120 days. Wouldn't that be correct?

Mr. WALRATH. Yes. If we assume that we had to start from the very beginning, with no help from the parties by way of stipulation or agreement as to what the facts were, if they said we won't agree on anything, then certainly you are correct, we would have that entire record to review. Then assuming that either party had material evidence to submit in addition to and not duplicative of the existing records, then you are correct, we would be required in order to give due process to hear them on that. That could well happen. Just judging the atmosphere of that, I don't think it is going to be quite that bad. I think from having read of the proceedings, especially the second, before Emergency Board 154, that there were areas in which the parties were able easily to agree as to the basic facts. I would hope that if you give us the liberality of procedure, through prehearing conferences we could define those areas where agreement could be reached, and the facts stipulated.

We would encourage that. We would think that anything of that nature is completely within the spirit of this resolution. If we could

take a stipulation that the facts are thus and so, then we would not have to search the record of 15,500 pages to find out. We would explore any method of reaching an agreement to avoid the necessity of this long study. If the parties were not cooperative, you are correct—we would have to go through the whole thing and take anything additional that was material.

Mr. BROTZMAN. Your three Federal—three-judge Federal court, would they have the right under the statute to take new evidence or would they merely review the record?

Mr. WALRATH. That is the traditional review in the normally accepted sense. To review the propriety of the action under the law—not to take new evidence or retry the case in any degree.

Mr. BROTZMAN. If I understand your recommendation you would like to have venue confined to the Federal district court in Washington, D.C.?

Mr. WALRATH. Any one area. We suggest that because it is convenient. But Chicago or any place. Just so it is closely confined in the interests of everyone.

Mr. BROTZMAN. This is bothersome to me. I say to you frankly that I don't know if the public interest really is best served by confining it to one place. I realize from one point of view that might be the case. But I am wondering about the parties litigant having to come back here to perfect their appeals to your orders. Are there any removal procedures if there are multiplicity of suits in the Federal courts, or would that be operative in this case?

Mr. WALRATH. Our counsel advised me as we were developing this position, to illustrate, if the same issue is raised in the district courts of Illinois and also in the District of Columbia and perhaps in California, there is no judicial method by which the judges in any one of those can say, transfer this to the other. In other words, there is no mechanical procedure by which it can be done. In that event not only we but the parties concerned would have three lawsuits to contend with dealing with the same issue.

It has happened before, Mr. Brotzman, but not in a matter of such emotional involvement as this. It has happened, I am sure, in some of our rate cases. In the *Trip Leasing* case we were in five different courts on the same issue. This did not involve the broad public interest and urgency here present so heretofore we have not had occasion to ask the Congress to make any such provision as this. But considering that we are dealing with what we hope to be a very short interim situation and an emergency we think not only as a convenience to us—and that is the least consideration—but as a convenience to the parties and the shipping public that this thing be resolved, that the issues ought to be closely confined and therefore readily determinable and if necessary get to the Supreme Court quickly and have final determination.

Mr. GINNANE. Congress has done that in at least two cases requiring review of particular types of orders in one court. Under the Emergency Price Control Act during World War II it required all suits to be brought before the emergency court of appeals here in Washington. Under the Communications Act, suits seeking to review FCC orders were—with respect to licenses must be brought in the Court of Appeals of the District of Columbia.

Mr. BROTZMAN. I have just one more question, Mr. Chairman. Five minutes goes awfully fast.

Mr. WALRATH. I am sorry I took so long to answer.

Mr. BROTZMAN. It was not your fault. I want to ask you a general question. In lines 10 and 11 on page 2, we have a broad referral to the procedures and provisions of section 5 of the Interstate Commerce Act. I think that you are experts in working with this law and are conversant with it.

Are there any contradictions that you know of in an adoption of this type that would make this resolution unworkable? Are there implicit contradictions built into the language of section 5 generally that would work at cross-purposes with, shall we say, the purpose of this resolution?

Mr. WALRATH. As to the procedures, no, sir, I am not aware of any. Except that, when we act in accordance with the procedures and provisions of section 5 in all other cases than this, we are at liberty to use the freedom given by section 17 of the act which lets us make special provisions.

That is why we are asking that here. We would read it that way, Mr. Brotzman, but again because special procedures are specifically mentioned in section 6 it might be construed as deliberately preventing us from instituting them under section 4 or section 1 issues. There is no inconsistency, to answer your question, that we are aware of. We are asking only that this be read in connection with the section 17 privileges we have to expedite matters when it is necessary.

Mr. BROTZMAN. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Chairman, let me commend you on your appearance here today and the excellent testimony that you have given.

Mr. WALRATH. Thank you, sir.

Mr. KORNEGAY. Let me ask you a couple of questions. One referring to section 6 dealing with special procedures which authorize you to adopt special procedures not confined to those set out specifically in this joint resolution. What would be the time element involved in the adoption of any special procedures under that section?

Mr. WALRATH. If we had a proceeding pending that fell within section 6 issues, the time element would be determined much by what we could accomplish through a prehearing conference and consultation with the parties.

Mr. KORNEGAY. I am getting at this situation. As I understand it, under your general rulemaking power, it can be a time-consuming procedure.

Mr. WALRATH. Yes.

Mr. KORNEGAY. The time required would be less than that for general rulemaking?

Mr. WALRATH. Yes, that is what I take it we would be authorized to do here through conferences with the parties. We might agree within a given number of days the counterproposals would be filed or the arguments against would be filed rather than let it take its normal course under our general rules of practice where a longer period of time is provided by rule. We could shorten the time.

Mr. KORNEGAY. Then I take it from what you say that under the resolution you think you would have the authority to greatly expedite the rulemaking authority.

Mr. WALRATH. We would feel we would have it if it were not specifically mentioned, in section 6 and not in 1. That is why we would like to have it mentioned in section 1.

Mr. KORNEGAY. You do not anticipate any difficulty in that respect?

Mr. WALRATH. No. Because once we have heard the views of the parties under our general procedure, we have the power to impose special rules whether they agree with them or not.

Mr. KORNEGAY. You have suggested that we incorporate into the resolution the phrase which you state on page 6 of your statement:

> And pursuant to general or special rules of procedure prescribed pursuant to the provisions of section 17 of that act.

Mr. WALRATH. Yes, sir.

Mr. KORNEGAY. Does that phrase include section 17 in its entirety, or does it include simply the provision relating to general rulemaking contained in section 17?

Mr. WALRATH. That would have particular reference to subsection 3 of section 17.

Mr. KORNEGAY. Which contains the rulemaking authority?

Mr. WALRATH. Yes.

Mr. KORNEGAY. The reason I ask that question, Mr. Chairman, is to find out whether or not this provision would incorporate subsection 6 which provides for rehearing, reargument, and reconsideration?

Mr. WALRATH. I think to that extent it might well be. You notice subsection 6, setting up the right of the parties to make application for rehearing and reargument, and so forth, is qualified by the Commission's control. That is we control that. For example——

Mr. KORNEGAY. The Commission has to find a sufficient reason for rehearing, reargument, and so on?

Mr. WALRATH. Yes. Any petition filed does not stay what has been done on the Commission level or any level where the action was administratively final. What I started to add to my partial answer was that in our regular workload we have determined that for the most part only those cases come to the full Commission which are of general transportation importance. I don't want to divert attention here. Certainly this would be general transportation importance. That is why I suggest we move to the Commission level at the very outset. So I don't believe these questions of procedure would come up, except a petition for reconsideration might be filed. We would give it consideration. But its mere filing would not stay the effectiveness of our decision in the first instance unless we imposed a stay ourselves or unless the court imposed it.

Mr. KORNEGAY. There is no right on the part of the parties litigant to rehearing or reargument?

Mr. WALRATH. No, sir. It would be a matter of discretion by the Commission.

Mr. KORNEGAY. Thank you very much.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. Mr. Walrath, is there any reason you know why any member of the Commission or any of its key staff personnel should disqualify himself from participating in the deliberations that would implement this resolution?

Mr. WALRATH. I am not aware of any.

Mr. VAN DEERLIN. No past association or recorded statements with regard to the issues at dispute?

Mr. WALRATH. No, sir; I certainly am not aware of any.

Mr. VAN DEERLIN. I just wanted to cover that ground. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers mentioned something a moment ago I think purely out of misunderstanding of the worlds "condition" and "commission."

Mr. WALRATH. Yes, I am glad he cleared that up if he misunderstood it.

The CHAIRMAN. I imagine at least some if not all members of the Commission think it might be a sound idea, though.

Mr. WALRATH. There have been times this week, Mr. Chairman, when I might have entertained such a view.

The CHAIRMAN. Of course, that is clearly beyond the prerogative of the Commission or this committee.

Mr. WALRATH. Yes, sir.

The CHAIRMAN. As I gather from your overall testimony, you have indicated that you felt that there would be rather wide latitude for the Commission.

Mr. WALRATH. I think you would intend us to exercise judgment based upon all available facts and we would have wide latitude; yes, sir.

The CHAIRMAN. I had the impression that this was a rather narrow jurisdiction that we were giving you.

Mr. WALRATH. Perhaps in the context in which you are thinking I agree with you. We are limited to the issues which were encompassed within the proposals of 1959 and 1960 and we have no jurisdiction on anything that would not be consistent with that framework, that is right, sir. I took your question to mean as to our freedom to decide what is fair and right under all of the circumstances on these limited issues.

The CHAIRMAN. I would agree with that insofar as your responsibilities are concerned. But insofar as your authority is concerned, it would be limited to the terms of the resolution.

Mr. WALRATH. Yes, sir.

Mr. YOUNGER. Would the gentleman yield at this point?

The CHAIRMAN. Yes.

Mr. YOUNGER. I understand from your testimony that your authority would be limited to the application, but you are not limited in the rule that you might render as to any of the previous determinations that were made by the Commission or that were proposed by the carriers or by the employees.

Mr. WALRATH. That is my understanding, Mr. Younger. We are limited by the scope of the resolution firmly to the subject matter.

Mr. YOUNGER. But the rule that you make is not limited by any of the previous decisions?

Mr. WALRATH. That is my understanding, sir. Mr. Chairman, if it is appropriate at this time——

The CHAIRMAN. So we don't have any misunderstanding about that, any decision you make has to be within the narrow terms of this resolution of those issues that were contained in the notice.

Mr. WALRATH. That is right.

The CHAIRMAN. And you could not go beyond that?

Mr. WALRATH. No, sir.

The CHAIRMAN. I think that should be made very definite.

Mr. WALRATH. Yes, sir.

The CHAIRMAN. So that there would not be any misunderstanding about it. Did you have anything else?

Mr. WALRATH. You had earlier asked me if what I had said in direct testimony represented the views of the Commission without disagreement and I answered you in substance yes and explained that some of the Commissioners were away. I now understand that even the Commissioner who is ill has read my statement and has just sent word that he, too, is in agreement. I think I can state to you, sir, that 10 of 11 Commissioners have considered what I have said to you and the only reason the 11th has not is that he is on military leave and on active duty at the moment.

The CHAIRMAN. Who is that?

Mr. WALRATH. That is Commissioner Tucker.

The CHAIRMAN. There are three or four matters that I want to ask you about. First, I think with reference to the language on page 4 which you have already alluded to, the Commission shall require fair and equitable arrangements to protect the interests of the railroad employees affected as provided in sections 5(2)(f) of the Interstate Commerce Act and with due considerations to the recommendations of the Presidential Railroad Commission and the Emergency Board 154 relating to the retention of job rights of employees and so forth. Do you agree with the Secretary of Labor that if there is any conflict between the provisions of section 5(2)(f) and the recommendations of the Presidential Railroad Commission and Emergency Board that 5(2)(f) will be prevailing?

Mr. WALRATH. Yes, sir.

The CHAIRMAN. You mentioned earlier that if the committee or Congress should decide that the recommendations referred to should be given greater weight, that it might be placed ahead of the reference to the sections?

Mr. WALRATH. Actually, Mr. Chairman, not with reference to the relationship of weight, one over the other, but rather that if you wanted us to have the complete flexibility that does not now exist, then we might be charged with giving due consideration to 5(2)(f) and to these other matters, rather than one's being mandatory and the others a matter of due consideration.

The CHAIRMAN. Do you think that is congressional policy?

Mr. WALRATH. I do, sir; and that is why we did not suggest at the outset, in our direct testimony, any change. We thought that was written as it was deliberately and that the Congress would determine that as a matter of policy; yes, sir.

The CHAIRMAN. As the language is now you think there is some ambiguity?

Mr. WALRATH. I wouldn't think there is ambiguity. I think there is a possibility of a conflict, as has been pointed out.

The CHAIRMAN. Now, as to procedure, section 5(2)(b) provides:

And shall afford a reasonable opportunity for interested parties to be heard—

and there is a condition.

The public hearings shall be held in all cases where carriers of the railroads are involved unless the Commission determines that a public hearing is not necessary in the public interest.

Question: Would the Commission be required to hold hearings in all applications for changes in work rules made to the Commission?

Mr. WALRATH. I think we would have the benefit of the subsection the way it is written, Mr. Chairman, and we would not have to hold a public hearing unless the parties demonstrated that they had material evidence to be presented which would not be cumulative of that which you placed in the record before us by reference. We would not deny anyone the right to be heard if there is something material to be offered. I think you have given us the machinery to avoid an unnecessary hearing.

The CHAIRMAN. That is the language on page 3 and shall not be required to receive evidence cumulative thereto.

Mr. WALRATH. That is right, yes.

The CHAIRMAN. But with that language in there unless these conditions you mentioned or something similar were to develop, the Commission would not necessarily dispense with hearings.

Mr. WALRATH. We would have to make that finding, I suppose, if the issue were raised. If someone were insisting on a hearing and intended simply to offer what is already in one of those records you referred to I think we could very well deny that request.

The CHAIRMAN. In the same paragraph it is provided that the Commission shall notify the Governors of each State. Would the Commission be required to notify the State Governors of applications as is provided in this section then?

Mr. WALRATH. I think unless it is clarified that that requirement might be mandatory, Mr. Chairman. I think it would be. It would be no burden on us but it might be additional paperwork in the offices of the Governors.

The CHAIRMAN. It is also provided, talking about the Commission, that it shall enter an order approving and authorizing such transactions upon the terms and conditions and with the modifications so found to be just and reasonable. Can the Commission under this language impose additional terms and conditions upon orders issued by them as is possible in the third sentence of the section?

Mr. WALRATH. Yes, by virtue of the very clear provisions of section 4 of the resolution, which include the term "modified approval." The latter term, we believe, would authorize us to impose additional terms and conditions so long as we don't go beyond the issues in the notices of 1959 or 1960.

The CHAIRMAN. Under clause 2 of section 5(c) of the act, the Commission is required to give weight to the effect of the public interest of the inclusion or failure to include other railroads in its order. Will that clause apply to the Commission's order?

Mr. WALRATH. No, sir, because that is of substance rather than procedural, I take it. The reference in the resolution to section 5 is as to the procedural features. Section 5(2)(c) would seem to be applicable only in merger cases.

The CHAIRMAN. Under section 5(9) of the act the Commission is empowered to issue supplemental orders in addition to the orders already entered. Will that section apply?

Mr. WALRATH. Yes, I think so. That again falls in the procedural category. That, of course, is what might be done on a proper and substantiated petition for reconsideration.

The CHAIRMAN. I just wanted to see if we could develop the record here in order that there might be an understanding. There was some discussion yesterday and the day before as to the status of the full crew laws of the various States. Have you had an opportunity to consider the problem, and if so, what effect would it have on full-crew laws, if any?

Mr. WALRATH. We are aware of the question. I would like with your permission to let the general counsel comment on that, Mr. Chairman.

The CHAIRMAN. Very well.

Mr. GINNANE. The incorporation by section 1 of the bill of the procedures and provisions of section 5 of the Interstate Commerce Act could support an argument that includes the provisions of paragraph 11 of section 5. Paragraph 11 in effect provides that a carrier may carry out a transaction approved by the Commission without regard to the restraints of the antitrust laws and of State and local laws and regulations. It could be argued that if the Commission approves, for example, interim rules changing crew consist, that by virtue of paragraph 1 that would cut across State crew laws. I understand that the Secretary of Labor has testified here that that was not an intended result.

The CHAIRMAN. That is true.

Mr. GINNANE. If the Congress wants to be doubly certain, for example, that no such legal consequence follows it could be done simply by making clear in section 1, perhaps parenthetically that paragraph 11 is not to apply.

The CHAIRMAN. I appreciate your very frank response, because I think it has sort of been left up in the air as to what the courts might do. There has been expression as to what is intended and what some might have thought but I think we also have to provide clarity wherever it is necessary in order that the Commission may have guidance in its effort to carry out the responsibility should it so be directed. I believe you have covered the other notations that I have made already and there is no need to go over them again.

Are there any questions from other members of the committee? If not, Mr. Chairman, to you and all the members of the Commission and your staff, we want to thank you for your appearance here and your presentation and what I think would be a very fine discussion of this matter from your experience and knowledge of the act and as you understand this situation to be.

Mr. WALRATH. Thank you, Mr. Chairman. It is always a privilege to be here if we can be of help.

The CHAIRMAN. We are sorry to hold you overtime as well as the members of the committee but I saw we could conclude without having to come back in the afternoon by going on through the noon hour.

Mr. WALRATH. This week none of us have had a time schedule and I am sure your committee has not.

The CHAIRMAN. We want to thank you for it and we may call upon you later for further discussions.

Mr. WALRATH. Thank you, sir. With your permission while your record is open, if anything further occurs to us that we think would be helpful I understand you would permit us to communicate with you.

The CHAIRMAN. Yes, within a reasonable time.

Mr. WALRATH. Yes, sir.

The CHAIRMAN. Thank you very much.

The committee will adjourn until 10 o'clock on Monday morning at which time the brotherhoods will start their testimony.

(Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 10 a.m. on Monday, July 29, 1963.)

RAILROAD WORK RULES DISPUTE

MONDAY, JULY 29, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee), presiding.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. R. E. Davidson, grand chief engineer; accompanied by Mr. A. F. Zimmerman, assistant grand chief; and Mr. Max Malin, economic counsel for the Brotherhood of Locomotive Engineers.

Mr. Davidson, we are glad to have you and your associates.

STATEMENT OF R. E. DAVIDSON, GRAND CHIEF ENGINEER; ACCOMPANIED BY A. F. ZIMMERMAN, ASSISTANT GRAND CHIEF; AND MAX MALIN, ECONOMIC COUNSEL, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. DAVIDSON. Thank you, Mr. Chairman.

The CHAIRMAN. I believe you have a prepared statement that you wish to present at the outset.

Mr. DAVIDSON. I do have.

The CHAIRMAN. You may proceed.

Mr. DAVIDSON. Thank you.

Mr. Chairman, members of the committee, my name is Roy E. Davidson and my position is that of grand chief engineer of the Brotherhood of Locomotive Engineers which has just entered its second century of service. With me today is assistant grand chief engineer A. F. Zimmerman, who is chairman of our national rules committee and as a former member of the Presidential Railroad Commission has had intimate contact with every stage of this dispute.

Also joining me here is Mr. Max Malin, our economic counsel who has had extensive experience in labor economics and statistics and has served as a top labor relations adviser in several agencies of the U.S. Government.

With the permission of the committee and in the interest of expeditious coverage of the salient features of the dispute and the proposed legislation, I will offer my own overall comments and Mr. Malin and Mr. Zimmerman will then supply supporting analysis and factual detail.

Each of us will be happy at the conclusion of our testimony to answer candidly and fully every question that the committee may desire to have answered.

There are several large questions which I know must be in your minds, concerning which I feel I must answer personally, based on my own experience going back over a period of some 45 years in the railroad industry. Like every other officer of my organization, I served first as a helper-fireman, then as a locomotive engineer. I believe I am familiar with the work of the men running this Nation's trains and their lives and their way of thinking.

I believe you are entitled to my frank response to these questions:

Question. Can railway labor—leadership or rank and file—accept the proposal before you as a reasonable way out of a very difficult situation?

Answer. My answer is "No," emphatically "No." In a free democratic union such as the one I have the honor to head, the rank and file through local committees represent the ultimate authority. I regarded it a great tribute to have been reelected by acclamation in our convention last year. Even if I had the temerity or desire to commend the proposed legislation to the members of my union, I am certain that there would be an even more enthusiastic acclamation for my removal from the union's leadership.

Question. Are there two sides to the study of the development of this crisis? Are the railway labor organizations really sticking their feet in the sand? Are we blocking progress? Have we simply said no on every occasion, rejecting every reasonable proposal made for the termination of this dispute? Do we have a vested interest in procrastination, in interminable stalling and delay?

Answer. The answer to that must be that there are indeed two sides to this dispute. The side that you have already heard has the advantage of an astute, well-financed, constantly iterated public relations campaign conducted in an antilabor press. Public opinion is assailed by a one-way barrage of catchwords, misstatement, misinterpretations.

We rarely have equal opportunity to be heard, such as we have before your committee. The truth is that railway labor is well aware—in my opinion, more aware than any other group—that its job and welfare are dependent on safe, reliable, fast, frequent, economical service to the public.

The record of our productivity is one of unparalleled growth; no other industry can match it. At times we are the only group fighting to keep the railroads in shape to do the jobs which the railroads can do best and at lower cost.

Our work depends on a railroad system that is big enough and efficient enough and motivated enough to do the transportation job that a growing economy needs, to serve small business as well as big business, to serve the smaller communities along with the larger. We are against wholesale abandonments of service, wholesale mergers for the purpose of reducing service and for the elimination of competition, wholesale layoffs, and unilaterally imposed conditions of work that impair safety, impair frequency, reliability and speed of service, and impair the ability of the railroad system to handle growing traffic or to meet defense needs.

We are for collective bargaining with vigorous mediatory assistance to provide a fair and equitable solution to this dispute. We have rejected no proposal that would assure that result.

On the contrary, we have repeatedly made the only proposals which have progressed the matter toward a fair and equitable termination. And I should add that despite the carriers public utterances to the contrary, we have repeatedly made the only proposals which have progressed the matter toward a fair and equitable termination. And I should add that despite the carriers public utterances to the contrary, there had been considerable progress toward the settlement of this dispute and—under the surface—the dispute is not nearly so hopeless as it might seem to the public.

We have been exteremely forbearing in pressing our own demands to the point of creating an emergency. There is no reason why the carriers should precipitate a stoppage with their demands. What we need to do is to get back to the bargaining with the removal of incentives for not bargaining.

Question. Is there a better way out of this dispute than the one proposed to your committee?

Answer. I have no desire whatever to criticize anybody connected with the proposed legislation. I am sure that the motives of all connected with it were honorable. I am also certain that it would be hard to conceive a proposal more unsatisfactory to railway labor, more fraught with danger to our freedom, or less likely to result in ultimate harmony and cooperation between railway management and labor.

The proposal before you is compulsory arbitration. I respect the President and I respect the Secretary of Labor. I understand how difficult it must have been for the President—in the midst of problems that would overwhelm the capacity of any human being—how difficult it must have been for him to find even a little time for this complicated matter.

The President's advisers are themselves extremely busy men, men with heavy responsibilities in other areas. I regret that under the circumstances, there was pressed on the President and accepted by him a resolution which in haste and confusion actually sponsors compulsory arbitration.

Secretary Wirtz says otherwise and I admire not only his loyalty but his talent and persuasive skills as well. But he never even made an attempt to explain to the labor organizations that this proposal is not really compulsory arbitration. And you alone can judge whether his appearance before you—convincing as it undoubtedly was of the forensic ability of the Secretary—was at all convincing concerning the thesis he was here to advocate.

Of this I am certain, I could never explain to the members of the Brotherhood of Locomotive Engineers that this resolution is not compulsory arbitration. With my own people my record of persuasion is not too bad. But if I ever tried to persuade the good brothers that I could detect a difference between the resolution and compulsory arbitration I think they would persuade me that my usefulness as chief executive was over.

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Now I will go further. I will say this to you in all candor and sincerity. The resolution is not only compulsory arbitration, it is compulsory arbitration with the added evil of an utterly unfair preferment for the demands of management.

Beyond that, the arbitrator which this resolution seeks to impose on us is about the last arbitrator to whom we would think of submitting our dispute. The Interstate Commerce Commission is far less competent to deal with this dispute than any other arbitrator previously suggested, formally or informally. And the record of the Interstate Commerce Commission conveys no sense of reassurance whatever concerning bias and prejudgment.

Mr. Chairman and members of the committee, the resolution before you is harsh and unfair in the extreme, dangerous in the extreme, radical in the extreme. It is also unnecessary. There is the alternative of free collective bargaining guided by truly vigorous insightful mediation. That alternative has been virtually unused in this case to date. To the small extent that it has been used it brought this dispute close to peaceful negotiated resolution.

You have it within your power to maintain the advantages of the constructive creative forces of free collective bargaining in a free American society. Let us renew our faith and confidence in the American way of doing things.

I would now like to present to you Mr. Malin, our economic adviser.

Mr. MALIN. Mr. Chairman, and members of the committee, may I refer you to the outline of the statement of witnesses. In these literate United States there is hardly a schoolboy who doesn't know the case for the carriers. He has heard it and he has read it a thousand times. There is another side to the case which doesn't get to the public and we very much appreciate the opportunity to be here before a committee of the Congress where we can be heard.

To understand this dispute, and the inappropriate character of the resolution which is before you for its settlement, and why it would require a different answer, one must go back to the beginning to understand the nature of the demands made by the carriers in this case.

This will explain in part why the so-called work rules dispute has not been settled so far. The carriers' original notices, which they still label as fair and equitable, and which they still threaten to promulgate to this very day constituted a bodyblow to the effective bargaining relationship of the parties, and this is why: The carriers demanded a wage cut—wage cut—of 33.3 percent for some road employees and a cut of 37½ percent for other employees.

A cut of that magnitude from the date of their last settlement on wages. This demand could not have resulted in collective bargaining. It was in fact a demand that mocked the bargaining relationship of the parties. Wage cuts en masse to the degree contemplated in these demands, reductions of the general wage level of a whole industry, are unthinkable and in this we were confirmed by Emergency Board 154, as I will explain later.

Secondly, the carriers demanded that the organizations give up virtually every working condition that had been negotiated up to the date of the carriers' notices. Some of them working conditions which were traditional in the industry, some of them of recent origin, but all of them were demanded by the carriers to be scrapped.

Now there was no question of modifying some rules, eliminating some, replacing some. There was simply the bald demand for the cancellation of virtually every working condition of the operating employees of the entire railroad industry.

There was demanded of the organizations also to the demise of collective bargaining over virtually all working conditions. This was no longer to be within the area of bargaining. Management demanded for itself the right to make, keep, revise, and discontinue rules as it alone might determine and whenever management might choose to do so or not choose to do so. All without collective bargaining.

Now when you are faced with demand of this character, what are you faced with? These are not demands that are part of the evolutionary process of collective bargaining. The carriers sought instead at one stroke to eliminate from collective bargaining in a revolutionary manner virtually the entire field of working conditions. This was not only repugnant to the entire history of collective bargaining in this industry, it was antithetical to the recognized rights of employees through their bargaining agents to promote their own self-interest in safety, efficiency of operations, and the incentives achieved thereby, the burden of their work, the location of their employment, and the security of their jobs. The effect was to invite the unions to completely abdicate their functions in the interest and protection of their members in the working conditions of this industry.

What conclusion can we draw from this? The necessary conclusion is that the original demands were not designed as a vehicle for serious bargaining but rather as a vehicle for deadlock and rather as a vehicle for the end of a bargaining relationship. And you, this committee, and this Congress, are now being asked to confirm and reward this course of action by the carriers, by awarding them their long-term goal of compulsory arbitration in their favorite agency, the ICC.

Now these carriers' revolutionary wage-cutting, antibargaining demands were accompanied by a revolutionary change in bargaining technique—a technique in which labor relations were replaced by public relations.

Bargaining with the employee organizations was made perfunctory and unyielding. Public relations was taken from its ancillary role and provided a main role in achieving the carrier goals. In the course of doing this, the myth of railroad poverty was created and very heavily promoted. Defamation of the industry's workers who hold the record for growth of productivity among all major industries in the United States—there is not one whose record of productivity is better than that of the railroad workers as attested by the Bureau of Labor Statistics—the defamation of the industry's workers was prodigiously promoted.

The public relations people involved have openly boasted that they have made "featherbedding" a household expression of contempt. In public relations technical terms, the industry accomplished the symbolic anathemazation of its own employees and their organizations. We have conducted no polls of public reaction. We are quite well aware of public reaction. We are quite well aware that the image presented to the public is one which is unwholesome.

We would like to inform the public better. We would like for the public's opinion to be the kind of opinion that one would expect in a democracy such as ours with the means of communication such as we have.

We have talked to some people about their understanding of what is involved here. We asked a test question, and I don't mean to say that this was a scientific poll, but it is one to which we invariably had the kind of answer that we describe on page 2(B)(2)(1). I should say that most of the people to whom we put this question gave us the kind of answer that we describe. A test was made of the public's understanding of how many engineers and firemen-helpers there are on a train pulled by six units of power and how many there ought to be.

That is to say, a freight train of 150, 200, 250 cars, maybe 2½ miles long, that may be pulled by a number of locomotives assembled as a unit. There may be 2 or there may be 6 or there may be 12. They run as high as 16. We have asked if there are six locomotives hooked up together pulling this train: how many engineers do you think there are on this train? How many firemen-helpers do you think there are?

The answer that comes back is, "Well, if there are six locomotives hooked up together, there are six engineers and six firemen-helpers."

"How many do you think there ought to be?" "Maybe half, maybe two or three of each." Well, the fact of the matter is that pulling this train of a mile and a half length or 2 miles or 2½ miles length, with these six units, there is one engineer for all of the six units, a single one, and one fireman-helper for all of them. This comes as a great surprise to a public which has been regaled by tales of featherbedding, which is inclined to believe the worst of the employees in this industry, based on the campaign of the employers against their own employees.

Gentlemen, the intended result of these inordinate demands, these extraordinary demands, for wage cutting and the end of collective bargaining, and the intended result of this public relations program, is not to bargain, but to destroy.

I should add that the public relations program has some objectives other than labor objectives, and this public relations program has combined product.

The railroads' so-called "freedom campaign" consists of this: exemption from the obligations of continuing service under the heading of abandonments; exemption from taxation; exemption from intra-industry competition through mergers; exemption from interindustry competition through diversification and exemption from rate regulation.

The progam of public relations of this industry has been called the railroad industry's greatest technological development. It has been aimed particularly at the academic world from which come arbitrators and Government personnel.

The dean of American railway labor, George Harrison, cites this as the basic reason for railway labor's great current difficulty in finding fair and objective public representatives before whom disputes may be brought.

Gentlemen, labor's own demands for true modernization and rationalization of the working conditions in this industry have been overwhelmed and buried in the turmoil created by the carriers.

How many people know that engineers and other operating employees can to this very day, 1963, in the United States of America, still be worked up to 16 hours a day? They can be worked up to 7 days a week. They can be worked every week of the year. And they do not necessarily receive overtime pay for working long hours. They can work as long as 16 hours a day, 7 days a week, there is no weekly threshold of overtime.

On the basis of the current overtime rules, you can work that long without getting overtime pay. How many people know that in this industry unlike any other major industry in the United States, there are not such ordinary benefits as night shift differentials, allowances for expenses for layovers at away-from-home terminals, no paid holidays, and in many other respects the pattern of compensation is incomplete based on any standards—any modern standards—of compensation.

Yet, all through the various steps of this dispute the public has been mesmerized by the carriers' insistence that this is simply a manning case, a featherbedding case, a fireless firemen's case.

Every public representative dealing with this matter to this point has without raising any question, immediately acceded to the carriers' ultimatum, that if the so-called firemen issue is not discussed and settled first there will be no negotiation and settlement of any other issue. Hardly anyone knows that the carriers proposed unheard of wage cuts, or that the employees are seeking the normal benefits of overtime, night shift differentials, layover expenses, paid holidays, a 5-day workweek and the like.

Now with your permission, Mr. Chairman, I would like temporarily to yield to Mr. Zimmerman who has had unparalleled experience in this case going back to its very inception, and who served as a member of the Presidential Railroad Commission.

Mr. ZIMMERMAN. Mr. Chairman and gentlemen of the committee, I take no pride at this point in having been a part of that Commission.

I would like to make one observation before I continue the outline. This is my first time in your committee room and I couldn't help noticing the mural on the wall behind your chair. It appears to be symbolic of transportation. I think the industry that we are concerned about here today is notably absent from that mural. I would hope that it is not the fact we are in a status of something less than peace that has caused its removal.

I would prefer to think that railroads were not depicted up there by the artist from the outset. It is the earnest hope of my organization and the others that before we are through we will not only be able to depict rail transportation in that mural——

The CHAIRMAN. Mr. Zimmerman, before you go too far with your lack of full information about this, let me move back and show you that the railroads are depicted in this mural. I regret that you can't see it but all of this has nothing to do with what we have here today, however. This mural was put here by a rather distinguished artist, I believe about 1945, if I remember, when our beloved and distin-

guished former colleague was chairman of this committee at that time, Clarence Lea. I suppose I am the only member of the committee who was here at that time. But I remember distinctly that railroads and all forms of transportation is what the artist had in mind.

Mr. ZIMMERMAN. Mr. Chairman, I appreciate your calling to my attention what I failed to see from where I am sitting. I will wrap that one up by saying that peace is the objective of these organizations.

The CHAIRMAN. I think it would help all of us to look at the angel up above.

Mr. ZIMMERMAN. Yes, sir. We are not looking for victors or vanquished. We are looking for something that we can all live with in honor and justice.

With respect to the Presidential Railroad Commission, gentlemen, a continuing source of our difficulties, I would like to point out as briefly and as rapidly as I am able to do so, some of the expectations concerning that Commission, our expectations, our hopes, and some of the things that we regard as fatal errors which precluded the fulfillment of those hopes and expectations.

One of the principal hopes and expectations of all of these operating organizations in their urging for that type of Commission and included in its charter document, the agreement between these organizations and these railroads in October 1960, was a provision clothing the Commission with the authority, if they chose to exercise it, to exert their mediatory efforts to bring the parties together to a peaceful resolution of their rather wide difficulties.

We hoped, we urged—we were not successful in urging that as the most effective means of reaching resolution that the Commission would meet briefly here and record the positions of the respective parties, and then go into a series of determining of what kind of actual information studies ought to be developed, following which we would get together in the light of those facts, weigh the facts against the positions that had been expressed, take a look at how wide the difficulties were and go at it in a mediatory fashion.

Those hopes were not realized. Unfortunately, we moved almost immediately into a formal type of procedure, one that required the keeping of an extremely voluminous transcript, the listening to a great many witnesses, the receipt of a couple of hundred exhibits, a good many lawyers, and the result was inevitably that both parties instead of beginning at that point to move together and narrow the area of their differences were compelled by the very nature of the proceedings to harden positions, positions hardened to the point that it has only been in recent weeks that the parties themselves have begun to move toward one another.

That, I suggest, has been immeasurably assisted by the work, the deliberations, and the report of Emergency Board 154. It is unfortunate, in my opinion, that in the life of the Presidential Railroad Commission—this was principally in 1961—that there were virtually no discussions of substance. There was virtually no mediation and there definitely was not any negotiation.

I feel so strongly about the benefits of effective mediation, a feeling that has remained unaltered since long prior to the establishment of the Commission, that I express some disappointment concerning the failure to exercise mediatory efforts on the part of the Commission, that with your indulgence I should like to read to you a brief passage

from a dissent to the report of that Commission which was submitted to President Kennedy in February 1962.

I am speaking here of my belief of a mediatory function and an expression of disappointment of the failure of that function on the part of the Commission. I a now reading:

> From the very beginning and closely related to the adversary nature of the proceedings adopted the public members shied away from their clear obligation to perform a function of mediation, the predilection for an imposed solution emanating from the public members as it would from a judge and jury in a courtroom was too great. No mediatory efforts of any significance were even attempted.
>
> The public members did not start with the parties on their own terms and then attempt through mediation to reconcile differences. The only interest which the public members showed in the views of the parties was at the very end of the proceedings and the only views solicited were those concerning possible reaction to recommendations which had already been formulated by the public members.
>
> A mediator must be a thoughtful listener. He must at times be a friend or partner in coping with complex problems and conflicting positions. He must be capable of acting as an honest broker between two parties whose objectives must ultimately be reconciled.
>
> A judge, a jury, a critic, a lecturer, a legislator, all have their use and place.

Unfortunately, it is not in delicate situations involving the need for mediation. Mediation requires self-restraint and the Commission undoubtedly would have exercised more self-restraint had it abandoned its potential role of mediator. It would not have aggravated the dispute as is now apparent. Mediators value the quality of patience.

> Again the failure of the public members to view themselves as mediators destroyed their distrust of hasty conclusions. The necessity of finding a report before a deadline became all important and this was done with all effort directed toward the imposed solution rather than the agreed upon solution. Naturally the public members would have welcomed agreement, but on their terms and on the basis of their own approach. This is the very antithesis of what a mediator is called upon to do.

I read one more passage, concerning the situation which disturbed me greatly. I was advised by the Chairman of the Commission that the public members were aware that their recommendations could be erroneous but that it would be up to us to iron out any errors in collective bargaining. We have devoted a great deal of effort since the filing of that Commission report to do just exactly that. There were a great many areas of error.

The susceptibility of the key members of the Presidential Commission to carrier propaganda received informally and irregularly became the decisive factor, in my judgment, in their recommendations. There was an extremely widespread belief at the outset, and in my judgment, through the life of that Commission that they were there to rescue a dying industry.

I say to you, as I have said to many other people—and this is the first congressional body to whom I have said it—that there was a great deal of distrust and apprehension created in the minds of the labor representatives on that Commission when very early in the proceedings long before the carrier position had been formally presented and months before the organization began to present their position, we were urging that studies be made to develop for the record, for the guidance of the Commission, the actual conditions

under which these operating employees worked, to determine at a later point, to provide a basis around to which to determine what are just and equitable working rules. But before that was done, the suggestion was made on the part of the public members that we should develop information in four areas.

The first was—and this won't be a direct quote—to try to develop information pointing to where the industry might be 5 or 10 years hence. They wanted a study made concerning an age and occupation groups of the operating employees.

They asked that a study be made concerning the operation of the Washington job-protection agreement, and similar agreements, all of which inevitably suggested to those of us in labor that before a study of the actual situation, the way these people worked, the way the industry operates, the mind is already occupied with the question: What are we going to do, what measures of protection are we going to provide, for people that we expect to eliminate?

There was some little talk—and we are not blameless in that area—concerning developing information concerning what do these employees do. What is their job content? That was not pursued, and I say we are not blameless in that respect.

Now back to the matter of a stricken industry that needs a transfusion from some source, including the employees. In the testimony before your counterpart committee in the Senate, Mr. Wolfe stated that the Commission had found the financial positions of the carriers to be poor. Whereas the Secretary of Labor testified to the effect that the Commission didn't get into the financial question. They didn't get into it formally. Actually the report of the Presidential Commission avoids the appearance of consideration of financial conditions. They issued a disclaimer that their recommendations were in no ways influenced by the ability of this industry to pay.

I found it interesting in talking to the members of the recent Emergency Board No. 154, that was Judge Rosenman's Board, that commenced its hearings on the 11th of April this year, filed its report on May 13, that in the discussions that were had concerning the influence that the poverty plea has had on people who have been called upon to consider this case, that reference was made by one of the active members of Emergency Board 154 to that remarkable press conference.

He had reference to a press conference that the second chairman of the Presidential Railroad Commission held coincidental with the filing of the report of that Commission, and at this point the Commission Chairman in a press conference at the VFW building not too far from here, expressed his views concerning the moribund state of the industry.

This, after disclaiming in the main report that any consideration had been given to that aspect of the difficulties.

Emergency Board No. 154, after having material presented to them, expressed a much different opinion concerning the moribund state of this industry, as we will not a little later on.

There was another public member of the Presidential Commission who in his subsequent justification of the drastic nature of the Commission recommendation explained to various people from time to time that the public members believed they were dealing with a dying industry and had to perform radical surgery.

In a private conversation with that gentleman, he informed me early in the game that it was his conviction—and I don't know what he based it on—that within the next 5 or 10 years before this industry had a possible chance to stage any comeback, the number of employees was going to be cut just about in half. We had 734,000 total employees in the industry at that point.

He was talking in terms of less than 350,000. I fail utterly to understand the basis of that kind of a diagnosis.

In a followup to what Mr. Malin has said concerning the very drastic nature of the wage cuts that these railroads proposed to impose on us in their notices of November 1959, and which are still contained, completely unchanged, in the document with which they have for the past 11 months intended to promulgate a shutdown—I want to point out one of the other difficulties involved in the report of the Commission.

In their haste to meet the deadlines, to get their report out, they came up with a recommendation for these operating employees on the basis of which the Chairman of that Commission said that the report contemplated wage increases—increases—for 75 percent of the operating employees.

The Commission also expressed the view that their recommendations would result in something like a 2-percent increase in the wages of these railroads as far as the operating employees are concerned, while actually their report—and this has been completely documented since that date—involved even after the Commission sifting these demands a substantial decrease in the wage bill.

This is one of the few matters which Emergency Board 154 did investigate in some detail. It is obvious, and looking at the report of Board 154, and they so stated in conference, that the Railroad Commission of 1961 did not effectuate the increase in the wage bill that they said they intended, but had rather proposed a scheme which would result in widespread and overall wage decreases.

Now, Mr. Malin has mentioned the more than 30 percent proposed wage cuts contemplated by management's notices. The commission took cognizance of those cuts and verified them at pages 101 and 102 of their report wherein they said:

> This proposal constitutes a 37½-percent reduction in the mileage rate and passenger service for conductors and trainmen. The carriers propose to increase the basic rate of $225 million, a reduction of 33⅓ percent of mileage rates.

I mention that simply to verify the observations made. I say briefly in their portion of their recommendations the Presidential Commission went beyond that point with respect to certain miles compensated on a mileage basis. They recommended decreases of 50 percent.

I ask is it any wonder that we have spoken out in such clear terms against the value of the Presidential Commission's report as pointing the way toward solution of our difficulties? Among the evidence provided to Judge Rosenman's recent Emergency Board are figures clearly demonstrating that more than 80 percent of the through freight engineers that we represent would suffer a wage loss under the Commission recommendations. Sixty-six percent of local trade engineers, and 13 percent of those in the yard service.

It adds up, gentlemen, to a combined reduction for all classes of engineers of a little more than 7½ percent if the Commission recommendations were adopted. Those were recommendations concerning which the Commission said they were going to increase the wage bill.

Mr. SPRINGER. Are you talking about the Presidential Railroad Commission or Emergency Board No. 154?

Mr. ZIMMERMAN. I am talking concerning the figures, sir, about the Presidential Railroad Commission recommendations. I say that these are a demonstration of the validity of these figures that I am giving you was presented to the recent Emergency Board, demonstrating the effect or the recommendations of the previous Commission.

With somewhat varying results the same general conclusions are applicable to the rates recommended by the Presidential Commission for the other operating employees, the firemen-helpers, the conductors, and the brakemen on America's railroads.

Following its investigation the Emergency Board provided for a significantly different wage result than had been recommended by the Presidential Commission.

I would prefer, if you gentlemen would like to discuss that, that Mr. Malin point to the differences. He is an economist. I am not. I am a practical railroad man that like all of those represented here can look at his paycheck and tell whether he has more or less than he had last week.

The Presidential Railroad Commission, in my judgment, failed to acquaint itself sufficiently with the reasons behind the working rules and the practices in this industry.

The adversary proceedings did not contribute to the development of a knowing eye and an understanding heart in the observation of the mutual needs of the carriers and their employees.

This situation was complicated by the aversion of some of the public members for a mileage system of pay, and an aversion that was not shared either by the carriers or the employees. None of the notices—I should say neither of the notices—those demands made by the carriers and those demands made by our organizations suggested abandoning the mileage basis of pay.

I am not at all certain concerning the source of the desire of some of the public members to undo or attempt to undo our system of payments.

It is my own belief that it was their unfamiliarity with the system that is extremely simple to all of these employees who work under it, caused no difficulty for the personnel in the payroll departments who make their calculations and write the paychecks, but I believe it was finding something strange and confronted with the necessity of their going to understand it to dig into it that prompted these people to say, instead of our understanding your system, you ought to have a system that we understand. That is my own belief.

Now, the philosophy that is built into the principle, the system of pay on these railroads, for providing an incentive to the employees for skillful and attentive operation of the trains in order to get over the road and to get over the road expeditiously was never quite understood by the public members.

Their recommendations consequently provided a negative incentive which would deter employees from completing their runs in a most expeditious fashion. Their recommendations, if placed into effect—

and I think this is one of the facts of life—would result in such drastic cuts for some employees that the only way they could get well and get those dollars back in their paychecks would come in two forms. Either to make more trips, to spend more time on the road, more time away from home, or to hope that their run would run into overtime.

I suggest that is not the kind of incentive that is needed if these railroads are going to provide the kind of expeditious service that is salable, that will hold and gather traffic, and that is what we want to do.

Our present system encourages that result. Another of the areas of difficulty that confronted us with that Commission and in their report is the mileage and the special character of this industry relating to the location of the work. There is no fixed plant insofar as the operating employees are concerned.

Their workplace is in motion, excepting for yard service. In any other industry, if you are going to pick up a plant that makes stenotype machines or automobile tires and move the workers with it, the employer has a considerable cost attached to that. That is not true in the railroad industry, where it has been demanded by our employers, and with some concurrence on the part of the Commission, that they have the latitude—and this has been demanded in an unrestricted way—to uproot these employees from their place of residence at management's virtual will and pleasure and shifting them 100 or 200 miles somewhere up the road.

We have made, I think, considerable progress in that area in recent times. But I point to the fact that the promulgation which is still in front of us, which is currently hanging by a hair, contains a demand that that latitude be granted to management and the protection of the employees is no part of that demand.

Actually, it is our view that the report—not the recommendations, but the report—of the Presidential Commission provided considerable justification for improvement of the working conditions in this industry. But the report was accompanied by a recommendation which in actual fact did just the reverse of that insofar as the employee self-interest was concerned in the safety, the efficiency, the burden of work on these employees, their work locations, and the stability of their jobs.

I think it is also fair to state that since the Presidential Commission issued its report there has been a change in the climate of policy appraisal in this country. The more current view appears to be that the economy and its unemployment would discourage the undue acceleration of this employment and gains the apparent increase in efficiency of the economy achieved through this employment, there should be a way to real social and economic ways involved in the precipitous reassignment of mature men, such as operate this industry, from productive work to the heal of unemployment a fuller treatment of the other Presidential Railroad Commission errors which lead to the rejection of the recommendations, and it should be emphasized that those were merely advisory recommendations—and I want to comment briefly on that.

The agreement for the Presidential Railroad Commission has long since been public property. A matter that is not generally before the public is the fact that on the very same day within moments of signing the agreement for the Commission there was signed a brief letter by the representatives of both parties and the Secretary

of Labor clearly and expressly providing that the recommendations of the findings of that Commission would not be binding on either party.

That report has been treated by our potential friends on the management side as being of a binding nature, and we both know that was not the intent of it. We have made some observations and the Brotherhood of Locomotive Engineers has dissented from that report. I do not have copies of that available at this moment.

They were, however, mailed to each Member of both Houses about March or April 1962. Now as a result of the regard of the management representatives for the recommendations of that Presidential Commission almost every attempt of these organizations to negotiate has been met with a walkout by management representatives. As far as they were concerned, bargaining as we have known it in this industry was simply out, and as far as they were concerned, we had two courses. We could capitulate or we could let it go to compulsory arbitration.

I am not suggesting that the walkouts were numerous. I do say that they were critical. We spent some time with them in Chicago following the report of the Commission during April and May 1962.

I am not going to quibble about the percentage of time that was devoted to discussing the respective positions of the parties, excepting to say that we devoted more time to their proposals than we did to ours. When it became apparent to them that we were unwilling to adopt verbatim the recommendations of the Commission they left the room and they didn't come back until they came back at the request of the Secretary of Labor in accordance with the agreement which set up the Commission, and under the auspices of the National Mediation Board.

I regret to say, and I say it with no rancor whatever concerning any members of the National Mediation Board, that insofar as the efforts or the results were concerned in the month that ensued from their entrance into the picture until the next carrier walkout, the results were negative and I was extremely disappointed with the efforts made.

I was disappointed because I have seen those gentlemen work. I have seen the results that they accomplished. I have had my head banged by them. They can be effective.

I expressed at that time considerable disappointment that the walkout of the carriers was permitted, that it was followed by a proffer of arbitration which all of us regard and we said so as being premature and as being made prior to the exhaustion of the best efforts by mediation to resolve the dispute as contemplated by the Railway Labor Act.

I have made no plans by making this statement. It is part of my deep conviction that those efforts could have been more intense, should in fact remain intense, and can in fact serve to go a long way to putting us under the peace in this industry where we want to be.

It was that second walkout, the view of receding back, that accurred on June 2 a year ago. Shortly after that, as a matter of fact, after the expiration of 30 days from the proffer of arbitration and this 30 days is required under the Railway Labor Act, we were notified that at the expiration of that 30 days a promulgation of the work rules would be placed into effect.

This promulgation embodied the carriers' version of the recommendations of the Commission. Through the district court, the appeals court, and ultimately to the Supreme Court, there was a period of time ensued. During this time, and since, and at this moment, we are confronted with a promulgation which is almost verbatim the original demands made way back in 1959.

I say to you that the tread has been worn off of those demands. Many of them were rejected by the Commission, to which we have taken considerable exception. Those demands have been further rejected by the handling and the report of Emergency Board 154. Progress since that point has worn some more tread off them. They are threadbare.

But those are the things that are held up to this country as a threat to a shutdown of this industry. Earlier this year, at the prodding—and there is a record of this—at the prodding of these organizations, negotiations were briefly resumed. This again was in Chicago.

When I say "brief," that is what I mean. There was 1 day, March 13 of this year. The session lasted, according to my record, 1 hour 47 minutes. There was not mediation accompanying that meeting. Here is rail management confronted on last March 13 with a completely unprecedented proposal from the unions, particularly the Firemen's Union, with the wholehearted accord of my union, with respect to the firemen-helper jobs.

President Gilbert, in my judgment, made the kind of realistic and statesmanlike move on that date that we see urged by so many people who write concerning labor-management relations, who speak at times for this Government—that kind of a move was made and what result did it get?

Mr. Davidson had almost literally to constrain management people from walking out of the room again before Mr. Gilbert was through speaking. I suggest that that demonstration was just one more demonstration of management's determination to compel these organizations to accept the one-sided advice of the Presidential Commission or to go the hard way where we are threatened today with compulsory arbitration.

Now there has been a good bit of quarreling back and forth about whether this is arbitration or whether this is something different.

I would like to let a partisan group substantiate my own view that this is in fact compulsory arbitration. The National Association of Manufacturers is not known, I suspect, as the most liberal organization in this country. They have rarely, if ever, taken labor's side on this.

In their little publication called the NAM News, dated July 26, last, there appears a little story called "The Proposed Rail Dispute Legislation." I shall read you the first paragraph—

> The legislation recommended by the President on July 22, 1963, for dealing with the railroad strike threat would, in effect, designate the Interstate Commerce Commission as a board of compulsory arbitration to make final and binding determination of the issues between the parties, its determination on each issue to remain in effect for 2 years from the time it goes into effect.

With that comment, gentlemen, I would appreciate it if Mr. Malin might resume discussion following the outline.

Mr. Malin might resume discussion following the outline.

Mr. MALIN. I would like to briefly comment on the question of compulsory arbitration. It seems to me that the significance of the discussion on whether this is or is not compulsory arbitration is that it is clear from the statements of Secretary Wirtz and from other statements of the administration that this legislation was introduced on the supposition that it was not compulsory arbitration.

I think the returns are now in from all quarters. From labor, from management, from neutral observers, the New York Times, the Washington Post, the Wall Street Journal, all of them concur on this one conclusion, that the legislation before you is in fact compulsory arbitration, although sincerely offered as something else.

I should also like to comment on the reason for discussing the PRC, the Presidential Railroad Commission. You gentlemen have three reasons to consider the history of the PRC.

In the first place the recommendations of the Presidential Railroad Commission are embodied in the resolution before you for your consideration. They are embodied in the considerations which the ICC is required to make of the dispute. Therefore, one should know whether the Presidential Railroad Commission did or did not in fact make some errors of considerable magnitude which would disqualify their recommendations from further consideration.

The second reason that we have discussed the Presidential Railroad Commission report is that it shows we were not unreasonable in rejecting these recommendations or at least part of them.

The third reason is that it explains quite a lot about the time that was taken in this industry to reach the point where we are today. The Presidential Railroad Commission recommendations constituted a positive impediment to bargaining as we pointed out at the time of the report.

When the unions are accused of stalling this case, despite the fact that they have so much to gain from their own demands, consideration should be given to this very one-sided and erroneous recommendation of the Presidential Railroad Commission which did in fact delay collective bargaining until recent months.

Now we come to the Emergency Board No. 154 which was convened in April of this year. With respect to Emergency Board 154, our belief is that it contributed to a substantial change in the bargaining climate.

Under Emergency Board No. 154 there were various steps of progress made. We were not confronted with adversary proceedings, and in the short time that was available to the Emergency Board, this brief time that was actually put in with the parties, we felt encouraged to discuss our situation with the Emergency Board members, and we thought we got a good hearing, considering the time that was available to them.

The labor organizations took the initiative in proposing an approach to the manning and assignment issues. We think that in the Board's recommendations they adopted various principles of guided collective bargaining as we had proposed.

Under the auspices of the Board, bargaining started to be meaningful and we were talking in terms not of ideology. We were talking in terms of actual operating needs of the carriers and the actual needs of

the employees. We were trying to arrive at someplace where we could mutually accommodate each other.

We were talking in terms of criteria for the selection of jobs for eventual elimination and criteria for setting up categories of jobs.

On the very tricky question of interdivisional runs which had loomed so big in the minds of the Presidential Railroad Commission, and was viewed by them as a rather hopeless thing to settle, on our initiative with our proposal we bridged the gap in principle between the parties. It awaited only the settlement of some other issues that were related to it. But we had agreed on interdivisional runs that we were talking in the same language. That we could come up with a contract clause to settle that issue.

The Emergency Board so stated in its report. One of the things that Emergency Board No. 154 did was to help collective bargaining prospects by puncturing the financial myth of the railroads, this poverty plea they take daily in the daily press.

Emergency Board No. 154 had the following to say:

> We were impressed with the evidence submitted to us that the vitality and earning capacity of the railroads as a whole are improving, that the productivity of its workers is rising at a rapid rate, and that the industry can face the future with confidence and even optimism.

They wholly reversed the informally acquired views of the public members of the Presidential Railroad Commission which led them to the drastic surgery that they thought was required.

Now, in reaching their conclusions, the Emergency Board gave consideration to the evidence that they had before them on the financial condition of the industry. I would respectfully direct your attention to page 7 of our outline statement where various statistics are shown for the 20-year period 1940 to 1960, where volume of business has gone up tremendously, where profitability has gone up tremendously, where capability and productivity has gone up tremendously, where wealth has gone up tremendously, including a growth of corporate surplus in this 20-year period, a growth of 305 percent, an increase of 305 percent, where investment results and recognition have been demonstrated to have gone up greatly.

And incidentally, dividends, earnings per share, and market price per share, each one of them have outstripped Dow, Jones utilities for the same period.

What has been down during this period? Insolvency has been down. There are no railroads operated by trustees or receivers as in years past. It is down 98.4 percent. The Emergency Board also had before it the data on improvement and operating results since 1960, and the Emergency Board also had before it something that is not usually presented because one has to get in the footnotes of ICC tables. They had evidence which shows that over a long period of years, the railroads have, in fact, maintained their share of the intercity freight market, contrary to most people's views, views which are the result of reading some numbers without getting into the footnotes which explain and delimit the numbers.

Unfortunately, Emergency Board No. 154 had a statutory minimum time to serve of 30 days. It served 32 days, actually. It could have been continued. We urged that it be continued. We thought

the progress warranted that it be continued. It was discontinued when the continuance in the form recommended by us promised to be most fruitful.

What did we do in recommending further action? We recommended guided, collective bargaining, which is a middle course in the public's interest. We realized that these parties, as a result of the original drastic promulgation, unheard of promulgation in 1959, and the consequences of the Presidential Railroad Commission's work, we realized that these parties had begun to lose effective touch with one another; that they did need somebody with them to conciliate, to make them more friendly to one another; that they did need somebody with them that could look at the respective positions of the parties as they were evolving in the course of the Emergency Board's work, and take this progress and consolidate it, and then move on from that point and mediate the differences between them. They were not too great.

We recommended also that consideration be given to provide the carriers with some better incentive for bargaining.

As long as they had this picture in their mind that when the clock ran out they might get compulsory arbitration, it was exceedingly difficult to offer them anything that could interest them.

I must say that in principle our recommendations were most favorably and even flatteringly received, but, gentlemen, disastrously, they were never put into effect. Instead, what happened was some desultory bargaining for a brief period of time, with the carriers insisting that they "accept it," the emergency board report, a remarkable feat, inasmuch as that report was not at all self-executing or self-implementing.

What the board stated basically was this, and I will quote their language:

> Our recommendations are designed to aid the parties to explore several solutions in order to find those which best fit their vital needs at this time. We have not attempted to specify precise solutions to these problems. We believe that true collective bargaining will more likely succeed if we suggest general directions rather than specific solutions.

That was the language of the emergency board and that language and all of its implications and everything designed to implement those implications we did accept. We said that we would use this emergency board report as a basis for bargaining.

It has been widely bruited about that the carriers accepted and we rejected, and that is not the fact of the matter at all. What the carriers did when they said they accepted was not to attempt to bargain as this language clearly contemplates. They merely insisted on the adoption of a particular interpretation of some material offered by the board as examples for the parties' consideration, and what the labor organizations did was to adopt the basic bargaining principles of the emergency board's report.

And we made the meaningful proposals in this case, the proposals that departed from original position, and these proposals to this day have never evoked a counterproposal from the carriers to us, not to our knowledge.

Mr. Zimmerman has something to say on that.

Mr. ZIMMERMAN. That statement, gentlemen, that Mr. Malin has made here is not completely accurate. We have received proposals

from the carriers. I wouldn't want to characterize them as counterproposals in the most literal sense, but I don't want any of us here to leave the impression that the management people have made no proposals since the report of the emergency board.

I say without any qualifications that while we have made proposals to them concerning the demands that they are making on us, they have not since the emergency board report given us any proposals in connection with the demands that we have pending. There have been exchanged some proposals. I simply don't want to leave the impression there has not been an exchange.

The matter of terminology about proposals and counterproposals can be a little confusing here. They have come no distance at all concerning our demands. We have made proposals with respect to their demands, with regard to each one of them, as making substantial moves in the direction of what they want and what we think we can honorably live with.

Mr. Malin asked me whether we have received any proposal concerning this issue which has gotten so much space, the firemen proposition. The answer to that is they have made us no proposals whatsoever in response to our proposal on that matter.

Mr. MALIN. I should also like to clarify the status of the bargaining in this way: There has been bargaining on a number of these issues, although we have not received proposals from the other side concerning those issues. Proposals mean handing a written document to the other side saying "We are willing to live with this." Following the emergency board, as I have explained, the bargaining was desultory. Thereafter, the parties did get some mediatory assistance, and I regret that we must characterize this assistance with one notable exception as too late, as rather weak, as wavering, and as not creating a favorable bargaining atmosphere.

Despite that, the parties nevertheless did make considerable progress in the month of June 1963. Now gentlemen, we hear that this is a case that goes back to 1959. The month of June 1963, except for the even shorter period during the emergency board proceedings, was the only period when any mediation of any kind was tried at all.

Now, what happened during the month of June? The fireman-helper issue was progressed to the point where an agreement seemed quite likely at the high-water mark of bargaining on this issue. On the basis of the labor organization's initiative, the parties were beginning to bargain in terms of numbers, timing, guidelines, and categories.

On the crew consist issue, the parties were acknowledged to be an inch apart. The interdivisional issue was acknowledged to have been settled in principle on the basis of the labor organization's initiative.

There had been little bargaining on some other issues, notably the employees' demands, but there was also little indication that the carriers would be adamant on these once the manning issues were settled. These were, in fact, indications the other way.

There appeared to be no hopeless deadlock on any issue. And when I said it was the month of June, I am not going strictly by the calendar. It did fall in part toward the beginning of July. Now, at this point all that was lacking was the courage to remove the incentive for the carriers to run out another deadline and come back to their original

goal of compulsory arbitration. We don't mean to criticize the people who conducted the mediatory effort. In their way, their efforts were considerable. They worked hard. They meant well. They did what they thought was proper under whatever policy they were operating.

Neverthless, we believe that self-confident, vigorous mediation could have gotten the job done at that point in the negotiations and could have resulted in a fair and equitable negotiated agreement.

We think that the failure to provide the carriers with some incentive and the promise lurking around the corner of enforced arbitration such as they were looking for resulted in no agreement at this point. Time and time again the preoccupation of those who were mediating was with the question of how finally to resolve unsettled items in dispute, if we failed to negotiate, and this diverted their attention from getting at the substance of the dispute.

Our earnest entreaty for the avoidance of repeated strategic errors in handling were always well received, but again failed to materialize in timely action. The only assistance rendered at this stage was to give carriers repeated occasion to affirm that they stood by their original goal imposed solutions, while the labor organizations were forced over and over again to appear negative and recalcitrant.

We were given the opportunity to say, I don't know how many times, that we were opposed to compulsory arbitration. Again, in connection with compulsory arbitration, this should be understool as not having anything whatever to do with the people proposed. Our regard for the people proposed was high, and remains high. We have high regard for Associate Justice Goldberg, high regard for the Assistant Secretary of Labor, high regard for anybody mentioned to us formally or informally. Certainly we have high regard for the President of the United States.

Again, this has nothing to do with whether we think we would do well or not do well with compulsory arbitration. In my judgment, I think we would have done fairly well—quite well—with arbitration under Association Justice Goldberg. This is a matter of principle. We accept arbitration when we write the contract and there is a question of interpretation or implementation of the contract. Then we say a third party can come in and decide what was intended. But nobody is going to say, as far as we are concerned, what our contract should be, what we are willing to work for, the conditions of the people.

That is something that the Brotherhood of Locomotive Engineers and the other labor organizations have as their responsibility to work out with management in the mutual interest of management and the employees, with due regard and due accommodation for the interests of the other side.

It is that kind of arbitration that we did have to reject and we did have to reject it repeatedly, and that is the basis of this thought that the labor organizations had their feet in the sand. It is not true at all.

We went along with many of the principles that were suggested. But we could not buy the principle of compulsory arbitration and we can't buy it today.

I should say something about the special subcommittee of the President's Advisory Committee. From our point of view, this was entirely without significance from the mediation standpoint. Its only

accomplishment was to buy time to draft some kind of legislative proposal; even though substantial gains in previous Labor Department efforts were acknowledged by the subcommittee chairman, that is.

That brings us right here. The situation that we face is this: The carriers have precipitated a crisis by their repeated promulgation of their original demands, demands which we believe are clearly against the public policy as we conceive the public policy to be. We think it is not for wage cuts. We think it is for collective bargaining.

The labor organizations, with their own demands, have threatened no work stoppage. We don't want to enforce our demands by shutting down the entire railroad industry. Our demands are for such universal benefits as overtime pay, away-from-home expenses, a 5-day workweek, paid holidays, and the like. The resolution before you proposes only this: To reward the carriers in their demands, to give them the compulsory arbitration that they are looking for, and to give them preference in treatment—priority of treatment—on those issues which are their issues, and to stall us, the employees.

Now, a few further remarks on the resolution before you, House Joint Resolution 565. As we see it, the evils inherent in this resolution are first of all that it is compulsory arbitration. We might refer you to various dictionaries. For our part, it is confirmed when we talk to anybody in the cab of a train or any conductor or any brakemen. They know what it is. They don't need to go to a law dictionary. They recognize that the essential element is that the resolution proposes that a contract be created that will bind the employees without their consent, and that is compulsory arbitration.

Now, it is said that maybe it is just a little bit of compulsory arbitration. It is sort of a little interim type of compulsory arbitration. You get an award which has a life of 2 years or maybe 4 years depending on your view of the language and of the conditions under which the award might be made. The word "interim" in that connection means at least twice the lifetime of many or most labor relations contracts. That is what we face in this interim award.

And after 2 years, or 4 years, as the case may be, how can we get out of a system of compulsory arbitration? I think we would be back in it. I see no way out. There is no incentive provided for management to bargain.

Realistically, the resolution recommends—and we think unwittingly—compulsory arbitration now and for the foreseeable future. I think it is appropriate to ask ourselves all of us, "Who will be the victims of this compulsory arbitration? Will these labor organizations and their employees be the only victims?"

Secretary Wirtz, testifying before the Senate committee, has already mentioned the possibility of applying this scheme to airlines, although he was not advocating it. Is there any reason to doubt that transportation in all branches can become enmeshed in this same procedure? And further, ours is an economy where we each depend on one another, and a whole industry may go down for lack of somebody's production of a gadget.

In this interdependent economy, wherever industry depends on the output of some other industries, might this resolution not be looked upon by brinksmen as justification for not settling their disputes by negotiation?

And finally, on this question of victims, will this type of heavy-handed intervention and compulsion be used only against employees, or would it be reasonable to suppose that the same deprivation of liberty would some day be used against employers as well?

I have mentioned that the resolution before you gives great preference to the carriers. The manning issues which are in effect the employer's demands are given extraordinary priority under section 1 of the resolution. Section 1 and section 2 of the resolution. This rewards the party which threatens to bring the Nation's railroads to a halt by the promulgation of widespread and exceedingly deep wage cuts. A party that promulgates that it will not longer bargain about major working conditions.

It disadvantages a party patiently seeking to obtain through peaceful bargaining the ordinary benefits of overtime, the 5-day week, and the like. Preference is given even over rate cases and abandonments before the ICC which, I believe, can work to the advantage as a further reward to the carriers.

Further, the Presidential Railroad Commission is reinstated as a source of guidance, reversing a trend of departure achieved by the labor organizations in bargaining.

Now, gentlemen, we also believe that the selection of the ICC as an arbitrating body is cumulatively oppressive. We believe that the ICC is biased against the labor organizations and has without actual investigation prejudiced these very issues. I won't dwell on the general belief among us that the ICC is carrier-oriented, and particularly rail carrier-oriented, and I won't get into the situations where we believe that we have received very poor consideration from the ICC on matters of train abandonments, and mergers, some of which we are now fighting in the courts. And I won't dwell on the fact that the labor organizations are exceedingly dissatisfied with the ICC's handling of consolidation condition matters under section 5, the very same matters which are cited in the Presidential special message as the basis for selecting the ICC as an arbitrating body.

But I will direct your attention, gentlemen, to the railroad passenger deficit investigation No. 31954, in which the Commission reported on May 18, 1959. In their report, the Commission attacked the dual system of pay, the basic day rule, mileage regulations.

We believe that the Commission bought the AAR propaganda line and it attacked railroad labor as shortsighted, stubborn, and as adhering to outmoded provisions of wage agreements. The Commission attacked the wage structure and the work rules as uneconomic.

In short, the ICC has already decided the merits of the very issues which the resolution, if enacted, would entrust to their consideration. This was done on the basis of secondhand information, reflecting inspiration from the AAR, without a real investigation of the facts and without a genuine study of operating jobs.

It should occasion no surprise, therefore, when witness Wolfe, before the Senate Commerce Committee, speaking for the carriers, so warmly endorsed the ICC as the proper repository for its disputes.

In response to a question, he stated he could think of no other agency he would prefer. In addition, the ICC operates in a manner that is not appropriate for the resolution of labor relations disputes. Basically, the ICC handles adversary proceedings. The experience

which we had in the adversary proceedings before the Presidential Railroad Commission should have discouraged anybody from recommending this at this time.

Adversary proceedings freeze positions. They contribute to antagonizing the parties rather than reconciling them. They contribute to results that are all or nothing, rather than mediated results. Beyond that, the arena proposed is one in which the carriers have the great advantage of everyday familiarity with personnel and with the rules of practice. This is the stamping ground of the carriers. We rarely have occasion to be before the ICC.

The truth is that the ICC is basically without experience in labor economics, conciliation, mediation, or arbitration. Its responsibilities are basically in other directions, and its personnel, its organization, and its procedures reflect that fact.

The administration of section 5(2)(f), which is cited as support for the ICC's experience in labor relations, quite apart from our dissatisfaction with that administration, illustrates only this: that in a narrow field the ICC is given a legislative prescription to administer. It is given nothing to create under that section. The statutory prescription is stated.

This is in sharp contrast to what the ICC would be required to do under this resolution that is before you, where it would have to create, in effect, a contract between the parties covering many issues.

Gentlemen, I have here the George Washington Law Review, October 1962 issue, devoted to the Interstate Commerce Commission, commemorating its 75th anniversary. It contains many fine articles, and I noted two from the chairman of this committee. I looked in vain in this comprehensive discussion of the ICC, its organization, its interests, its accomplishments, its work, for what it had to do with the field of labor relations. Not one of the articles discusses that as a responsibility of the ICC.

I looked through the bibliography covering the procedures and the legislation and the practice before the ICC. I looked in vain for discussion of labor relations responsibilities. I looked over the distinguished list of Commissioners of the ICC and I looked in vain for names that I would recognize as having written on subjects of labor relations or having participated as arbitrators or discussants in the field of labor relations.

Gentlemen, the ICC has a job to do. It is not the job which the resolution before you would have them do. Their job is in another field. Gentlemen, in summary, on the matter of the ICC, it is being constituted as a special labor court and an old chapter is being reopened for litigation, for appeals, for injunctions in labor law, and it is of more than symbolic significance that the venerated Norris-La Guardia Act is made inoperative in this area, and I put this question to you:

Is the likely path to harmony and cooperation going to be the path suggested that brings you to this resolution? We think that this is not the likely path to harmony and cooperation between labor and management.

Now, on page 13 of our outline statement, we cite various evidences of hasty preparation of this bill. I won't go into them inasmuch as this committee is fully informed concerning the merit or lack of

merit of the thought that this resolution was drafted hastily. We come now to the real question. Nobody likes compulsory arbitration. I assume that many people will not like this particular form of compulsory arbitration, and the question is: Is there an alternative? Labor's answer to that is "Yes," there most definitely is an alternative, and a very hopeful one, and one that has always worked.

It is very difficult for some people to understand how freedom works. A good many people in this world don't understand it at all. They think it just can't work. It is not definite enough. You are not assured of a result. The lines are not laid out where you know it is going to work.

But a long time ago, out of a sense of indignation, the founders of this country adopted a system in which freedom would have to work, and in the experience of all of us, and most particularly in the experience of the people in this industry, we know that freedom works. It has never failed. It is the lack of confidence in freedom that causes failure.

Now, what we are asking for is, first of all, the restoration of a bargaining attitude between the parties, and to do that, there is first of all required that management be given an incentive to bargain, and that their incentive be removed from running out the clock in order to get a compulsory arbitration, and to that end, we think that bargaining would occur if the promise of compulsory arbitration were removed.

As a matter of public policy, there should be an unequivocal statement, legislative or otherwise, legally or morally, as to the extreme harshness and unreality of management's proposed promulgation. And it should be pointed out that this promulgation which is to go into effect some midnight in the event that we fail to negotiate, that that promulgation of the carriers has been rejected by the employees, by the Presidential Railroad Commission, and by Emergency Board No. 154. It is their original promulgation of demands which they made inordinately in 1959.

And there should be an unequivocal statement that it is flagrantly contrary to national public policy to deprive workers of the right to participate in the setting of their working conditions, and that it is wrong to promulgate drastic wage cuts for many of the employees in this industry, and that it is wrong to disemploy employees without limit and without protection and without regard to the elements of safety, efficiency, and burden of work to which Emergency Board No. 154 gave its approval.

Now, assuming that the carriers have got themselves into a position where they have only the alternative of continued bargaining or imposition of their promulgation of their original demands, our answer is that they must be encouraged or directed by every proper means to continue bargaining; and furthermore, there should now be brought out into the open what is a demonstrated and accepted fact: that the PRC report, with its errors and bias, cannot serve as a basis for settlement. It was, in practical terms, replaced and superseded by the report of Emergency Board No. 154, by the positions of the parties in recent bargaining, and by the suggestion of the Secretary of Labor.

What needs to be done now is to memorialize and consolidate the gains that we have made in approaching each other in bargaining. It should be found and reported that in principle the labor unions in this case recognize that with appropriate provisions for protection of incumbents, jobs which do not contribute significantly to safety, efficiency, or to the sharing of what otherwise would be undue burdens of work can be eliminated.

It should be found and reported that the carriers and the labor unions have, in fact, been bargaining in terms of numbers, categories, timing, and guidelines for the purpose of determining the conditions under which jobs are to be eliminated. Specifically, reference should be made to the undertaking by the labor organizations of guarantees of the number of jobs that are proposed for elimination.

It simply is not true that we have put in some proposals such as has has been described as involving 5,500 fireman-helper jobs that would involve perhaps only 100 or 200 or 300 employees, according to the carriers. That simply is not a fact. The fact is we guaranteed what we said, 5,500, and we have proposed to the Secretary of Labor in writing several times guarantees to carry that out. We have not been told that they are not satisfactory guarantees.

We have been given no suggestion that our language is inappropriate to carry out what we mean. Nor have we been given any counterproposal by the carriers.

It should be found and reported that the parties are, in fact, close to agreement on the interdivisional runs issue; that there appears to be no necessary impasse on overtime or other compensation issues, nor on operation of self-propelled equipment, nor on combination of road and yard work; that we have made considerable progress, each of us, in moving away from original positions on manning in the bargaining sessions, and are not far apart on the consist-of-crews issue; and that we believe we are very close on the fireman-helper issue.

And, at this point, I would like for Mr. Zimmerman to make the closing remarks, with your permission, sir.

Mr. ZIMMERMAN. I have spoken at some length, Mr. Chairman and gentlemen of the committee, concerning my own feelings and convictions on what can be accomplished through aggressive, intensive, persistent, and vigorous mediation. This I still regard as the best solution to the problem that is in front of us.

I want to point out in closing, I would ask that you simply review, at your leisure, the balance of the outline that we have not covered. But I do want to point this out—that despite the wealth of material that I understand has been presented to the Commerce Committees in both Houses about the disastrous impact on this Nation of a railroad strike, despite the repeated and repeated and repeated reference to strike in the message accompanying, at least, the resolution that went to the Senate side, there has not been, at any point in this entire dispute, a threat by any of these operating brotherhoods to tie this country up some night at midnight if our objectives are not reached. We have not said that. We do not say it now.

It is the promulgation of the 1959 demands that poses the threat of a shutdown of this industry. We have become accustomed, although we like it little, to being the subject of headlines, articles, editorials, strike. It is not a strike of the employees that puts this matter or a

threatened strike of the employees that puts his matter in the posture that we find it today.

I thank you, gentlemen.

Mr. DAVIDSON. Mr. Chairman, if I may, just to correct the record, everyone had copies of my opening statement, but on page 2 in the fourth line, the beginning of the fourth sentence, I read those first two words backward. I said "We have," and I should have said, "Have we."

That is all I have, Mr. Chairman.

The CHAIRMAN. The record will be so corrected, and we so understand.

I am sure there must be questions in the minds of members, particularly in view of some of the statements that have been made here this morning, and some of the statements that have been made prior to today.

It is now 12:15, and I think probably the better thing to do would be to recess until 2 o'clock, at which time we will be back and we will start the questioning such as members may have.

(Whereupon, at 12:15 p.m. the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p.m., Hon. Oren Harris, chairman of the subcommittee, presiding.)

The CHAIRMAN. The committee will come to order.

I suppose that it is the intention of either of you to answer questions, particularly when they are directed to you individually, but when a question is asked, is one of you going to answer, or are we going to expect all three of you to be answering questions?

I am trying to get some understanding so we won't be engaged in arguments back and forth instead of just trying to get answers to questions members may have.

STATEMENTS OF R. E. DAVIDSON, A. F. ZIMMERMAN, AND MAX MALIN—Resumed

Mr. DAVIDSON. I had in mind that each of us would be asked some questions. There are some that I am not as intimately familiar with, however, as Mr. Zimmerman and our counsel, and I may in those instances defer to them for reply.

The CHAIRMAN. In other words, in order that we may have the proper procedure, you would expect the questions to be directed to you, Mr. Davidson, and you would refer them?

Mr. DAVIDSON. Either that or as the Honorable Congressman wish, to the individual.

The CHAIRMAN. We will try to proceed. What I was trying to avoid is getting three answers to every question.

Mr. DAVIDSON. Yes, I appreciate that.

The CHAIRMAN. I know other members of the committee feel, as I do, that we are glad to have your testimony this morning, and your presentation expressing your feelings, as well as your views about this entire matter.

If there is anything that has thus far been accomplished, so far as I am concerned, it has confirmed, in my own mind, that this was and is a highly complicated and difficult problem which has been brought to us in an effort to resolve, and not merely a simple proposition, as some of our mail and other contacts would indicate.

So I am sure that the members of the committee, and, indeed, the Members of Congress, would like very much, as I would like, to try to get really at the crux of this thing and get down to the bone of contention with a view of seeing what, if anything, can be done.

I did not want anyone, so far as I am concerned, to get the idea that the Congress itself might be the vehicle to arbitrate something. I certainly do not feel that I am capable of anything like that.

If there is anything of substance that you have said about ICC, you can add that manifold as to my capacity and ability, I suspect. But I was quite interested in your last statement, Mr. Zimmerman, and if that is true, it appears to me that we might just let his thing alone.

Mr. WILLIAMS. Mr. Chairman, I left the room before he made his last statement. What was the substance of it?

The CHAIRMAN. I am about to quote the substance of it, as I understood you, and if I misunderstood you, I would want you to correct me, and that is, that the brotherhoods or labor organizations of the railway industry have at no time made any threat or given indications to the general public that there would be a strike, and that the railroads would suddenly cease operation some night at a given hour, 12 o'clock, so that there would be no transportation.

Did I hear you correctly?

Mr. ZIMMERMAN. You heard me correctly, as far as you went, Mr. Chairman. I added to that, or built into it, that we have made no threat nor do we now make a threat to strike in furtherance of the many objectives that these organizations have in this dispute.

The CHAIRMAN. That is what I thought I heard you say. Do I get from that now, Mr. Zimmerman, that we could expect that there would be no strike on a given day, say the 29th of August, if there was not anything done about this?

Mr. ZIMMERMAN. There won't be a strike on the 29th of August so long as these management demands with which we are confronted are not sought to be imposed. Translating, we have demands in here for overtime and expenses and things of that nature.

The CHAIRMAN. Mr. Zimmerman, that is going far beyond. I hope you don't think we are the kind of people that will not take some cognizance of what is actually facing us today. The Secretary was here and testified, as you no doubt heard. You have been in consultation with the group of the Secretary. There have been consultations at the White House about it. There have been other meetings throughout, so you are far more familiar with what is going on and what has been done than I.

But the Secretary told us the other day—it is in the report—in the factual background report to the President, that the industry gave notice at a certain time that it would put into effect or attempt to put into effect certain amendments to the work rules. The Secretary said they were given a notice to that effect. Is that not true?

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. As I understood the Secretary to say, following that announced intention, the brotherhoods filed a notice that if those rules were put into effect, there would be a strike.

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. Is that true?

Mr. ZIMMERMAN. In lack of any other alternative, yes, sir; we said exactly that.

The CHAIRMAN. But that is true.

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. But what is that except a threat or an actual statement of what will happen?

Mr. ZIMMERMAN. It is a response, a defensive move, rather than an aggressive move. We have never said we would upset the status quo.

The CHAIRMAN. You did not mean to say that there would be no strike if the thing was left alone?

Mr. ZIMMERMAN. No, sir. I said we made it perfectly clear if the status quo were upset by the imposition of these rules, we would respond by ceasing to work.

The CHAIRMAN. I understood that was the situation.

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. I did not want to get any erroneous impression from what you had said this morning. You have, and all three of you together have, given us a rather detailed report and analysis of this entire situation going back prior to the original notice of November 2, 1959.

Now, as I understand, we are not called upon to try to consider in detail all of these problems. Maybe I am wrong about it. The two or three conferences I have been in on, as I understand it, it is not intended to include all of the things involved.

Do you agree with the statement that was submitted by the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy, July 19, 1963, as to the factual background?

Mr. ZIMMERMAN. I would regard that, sir—I don't have all of the words in the sections in my mind—as a reasonably accurate statement of the facts at the time that report was prepared and issued.

The CHAIRMAN. It was signed by Mr. Block, Mr. Leighty, Mr. Meany, Mr. Saunders, Mr. Wirtz, and Mr. Hodges. You have seen that report, haven't you?

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. It purports to give a factual background and boil down to a very brief statement of the issues and positions of the parties.

Would you say that report is correct?

Mr. ZIMMERMAN. Yes, sir, generally. As I say, I don't have every word of it in my mind. There was a request on both bodies, opportunity presented prior to the issuance of that report, to comment on a first draft. We provided comments and some changes resulted from those, I think. I am sure the same thing is true on the other side.

The CHAIRMAN. This sets out eight issues in dispute.

Mr. ZIMMERMAN. Yes.

The CHAIRMAN. Would you agree that it is boiled down to those eight issues?

Mr. ZIMMERMAN. It is my recollection, sir, that there are more than eight when they are broken down.

The CHAIRMAN. I know they are the whole gamut of the thing in question. But I am talking about the real dispute, the difference between you. Is it correct to say that they are limited to these eight? We are not to be concerned with the rest of them. Under the usual mediation and collective bargaining, they can be resolved.

Mr. ZIMMERMAN. I think the essence of the thing is generally included in those eight and I think also they are all subject to resolution by the mediatory process and the other suggestions that we have offered.

The CHAIRMAN. Would you agree with what has been told this committee and what has been said beforehand, that if the problem with reference to the firemen's situation could be resolved, that all the other questions could be resolved by the usual collective bargaining process?

Mr. ZIMMERMAN. I think the firemen thing has received so much attention that it would follow that if a problem of that size can be worked out, yes, that the solution to the others must necessarily follow.

The CHAIRMAN. We have understood from reports we have had, and comments and statements have been made, if the question of the fireman situation could be resolved and the crew consist problem, that all of the other issues could be resolved by the usual mediation and collective bargaining processes.

Mr. ZIMMERMAN. I think they could. I also believe that the two you have mentioned, the fireman and the consist issues, are subject to that same kind of resolution.

The CHAIRMAN. I know that. You made it very clear this morning.

Mr. ZIMMERMAN. I did leave a misunderstanding, sir, in our statement. There is a short paragraph in there, I can't cite you the page right now, that points not quite accurately to insistence of people who have met to treat with this thing confining it solely and strictly to the firemen proposition.

I want to say to you now that the record needs some correction to that extent. The emphasis broadly stated has been on those subjects where the people, the so-called manning issues, are concerned. The Secretary summed that up the other day, I do not disagree with him in principle, as including the firemen, crew consists, interdivisional runs, self-propelled machines, and combination road and yard.

The CHAIRMAN. I know that. I am trying to narrow it down, it can be narrowed down, to be of whatever help we can. You have said in your statement, the Secretary said in his statement, I am not sure that the railroads made the statement, but it was certainly implied if not actual, that at one time the problem of the crew consist was almost settled except for one little item. It got up to that point. Is that true?

Mr. ZIMMERMAN. That is information given to me by one of the key people in the Department of Labor that had been involved in this dispute. The term "1 inch" was not used. The fingers that described the phrase, they were this close together; they were, at that description, an inch apart.

The CHAIRMAN. I had understood that to be true. It had been stated by other sources in addition to yours this morning. If it is that close on that issue under the usual collective bargaining procedures or mediation procedures, then that would leave one real prob-

lem that a little progress has been made and that is in relation to the firemen.

Mr. ZIMMERMAN. I don't want to quibble with you, Mr. Chairman. We regard all of these as problems.

The CHAIRMAN. I know that. But I am trying to get down now to the point where you apparently, from what we have had developed here, you have not been able to make any progress.

Mr. ZIMMERMAN. I think we have made great progress, including the firemen issue, and some of that quite recent.

The CHAIRMAN. The facts don't bear it out from what has been brought to us. I don't know whether this side is correct or this side is correct. But I do know that we have had it stated both ways.

Mr. ZIMMERMAN. I have lived with this particular one. It is my considered judgment that we have made great progress on the firemen issue and that we made some more yesterday afternoon.

The CHAIRMAN. I understand you made the same plea before the Senate committee on Saturday. Let us bargain, let us actually get together. We have heard the other side of it, and we have heard them talk about all these meetings where they say it was bargaining and they enumerated them right on down the line for the record.

I understand that when you made the statement to the Senate committee, that Senator Pastore said, "Well, we are going to end this meeting and we are going to let you get together and bargain." It has been reported to me that you were together following that meeting until very late Saturday night and that you were together again yesterday until fairly late last night, and that they are together again today; that is, the proper people. It seems to me that bargaining process is underway. What kind of report can you give us?

Mr. ZIMMERMAN. I would like to be able to report that we reached agreement in all respects, but honesty compels me not to say that. I don't recall a day—I think it is unimportant—it was the evening of the day that we talked to the Commerce Committee in the Senate. We gathered collectively in the Labor Department Building.

Jointly, this is the Secretary, the members of the Board, representatives of both parties. The Secretary spoke rather freely and with some feeling, following which the three groups or the two groups were separated. Part of the Government people went with the management folks, part of them went with the train service people, part of them with the engineers and firemen.

We were there until rather late. We met again Saturday. We met yesterday afternoon. I don't separate those sessions from bargaining. I feel, however, Mr. Chairman—and it may be an erroneous assumption and I wish you would correct me—that you have an impression that we sat across the table from the management people and we discussed things.

The CHAIRMAN. No.

Mr. ZIMMERMAN. No. We were doing things the way that we had third-party mediatory participation in there, just what we asked for. I hope we will continue to have that energetic, aggressive type of third-party assistance in this thing. I don't believe it is a thing we can do ourselves, by ourselves, across the table from our potential friends on the other side without third-party assistance in a mediatory capacity.

The CHAIRMAN. Mr. Zimmerman, I have a feeling that this thing has worked up to a point that both sides have such a deep feeling, way deep down in their souls, that it is pretty hard to give. It seems to me, as one Member of Congress, that if there is a general feeling by the President of the United States, by the Secretary of Labor, by the Assistant Secretary of Labor, by your organization, by others who testified here, that all of these issues except one can undoubtedly be resolved, that this thing ought to be narrowed down to a point that it could be resolved.

Your organization, as an organization, would not be affected by the firemen's controversy, would you?

Mr. ZIMMERMAN. Yes, sir; we would be affected by the firemen controversy.

The CHAIRMAN. How?

Mr. ZIMMERMAN. I am going to try to make it as brief as I can.

In three principal ways: It has been some 12 years since I worked as an engineer, but the recollection is fresh. No. 1, that is the kind of help I want when I am an engineer operating one of these locomotives.

No. 2, it is my neck that is out there and I welcome any help I can get to keep my neck intact and that of my friends on the crew. Not without a great deal of importance, when the fluctuations in traffic are such that I am unable in the line of seniority to work in the capacity of an engineer, I have the right under our contractual arrangement to step over on the other side and work in the capacity of the helper-fireman.

We represent a number of firemen, far less than the Brotherhood of Locomotive Firemen and Enginemen represent, but nevertheless, we have the obligation as bargaining representatives to several thousand firemen.

The CHAIRMAN. You mean there is an overlap in the organizations?

Mr. ZIMMERMAN. Yes, sir.

The CHAIRMAN. Between engineers and firemen?

Mr. ZIMMERMAN. Yes, sir. And last thing I want to mention, the only place in the world that I can get my training to do an effective job as an engineer, or the only place where future engineers get that effective training, is working on that engine as a fireman acquiring that training from direct contact with the operation, with the engineer as the teacher. We don't have a formal teaching arrangement. We are the teachers in a great measure.

The CHAIRMAN. Are you saying to us that in the operation of the diesel freight train that it is necessary to have what is referred to as a fireman or helper on that engine?

Mr. ZIMMERMAN. On many, many of them; yes, sir. We have said in our statement—I don't like to get too deeply into things that are critical to negotiations, but we said to the Emergency Board, we have made it clear to the Labor Department, and I will make it clear to you, we are not saying, neither of these organizations, that we are going to insist on keeping a helper-fireman on a job where he makes no contribution to the industry.

The CHAIRMAN. Do they make a contribution?

Mr. ZIMMERMAN. Yes, sir.

Mr. CHAIRMAN. What do they do?

Mr. ZIMMERMAN. I won't attempt to give them priority in the order that I am about to recite some of these things. They learn to be engineers. They see some things that, as an engineer, I can't see from their side. They contribute greatly to my peace of mind, which is connected, No. 1, with getting that traffic over the road and staying alive in the process, they keep my machinery running back there. They relieve me when I become weary from sitting in an engineer's seat. We have plumbing on some of these locomotives, and the fireman taking over will afford me that opportunity.

This matter of keeping things going to keep this traffic going, the things that people are awaiting, is a joint obligation of everybody on that train.

The CHAIRMAN. Are you saying to us that the engineer needs someone to become a part of his eyes in order to see and also to assist him in the maintenance phase while en route?

Mr. ZIMMERMAN. Yes, sir. The engineer, from his post at the throttle, which he cannot leave while that train is in motion, is helpless to make corrections and/or repairs and keep this machinery producing to keep the traffic in motion. Oh, yes, it has been said he can stop and go back and make these repairs and start things up again. I don't want to state it as succinctly as the Swede did, but I don't think that is the best way to run a railroad.

The CHAIRMAN. That is amazing to me, that maintenance can be and is necessary, and I am asking for information because I know so little about it, while the train is in actual operation.

Mr. ZIMMERMAN. Yes, sir; these railroads generally——

The CHAIRMAN. What does the brakeman do?

Mr. ZIMMERMAN. He is watching ahead, sharing that chore with the fireman. He is doing that exclusively on his side when the fireman is back making his periodic inspections or his little repairs. He is responsible for watching behind him along these great, long trains for signs of things dragging, hotboxes, things on fire, all of the difficulties. He might also be and frequently is riding in the trailing unit on this assembly of units.

What I wanted to say, sir, is that diesels are a pretty good piece of machinery, but they are like any other, subject to failure and difficulty. Gordon Cooper was delayed 24 hours because of a diesel that had, I am sure, some great talent devoted to it. But when these diesels are pulling trains, they are working at their capacity. It is not an idle engine that causes trouble. It is an engine that is beaten hard. They are no different than any other combustion engine and they work out like any other piece of machinery.

The CHAIRMAN. I have taken to much time. I do have some other things in mind after the other members of the committee have had an opportunity. Mr. Bennett?

Mr. BENNETT. Thank you, Mr. Chairman. I am sorry I did not hear all of your statement, Mr. Zimmerman, and all the statements that were made this morning by Mr. Davidson and Mr. Malin. But I want to ask you a couple of fundamental questions. I think they are fundamental here.

I take it that you are opposed to the President's resolution and I think I can say that without any fear of contradiction.

Mr. ZIMMERMAN. The answer to that is an unqualified "Yes, sir"; we are opposed to that resolution.

Mr. BENNETT. Do you regard the resolution as providing for compulsory arbitration?

Mr. ZIMMERMAN. Yes, sir; again unqualifiedly.

Mr. BENNETT. Is that one of the reasons you are opposed to it?

Mr. ZIMMERMAN. Yes, sir.

Mr. BENNETT. Are you opposed generally to compulsory arbitration of labor disputes regardless of what their nature might be, insofar as they affect the industry that you are concerned with?

Mr. ZIMMERMAN. In the making of rules, in the drafting of contract language, in the formulation of agreements; yes, sir; in an unqualified manner. Now, earlier, before lunch today, we had opportunity to say that we do not oppose arbitration, compulsory or otherwise, in the interpretation of existing agreements. We have lived under that system for a great many years. We have written those provisions into other agreements. I suppose that would be called voluntary arbitration. In that case it is under the law and the first division of the Adjustment Board is another example.

That is voluntary to the extent that we are able to keep a case from that body and it is not subject to third-party resolution. So far we have not been able to find a way to keep a case from that group.

Mr. BENNETT. Are you opposed to compulsory arbitration initially before any agreement is reached whatever? It is in that area where you are against compulsory arbitration?

Mr. ZIMMERMAN. Yes, sir.

Mr. BENNETT. Which is the area you are in at this moment.

Mr. ZIMMERMAN. Yes, sir. We think we are better qualified than anyone else in the world to participate in the drafting of the rules under which our people are going to work.

Mr. BENNETT. Do you believe the Interstate Commerce Commission is qualified to act in the area of settling a labor dispute?

Mr. ZIMMERMAN. I have not the best feeling in the world about that group, but Mr. Malin has worked more closely in that connection.

Mr. BENNETT. I don't mean anything personal in this as far as the Commission members are concerned. I am merely asking a question as to whether you feel the Interstate Commerce Commission is an agency which is qualified either by training or experience or otherwise to handle the settlement of a dispute of this kind.

Mr. ZIMMERMAN. We do not feel they are qualified by training, experience, or otherwise; no, sir.

Mr. BENNETT. Is it not true that they have never before, and historically have never engaged in the settlement of this kind of dispute?

Mr. ZIMMERMAN. I am not the world's foremost authority, sir, on what they have done in this area. They have offered comment concerning some of our rates of pay, rules, and working conditions. We alluded to that briefly in reference to the passenger deficit case. We don't think they are qualified and we think they thoroughly disqualified themselves with their comments in connection with the passenger deficit case.

Mr. BENNETT. Your dealings in the area of negotiation of disputes between the brotherhoods and the railroads have been under the Railway Labor Act, with the Mediation Board, and the procedures that

are set up under that act, or with the Secretary of Labor, who has overall authority to come in and intervene and try to help settle any kind of dispute. Isn't that true?

Mr. ZIMMERMAN. Yes, sir.

Mr. BENNETT. I gathered in response to questions that Mr. Harris asked you that you have a feeling that this dispute is not hopeless so far as reaching a settlement is concerned by voluntary means.

Mr. ZIMMERMAN. Given the atmosphere that we have urged, given an even incentive on both parties to bargain in this thing, I say it is anything but hopeless, sir.

Mr. BENNETT. Last Friday, George Meany, president of the AFL-CIO, sent up a recommendation to the chairman of our committee and the chairman of the Senate committee. Are you familiar with his proposal?

Mr. ZIMMERMAN. I am not certain that I am.

Mr. BENNETT. He suggested, if I understood it correctly, that Congress pass a joint resolution requiring the parties to this dispute to go back to voluntary arbitration under the supervision of the Mediation Board and the Secretary of Labor. There would be no strike or work stoppage pending further negotiation, and that a joint committee of Congress be appointed which would have no function except to receive reports from the Secretary of Labor each 10 days as to the progress that was being made.

Do you feel that kind of an arrangement offers any hope—any reasonable hope—of getting this thing settled?

Mr. ZIMMERMAN. Yes, sir; I do. I was not familiar with all of the details of it since I had not seen it. But that is in essence the urging that we made to Judge Rosenman's Emergency Board. We pleaded with those people to retain jurisdiction of this dispute and that they be provided with some active, energetic mediatory assistants who would work between the parties and report at intervals to the Board members to take the physical burden from them and to report who was trying to reach agreement and who was trying not to reach agreement, to remove this promise of some legislation, and to provide an even-handed incentive on the parties to negotiate.

As I understand the resolution, sir, you have just described, it would propose to do that and I am wholeheartedly in favor of it.

Mr. BENNETT. I am sure you must have the feeling that there are areas where by give and take on the part of both parties to this dispute, under the procedures you have just been talking about, a settlement could be had.

Mr. ZIMMERMAN. I am absolutely convinced of that.

Mr. BENNETT. I think most people, including Members of Congress, feel that if any voluntary settlement of this dispute can be made, that ought to be done. I think very few Members look with much favor upon this policy of compulsory arbitration, because not only of its effect, the setting of a precedent on the immediate dispute, but what it would do in the future of collective bargaining between labor and management in any industry in the country that has a substantial impact upon the economy.

If we adopt it here, it seems to me that we have a very difficult time for refusing to adopt it in any instance where a strike would have a substantial effect upon the economy of the country.

If we have to resort to that kind of arrangement, it seems to me that we completely destroy the basic concept we have always had of free, collective bargaining arrangements between management and labor.

Mr. ZIMMERMAN. I concur in every word of that, sir. I didn't mean to leave with you or any of the other gentlemen of your committee the impression that evenhanded incentives here are going to result in final agreement overnight. It is not that easy. There remains work to be done. Even when we reach accord on the fundamental principles, it always takes time—and I speak from experience here—to reduce that agreement in principle to agreement in contract language that is going to govern the employees that we represent. It is not an overnight thing.

Mr. BENNETT. I recognize it could not possibly be overnight. But you feel there is a reasonable hope that a settlement could be reached in a reasonable length of time.

Mr. ZIMMERMAN. Given the climate that we urge and the assistance that we plead for, yes, sir; I do believe that.

Mr. BENNETT. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Gentlemen, I am going to confess that I am not too well versed in labor relations matters. I hope that you won't consider these questions entirely too elementary. I do want to get a clear understanding of the situation as it exists at the present time. You correct me if I am wrong.

Isn't it a fact that on the one side we have management, which has proposed work rules or certain work rules, and they are proposing these work rules within the framework of the law as the law has been interpreted by the courts? On the other hand, we have the employee representatives and the employee groups who have refused to accept the work rules that have been promulgated by management? Therefore, you have negotiated or sought to negotiate the differences of your position and the differences in management's position, attempting to arrive at some middle ground that would be acceptable or livable to both sides.

In the course of these negotiations, you have failed to arrive at an acceptable middle ground; isn't that correct?

Mr. ZIMMERMAN. We have not reached that acceptable middle ground just yet. We have, however, only been actively negotiating on these matters for something like 60 to 70 days, not since November 1959.

Mr. WILLIAMS. Regardless of how long you may have been negotiating, that is the situation as it stands now. You have reached an impasse, a deadlock, so to speak; if that is not the case, then why is this before the Congress?

Mr. ZIMMERMAN. I don't regard it as a deadlock on any of the many issues. Yes, I am, too, certain why this is before the Congress.

Mr. WILLIAMS. Let us go a little bit further then because I want to understand this fully. Then it is still subject to further negotiation?

Mr. ZIMMERMAN. I certainly hope so.

Mr. WILLIAMS. Where will we be when we reach that point of impasse, assuming that we reach a point of impasse where management and labor can find no acceptable middle ground?

Mr. ZIMMERMAN. I don't believe that given the climate and the assistance we are urging that we will ever reach that impasse.

I suggest that it has been a concentration.

Mr. WILLIAMS. The question I asked was on the presumption that you did reach that impasse.

Mr. ZIMMERMAN. I do not feel we will.

Mr. WILLIAMS. I am trying to find a little something about the labor relations. I am trying to find out for my own edification just what the result of a situation would be where you would reach an absolute deadlock.

Mr. ZIMMERMAN. Mr. Malin asked to provide the answer to that one.

Mr. WILLIAMS. All right, sir.

Mr. MALIN. If I may, sir, you have put a very profound question, Mr. Congressman.

Mr. WILLIAMS. I frankly thought it was very elementary.

Mr. MALIN. It is a question that has been discussed by experts for years and it is not at all a simple elementary question. But what the experts have concluded almost invariably—I hardly know of any who have come to a different conclusion—I am talking about the people who are the brains in the industry, the arbitrators, the discussants at various seminars, and writers of textbooks on labor relations, what they have always come to is this: That if you concentrate on absolute certainty of the not getting into a work stoppage, and if you provide beforehand a known solution which one of the parties may regard as preferable to negotiations, you will get what you are not looking for.

You will get an impasse. On the other hand, should you provide a bargaining relationship and an environment—some of these things are very subtle, it may get down to personalities and the number of people and the degree of conciliation and the initiative and creativeness exercised in mediation—if you apply the appropriate means you come to an agreement.

There are very few people in the United States who are engaged in labor relations over any period of time who don't prefer to seize on the immediate issue of substance between the parties and try to get them mediated. Sometimes it may be an ebb and flow proposition. You may make some progress. You may retreat a little bit, you may make more progress.

But somewhere along the line guided collective bargaining with the assistance of energetic mediation and creative mediations going to settle this problem right here.

We are convinced of that.

Mr. WILLIAMS. Let us distinguish between guided collective bargaining and what we have always known as free collective bargaining.

Mr. MALIN. I am speaking of free collective bargaining with the help and assistance of mediation.

Mr. WILLIAMS. Let me ask this: I don't have but just a moment. I do not want to take all the time here. Let us assume for the sake of this discussion that you reach this point of impasse, what weapon then does management have?

Mr. MALIN. Does management have?

Mr. WILLIAMS. Yes, sir. I am assuming that organized labor would have the weapon to strike.

Mr. MALIN. Mr. Congressman, the weapons that either side have are to engage in self-help ultimately. In doing so they must take account of public opinion, legislative consequences, and economic consequences.

Mr. WILLIAMS. As a matter of fact, would management not have the economic weapon of being the one who pays the salaries of the employees and therefore can use that economic weapon to some advantage?

On the other hand, both sides would be free to put out the record to the public as they saw fit to advance their own cause. What I am trying to get at is this: There is one interest involved here that supersedes both the interest of labor and management and that is the public interest and when you reach an impasse then what weapon does the public have other than to go to the Congress and exercise the powers of Government in order to protect their interest?

Mr. MALIN. I would like very much to answer that very sincere question, Mr. Congressman.

I think it is a question that bothers all of us. None of us contemplates a work stoppage that would injure this Nation. We think that the best way to avoid that work stoppage is to do those things which encourage collective bargaining and which have traditionally worked and which involve freedom and which have shown that freedom can work.

Now should that not work and this is the nub of your question and, incidentally, I think the public has a great interest not only in the goods being transported and so forth, which is a tremendous interest, but they also have a great interest in maintaining the freedom of American institutions including collective bargaining.

However, should the impasse be reached of which you speak, then I would think it appropriate for the White House and the Congress to work out a program to resolve this dispute. Once you decide in advance before the impasse is reached that the solution must be compulsory arbitration, then you are more or less helping one side of the dispute and you are disrupting the potential of collective bargaining. But should Congress see fit to adopt the suggestion which was referred to by Congressman Bennett, submitted to the Congress by the president of AFL-CIO, then you would have a situation where neither side would know that its recalcitrance in bargaining would result in a victory for itself.

You would leave the solution, the method of settling the dispute to the time when you knew what was causing the breakdown in bargaining and therefore neither side would wish to take the consequences of its causing a breakdown.

That would mean that you would have a variety of means of settling this dispute at such time as you did arrive at an impasse. You might conceivably do the very same thing that is being asked of you now. You might advocate some form of seizure. You might settle the dispute by simply legislating some status quo or some change in the rules. But if you don't tell the parties in advance what you are going to do, then both parties would have the incentive to get together and settle it as only they can settle it, the best way possible, because they know what they are going to get might be worse than they can do for themselves.

The CHAIRMAN. Would the gentleman yield?

Mr. WILLIAMS. Surely.

The CHAIRMAN. I do not want to get into any discussion of this but for clarification I simply cannot see the difference in just what you have just advocated as proposed by Mr. Meany and what we actually have now, except we do not have what you might call a Special Joint Emergency Railroad Committee.

What we have is two Commerce Committees, one in the House and one in the Senate. This matter is under active consideration and we are receiving reports almost daily from those activities. The language—and here is what raises the question from your reply to Mr. Williams' question—it provides if at any time the Special Joint Emergency Railroad Committee finds that the procedures herein provided afford no prospect of resolution of the disputes within a reasonable time, it shall so report to the Congress, together with recommendations for further action by the Congress.

Is it not a procedure that actually puts into a joint resolution what we actually have now underway during an additional 30 days because some of us did not feel that we could possibly get this thing out on the table in a week and get consideration of it and during the time we have insisted that these negotiations continue? We have until the 29th of August right now.

It seems to me it is just a question of whether it is down in words or whether it is actually in operation as it is now.

I am very much interested in what the outcome of these daily negotiations are right now. I do not see how we are any better off with that resolution than we are with the procedure we are trying to get you to do something right now.

Mr. MALIN. May I respond, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. MALIN. There is a profound difference in our judgment, Mr. Chairman, and I recognize the sincerity of your own position.

We who are experienced—and I have been in the labor relations field since 1935, and certainly Mr. Davidson has been in the railroad labor field 45 years ago, and Mr. Zimmerman has long experience, and in fact, all of the organizations—we feel there is a profound difference between the tone and temper and the objective of a resolution such as the one suggested by the distinguished president of the AFL–CIO as opposed to the harsh, one-sided nature, and premature character of the resolution which is now before your committee.

We think that there is profound difference.

The CHAIRMAN. You misunderstood me. I do not mean the resolution before the committee. I mean the 30-day extension that we have which the railroads agreed not to invoke the work rules during this 30-day period of time and in the course of these hearings that the negotiations are continue.

I am not talking about the resolution.

Mr. MALIN. If I may respond to that, Mr. Chairman.

We appreciate the 30 days. We are making every effort to use them to the advantage of both parties, which means a negotiated settlement.

The CHAIRMAN. I hope and urge and insist that you make a double effort on both sides.

Mr. MALIN. If possible it should be quadrupled, Mr. Chairman; we are offering and we have offered proposals which are moving toward the other side and we hope to get some from them which are moving toward us.

We hope to get some mediation which will shove us both together. But the state of the dispute under the cloud of this resolution, and we can't overlook the fact that it is supported by the administration—we cannot overlook the fact that it is based on a presumption that the dispute has been decided to be hopeless, and we can't overlook the fact that the remedies are not left uncertain for both parties depending on which one is recalcitrant.

The remedies favor that party which wants compulsory arbitration. He can stick his foot in the sand and make compulsory arbitration a fact under this circumstance, I would further say, as I understand the Meany proposal, it would involve a watchdog committee presumably of people who are in a position best to gage the labor relations status of the dispute. Presumably it would involve people who have had experience on some of the committees of Congress which are most directly concerned with labor relations and who would have some intimate knowledge of the personalities and the issues and the probability of proceeding to a solution.

I do not mean by this to in any way derogate from the acuity of this particular committee which deals mostly with interstate commerce and foreign commerce.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Malin, I have gone over my time but I do have one further question I want to ask you. This is purely for my own information.

Let me say that based on my very limited knowledge of labor relations and labor problems, I certainly do not favor or I do not look with much favor on the proposition of compulsory arbitration.

I have to make an exception where the public interest is vitally concerned and that too only as a last resort. You have referred to compulsory arbitration or referring this to the ICC, as holding the threat or the cloud of this legislation over the brotherhoods.

You are presupposing if this should go to arbitration that the brotherhoods would come out on the short end of the stick.

Mr. MALIN. If I might answer you boldly and candidly.

Mr. WILLIAMS. Is it possible that the railroads should harbor the same fears you have?

Mr. MALIN. Mr. Congressman, I don't know whether you were present at the particular moment this morning when we discussed the origin of this dispute. We then pointed out that the mature of the demands made by the carriers in contrast to the evolutionary demands we wanted—we just wanted some ordinary things like overtime and paid holidays and night shift differentials—the demands of the carriers were so revolutionary, they wanted decreases of 33.3 percent for some road employees and 37½ percent for other road employees, and they wanted to abrogate the whole field of collective bargaining about working conditions.

Mr. WILLIAMS. Is not that in issue now?

Mr. MALIN. Those are the very conditions which would be put into effect some midnight if the carriers were permitted to promulgate their rules. Those are the very ones they are threatening to impose upon us.

Mr. Congressman, what I am getting at is this: From the very beginning one side, the carriers, have sought compulsory arbitration. Their very demands were shaped in that direction. They were not demands on which you could really get to bargain. Our bargaining has only been since they have retreated under the aegis of Emergency Board 154 in May and during the month of June and part of July under the auspices of the Department of Labor, we have come to more sensible positions, both of us.

But they have sought, and whenever they get a chance and see the clock running out, they still seek compulsory arbitration. We don't want compulsory arbitration whether it would give us the moon and the sky. We still don't want it.

We want our freedom to write our own contracts. Therefore, what I am telling you about a cloud is just that. It is a cloud that threatens us. It favors them.

Mr. WILLIAMS. Mr. Chairman, I have used more than my time.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Mr. Chairman, I find myself even less experienced than our colleague from Mississippi, Mr. Williams, in the area of labor relations. As I understand the feeling of the various railroad labor organizations, it is that they are quite opposed to turning this over to the Interstate Commerce Commission for an interim decision on various matters.

Is that the position?

Mr. MALIN. Yes, Mr. Congressman, with this explanation about interim. As we explained earlier in our direct testimony, the interim period provided for disposition of this matter by the Interstate Commerce Commission is from 2 to 4 years depending on your interpretation and depending on the manner in which the dispute gets to them.

That so-called interim period we have pointed out is two to four times the length of many or most of the contracts in American labor relations. Many of them are 1-year contracts. So this interim arrangement is fully for the life of a contract or maybe twice the life.

Mr. SCHENCK. I heard that testimony this morning. As I understand these decisions are also subject to judicial review and appeal through the ordinary court procedures, are they not?

Mr. MALIN. There has been testimony to that effect. There are legal questions involved in the interpretation of the proposal. The Secretary of Labor on the occasion when he testified before the Senate Commerce Committee wasn't quite sure whether those appeals were provided or were not.

Mr. SCHENCK. If you, then, as representatives of the organizations are opposed to this question being considered by the Interstate Commerce Commission, you apparently are not opposed to be it being considered under the general direction and supervision of the Department of Labor: is that true?

Mr. MALIN. I should explain that. Your view is not quite in accord with what we think. We propose guidance in the form of mediation. This means that the third party can come in and sit down with the

two disputants and help them understand each other's problems and help them accommodate each other and find some middle ground they can settle on.

This has been the traditional way of assisting parties. That is something entirely different from a third party getting in there and saying, "I am not going to help you find an area of agreement with your opponent. I am going to tell you what I think the contract ought to be regardless of whether you agree or don't agree."

Mr. SCHENCK. Do you feel that this committee of the Congress or some other committee of the Congress should assume responsibility for arbitration position between the parties?

Mr. MALIN. Not arbitration at all, Mr. Congressman. We do not favor arbitration or imposed arbitration of this dispute by anybody including the Congress of the United States.

Mr. SCHENCK. No, I meant do you feel that this committee ought to through its operations assure that there would be arbitration?

In other words, if this committee would assume that responsibility then we would also be exercising certain compulsion; would we not?

Mr. MALIN. We did not intend to recommend that this committee or any committee of the Congress or the Congress or any other body provide compulsory arbitration.

Mr. SCHENCK. It is my understanding from my colleague, Mr. Bennett here, that the suggestion of Mr. Meany was that this was to have been referred to the Department of Labor through its various organizations rather than the Interstate Commerce Commission.

Mr. MALIN. I believe I understand the confusion at this point. I think one of us misspoke in referring to the Meany proposal. We might have mentioned, one or the other of us, that we were talking about arbitration.

The fact is that we were in fact referring to and the context will so show, to a proposal for mediation and not for arbitration. For negotiation and not for arbitration.

So I can understand the confusion that arose.

Mr. SCHENCK. I am glad for the clarification of the proper words. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. I have just one or two questions, Mr. Chairman.

Mr. Malin, I believe in the outline you mentioned the fact that Secretary Wirtz already mentioned the possibility of applying this proposed scheme of the airlines.

Could you document that or supply it for the record if you do not have it here?

Mr. MALIN. Mr. Congressman, in referring to that this morning I thought I was making clear that he was not at this moment making a recommendation of that kind, that it should apply to the airlines industry.

On the other hand, in response to a question put to the Secretary by one of the members of the Senate Commerce Committee, which question had to do with where else could legislation of this kind be applied, the Secretary did say, "Well, the airline industry."

I would be very glad to furnish a reference to the transcript.

(The information referred to follows:)

BROTHERHOOD OF LOCOMOTIVE ENGINEERS,
Cleveland, Ohio, July 30, 1963.

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

DEAR CONGRESSMAN HARRIS: In response to a question put to us on Monday, July 29, during our appearance before your committee, we promised to supply a citation to the transcript of the Senate hearings in connection with the question of the applicability of the proposed resolution as a precedent for the airlines industry.

Please be advised that Senator Hart's question on the matter of a precedent appears at the bottom of page 131 and in the first line of page 132 of the report of the procedings of the hearing held before the Senate Committee on Commerce on July 23, 1963. Secretary Wirtz's reference to airlines follows immediately thereafter in the transcript.

Respectfully yours,

A. F. ZIMMERMAN.

Mr. ROBERTS. It is your feeling, then, that to refer this to the Interstate Commerce Commission would be a precedent that might in the future be used to enmesh the airlines and other forms of transportation?

Mr. MALIN. Yes, Mr. Congressman, it is our feeling that when something of this kind happens that is so revolutionary in the field of labor relations, that people take a look at the new situation, both labor and management, and then each of them would question whether they couldn't make us have the same type of legislation to further their own ends.

We think that this would undoubtedly happen, although not intended—it is intended to settle this case and I will concede that. I know that the people who propose it are sincere in so thinking.

But experience shows that you cannot shut off the outflow from Pandora's box once you have opened it.

Mr. ROBERTS. I take it from your testimony that you do not believe that the Interstate Commerce Commission is set up for the handling of this type of dispute between labor and management.

Mr. MALIN. That is our very firm conviction, Mr. Congressman. They are in a different field. They are not in the labor relations field. Their personnel and their organization are all set up to handle different kinds of problems.

To my knowledge they don't participate in mediation, arbitration, and the writing of contracts with one very narrow exception, and that narrow exception has to do with the specified prescription provided by the Congress of the United States and is not relevant to a situation in which the Interstate Commerce Commission would be required to frame a whole contract for the parties.

Mr. ROBERTS. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Malin, it is difficult for me to get the distinction between what you say of your belief in arbitration and what has transpired in the past.

Mr. Wolfe's testimony gave 23 cases dating back from 1910 up to 1960 of arbitration awards where the same brotherhoods that are in this conflict were participants.

I notice one here in 1912 in which the Brotherhood of Locomotive Engineers was a party. That apparently was not the interpretation of the contract. It was in regard to the standardized and codified basic day and overtime rules governing the compensation of engineers and rules governing the payment of arbitraries and constructive allowances and the beginning and end of a day and the hours of service.

I have a hard time fitting this in with what you say is your policy on arbitration.

Mr. MALIN. Would you care for a comment?

Mr. YOUNGER. Yes.

Mr. MALIN. There are undoubtedly instances in the past involving one or another of the rules and some elements of compensation which were submitted voluntarily to arbitration and we would hold ourselves open at any time should the occasion arise for a voluntary submission to arbitration.

There has never been any question of compulsory arbitration. I should also point out that such experience as we had in arbitration, and it has been limited and it has been sporadic, is of a character which has not reassured the organizations as to the efficacy of that method or the desirability of that method and the organizations have uniformly come to the conclusion over a period of years that this is not the proper method for the resolution of their disputes.

In any event, not this one.

Mr. YOUNGER. But you have had 23 cases where you have voluntarily agreed. I do not infer at all that these were compulsory arbitration. But you have had these past cases where the question was submitted to arbitration for a firm determination.

My point is, at any time during these negotiations was there an offer made for a voluntary agreement between the parties for an arbitration?

Mr. MALIN. There were a number of such offers made, Mr. Congressman. Let me explain that those were turned down by the organizations. The reason they were turned down was first of all that they were premature and we so said.

The proffer of arbitration by the National Mediation Board took place at a time when it was most inappropriate to consider arbitration. The parties had not really been bargaining. They had been brought into a position where they could not bargain on account of the existence of the Presidential Railroad Commission Report.

When that erroneous report was removed in influence from the scene—in effect it was removed from the scene by the succeeding Emergency Board 154 which did offer us a basis for bargaining—then we made great progress in the short time that we had thereafter in bargaining.

So there was never any time when we felt that arbitration should even have been suggested because there was tremendous opportunity for clinching this thing and coming up with a negotiated settlement.

I should further remark—I don't have personal knowledge of 24, but I will assume that the figures are right and that the experience goes back that long and covered the subject matter to which Mr. Wolfe referred—but assuming that, there is never in any of those instances, I am certain, anything involved more than a relatively few items.

Here we are dealing with an entire contract. We are dealing with rules that have been negotiated over a period of a hundred years. Some of them reconfirmed over the years. Some of them relatively new rules.

All of these are the working conditions of the employees that we represent and we don't feel that we can simply turn over to a third party the welfare of our members covering the entire set of working conditions in this industry.

Mr. YOUNGER. Who is to determine when that time arrives when arbitration should step in. You say you would have been willing to arbitrate if the time was propitious and if a certain amount of negotiations and bargaining had preceded it.

Who is to determine when that time finally comes that the case ought to go to arbitration?

Mr. MALIN. I didn't make myself clear. I didn't mean to suggest that arbitration was appropriate at any time in this dispute.

I said, I think, that the proffer of arbitration was premaure when it was offered.

I would suggest to you, Mr. Congressman, that the preoccupation with the question of what we will do if we fail to agree is one that has kept these parties from agreeing. It has kept the mediation effort from being as vigorous and as creative as it might otherwise have been.

Mr. YOUNGER. That is a little different than the testimony we got from the Secretary of Labor.

Mr. MALIN. I imagine so.

Mr. YOUNGER. It is very difficult for us to try to fit the testimony of the various individuals together, because the Secretary of Labor was very definite that this offer was turned down.

You come along and say, "No," you were willing to accept these various proposals.

Mr. MALIN. If I might comment, Mr. Congressman.

Mr. YOUNGER. Yes.

Mr. MALIN. What the Secretary of Labor said literally is correct in that he said that there had been no agreement on any of the issues in this case.

I would like to point out that there really can't be agreement on any of the issues in this case until all of them are ready to be wrapped up.

You have to make your progress on one front and another front and then you have a complete contract to which you can agree as an entirety. But what might have been said and perhaps the Secretary did say it—I was not here when he testified—the fact is that we did make progress on every one of these issues which we discussed.

The Secretary, I am sure, was informed of that fact and he has reassured us to the effect that he recognizes that there has been great progress under the surface where it can't be seen by the public because there is no signing of names under an agreement.

Mr. YOUNGER. He also said in his opinion there were a lot of questions that were not negotiated or bargained properly or with vigor.

Mr. MALIN. No comment.

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

The CHAIRMAN. Mr. Staggers?

Mr. STAGGERS. Mr. Zimmerman, I would like to direct this to you. As a former fireman and former engineer, you said in your testimony and in your answers to questions that progress had been made in this field of the fireman-helper problem. I believe that is correct.

Mr. ZIMMERMAN. Yes, sir.

Mr. STAGGERS. You stated that in some instances you and your organization said that some firemen were not necessary on some trains.

Mr. ZIMMERMAN. What I said, sir, was that we do not contend, we don't argue—well, we argue but we don't impasse on the basis that you must have a fireman even though in a particular situation he makes no contribution.

We have indicated a number.

Mr. STAGGERS. You have been willing to negotiate or to mediate on that problem?

Mr. ZIMMERMAN. Yes, sir; emphatically.

Mr. STAGGERS. You have insisted where he does contribute to the safety and well-being of the remaining number of the crew and to the helpfulness and watchfulness and safety of transporting the goods that he be kept on.

That is part of the contention of your organization?

Mr. ZIMMERMAN. That comes fairly close to it, sir. We think, in all cases, they do make contribution. I think, stated baldly, we recognize the fact that in the posture of this case and the history of it, there is no way out of it excepting to make a sacrifice of public opinion.

We have indicated a willingness to go a long way in that direction.

Mr. STAGGERS. I was interested in your contention that the engineer must be at the throttle at all times while the engine is proceeding on the tracks.

Mr. ZIMMERMAN. He better be there.

Mr. STAGGERS. That is right. That is the rules and regulations. But if he has a man qualified, and there is an emergency of some kind that demands his attention, he could delegate that to the fireman?

Mr. ZIMMERMAN. Yes, sir. It happens with too great frequency now.

Mr. STAGGERS. I understand that. Another thing is that some runs are 3 to 5 to 6 hours in length between terminals.

Mr. ZIMMERMAN. A good deal more than that in many, many cases. The spread is very considerable.

Mr. STAGGERS. Eight hours or maybe more?

Mr. ZIMMERMAN. Up to 16 hours, and that is where the law says thou shalt go no further.

Mr. STAGGERS. That is right. In that time, a human being does have to take care of things and do things that nature calls on, and he should have somebody around to relieve him of his duties at the time.

Mr. ZIMMERMAN. Yes, sir. I always found the first instance to be necessary and the second one to be completely advisable to fill that seat when I got up.

Mr. STAGGERS. That is only part of this thing. Having had a little bit of experience myself as a trainman on the railroad, as a brakeman on the front end of a train, on one very foggy evening, we passed a signal marker and the engineer realized he passed it. He stopped, and he

said, "You will have to go back to see what the signal was before we can proceed any further." He held that that train until I did walk back and read the signal and come back and related to him before we could proceed on our way

He was doing just exactly what his duty demanded, because I had not seen the marker nor anyone on that train had. This thing of the firemen is intriguing, because I understand that you have said and others have said that great progress has been made in this negotiation on the firemen issue and that seems to be the big problem as I noticed by your testimony on page 15.

Many of these things were falling into line all along the line, and even the firemen's-helper thing has proceeded. Your organization contends that so many are necessary in certain situations. Is mediation going on today between the groups or not?

Mr. ZIMMERMAN. I think, from what I can see behind me and what you see here, that there are no meetings being conducted which involve the engineers and the firemen's organizations.

I do not know sir, about the train service people.

Mr. STAGGERS. Evidently, in the last 3 days, different groups have met trying to mediate these issues, and presumably some progress has been made on the different issues.

Mr. ZIMMERMAN. I am not in a position to speak, excepting concerning the work that we have participated in during that period. I said to one of your fellow committee members, and I am not certain which one now, that as late as yesterday afternoon insofar as the engine service organizations are concerned, that I regarded the action that we took as another piece of progress. That was about 5 o'clock yesterday afternoon.

Mr. STAGGERS. There is hope as long as men meet and talk, I do believe.

I understand this is a little bit different than had been done before, that the different groups are meeting with the mediators and outlining with different things and that is being conveyed between different groups.

Mr. ZIMMERMAN. I should not like, at this stage of things, to get too much into the mechanics. I think it shows some promise.

Mr. STAGGERS. That is as far as I will go. I understood that this is a little bit different. There has been a new fact taken and perhaps there has been suggestions that new negotiating crews take over or that there be a different approach to this.

You do not need to answer this. I am just saying this has been proposed. It would look to me that that is getting out of a rut, and trying something new to attack the problem.

Mr. ZIMMERMAN. I haven't been aware that there has been a suggestion for new crews. I wouldn't be surprised if replacements were suggested for us. Yes, there has been a satisfying degree of activity. I am pleased about it. I hope it will be intensified and that our suggestion concerning the kind of mediation we have mentioned so frequently here today will be utilized.

Mr. STAGGERS. Then you are satisfied that there is a little more favorable atmosphere prevailing in this problem?

Mr. ZIMMERMAN. I regard it that way; yes, sir.

Mr. STAGGERS. That is fine. I think perhaps that probably follows after we get to the serious business, and most people when it has been brought out before this committee and I am sure the Senate committee, that if we act on this bill, the railroads are going to be just as much bound by it in the future and it looks to me, speaking as only one Member of Congress, it will lead to seizure of the railroads sooner or later if we start this compulsory setting of laws and regulation.

The next step would be the seizure and the running of the railroads. That is only one man's opinion. That is not the committee's.

Mr. ZIMMERMAN. I share that view, sir.

Mr. STAGGERS. I believe it has been stated by most every member of the committee of the ones who have spoken—some I have not heard—that this is a form of compulsory labor enforcement, not only on the industry but on the men who work.

I do not want to go into the implications of what it might mean. I was interested in a suggestion by my colleague from Alabama, Mr. Roberts. He said he would have three men from the House, three men from the Senate appointed that were retiring from Congress and settle it. He would have them settle this thing.

I expect that would be a pretty good way to get it settled. I am not so sure that they would satisfy either side. I commend you and your group for your presentation of your side of this problem, because I do know that you represent the human side, the workingmen who actually toil on the railroads. There are two sides to every question, as we know.

Mr. ZIMMERMAN. Yes, sir; thank you, Mr. Staggers.

Mr. STAGGERS. We have a saying back up home that "no pancake become so flat but what it has got two sides to it." This pancake is pretty flat but it still has two sides. I think the only way that if men of good will can be together, either directly or indirectly, I think the problem will be worked out.

I am hopeful long before the time suggested by our chairman and agreed upon by interested parties that this situation will have been settled to the best interests of all and to the Nation.

Thank you very kindly.

Mr. ZIMMERMAN. Thank you, sir. We want to pursue that effort with all the energies that we have.

Mr. STAGGERS. I am sure that you do and the other side does and we won't have to enact the legislation.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. May I say that I think you three gentlemen have made an excellent presentation of the case. I think it is very complete.

Mr. DAVIDSON. Thank you.

Mr. SPRINGER. I want to go into two or three things that I think are fundamental to be sure that the committee has no misunderstanding about the positions. I think sometimes we get reports and rumors without getting actually what our position is.

There are 19 brotherhoods; is that correct?

Mr. MALIN. We believe there are 23 railroad brotherhoods and 1 organization besides which comprehends several of the brotherhoods.

There are 24 standard railway labor organizations. Of those, five are involved in this particular case.

Mr. SPRINGER. What is the position of the remaining 19?

Mr. MALIN. We have every reason to believe that they feel exactly the way we do in our reaction to this bill. We are all members of the Railway Labor Executives Association and we are receiving assistance from that association.

Mr. SPRINGER. May I ask you this: Have the other 19 organizations, labor brotherhoods, taken an official position?

Mr. DAVIDSON. They have, sir, against compulsory arbitration. The RLEA has.

Mr. SPRINGER. They have all taken this unanimously against this bill?

Mr. DAVIDSON. That is right.

Mr. SPRINGER. Have they taken an official position with reference to the issue of these firemen and others whom you claim would lost a job under this?

Mr. DAVIDSON. They have supported our position. I will turn that over to Mr. Malin.

Mr. MALIN. I should say this: that the dispute involves demands on the operating brotherhoods and demands by the operating brotherhoods of their own. It in no way involves the nonoperating employees. Naturally we have a great community of interest. Things which hurt us will eventually hurt them and vice versa.

We have been supported by the RLEA in our position on the firemen issue specifically.

Mr. SPRINGER. Let me ask you with reference to a telegram that has been received by the committee without going into who it was sent by. I do not know the man and never heard of him. He lives in Cleveland but I won't give his name.

This is the telegram—

> regarding the current railroad work rules question we believe you should be aware of the fact that it has received no public notice of the total 700,000 railway employees, less than 100,000 oppose the proposed work rules changes.
>
> The shop crafts, maintenance of way unions and other nonoperating employees are not in sympathy with the operating brotherhoods in this regard and actually support management's position.
>
> The reasons for this condition dates from 1921 railroad strike and are explained by Prof. F. W. Cottrell in his excellent book, "The Railroad."

Is that enlightening or not?

Mr. MALIN. Are you asking whether that excerpt read is enlightening?

Mr. SPRINGER. I am asking is that substantially true. That is what I am trying to find out.

Mr. MALIN. I don't know who wrote it. I don't know for what purpose. I don't know how he found out about how many people were for or against this bill. But our information is quite the contrary.

The railroad organizations who have some 750,000 employees in the industry, of whom something like 220,000 or 230,000 are operating employees, all feel that deep cuts of wages, the end of collective bargaining on working conditions, is not helpful to anybody.

It must be resisted by all, without exception.

Mr. SPRINGER. Let me ask you this: I am trying to get information. You can state this unequivocably as the position of the 24 brotherhoods?

Mr. DAVIDSON. The RLEA, Congressman Springer, has consistently supported the position of the five operating brotherhoods in this.

I don't know who wrote this wire. We get some screwball wires every once in a while in our office in Cleveland.

Mr. SPRINGER. At least I have your comment on this because I think this probably will receive general circulation. I want to know officially where the remaining 19 brotherhoods do stand on this particular thing.

Mr. MALIN. If I might comment just a bit further. I know and we all know Professor Cottrell.

Mr. SPRINGER. I never heard of Professor Cottrell myself.

Mr. MALIN. He is a splendid man.

Mr. SPRINGER. Would you enlighten me who he is?

Mr. MALIN. He is professor and head of the Department of Sociology, Miami University, Oxford Ohio. I must say that I have every indication and we have always had every indication that he and his associates are extremely concerned with the type of propaganda to which we have been subjected and are extremely sympathetic with our cause.

Mr. SPRINGER. You raised a question, I think, or Mr. Zimmerman, did, this morning, and I want to be sure there is no misunderstanding of what your position is.

You will recall, Mr. Zimmerman, in your discussion of the question of wages and what you said would be a reduction in wages?

Mr. ZIMMERMAN. Yes, sir.

Mr. SPRINGER. I want to read so that the committee may know, and I was reading this particular paragraph at the time of your testimony, and it is as follows:

At page 140 of the report of the Presidential Railroad Commission under the title, "The Cost and Earnings Impact of the Recommendations?" Going to paragraph 3:

> Our recommendations would yield increases in earnings to about 75 percent of the operating employees. Substantially all yard and local freight employees would receive higher rates. Similarly, road service employees on runs under 100 miles, 150 in passenger train service and those who work long hours in all class of service will benefit from higher pay rates and overtime provisions in these recommendations.
>
> Approximately 25 percent of the operating employees whose trips are in excess of 100 miles but require less than 8 hours on duty will have their earnings reduced.
>
> The impact of these rate reductions on earnings for employees who are now averaging 24 to 32 hours on duty per week will be substantially minimized under the recommendation pay structure as the result of a moderately longer workweek.
>
> The workweek of these employees would still be on the average well below 40 hours a week. It is estimated that the net effect of the proposals and their immediate impact on earnings an increase of approximately 2 percent in freight and yard service.
>
> This amount is in keeping with the drift that accompanies almost all revisions in pay structures.

Do you say that is substantially true or is that not true in the light of your testimony?

Mr. ZIMMERMAN. Substantially it is not true, sir, and I should like Mr. Malin to give you a comprehensive answer to that since we asked him to and he did participate in the development of these figures that I gave you earlier today from the Outline.

Mr. MALIN. If I may add to that question, Mr. Congressman, when Emergency Board 154 met in April of this year, one of the first ques-

tions that they put to us and to me personally, was whether or not the statement which you have just read from the Presidential Railroad Commission was well founded, or whether our statement to the effect that there were wage decreases involved overall and for a great many employees was well founded.

I am acquainted and have been acquainted for a number of years with two of the members of Emergency Board and was professionally associated with them in the National War Labor Board and National Wage Stabilization Board where I was director of case analysis.

The question was put to me pretty bluntly. "We know you and you tell us now whether there are any gimmicks in what you are saying, or is this straight."

I told them that I would get documentation. Thereafter we submitted documentation to the Emergency Board which they checked out with the carriers. As a result of that, Mr. Congressman, the Commission was impelled to write what they differed from the Presidential Emergency Board and they did it in the very kindest way.

I am sorry, I misspoke. The Emergency Board reported that they differed with the preceding Presidential Railroad Commission.

Mr. SPRINGER. On this point?

Mr. MALIN. On that very point. But they did it in the most kind way and it will be hard for you to find exactly how they differed. I will read you some of the language: This is from page 18 of Emergency Board No. 154 report, dated May 13, 1963.

After exploring the many ramifications of this problem of the parties, we propose the following recommendations which differ in two respects from the report of the Presidential Railroad Commission.

The first respect they refer to as a modest increase in average compensation.

We recommend that a full 2 percent be used in working out the adjustments in this case.

The second respect is that they recommended something that was flagrantly missing from the Presidential Railroad Commission's own recommendations and what was flagrantly missing was the prevention of wage cuts to individual employees. There were a great number of employees who would receive wage cuts under the Presidential Railroad Commission's recommendations.

That was specifically intended to be avoided under the Emergency Board 154 recommendations. I could get into a very long description of the technical details on the basis of which we reached our conclusion and on the basis of which the Emergency Board reached its conclusion, confirming our statement that the PRC, the Presidential Railroad Commission, quite unintentionally, I am sure, had come up with a recommendation which involved wage decreases where they thought they were granting wage increases.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. VAN DEERLIN. Would the gentleman yield?

Mr. SPRINGER. Yes, if I have time.

Mr. VAN DEERLIN. It is pertinent to this point: Is this wages or wage rates that we are talking about?

Mr. SPRINGER. Wages.

Mr. MALIN. If I may respond to the question of the Congressman concerning the question of wages or wage rates. It would be in the first instance wage rates and this would translate into take-home pay cuts for a great many employees.

Does that answer your question, sir?

Mr. VAN DEERLIN. It answers it, I assume, correctly. I was wondering, though, whether this might be based on the length of run and so forth where a man's take-home pay or his actual pay might not be reduced, but his rate of pay per mile would be lower?

Mr. MALIN. In the first place, sir, I understand your question and I will try to answer it fully.

I should say in the first place, sir, in any system which is an incentive system—which is paid on a per unit of something, and in this industry it is per unit of miles run—it would be to our great advantage to have it per unit of production, meaning per unit of ton miles run.

Our system doesn't give us the advantage of longer trains, bigger cars and heavier equipment to that degree. Therefore, we have a system which is based on mileage on road jobs.

For a given length of run there would be decreases of 33⅓ percent and 37½ percent to the employees. Now it might be stated or it might be thought by some, just run a little further. This gets into the problem of whether you have a wage cut or not in the first instance. Because a wage cut traditionally is defined as something which provides you with less compensation today than you would have gotten yesterday for doing the same thing. But I will go on to the next step which I know is in your mind.

Would the runs be increased in length? If the runs were increased in length there would be two consequences. No. 1, there would be the displacement of a number of people without any protection whatsoever. You see, protection is intended for certain displacements for fireman-helpers and so forth.

In this case there would not be any protection whatever.

In the second place, a good many of these people are running as far as you can run and they can't run anything more. You take a run of 180 miles—I will put it another way—take a man running 8 hours at an average overall speed, including stops, of 20 miles an hour. He has gone 160 miles. This is the distance between his terminals. They won't take on another 20 miles or another 30 miles to make him whole. That is where it stops.

Or a man running 200 miles, there is a limit to how far you can run. I should also make this observation: that the great incentive in this industry that gets the traffic moved over the road expeditiously is the incentive of knowing that if you make a good run, when you get to the end you are off.

I know it is very hard for people who think in terms of other industries to know what the hours mean in the railroad industry. They don't realize what it is to run an engine, what kinds of orders they have to keep in mind and how they have to translate that and think ahead to get a good run.

It is a most difficult assignment and at any point they can break a train in two, they can cause injuries on the back and they can cause fatalities at any time.

There is hardly any engineer who retires who has not at some time been in a fatal accident, fatal to somebody. Under those circumstances, when you talk about hours you are not talking about the 8 hours for a store clerk or 8 hours for somebody doing something in a production plant. You are talking about hours of the most intense vital alert operation under varying conditions.

It might be foggy, it might be night, it might be snow, it might be terrain that is this way or terrain that is flat. You get terrain where part of your train is going up and part is going down and your slack action is most difficult to control.

This is a field where the public has real interest in seeing to it that the hours are not excessive. Therefore, overall I should summarize it this way: It would mean, taking the Presidential Railroad Commission report, and I think we proved this to the Emergency Board, it would mean a very harsh treatment of the employees. It would make the employees pay for their own overtime. It would get a lot of people in a position where their jobs would be insecure needlessly. Engineers. I am not talking about any other occupation at this moment.

It would result in actual loss of take-home pay for a great many individuals, some of that loss being tremendous. We have given examples in our own dissenting opinion.

I believe we made our point with the Emergency Board and the Emergency Board has confirmed what we said by giving us the kind of recommendations which they say differ from the Presidential Railroad Commission.

Although speaking only for the engineers, I am sure that the other employees feel the same way about wage cuts. I don't have any doubt about that.

There is one technical error which I might have perpetuated on this committee a moment ago, when I said we are not paid by ton-miles we are paid by miles of operation regardless of the train and so forth.

To a very slight degree, a most inadequate degree, there is a differential in rates for the engineer based on weight and drivers and for the train crew, the conductors and the brakemen, based on the number of cars.

I should correct it to that extent.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. If we do not have some shorter answers around here we won't get through within a reasonable time. I hope everyone will keep that in mind as we proceed. We have a good many people to be heard and a lot of questions by a great many members.

Mr. Rogers of Texas?

Mr. ROGERS of Texas. Mr. Davidson, as I understand it, this whole matter can be settled in your minds if we can reach an agreement on the crew consist issue and on the firemen issue; is that correct?

Mr. DAVIDSON. I believe it can, sir.

Mr. ROGERS of Texas. Without any further measurable difficulty?

Mr. DAVIDSON. I think they are the key issues.

Mr. ROGERS of Texas. As I understand the situation, this resolution that is before us is addressed to those two issues, the crew consist and the firemen issue.

Mr. DAVIDSON. That is as I understand the resolution you have. Primarily those two.

Mr. ROGERS of Texas. A great deal has been said about compulsory arbitration. As I understand this, the matter is being worked out so that the ICC can fix a status quo to prevail during the time that collective bargaining is proceeding, not to exceed 2 years.

Why do you think that is compulsory arbitration?

Mr. DAVIDSON. I don't understand that to be the situation in the resolution.

Mr. MALIN. May I comment on the question, Mr. Congressman?

Mr. ROGERS of Texas. Yes.

Mr. MALIN. Very briefly, I hope. We don't understand that the resolution provides for the maintenance of a status quo.

We believe——

Mr. ROGERS of Texas. No, you misunderstood me, Mr. Malin. I want to be perfectly clear. It provides for the ICC to create a status quo either by the approval, disapproval, or modification of a work rule or a matter that is presented to them. And that to be the status quo during the pendency of the collective bargaining.

Mr. MALIN. By the term "status quo," in labor relations we usually refer to status quo ante. This is the status quo which is referred to in the Railway Labor Act.

Mr. ROGERS of Texas. Mr. Malin, I understand that. I want to be perfectly clear about this.

What I am talking about is what the resolution actually does. The resolution simply says that the ICC can either approve, disapprove, or modify a matter presented to them and that will be the status quo for a period of 2 years or until the matter is settled by collective bargaining.

That is correct, is it not?

Mr. MALIN. Mr. Congressman, it will be the status quo after they have made the change from the present rules.

Mr. ROGERS of Texas. We are not bound by what you might call the status quo. Status quo is a Latin phrase to mean that something is to remain intact for a certain length of time. Is that not correct?

Mr. MALIN. It has a very technical significance in labor relations and is embodied in the Railway Labor Act. In the Railway Labor Act status quo is referred to as meaning the position of the parties before the dispute began.

Mr. ROGERS of Texas. Yes, sir. You say the status quo before the status quo before the status quo and you could go back clear to the beginning of the railroads, would you not?

I am not talking about that. Let us not argue about that kind of thing. I am talking about what this resolution does. This resolution provides that the ICC can create a situation—let us not call it a status quo—can create a situation that is to be the law insofar as the parties are concerned while you are collective bargaining trying to settle a dispute between you or until 2 years passes.

Is that correct or not?

Mr. MALIN. If you want my frank opinion, sir, and I think you do.

Mr. ROGERS of Texas. I sure want your frank opinion.

Mr. MALIN. I must say we don't read it in practical terms that way.

Mr. ROGERS of Texas. How do you see it, let us get it that way? In a short answer, now, Mr. Malin. You took 10 minutes on this other answer.

Mr. MALIN. All right. We think that this would create a contract against the will of either party, or with or without the will of either party which would prevail for a period of time which could be changed by agreement of the parties.

However, in practical terms it is very obvious that the railroads would have no incentive whatever to join us in seeking a change under those circumstances.

Mr. ROGERS of Texas. Suppose, though, that the ICC held in your behalf and gave something to you that the railroads would want to change?

Mr. MALIN. Then we would have no incentive to bargain with the railroads.

Mr. ROGERS of Texas. That is right, you would not have. You mean you would not bargain simply because you would not have any incentive to bargain because the ICC had given it to you although there was a very drastic situation involved here?

Mr. MALIN. The history of this case and others would indicate that the party having the advantage under those circumstances would not be likely to bargain.

Mr. ROGERS of Texas. I am not talking about what history says. I am talking about what you are wanting to do. You are the economist that is advising the engineers, are you not, sir?

Mr. MALIN. I am one of the people trying to help the engineers; yes, sir.

Mr. ROGERS of Texas. Let us not bandy over words. You are being paid to help the engineers, are you not and to advise them?

Mr. MALIN. Yes, sir.

Mr. ROGERS of Texas. And you expect them to take your advice or fire you, do you not, Mr. Malin?

Mr. MALIN. They sometimes do.

Mr. ROGERS of Texas. You mean fire you or take your advice?

Mr. MALIN. They sometimes take my advice and occasionally they have suggested the other.

Mr. ROGERS of Texas. I understand that. They have not carried the latter into effect yet, which is obvious from your being here.

Mr. MALIN. That is right, sir.

Mr. ROGERS of Texas. The proposition is simply this: You are saying that this is compulsory arbitration because whichever side got the benefit of an ICC holding they would have no incentive to enter into any collective bargaining situation for a period of 2 years?

Mr. MALIN. Yes, sir.

Mr. ROGERS of Texas. In other words, you mean you would not bargain in good faith? Are you saying that or are you saying the carriers would not?

Mr. MALIN. I must say that question was brought up before the Senate Commerce Committee and the obligation to bargain was something that was not quite agreed on by the Secretary of Labor as against the Chairman of the National Mediation Board. They each had a different answer.

In my opinion——

Mr. ROGERS of Texas. I am not asking you for their answers. I am asking you for your answer.

Mr. MALIN. In my judgment based on my experience, there would be no bona fide bargaining following the issue of an award. That is my answer.

Mr. ROGERS of Texas. There would not be bona fide bargaining after the ICC had acted?

Mr. MALIN. That is my answer, sir.

Mr. ROGERS of Texas. That is your answer. You said one reason this was compulsory arbitration was because it lasted for as long as or twice as long as most contracts or agreements?

Mr. MALIN. Did you want my comment on that?

Mr. ROGERS of Texas. Yes, did you say that?

Mr. MALIN. I said that one of the two reasons was that the word "interim" is not really something that suggests a very short period. It suggests the life or twice the length of life of most contracts; yes, sir.

Mr. ROGERS of Texas. Would you be willing, then, to agree to this resolution or to support it if the term "2 years" was changed to "1 year."

Mr. MALIN. If it were changed to 1 day it would be all wrong because after that the carriers would have no incentive to bargain.

Mr. ROGERS of Texas. You say the carriers would have no incentive to bargain?

Mr. MALIN. That is the way we view the probabilities.

Mr. ROGERS of Texas. Suppose the ICC would say the status quo, the technical meaning that you put on the term "status quo," which is anti, should prevail? You think the carriers would have no incentive.

Mr. MALIN. Under what we regard an unlikely circumstance, yes, they would have incentive to bargain.

Mr. ROGERS of Texas. The fact is, Mr. Malin, you are against the resolution in any form, are you not?

Mr. MALIN. I don't know what other form it has, sir. We are against the resolution in the form that it is presented to this committee, sir.

Mr. ROGERS of Texas. I mean you are against the resolution of having this matter settled anyway except on a collective bargaining basis with the right to strike remaining intact?

Mr. MALIN. We are for the Meany suggestion to the Congress.

Mr. ROGERS of Texas. What is that?

Mr. MALIN. That would provide, sir, for the parties to go back to negotiations with vigorous mediation assistance and with a watchdog committee appointed by the Congress to receive reports on whether the parties are negotiating in good faith and whether they are making progress. And should they then receive the report and conclude that the parties are not going to settle this thing peaceably, then the Congress would take whichever action was appropriate in the light of the circumstances as then revealed to the Congress.

Mr. ROGERS of Texas. If that required compulsory arbitration in the eyes of the Congress at that time, you would be willing to go along with that?

Mr. MALIN. I would say that you could postulate a condition under which I personally would go along with something that had to be done. Our point is——

Mr. ROGERS of Texas. I did not ask you that, Mr. Malin. I asked you if the situation came back up here and compulsory bargaining was required to settle this thing, there was a complete impasse, you would then support compulsory bargaining in keeping with Mr. Meany's suggestion?

Mr. MALIN. I can't answer you "Yes" or "No," sir, because I can't go along with the assumption that collective bargaining will not work. It has worked forever. It has worked all the time.

Mr. ROGERS of Texas. Then, Mr. Malin, let us sum your position up this way: Your position is, and I mean there is nothing wrong with it, that this ought to be settled on collective bargaining or it ought not to be settled at all?

Mr. MALIN. It can be resolved by collective bargaining and the resolution by collective bargaining would be assisted if Congress left itself available a variety of means to handle it depending on who was sticking at the bargaining and who wasn't.

Mr. ROGERS of Texas. And if it can't be settled that way what would be your suggestion?

Mr. MALIN. Then I think at the time you could make your decision.

Mr. ROGERS of Texas. What would be your suggestion? I am asking for your advice as an economic's adviser.

Mr. MALIN. I couldn't offer an answer, a definite answer, based on a conjectural situation that might occur at that time. I would say if the labor was proved to be recalcitrant, Congress should take that into account.

If the carriers should be proved to be recalcitrant, Congress should take that into account and frame an appropriate solution.

Mr. ROGERS of Texas. And you would feel whatever Congress did at that time to settle the problem would be all right even though collective bargaining would go out the window?

Mr. MALIN. I don't think that Congress would find that to be the right answer.

Mr. ROGERS of Texas. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Chairman, I think I will forgo any questions at this time.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. Mr. Chairman—Mr. Malin, in presenting to Congress proposals contained in this resolution, the President was seeking to avoid a shutdown in the railroad industry. I believe we can agree on that.

I also believe that we can agree that he would welcome any alternative proposal that would be fair and effective in arriving at a mutual agreement and settlement of this controversy.

I can understand and sympathize with your opposition to permitting the ICC to determine these controversial issues, but let me ask you this question: What do you feel that this committee can and should do in seeking a settlement of this dispute and preventing a shutdown of the railroad industry?

Mr. MALIN. We think, sir, adoption of a resolution such as the one favored by the president of the AFL–CIO would inevitably result in a settlement of this case by free collective bargaining and with the assistance of the active creative mediation. We don't think you would have any problem after that.

Mr. DINGELL. If the gentleman would yield, how long would it take for this problem to be resolved by the proposal you are urging on this committee?

Mr. MALIN. Mr. Congressman, it is awfully difficult to gage how fast any deliberative bodies or any bargaining bodies can work.

We have come to the point where we thought we were within hours of solving the firemen issue in principle.

The fault for that can be ascribed to any number of people for not getting to the point of actually solving it. We think if we can get back to where we were and if we could have active mediation we could solve this problem in a relatively short time.

On the other hand, I am assuming that the bargaining environment is one which will be conducive to bargaining. As long as there is anything pending that gives one or the other parties an out, then we can't make progress quickly.

If we leave the parties in a dilemma as to what would happen as the result of their failing to agree, and this could be arranged by periodic reports to the Congress with an open end to the Congress as to what they might want to do, then I think that the bargaining would be made more expeditious.

I think we are talking in a matter of weeks.

Mr. DINGELL. How long do you propose we should allow the Meany proposal to be in effect?

Mr. MALIN. Just so long as you receive reports which indicate that there is progress and that there is an expectation of settlement. When you receive reports which indicate that there is no progress, that there can be no progress, that there can be no settlement this way, then you would have something else to do.

Mr. DINGELL. It is very clear to me—I am transgressing on my colleagues' time—I have sat in this committee room now for about 4 days and have heard the railroads say there has not been collective bargaining.

I have heard the Secretary of Labor say that there has been no collective bargaining. I have heard the brotherhoods say there has been no collective bargaining.

I think if we are going to accept the Meany proposal we ought to have some idea just how long the Congress and the country is going to wait for there to be collective bargaining. Because as near as I can discern, everybody has agreed there has been no collective bargaining.

You folks say none, the Secretary of Labor says none, the railroads say none. I have not heard anyone say there has been collective bargaining.

Mr. MALIN. I think it would be an exaggeration to say there has been no collective bargaining. The truth is there has been pitifully small amount of collective bargaining and there has been pitifully small amount of mediation.

The parties have approached each other with progress on a number of issues.

What we are talking about is really compulsory negotiation rather than compulsory arbitration. We are talking about meaningful creative mediation instead of just asking both sides: where do you stand today?

We are talking about banging some heads together. On that basis I don't know what could be more in the public interest than to have the public receive reports indicating the degree of progress periodically and to assure itself that there is, in fact, collective bargaining and that there is, in fact, meaningful mediation and that there is hope for settlement not involving a means which I know everyone would like to avoid, compulsory arbitration.

Mr. RHODES. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Malin, in your response to the question or in your statement you made some reference to the rejection of the recommendations of the Presidential Commission as to work rules . You qualified it by saying, "or part of them." Are there some parts that you agreed with and some you disagreed with?

Mr. MALIN. In this way, Mr. Congressman: We thought the language of the report of the Presidential Railroad Commission and their general explanation of some of the difficulties in the proposals of the parties, that they had something in it of merit as we could view it.

But the recommendations which were supposed to carry out their analysis, by and large, did not bring those thoughts into being or into an advisory recommendation.

I should say that some of the recommendations in this Commission report are viewed by some as having some promise; yes, sir.

Mr. NELSEN. Further, I think there sees to be some feeling that in the event that the ICC handed down a ruling that the work rules would be in keeping with the Presidential Commission or those who suppose it to be true, but if nothing is done am I to understand that the railroads' work rules would include these wage cuts that are not in the dispute as far as the Presidential Commission is concerned?

Mr. MALLIN. The work conditions which the carriers would unilaterally impose in the event there is no resolution of this matter and that they intend to precipitate, those would be the very same ones they promulgated in 1959 which involved very heavy wage cuts and involved the end of collective bargaining over working conditions in this industry.

Mr. NELSEN. And it would not include the suggestions that are included in the Presidential Commission report?

Mr. MALIN. No, sir. They will be the original demands of the carriers.

Mr. NELSEN. Now, another observation that you made relative to the the ICC, you stated I think, that the ICC which was friendly to the railroads. On what do you base that observation?

Mr. MALIN. I was saying, sir, that labor regards the ICC as not our forum or our arena. We have nothing to do with the ICC except in peripheral, tangential matters. Our work is done with the Labor Department, with the National Mediation Board, with a whole group of other people and institutions.

We know that the railroads and other carriers are before the ICC every day of the week and they are known to the personnel, they know the procedures, they know the practices, and I think some of us conclude that, by and large, they are rather successful with the ICC.

We have no hope of being that successful with the ICC.

Mr. NELSEN. The term I had remembered was the word "friendly." I gather from that you think they might be partial in their decision?

Mr. MALIN. I meant to suggest nothing improper, sir. On the other hand, we have our view that the ICC is necessarily biased against us based on their record.

Mr. NELSEN. I have no further questions other than to thank the gentlemen who have appeared and they have certainly spent a hard, long day.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. I am interested in this proposed congressional committee; is it your judgment that a congressional watchdog committee would be more objective in observing collective bargaining than the various boards, commissions, and agencies which have been involved in this matter?

Mr. MALIN. Sir, we had our great difficulties with the Presidential Railroad Commission. We have had no complaint about the objectivity of Emergency Board No. 154 which succeeded and revised recommendations of the Presidential Railroad Commission.

To answer specifically, we believe a watchdog committee of the Congress, receiving reports, would be an objective body that would enable the Congress to know what was going on.

We would have no objection. We would have every encouragement to offer that the Congress do that.

Mr. O'BRIEN. This committee or these Congressmen would not be umpires really. They could not call anybody safe or out. They would be observers to a great extent. Sort of toothless watchdogs.

Mr. MALIN. Not at all toothless, because they could recommend to the Congress the action which Congress would deem appropriate based on the actions of the parties.

Mr. O'BRIEN. In response to a question from Mr. Dingell who asked several times how long you though this status might prevail if such a committee was set up, I think you said at one point that it might even be a matter of weeks.

Mr. MALIN. It might be, sir.

Mr. O'BRIEN. Then I think it was Mr. Zimmerman who said that progress—he did not quite describe the degree— progress had been made in the last few days; is that correct?

Mr. ZIMMERMAN. Yes.

Mr. O'BRIEN. We have 30 more days before August 29. Do you think there is a possibility that by August 29 there could be an agreement on these two major problems?

Mr. ZIMMERMAN. Give the atmosphere that we have been urging.

Mr. O'BRIEN. That is the word that is bothering me. I have heard "atmosphere" and "climate." What do you mean by "atmosphere" and "climate"?

Mr. ZIMMERMAN. Without the promise of the type of legislation that we think is intended by this resolution, without the removal of that incentive for somebody to just run the clock out, I say to you I wouldn't expect a great deal to be done between now and August 29.

Atmosphere, sir, is what I mean by equalizing incentives.

Mr. O'BRIEN. I understand that.

The problem that is in my mind, there would come a time when this congressional committee would report back finally. We would all hope that it would report back that everything was solved and Congressmen would not have to cast these difficult votes. But there is a possibility, too, that that congressional committee will come back and say, "no dice, we have not accomplished anything and we won't and we recommend this kind of legislation," or something similar.

That, in a sense, is a gun. It might not be a pistol right against the forehead. But it is a gun. If we have made progress in the last few days and if you think this matter under the suggestion made could be resolved in a few weeks possibly, do you think if this whole matter could be postponed for 90 days and then Congress would vote either up or down on this resolution that there could be an agreement.

Mr. ZIMMERMAN. Let me answer you in this way, Congressman O'Brien: I have seen so many deadlines in this proposition, deadlines which in my own mind I am certain have stifled the effective bargaining and mediation, that it is my own judgment that the interval between reports to this watch dog committee—and I think they would have fangs rather than being toothless—would give you a series of potentials in there and leave to the discretion of that joint committee the setting of a deadline.

When you are clear up to here and you are satisfied that there is nothing else for it, I would see no point in waiting to run out the 90 days.

On the other hand, if you are seeing progress I wouldn't want it shut off at the end of whatever time. I think the proposition has the discretion of the committee setting a deadline.

Deadlines have murdered this to this date. We have had a dozen of them. Each one has simply been a target.

Mr. O'BRIEN. I am not advocating 90 days or 30 days or 120 days. I just have heard reports that we might be here on Thanksgiving and the 90 days sort of popped in my head.

Mr. ZIMMERMAN. It is my recollection, sir, that prediction was made before this resolution.

Mr. O'BRIEN. As a matter of fact, we might need a little compulsory arbitration ourselves.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Keith?

Mr. KEITH. Is it your contention, sir, that many of the railroad management's charges of featherbedding really are attempts to persuade the public that the unions are in their work rules proposals demanding pay for services not rendered?

Mr. ZIMMERMAN. That certainly has been a good part of the campaign that has been waged in all the media available. We have been accused of many, many things including, it is covered by this thing that has now become by their own admission a household word.

Mr. KEITH. It is your contention that you are not asking for payment for services not rendered?

Mr. ZIMMERMAN. We are not.

Mr. KEITH. What would be wrong with a law similar to the Lea Act in the *Petrillo* case that made it illegal to bargain for payment for services that were not rendered?

Mr. ZIMMERMAN. Sir, the Lea Act is only a term insofar as my knowledge of it is concerned. There has been some discussion of it recently. I have been given to understand that something that represents a counterpart of the Lea Act has been discussed, but I am not familiar with what that act contemplated.

Mr. KEITH. One of the problems that your industry has been facing is that the commissions that have been set up to resolve these questions have been men with their strengths and weaknesses—their approach has not been perhaps as objective as a judicial review would be.

Mr. ZIMMERMAN. Mr. Malin asks if he might answer that one.

Mr. MALIN. Mr. Congressman, the individuals with whom we dealt were all honorable men and many of them are experienced in the field of labor relations. We don't believe that they would have bias as such in an ordinary labor case.

We do believe that the Presidential Railroad Commission or some of its members had a preconception that they were dealing with a dying industry which did require in their opinion drastic surgery.

Emergency Board No. 154 which followed them, came to a quite contrary conclusion and reached a very optimistic estimate of the industry and its present situation and its future potential.

We have no quarrel with the activities of Emergency Board No. 154 nor their prescription in their report. We were very dismayed to find that we were limited to the statutory minimum time. They ran 2 days over the 30 days provided as a minimum by the law.

We urged that they be maintained as a body for the purpose of supervising mediatory efforts.

I believe if that had been done we would have settled this case.

Mr. KEITH. Assuming that some legislation could be passed, which would make it illegal to strike for pay for services not in fact rendered, would you still be able to bargain effectively to take care of the men adversely affected by such a ruling?

Mr. MALIN. I am afraid, sir, that we would not only be bargaining, we would be litigating all over the country and there would be a turmoil in labor relations, that there would be anything but harmony and cooperation between labor and management.

We have a very definite self-interest in manning. We have a self-interest of our own safety and of our regard for the public. Nobody wants to kill other people. We have an interest in the lives and limbs of our fellow workers. Many of them who work under the most distressing conditions of safety between cars in switching and so forth.

We have also an interest in the efficiency of operations and in the burden of work. To subject that to a very simple "yes" or "no" proposition on the basis of a law such as you suggest would result in disputes and litigation that would be endless.

Mr. KEITH. There is a decision by Justice Black on this subject that indicates that reasonable men could so conclude.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Malin, we received this message from the President on last Monday. Had the legal processes available for the handling of this dispute been exhausted?

Mr. MALIN. Not in our judgment, sir.

Mr. MOSS. What remained?

Mr. MALIN. Under the Railway Labor Act and under the rules of the game as played by the parties throughout history there always is time for collective bargaining, for negotiations, for continued mediation.

Mr. Moss. You are entitled to your answer. How could they have been directed? Who had the authority at that point to direct them?

Mr. MALIN. Mr. Congressman, had the carriers put in their promulgation, I am not sure there was any legal authority that could have prevented them.

Mr. Moss. Let us put it the other way. You are sure there was not legal authority?

Mr. MALIN. No, sir; I am not. I would not say that there was not legal authority for the prevention of the promulgation of the carrier's demands based on their 1959 original proposals. I would not go that far as to say that could not be prevented legally; no, sir.

Mr. Moss. I would be interested in any citations you have as to what method would have been available at that point to avert placing into effect of new work rules. You can supply them for the record.

Mr. MALIN. I am not at liberty to discuss that particular matter.

Mr. Moss. I think it important and I think I speak the views of every member of this committee when I say that we do not regard this involvement of the committee as a pleasant or pleasurable assignment. The thing that we have before us basically, the first question, is whether or not under the conditions prevailing last Monday we could reasonably have contemplated that as of midnight tonight work would have ceased on the railroads. Both sides had taken a position: had they not?

Mr. MALIN. Yes; they had but the position of the carriers was certainly subject if not to legal compulsion, to moral compulsion which could have been exercised at the very highest levels of our Government, because they involved, sir, wage cuts that are unheard of in modern bargaining and the end of collective bargaining.

Mr. Moss. I am trying to bring into some perspective what we have before the committee. We have to determine, I think, whether in the absence of any further means of compelling consideration, in the absence of the postponement agreed upon last Wednesday, the prospect was reasonably that of a work stoppage on the 29th of July.

Mr. MALIN. There was reasonable expectation, sir, subject to the moral compulsion and subject also to——

Mr. Moss. I am asking for a reasonable expectation only, Mr. Malin.

Mr. MALIN. I believe it would be quite reasonable for the railroads to respond to moral persuasion on the subject of wage cuts and on the subject of the ending of collective bargaining on working conditions. Yes, sir; I believe that eminently reasonable.

Mr. Moss. Do you think that the President overstated the case when he said that we were then on the brink of a nationwide rail strike.

Mr. MALIN. No, sir; I don't believe he overstated the case.

Mr. Moss. Now, if that is true, if we were on that brink, reasonably that was the alternative to some further actions on the part of the Government. The Government apparently having exhausted all processes available to it at that point. Then we have to determine whether the Congress should act, if it is in the public interest that action be

taken to insure a continuation of a very vital transportation media. Would you think that is a role of the Congress?

Mr. MALIN. I can't agree with at least one of the assumptions, sir. The Government, meaning the executive branch of the Government, had by no means exhausted all reasonable efforts to mediate this dispute. Nor can I agree, sir, that the only alternative was the type of legislation which is here before you.

Mr. MOSS. I did not ask you about the type of legislation. I am trying to get before us somewhat in perspective what this committee is faced with.

Mr. MALIN. Yes, sir.

Mr. MOSS. I have listened with great care to your case and I have listened with great care to the case of the carriers. But there is another case here. It is the case of the public and we are in the peculiar position or the unique position, a very responsible position, of having to be very very mindful of the public involvement. Would a strike be chaotic.

Mr. MALIN. A strike—may I answer other than yes or no, sir?

Mr. MOSS. Certainly.

Mr. MALIN. Nobody here wants a strike. We want that which would avoid a strike. We recognize that a strike, unlimited, prolonged longed would be exceedingly harmful to the public. We have offered some amelioratory suggestion. We offer to run commuter trains, passenger trains. We offer to run trains designated by the executive branch as being necessary to the defense effort or the welfare of the country. We offered to turn our wages to charity while doing so. We have had no response on that offer. But in any event we would like to avoid even that contingency. We would like to avoid a stoppage of any kind and we think the best way to avoid it is that which the Government can do, which is to exercise creative mediatory efforts.

Mr. MOSS. Do you agree that a strike is certainly undesirable and would not serve the public interests?

Mr. MALIN. Amen.

Mr. MOSS. Then the question this committee has is, "How to continue the operation of this important transportation system and at the same time insure that there be some continuation of consultation between the affected parties in an effort to reach an agreement."

Mr. MALIN. Yes, sir.

Mr. MOSS. The method of achieving the objective is the only thing in controversy before this committee. You don't want us to write the work rules.

Mr. MALIN. No, sir.

Mr. MOSS. If we were to undertake to evaluate with the care we should the performance of the Presidential Railroad Commission in fairness to all parties, we should hear from those who served as members of that Commission, should we not, and review in some detail the substance of their deliberations?

Mr. MALIN. Yes, sir. But I should point out that the resolution injects the Presidential Railroad Commission's recommendation into the provisions of the legislation.

Mr. MOSS. It injects Board 154 and it injects further progress made as a rule of negotiations, does it not?

Mr. MALIN. Yes, sir. But I should point out that we are a long way from the Presidential Railroad Commission days because we have made a great deal of progress since then.

Mr. Moss. This resolution brings all of those factors in, does it not?

Mr. Moss. I think it erroneously brings in the thing that has kept the parties apart for which a long time, the Presidential Railroad Commission.

Mr. Moss. Does it bring it in exclusively?

Mr. MALIN. No, sir.

Mr. Moss. Then it does bring in the other findings that represent the progress made to this moment, does it not?

Mr. MALIN. Yes, sir. But it widens the discretion of the deciding agency beyond where it should be.

Mr. Moss. As a proposal alternate to this is the one offered by George Meany, President of the AFL–CIO, the proposal which is endorsed by your organizations.

Mr. MALIN. Yes, sir.

Mr. Moss. And that is the proposal to require: (1) That there be no cessation of operation of the railroads, and (2) that there be continued collective bargaining.

Mr. MALIN. Yes, sir.

Mr. Moss. Open end.

Mr. MALIN. Subject to reports to the Congress so that it can decide when to close the end.

Mr. Moss. For how long a time do you think it would be reasonable? You are talking now of atmosphere. I think we should be most unwise if we deluded ourselves in considering atmosphere. Is not there very clearly injected into this whatever you do or whatever I do, whatever the Congress does, the clear fact that at a point when progress is not sufficient to justify depriving one party of their rights, because there are two parties to this, the right of one is to place its rules into effect, the right of the other to strike. You are asking us to temporarily cancel out the right of the one. Can we do it indefinitely?

Mr. MALIN. We have our own demands which are involved here.

Mr. Moss. I know.

Mr. MALIN. I just wanted to point out it is not the one party. We are both of us here pressing for demands.

Mr. Moss. We are in the fortunate position here of having clearly in focus a case.

Mr. MALIN. The case involves the carrier's demands and our demands as well as our defense of the carrier's demands. We have asked for overtime pay and night shift differentials, paid holidays, and a number of other important things to us. We have been very forebearing. We have not threatened to stop the country's railroad system because those demands are not granted to us in the time that we think they ought to be granted to us. We have been patient.

Mr. Moss. This is your own election. I am pointing out here that you have the rights of another party involved and it is not their election to have those rights set aside for an indefinite and indeterminate period of time. There should be, should there not, some reasonable limitations prescribed here if that type of proposal is to be seriously considered.

Mr. MALIN. The reasonable amount of time to be prescribed is, I suggest, sir, the time that the Congress can best decide on the basis of the reports which it receives periodically. To do it any other way would be an open invitation to run out the clock. I think that the Congress can through its observers and reports conclude at any time that there is no further promise in the negotiations and that they are required to take whatever action they will then feel is appropriate, or that there is promise. If there is promise you go beyond the deadline anyway. So what is the use of having a deadline?

Mr. MOSS. We have talked of the alternatives that would face us if the Congress in its Special Oversight Committee finds that there is, let us say, not a lack of progress but a sufficiency of meaningful progress, then what type of recommendation do you think that the Congress should consider at that point?

Mr. MALIN. I think they would be in a position at that time to judge what the appropriate action would be. To tell the parties in advance what they would do if there were a failure of negotiations is almost a guarantee of failure of negotiations. It would make that party which had something to gain by the remedy that was made public, it would give that party an incentive not to bargain. You must reserve, I submit, gentlemen, to yourselves the appropriate remedy at the time that you became convinced that you need a remedy through legislation.

Mr. MOSS. I notice in the report of Mr. Zimmerman, and I have gone over it rather carefully—I am trying here as I look at this not to sit here as a judge because I am not qualified, I submit, to resolve this dispute or the substance of the dispute between the two parties. I have a minimum of experience to undertake that assignment. I found Mr. Zimmerman's views very, very enlightening, but not on the problem that I have here. Mr. Zimmerman, you were most critical of some of the public members of the Board for their absence, their overcommitment of their time. You conceded to them, I believe, good faith. But you pointed out an overcommitment on their part. We have a situation in Congress where many of us find we are almost constantly overcommitted.

It is difficult for us to undertake the sort of role you would assign to some of my colleagues here and have them do the kind of job which apparently you would expect them to do. They represent constituencies. In the case of the Senate they represent States. We are at a point where congressional business is going to accelerate and I know of no simple problems now pending before the Congress. Do you think those are the type of men who should be called upon to exercise their oversight function, this evaluating function?

Mr. MALIN. If I might comment, Mr. Congressman, I quite agree and realize that the President of the United States is terribly overcommitted and so is the Secretary of Labor, and so are you eminent gentlemen in the Congress of the United States. I submit to you that you will only be multiplying your work if you come up with a solution based on expediency and against the interests of freedom and against the sound principles of collective bargaining, and in a premature fashion without actually knowing that it was quite necessary to do that. That far from relieving the situation of overcommitment

you would be getting into a Pandora's box the outcome of which nobody knows.

Mr. Moss. You were discussing the alternate rather than the one I am attempting to discuss with you. I think it would be far more helpful if we would discuss the one that has been put forward with your endorsement as the best means of effecting settlement.

Mr. MALIN. I stand corrected, Mr. Congressman. On that particular proposal of the president of AFL-CIO, I think in the long run it would solve many problems for the Congress and would be a good precedent in other cases and would save the time of the Congress in the long run.

Mr. Moss. I see I have used my time and more of it, Mr. Chairman, I want to thank you for your indulgence.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman. I had to be away for a few minutes because I just sent my family home on the B. & O. I had a question in my mind that the carriers under this legislation might propose a rule to the ICC, and the ICC should approve this rule, and you would feel it is one that you could not live with but it would be in effect under their approval for 2 years. What would happen after the 2 years is up? Then you would accept that rule or you would go on strike perhaps. That is a long way away, but this resolution is only a temporary solution. I am wondering if it is wise to have a temporary solution to anything, if it only postpones the problem.

Mr. MALIN. Mr. Congressman, at the end of 2 years or 4 years, whatever the case might be, depending on the intepretation, would be that we would be enabled to serve a notice under section 6 of the Railway Labor Act and begin at that time a procedure for bargaining to change the rules in the light of what we then wished to suggest to the carriers. There would be another crisis if we persist in the same way to the very end; yes, sir.

Mr. CUNNINGHAM. Under the present situation without the enactment of the legislation under discussion, if rules were put into effect with which you did not agree as not being in your best interests this strike could not be stopped by a court of law as of now.

Mr. MALIN. I would not pass judgment on that question, sir.

Mr. CUNNINGHAM. I don't think it would. In the event this legislation is enacted, it does provide for an injunctive procedure as to a strike and the courts would then become strikebreakers. It does make that provision. It proposes a recourse to injunctive procedure to stop a strike.

Mr. MALIN. Without application of the principles of the Norris-La Guardia Act; yes, sir.

Mr. CUNNINGHAM. That is right. The same would happen if the other side was involved, we will say in a lockout.

Mr. MALIN. I think it is intended to have that effect, sir; yes, sir.

Mr. CUNNINGHAM. I believe that is all I have, thank you very much.

The CHAIRMAN. It looks as though we were going to be here for a little while. There area several members yet to ask questions. Do you gentlemen want to take a 5-minute recess?

Mr. MALIN. It does not matter to us. As you would suggest, sir.

The CHAIRMAN. I was asking for your own convenience.

Mr. MALIN. I think we are very happy with the questioners.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. Let me ask you this question. Is it your assumption that if this Congress does not act on some form of legislation before this Congress, that there will not be a railroad strike?

Mr. MALIN. I can't make a prediction, Mr. Congressman. This depends on the efforts made to mediate.

Mr. DINGELL. Is it your judgment, then, that there will be a railroad strike if the Congress takes no action on some form of legislation?

Mr. MALIN. I think if there were no threat of legislative handling of this matter that there would be a settlement.

Mr. DINGELL. You assume there would be settlement?

Mr. MALIN. Yes.

Mr. DINGELL. On what basis do you make an assumption that there would be a settlement?

Mr. MALIN. On the basis of the small time we have had in negotiations and with the small amount of mediation assistance we had we made progress. If one or the other parties is looking at the clock because somebody has promised something legislatively we can't make progress. If that threat is taken away, if that overhanging legislative handling is taken away I am confident that the carriers will not promulgate their rules and we won't strike.

Mr. DINGELL. Then sitting there will you promise this Congress that there will be no strike if we don't act?

Mr. MALIN. No. I can't say that either, sir.

Mr. DINGELL. Then as a matter of fact it would be fair to infer that if the Congress does not act there is a clear and present danger there will be a railroad strike, is that correct?

Mr. MALIN. I can't predict that either.

Mr. DINGELL. You are not prepared to predict there won't be a strike.

Mr. MALIN. What I am saying is that it depends not only on whether Congress will act. It depends on whether there is a threat the Congress will act in a particular way that will suit the carriers.

Mr. DINGELL. I am not talking about that. I am trying to get in very brief form, sir—let me say I am impressed with your ability, but I am also impressed with the wordiness of your answers—I would like to get this down very simply without too much qualification because time is limited. Would I be fair inferring that there would be grave danger of a railroad strike if we do not act in one form or another?

Mr. MALIN. I am advised we don't believe there would be grave danger in the terms that you used.

Mr. DINGELL. When did this mediation and this change in atmosphere which helped the progress which you are referring to begin to take place?

Mr. MALIN. It began in April under Emergency Board No. 154 and was continued since then.

Mr. DINGELL. That is a matter of April until the end of July. It is a matter of almost 90 days.

Mr. MALIN. It is a matter of calendar length of time but not of 90 days spent in negotiation and mediation. Much of that time was wasted.

Mr. DINGELL. In that 90 days we did not achieve a settlement without congressional action.

Mr. MALIN. We did not reach a settlement.

Mr. DINGELL. There is another question on constitutionality. Do any of you gentlemen have any suggestion as to the constitutionality of the alleged compulsory arbitration features of the administration's bill.

Mr. MALIN. That is a question that is under study, sir, and I am not at liberty to comment.

Mr. DINGELL. As you know, I have always opposed compulsory arbitration in railroad disputes.

Mr. MALIN. That is right.

Mr. DINGELL. As a matter of fact, I have been responsible for sitting on a compulsory arbitration bill that is pending before another committee of which I am a member. I will be very frank with you three gentlemen that it is my firm judgment when negotiation and free collective bargaining breaks down, the Congress has responsibility to act.

Mr. MALIN. Did you mean collective bargaining breaking down?

Mr. DINGELL. I said when collective bargaining breaks down. I have heard you gentlemen indicate that collective bargaining has broken down. I have heard the railroads indicate that. I have heard the Secretary of Labor to indicate that.

Mr. MALIN. May I comment on that.

Mr. DINGELL. Yes, you may.

Mr. MALIN. I don't believe we said that collective bargaining has broken down now in the sense that it means a hopeless deadlock. I don't think the Secretary of Labor could fail to note, and I think he did note considerable progress in our collective bargaining in recent weeks. Collective bargaining has not broken down. The conditions for collective bargaining have not been made appropriate. The institution of collective bargaining has far from broken down. It is just a matter of getting to apply the things that are known everyday in collective bargaining to this particular situation. I don't at all, or none of us take the position that collective bargaining has broken down; no, sir.

Mr. DINGELL. Let us talk a little bit about the proposal you have brought forward before this committee. I assume you urged before the committee the so-called Meany substitute.

Mr. MALIN. Yes, sir.

Mr. DINGELL. Exactly what is the Meany substitute going to accomplish?

Mr. MALIN. What is will do is to restore a bargaining climate where the parties would not know that they had an advantage by reason of their not bargaining. Therefore, they will be induced to bargain. Once they were so induced I have not the slightest hesitation in saying that there would be an agreement.

Mr. DINGELL. You assume that this will result in successful conclusion of the difficulties before us. You would then be vesting in the Congress the judgment of whether or not collective bargaining has

succeeded or when it has come to the point where it has no longer succeeded by vesting in this watchdog committee the authority to make this judgment. Am I right?

Mr. MALIN. It would provide that watchdog committee with the function of reporting to Congress, yes, sir.

Mr. DINGELL. You would essentially then be submitting yourself to the judgment of Congress as to when collective bargaining had fallen by the wayside and had failed, am I correct.

Mr. MALIN. Yes, sir. I think the result would be an agreement rather than having the watchdog committee have to make a report about failure.

Mr. DINGELL. You recognize, of course, the established fact that the Congress changes in complexion from year to year, do you not?

Mr. MALIN. I am aware of that, yes, sir.

Mr. DINGELL. By elections?

Mr. MALIN. Yes, sir.

Mr. DINGELL. Would you still be willing to submit yourself to the judgment of perhaps a much more conservative Congress than the one which you have at hand now?

Mr. MALIN. Far preferable to submitting ourselves to the ICC for compulsory artitration, yes, sir.

Mr. DINGELL. You would submit yourself to Congress' judgment as to when collective bargaining had finally failed under the so-called Meany proposal, am I correct?

Mr. MALIN. That is a fact of life in any event, sir.

Mr. DINGELL. And when this watchdog committee came forward, having submitted yourself to its jurisdiction, would I be fair in inferring that you would then accept the recommendations of this watchdog committee?

Mr. MALIN. I don't know what they would recommend and our feeling about the matter I can't predict. Obviously whatever Congress did that was lawful and authoritative, we, like anyone else will accept, yes, sir.

Mr. DINGELL. That is a rather qualified acceptance at best, is it not?

Mr. MALIN. You bet it is, yes, sir.

Mr. DINGELL. Let us go a little further here. You have been complaining about the ICC having no expertise in labor management problems and also being essentially railroad forum. Assuming you are going to get some form of the administration bill, do you have an alternate forum that you would suggest to this committee as opposed to the ICC?

Mr. MALIN. The idea of compulsory arbitration is so obnoxious that we have not canvassed alternative bodies to administer that blow to us. But I will say this, and the chief has said it earlier, of all the bodies that we can think of that would be about the last.

Mr. DINGELL. Supposing the Congress were to settle upon the national mediation service within the Department of Labor, would this be acceptable to you?

Mr. MALIN. No, it would not be acceptable, but not on the same grounds. We do recognize that those persons have some expertise in this field. But it would not change the principle of compulsory arbitration.

Mr. DINGELL. Would it be more acceptable to you than the ICC?

Mr. MALIN. It would make more sense in that one respect but it would make no sense in our judgment on the subject of compulsory arbitration.

Mr. DINGELL. All right.

Mr. MALIN. If they exercised their mediatory function as they are set up to do, I think we could get this thing settled.

Mr. DINGELL. Let us ask, then, would you accept the Secretary of Labor, or NLRB as being preferable and of these that I have named would you care to indicate your preference or your order of preference?

Mr. MALIN. We had the opportunity to pass on the question of whether we would submit to compulsory arbitration by the assistant Secretary of Labor or by Associate Justice Goldberg or by others. We thought that they were eminently qualified to deal with this matter. That is the great distinction that we make with respect to ICC. But in no event did we feel that anybody in these United States could do the job of creating our contracts and appending thereto our assent when we did not give assent, no, sir.

Mr. DINGELL. Thank you very much.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. As I understand this legislation, the parties to this dispute could continue collective bargaining after an interim rule would go into effect, is that true?

Mr. MALIN. I understand that there is some expression of that kind in the legislation, but I assure you I don't understand that would be the fact. We understand that the contrary would be a fact in actual practice.

Mr. BROYHILL. Would you explain your answer.

Mr. MALIN. Yes, sir. Once there is an award under this legislation whichever party was satisfied with that award would have no incentive to open it up for collective bargaining.

Mr. BROYHILL. If you were favored by such a rule would you be willing to go back to the bargaining table?

Mr. MALIN. Frankly, I don't believe so. I am certain the other side would not.

Mr. BROYHILL. No other questions.

The CHAIRMAN. Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman. I would like to direct my question to Mr. Davidson and his prepared statement. I believe in the last paragraph on page 4 of your prepared statement, running over to page 5, after the first sentence you went on to say that you respected the President, you respected the Secretary of Labor and you ended up by saying:

> I regret that under the circumstances there was pressed on the President and accepted by him a resolution which in haste and confusion actually sponsors compulsory arbitration.

Where was the haste and where was the confusion? I am somewhat disturbed with that in view of the record I have before me.

Mr. DAVIDSON. I think, Honorable Congressman, that they had a week. This was on Monday the 22d. They had a week before one of these so-called deadlines to get something done. I think this was hastily drawn and perhaps under a confused condition and hastily submitted to the Congress and the Senate.

Mr. HEMPHILL. Is that just a thought of yours or do you know that? You made the statement.

Mr. DAVIDSON. I don't know who prepared it even.

Mr. HEMPHILL. I thought you did not and it concerned me.

Mr. DAVIDSON. I don't know who prepared it. I have an idea who did it.

Mr. HEMPHILL. It concerned me because the office of the President is very sacred office regardless of who he may be, and I so held it under the administration which I opposed for 4 years here. But if I recollect the record correctly the President of the United States or another President had a commission which held hearings for 13 months and which on February 28, 1962, issued a report for better or worse, whether you agreed with it or not. So the President must have had some knowledge of that.

Then my collection is that on April 3, 1963, the President of the United States, and I hope this was not in any haste or confusion in your thinking, set up under a section of the Railway Labor Act a public board which we call now Emergency Board No. 154. On June 4, the Secretary and Assistant Secretary of Labor who represented the executive branch, joined in. We had various statements. I think probably it would be better for the record if you would like to retract that. Would you like to take that back at this time?

Mr. DAVIDSON. I had no reference to these other tribunals that you mentioned, Congressman.

Mr. HEMPHILL. But you are accusing a lot of people of haste and confusion and you don't know all the facts.

Mr. DAVIDSON. That was in the preparation of the resolution you have before you. That was the only thing I had reference to in referring to it as hastily prepared and perhaps under a confused condition when they had so short time to get something done.

Mr. HEMPHILL. You say "perhaps." Are you sure of that?

Mr. DAVIDSON. I don't think with all respect to the President, as I have stated there, that he thought that this was compulsory arbitration. I don't think he thought that.

Mr. HEMPHILL. That is not the question. You have accused the administrative branch of haste and confusion and you were not there. Do you just think that, or do you just want to accuse or indict somebody?

Mr. DAVIDSON. No; I don't have any desire to accuse or indict anybody.

Mr. HEMPHILL. I think you have done it and that is the reason I asked you if you wanted to retract it.

Mr. DAVIDSON. If it will help any to scratch haste and confusion I am not averse to that. I think under the circumstances I described that there was some haste and confusion to get a bill before these bodies before something had to happen.

Mr. HEMPHILL. Thank you very much. Now, Mr. Malin, you made a statement in answer to somebody's question that there was a drastic reduction in wages which you people felt was unjust. I would like some explanation of that because I have heard, and perhaps incorrectly, that the reason for this was that now that these fine trains can run 60 and 70 miles an hour over well-bedded track and heavy rail and under safe conditions, that you are now paying a fellow the same

wages for 120 miles that you used to pay for 600 and actually the man is not working but 2 hours in many instances instead of a 8-hour day, but is getting the same pay. I would like your comment because I don't know.

Mr. MALIN. I would like to start the comment and if you don't mind, Mr. Zimmerman has some material also. You have asked a very good question, sir, and it deserves some kind of an explanation. There are good jobs and poor jobs in the railroads. There are the so-called red apple jobs which are thrown out for public view. These are really jobs of a man who has worked all his working life doing the hard jobs and the long jobs, the miserable jobs. He gradually works up to one where he does get a red apple assignment. But they are few and far between. They go to the people with the greatest seniority. But the bulk of the people can work all kinds of hours and they don't get overtime.

About the speed of the trains, there are many trains running today whose average speed is less than 12½ miles an hour, based on time started and time off. There are many trains today which when compared with the trains of many years ago, the same runs, same passenger runs, before there was a diesel, they are no faster today and they are slower today. You have to keep in mind the great technology here in the increase in the length of the trains. Where one engineer now does the work that six or eight engineers used to do some years ago.

In 1920 there were 2 million people in the railroad industry of the United States. There are only 750,000 today, and in the meantime the volume of traffic is 250 percent of what it was then, and there is no group of people that has a better productivity record than that.

I would like at this point to turn it over to Mr. Zimmerman who has practical operating experience.

Mr. ZIMMERMAN. I think, sir, and I brought a magazine along today because in the Senate committee last week a question was propounded that had to do with a man who was on duty a relatively short time. I have an item here that says, Washington to New York in 3 hours 55½ minutes. It comments—I am not certain what railroad it was—Pennsylvania Railroad, 226 miles, which is what the distance is, in a little under 4 hours. It talked about the stops that they made and was quite complimentary of the operation. The fundamental or the fundamentals that went into what the employees on that train receive are no different than they are now. Nobody was distressed at that time that these people were paid the way they were, which essentially is the same as they are now.

I am looking at the Railway Age Gazette, dated January 27, 1911. We had a lot more people in passenger service on those good fast runs in those days than we do now. Yet it was not a subject of propagandizing the public. It was an accepted fact of life. I don't know how many people we have left on those goods runs, and they are cited as horrible examples, but percentagewise there are a lot fewer than at the time this article was published.

The CHAIRMAN. Would the gentleman yield?

Mr. HEMPHILL. Certainly I will be happy to yield, because I have not gotten an answer to my question.

The CHAIRMAN. That is where the interdivisional problems come in, isn't it?

Mr. ZIMMERMAN. In that instance, no, sir.

The CHAIRMAN. If you take a train from New Orleans to Memphis, for example?

Mr. ZIMMERMAN. You have me lost. I don't have a mental picture of that country down there. I would be happy to take it to be in distances.

The CHAIRMAN. I understood they had to change three crews from New Orleans to Memphis. You don't know whether that is so or not?

Mr. ZIMMERMAN. I don't know that directly; no, sir. I am not inferring here that all of these employees have runs as much as 226 miles such as the train from Washington to New York.

The CHAIRMAN. Thank you.

Mr. HEMPHILL. Just one more question. I am not satisfied, and I think you should know it. A man that is on a 4-hour run, let us give him an hour to get down to his train and do whatever duties are necessary in preparation and give him an hour after he gets off to make such reports as may be required. I am not that familiar with that particular run or any other at this time. Your other people are working 8 hours for the same comparable pay. I mean the same comparable position. Do other people work, too, on a given day and get paid the same as worked eight, the man who worked four or the man who worked six. That is what I have heard from railroad people and others and it disturbs me because if that is true it looks to me you people have not cleaned up your own nest.

Mr. MALIN. May I comment, Mr. Congressman?

Mr. HEMPHILL. Certainly.

Mr. MALIN. In part what you say is true. There are runs which last for 4 hours which receive the same pay as a run that lasts 8 hours and so forth. But I did try to point out to you, sir, that these runs are advertised for selection according to seniority. There are relatively few runs that are really good. You have to take into account that all of these runs involve time away from home at some faraway terminal without pay and without expenses for being away from home. These hours are not at all compensated.

Mr. HEMPHILL. As a Congressman I have some familiarity with that.

Mr. MALIN. It is true that there is that variation if you look at it according to hours, but I suggest to you, sir, that it is something that you make up, that you get the advantage out in your later years of service that you paid for in your earlier years of service. I might also suggest to you, sir, that some of these things do not look so bad to a railroad man as they look to an outsider. I will try to give you an example that all of us would be familiar with. I don't think many of us would be happy to pay, let us say, a taxi driver by the hour instead of by the trip or by the mile.

There is an incentive to be gained. When you are paying a man—from an economic point of view—for the obliteration of time and space. When he accomplishes that in a short time it is not less work than if he accomplished it in a longer time. That is what the railroads get their tariffs for, their revenues from. The incentive to

obliterate time and space with a lot of material going from one place to another is the economic advantage that is produced and that is the economic advantage that is paid for.

Mr. HEMPHILL. Can I assume from what you gentlemen have said that the answer to my question is "yes." One of the troubles is this pay differential where some people work 2 hours and others work 4 at comparable or almost equivalent tasks and others work 6 and others work 8 and the man that works 2 gets the same pay as the man who works 4, 6, and 8. That does happen.

Mr. MALIN. It does happen. We don't regard it in the same light as outsiders do. It has been traditional in the industry. It is understood by the employers. It is understood by the employees. It is part of what they pay for in the earlier years to get the advantage of an easier job in their later years when they are still employable in a constructive manner for the entire economy but they can't carry the same load or physical duration of timework as when they were younger.

Mr. HEMPHILL. Thank you, Mr. Chairman.

Thank you, sir.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman.

When did you folks first receive the Meany proposal for your study?

Mr. MALIN. I don't know that we have received it to date, sir. But we have heard about it.

Mr. BROTZMAN. That is what I was driving at. I thought in the colloquy this morning here Mr. Zimmerman was asking what the provisions of the Meany proposal were or might be. I wondered if any of you at this time have yet received a written copy of that thing that you are so ready to endorse.

Mr. ZIMMERMAN. I have not seen it. The subject has been under discussion. It is so comparable in principle to the thing that long ago, last May, we put in writing and urged upon the Mediation Board—we didn't have a watchdog committee in there, not a congressional committee—the principle was there.

The answer is "I have not seen it." I don't know. Mr. Malin has not seen it. It has been discussed, yes. The subject matter has been discussed. I am happy, although I am not or I don't completely understand that this has actually been introduced. If it has, I am pleased about it.

Mr. BROTZMAN. I don't know either.

I wondered if you people had some document that you had taken to those whom you represent so that you could represent to this committee that they have endorsed this proposal.

Mr. ZIMMERMAN. No. I was asked earlier today whether I liked or approved the Meany proposition. I don't know what the Meany proposition is. As it came out, I was able to say, "Yes, sir: we like that sort of thing."

Mr. BROTZMAN. Let me move on to another area because I know you have been on the stand a long time today and we have been sitting here quite a while, too.

I have heard two terms interspersed throughout your testimony a great deal today. It has been used somewhat by all three. I have

heard you talk about "energetic" mediation or a word of similar import. I have heard you use "vigorous" and somebody alluded to it "with vigah," and down the line.

The thing I want to know is, No. 1, and try to answer this yes or no, and you can explain your answer, has there been energetic mediation at this point?

Mr. ZIMMERMAN. There has been a great deal of energy expended, a great deal of sleep lost, sir.

Mr. BROTZMAN. I don't think that is quite responsive, if you don't mind. I will try to state the question again and you can answer yes or no and then you can explain your answer.

The question is: Has there been energetic mediation at this point as regards this particular dispute?

Mr. ZIMMERMAN. I am going to give you the short answer, which is no. A kind and soft no. I should like an opportunity to explain that.

Mr. BROTZMAN. You may certainly explain your answer.

Mr. ZIMMERMAN. I don't mean it as an indictment. I don't make it as criticism. I say that solely as a matter of great disappointment, great personal disappointment. It is a variable no.

What I say is based on previous experience with people from the National Mediation Board. I have been a direct participant in disputes, two of them rather prolonged, where those gentlemen have gone, I think, a little beyond the call of duty in exerting—this is the language of the Railway Labor Act—their best efforts by mediation. I have seen those efforts exerted all night sometimes. It is not the time that is important. It is what is done with it.

I read to this committee this morning my own views concerning mediation. They were expressed following the report of the Presidential Commission. I don't think they set the standards for mediators a bit higher than the talents that are presently available in that body.

Mr. BROTZMAN. Now, if I could stop you right there, if I understood some of your prior testimony, you think that it is essential at this point to have energetic mediation. Is that correct?

Mr. ZIMMERMAN. Yes, sir; I do.

Mr. BROTZMAN. My next question is, Do you know of personnel that we presently have available to provide the energetic mediation necessary?

Mr. ZIMMERMAN. Yes, indeed.

Mr. BROTZMAN. Are they presently employed by the Federal Government?

Mr. ZIMMERMAN. Yes, sir.

Mr. BROTZMAN. Are they presently on the National Mediation Board?

Mr. ZIMMERMAN. Yes, sir.

Mr. BROTZMAN. It was their responsibility before to provide this energetic mediation stimulus; was it not?

Mr. ZIMMERMAN. I am not certain about that, sir. I am going to be quite candid

Mr. BROTZMAN. Wait a minute. Did you hear my question? I said it was their responsibility to provide it.

Mr. ZIMMERMAN. I said I am not certain about that.

Mr. BROTZMAN. It is not their responsibility to afford energetic mediation to bring these forces together?

Mr. ZIMMERMAN. I am not certain what policy they operated under. I say only, and I know it previously made some people very unhappy by talking about this mediation, I say nothing—nothing—concerning the ability of people who are available because I know their ability. I have been subjected to it but not in this case for reasons that I don't know about which I will not guess about it.

I say to you that it is my very considered judgment that their ability has not been fully utilized in this case and I deplore unused talent. I say that and I want everyone to understand——

Mr. BROTZMAN. In your opinion, what would be necessary to get them to use these abilities to perform the energetic mediation that is necessary?

Mr. ZIMMERMAN. I should think that a suggestion from this body or from the Congress or, more hopefully, if the Meany resolution were to be adopted, that Congress or a watchdog committee would say, with their full authority: "You have the talent; you will be provided with whatever mechanical means you need. Go out there and get these people just as close together as you can get them, as demonstrated by your ability of handling tough situations in the past."

Mr. BROTZMAN. I want to conclude this. Do you agree that if there is an impasse between the forces of labor and management to the detriment of the public interest, that someone has to be the judge? That is, if there is a complete impasse?

Mr. ZIMMERMAN. Yes.

Mr. BROTZMAN. You agree there has to be somebody to make the decision. I ask you the second question. Who should that be?

Mr. ZIMMERMAN. Under the proposition which I think we are discussing, I should think this would be the people who are mediating, the so-called watchdog committee—and that is not my term—and I would suppose that at least insofar as the mediators are concerned, they ought to have good knowledge at that point of the judgment that the parties themselves placed on this situation.

Mr. BROTZMAN. I asked you this question: If there is an impasse between the forces of labor and management to the detriment of the public, somebody has to make a decision. You said yes. Now, it seems to me we are called upon to determine whether or not this impasse presently exists.

It seems to me that part of our job here is to determine if you have, in fact, reached an impasse. I am going to say frankly that I have listened very carefully to a great deal of testimony from that witness chair over a period of time here in the last few days, and I am sort of an optimistic type of person, but I haven't heard anybody that really has convinced me that you are not at an impasse now.

I would like to be able to agree with the Secretary of Labor that I heard speak in what I thought were wishful terms, and all of you gentlemen who have been here have talked along these same lines. But I can't be convinced that something is really going to happen if you continue your present course of negotiation.

Mr. ZIMMERMAN. I would like to comment just in two sentences, and Mr. Malin might like to comment.

So help me, I cannot agree with anyone that we have an impasse or anything that can properly be called an impasse when we accomplished only yesterday as much as I believe we accomplished yesterday.

Mr. BROTZMAN. Let me ask you a question. I don't want anything confidential, but can you tell me what you accomplished yesterday or is this out of the realm of things that we should know about?

Mr. ZIMMERMAN. I would prefer, since with our accomplishment of yesterday we left discretion on that subject with the Department of Labor, not to go into the detail here.

Mr. BROTZMAN. I am not going to press you for an answer at this time.

Mr. ZIMMERMAN. It is happening.

Mr. BROTZMAN. All I hear are conclusions, but I don't see any facts that really seem to support the conclusions. This is bothersome to me.

Mr. MALIN. May I offer this partial answer to you?

Mr. BROTZMAN. Surely.

Mr. MALIN. Inasmuch as it was a document deposited with the Secretary of Labor which he thought might be useful in negotiations with the other side, we can't get into it, but it was a document which represented a further recession on our part from the positions previously taken on the fireman-helper issue in this case.

Mr. BROTZMAN. Thank you.

The CHAIRMAN. Let us don't get any erroneous impression from what has been stated, please. I hope your optimism is well founded.

During the course of today, at one time you were very optimistic, and at another time you were very reluctant and very pessimistic about it in answering a question. I don't want this record to be in such condition that there is great hope today because the Secretary of Labor reported to me this morning that you cannot come to any agreement, and so far as the purposes of the hearing here today, nothing happened that would change the situation. That was this morning. I don't know what has happened since. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

I would like to address the first question to the grand chief or the assistant grand chief.

As I understand it, you have an engineer and a fireman on a passenger train, only two men in the cab.

Mr. DAVIDSON. That is right.

Mr. KORNEGAY. On a freight train carrying material you have three people in the cab, an engineer, a fireman, and the head-end brakeman. That is the thing that I have not understood yet during the course of these hearings; that is, why does it take more personnel to operate safely the freight trains than the passenger trains?

Mr. DAVIDSON. That is not always correct, Congressman. The brakeman is not always up in the cab in the operating end. I think that was put in the record today at more than one place.

Mr. KORNEGAY. You described, Mr. Davidson, or Mr. Zimmerman, the duties of a fireman on a diesel, and they are to relieve the engineer, to make minor repairs on any of the units, and also to look out the window opposite from the engineer.

Mr. DAVIDSON. Adjust malfunctions in the powerplants.

Mr. KORNEGAY. The engineer controls the throttle.

Mr. DAVIDSON. That is right.

Mr. KORNEGAY. It makes the train go forward and slows it down. He also controls the braking system on the train?

Mr. DAVIDSON. That is right.

Mr. KORNEGAY. Actually, the term "brakeman" is somewhat a misnomer in the present day.

Mr. DAVIDSON. No.

Mr. KORNEGAY. Does he execute the brakes?

Mr. DAVIDSON. He wouldn't handle the brakes except in a rare occasion.

Mr. KORNEGAY. That is what I am getting at. The brakeman doesn't actually put the brakes on.

Mr. DAVIDSON. I don't think I understood his question at first.

Mr. ZIMMERMAN. It has been said that there are firemen with no fires to tend and brakemen with no brakes to handle. Brakemen have never operated the train brakes from the locomotive. But boxcars, gondolas, all the freight equipment, all the passenger equipment, have essentially the same braking system on them they have had for years, brake cylinders, brake shoes, a hand brake of some kind or another.

Insofar as stopping the train, I guess it has been 75 years since a brakeman and the conductor went back over the tops with their clubs and wound them down. But they still handle those hand brakes and release them when cars are picked up from the spur, set them when they are set out, set them when trains are stopped on grades.

Mr. KORNEGAY. What does the head-end brakeman do?

Mr. ZIMMERMAN. I suspect that when the BRT is sitting where I am sitting, they will give you full details. His chores, in my judgment, have not changed since I went railroading in 1937. He has to be on the ground when the road train stops to do station switching, to check out cars, check the cars before the train leaves his initial station. They have people working back there, and a lot of things to do.

Mr. KORNEGAY. You have a brakeman in the rear?

Mr. ZIMMERMAN. Yes, in the caboose. On rare occasions he might be 3 miles back. It is not at all unusual to be a mile and a half or 2 miles back there with today's trains.

We have the flagging obligations not only imposed by rule, but dictated by commonsense when you have more than one train on the railroad.

Mr. KORNEGAY. Does the brakeman also handle the flagging?

Mr. ZIMMERMAN. Yes, sir.

Mr. KORNEGAY. Then you don't have a man known as a flagman?

Mr. ZIMMERMAN. The man known as a flagman is a brakeman.

Mr. KORNEGAY. Then you have the engineer, the fireman, the head-end brakeman, and rear-end brakeman, and the conductor on the average freight train regardless of the length of the train?

Mr. ZIMMERMAN. That is the normal crew complement.

Mr. KORNEGAY. When the head-end brakeman is not riding in the cab, where is he riding?

Mr. ZIMMERMAN. I am going to speak from experience. He might be in the trailing unit. He might be back on a car watching to see if that is flour or some kind of commercial dust dribbling out, or smoke coming out of one of the journal boxes. He can be just about anyplace on that train.

Normally, he is close to the head end when the train is in motion. When you stop at a station, he can be anyplace where the work is. That is what he is there for.

Mr. KORNEGAY. Thank you very much, Mr. Zimmerman.

Let me ask you this: You stated earlier in the day, and then the chairman asked you a few questions about it, and that is your statement with reference to the fact that the brotherhoods have not threatened to strike, and that any strike that would have come about would have been a defensive measure as the result of the carriers promulgating the rules which were outlined in their notice of November 8, 1959.

Mr. ZIMMERMAN. Yes, sir.

Mr. KORNEGAY. Let me ask you this: Had the carriers served notice that they were going to promulgate rules based on the terms and conclusions as outlined in the report of the Presidential Railroad Commission; in your opinion would the brotherhoods have struck in that case?

Mr. ZIMMERMAN. I think that defensive measures under those circumstances would have definitely been indicated.

Mr. KORNEGAY. Then what you mean is that they would have struck?

Mr. ZIMMERMAN. I believe so. The question is moot, but I believe the answer would be "Yes."

Mr. KORNEGAY. Now, what if they had served notice that they were going to promulgate rules based on the terms and conditions as found by the Emergency Board 154?

Mr. ZIMMERMAN. That would——

Mr. KORNEGAY. Would the brotherhoods have struck?

Mr. ZIMMERMAN. That would have provided a great source of entertainment, because promulgated as they stand, I don't know how you could operate a railroad under them. There are suggestions in there, practically directives. They are not rules.

Mr. KORNEGAY. I am not going into the merits or demerits because I am not prepared to do so.

Mr. ZIMMERMAN. You couldn't run a railroad under those circumstances.

Mr. KORNEGAY. But assuming that the carriers had attempted or had stated in their notice to you that they were going to promulgate rules based on those conclusions, whether they could run the train or not, or the railroad or not, would the brotherhoods have made the same decision to strike?

Mr. MALIN. May I attempt an answer, Mr. Congressman?

Mr. KORNEGAY. Yes.

Mr. MALIN. I think there is some misunderstanding about what the Emergency Board 154 recommended, or what type of things they recommended. They didn't recommend anything that was self-executing or self-implementing. They were not rules. They were just a direction to the parties to start negotiation of rules.

Mr. KORNEGAY. The Emergency Board made certain suggestions or modifying of the original rules, and also the suggestions of the Presidential Commission, didn't they?

Mr. MALIN. Only in the most general way. We pointed that out in our outline today. The Emergency Board 154 simply told the parties, "You go out and find the rules, work out the rules which will suit

you best. We are giving you some general guidelines to help you get started." So you could not say that anybody could promulgate the rules or the working conditions set forth by the Emergency Board because it didn't set forth any working conditions or rules. They just set forth the prescription for arriving at an agreement. This could be interpreted by the parties.

Mr. KORNEGAY. Let me see if I understand you. There was nothing substantive about that report. It was merely procedural; is that correct?

Mr. MALIN. If I might use their own language, perhaps this will explain. As we state on page 8 of our outline, the statement in the next to the last paragraph, the Board stated:

> Our recommendations are designed to aid the parties to explore several solutions in order to find those which best fit their vital needs at this time. We have not attempted to specify precise solutions to these problems. We believe that true collective bargaining will more likely succeed if we suggest general directions rather than specific solutions.

As a result of that, we said that we would accept the suggestion as a basis for bargaining.

Mr. KORNEGAY. I thought you had declined to accept the recommendations.

Mr. MALIN. I know that is the general feeling that results from the carriers saying we accept and we reject. But we have said over and over that this is the basis for bargaining as they recommended.

The CHAIRMAN. Would the gentleman yield?

Mr. KORNEGAY. Yes, sir.

The CHAIRMAN. I don't want to get too far from what the actual record is. On page 11 of the report, they said, "We recommend 1, 2, 3, 4, 5, 6." That is not guidelines. Those are absolute recommendations.

Mr. MALIN. Page 11 of the Emergency Board report?

The CHAIRMAN. Yes. The record is replete over and over again that the railroads said they would accept this recommendation and the brotherhoods said they would not.

Mr. MALIN. Sir, the brotherhoods have not said that they would not accept these recommendations. The brotherhoods have said that they would accept this as a basis for bargaining. The language to which you refer on page 11 is preceded and placed in a context which requires the parties to bargain.

I would respectfully direct your attention to page 6 and 7 immediately preceding the fireman issue where they used the very language that we quoted: that our recommendations are designed to aid the parties to explore several solutions, and so forth, and that they are suggesting general directions rather than specific solutions.

The CHAIRMAN. Then it is followed by specific discussions and recommendations on the various issues.

Mr. MALIN. That requires, sir, some implementing proposals which we made which would give effect to the general recommendations of this Emergency Board.

The CHAIRMAN. I don't want to interrupt the gentleman from North Carolina.

Mr. KORNEGAY. I do not mind at all, Mr. Chairman.

The CHAIRMAN. You have said you have not rejected this.

Mr. MALIN. We have said repeatedly we have not rejected this report, sir.

The CHAIRMAN. If I understand correctly, the Secretary of Labor testified very emphatically that you did reject it.

Mr. MALIN. That was not my understanding when I heard him testify before the Senate Commerce Committee.

The CHAIRMAN. I heard him testify here, and I want to look this record over and see. Maybe we have some basis of something to try to see what can be done.

Mr. MALIN. We have tried to work with this report.

The CHAIRMAN. We have been told that the railroads would accept this, and we have been told that you rejected it. If you say you have not rejected it, may be that is the basis in trying to get closer together down here and have a little fellowship.

Mr. ZIMMERMAN. I can't quote you precisely the comment that the five chief executives of the organizations made with respect to this report. I do recall clearly that they said "We neither accept nor reject this report." That is a direct quote. What followed said in essence, "As we regard it, it is a basis for bargaining."

Mr. KORNEGAY. Did you do any bargaining based on the recommendations? Did you proceed to do any bargaining based on the recommendations contained in the report of the Emergency Board 154?

Mr. ZIMMERMAN. We are still engaged in that pursuit.

Mr. KORNEGAY. Then I take it that your answer is that the operating brotherhoods have neither accepted nor rejected the report filed by Emergency Board 154.

Mr. ZIMMERMAN. That is correct. We have been endeavoring to bargain with that report as a basis.

Mr. KORNEGAY. Let me go back and see if we can get a specific answer, Mr. Zimmerman, to the question I originally asked about it.

Based upon this report of Emergency Board 154. if rules had been drafted by the carrier and notice had been served that they intended to promulgate rules based upon those recommendations, would the brotherhoods have struck?

Mr. ZIMMERMAN. That question, sir, and I am sorry, I don't think lends itself to my answering it—this is not a supposition—I know what Emergency Board 154 has said is subject to some disagreement concerning interpretation.

It would be quite possible for either party to sit down and draft up a promulgation and urge and argue that everything is supported. I don't know what the promulgation might be and I don't think I can answer that question the way you put it.

Mr. KORNEGAY. You are familiar with the report of Emergency Board 154, I take it. Aren't you familiar with that report?

Mr. ZIMMERMAN. I am not sure there are terms; there are recommendations in substance and I am familiar with them; yes, sir.

Mr. KORNEGAY. As I have interpreted the testimony here today, with each progressive move starting with the rules promulgated by the carriers in November 1959, then you come along with the Presidential Commission, and then Emergency Board 154, each of those rules or recommendations, whatever they might contain, became a little

more acceptable to the operating brotherhoods, a little closer to what you desire out of this dispute; is that correct?

Mr. MALIN. Emergency Board 154 was one which did constructive work in our judgment, and provided the basis for bargaining. The question of promulgation of rules unilaterally by one side is subject to two difficulties.

In the first place, Emergency Board 154 contemplated no unilateral action by one side. In the second place, if one side did unilaterally interpret the Emergency Board's report to provide rules, it could interpret it any which way and interpret it in some way, we would accept it and interpret it is another way. We would not. There is no unique interpretation. It is a general direction for bargaining. It is not possible to say, "Would you accept the rules promulgated on the basis of Emergency Board 154?" because this leaves you a wider area of what kind of rules they might be.

Mr. KORNEGAY. I understand that. But be that as it may, do you now feel that there is some merit or some worth in the report and suggestions made, whatever they may be, of Emergency Board 154?

Mr. MALIN. Yes, sir; and we have said so many times.

Mr. KORNEGAY. You were highly critical of the carriers, the Presidential Railroad Board and the public members on it and the National Mediation Board. Board 154 is the only one I heard you not criticize here today.

Mr. MALIN. We think within the limitations of their time they did a fine job.

Mr. KORNEGAY. And that could well serve as a basis for further negotiation.

Mr. MALIN. That is what we have been saying, and that is what we want, and that is what we are trying to do.

Mr. KORNEGAY. My time has more than expired, and I don't want to get into any long discussion of this proposition. I have been impressed with the statements you gentlemen made with reference to the lack of time, that you have not had sufficient time, and that there has been insufficient collection bargaining.

Yet my thoughts always turn back to the fact that this controversy has been going on since November 1959, which will be 4 years this coming November. Of course, I realize that at certain times moratoriums were called when these boards were meeting, but it does appear there was a considerable amount of time when the two parties could have gotten together and gotten down to some real, hard bargaining.

I don't know whether you want to make any comment on that, but I wanted to leave that impression which I have gotten.

Mr. ZIMMERMAN. I don't laud the operation I am about to briefly indicate to you. Mr. Davidson and I were members of engineer committees in 1955, 1957, where we had one matter at hand, the matter of wages. It is my rough recollection that in 1955 we were engaged in that operation from May until October.

In the 1957 case, I recall being in Chicago before Christmas of 1957, and getting away from there sometime about Labor Day—no, it was Christmas 1956, and Labor Day 1957 we left there.

One organization, not tearing the contract apart, not worrying about manning, crew size, interdivision, only with wages.

Mr. KORNEGAY. In other words, what you are saying is that it takes a long time.

Mr. ZIMMERMAN. We are not proud of it, but we are not noted for speed in bargaining in this industry.

Mr. YOUNGER. If the gentleman would yield, I think it might be well to read into the record here the Secretary's response to the question.

> That Board made its report on May 13, 1963. With respect to the report, the carriers indicated their acceptance of the recommendations in the report. The brotherhoods have taken a position with respect to the report which is hard to state in a single phrase. To the extent that the recommendations of that Board required or proposed final and binding settlement by an outsider of certain issues, the brotherhoods rejected that proposal. There were also recommendations in the report for negotiation about a number of issues, and the brotherhoods' position has been that that part of it is acceptable to them. I don't mean to refine this too closely. I do mean to try to stay away from any oversimplification of it.
>
> In general, the carriers accepted the recommendation, and in general the brotherhoods rejected enough of it that made it not a basis for final settlment.

Is that your understanding?

Mr. MALIN. That is what the Secretary said, sir; yes, sir. What the Secretary means is that——

Mr. YOUNGER. I don't think we ought to put words in the Secretary's mouth.

Mr. MALIN. What he obviously intended to say is that on that occasion as all others when there was a case of arbitration in our contract provisions we rejected it. But we did find that the Board supplied a basis for bargaining. We did bargain with the carriers. We tried to progress the matter and we made great progress, although no settlement can be recorded as of this date.

It does serve and has served as a basis for getting the parties closer together on the very issue they should be talking about, which meant how many, when.

Mr. KORNEGAY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. No, thank you, Mr. Chairman.

The CHAIRMAN. I am constrained to ask a few more questions because the hour is late.

Mr. Davidson, I sincerely respect your position. You have a right to take a position from your knowledge. I know your experience, each of you, has been so much greater than mine—as a matter of fact, I have had none at all and you have years—but I think the implications that have been left here do deserve to let me ask a few questions to clear up what I can't help get from the implication.

I know it is a delicate situation, but nevertheless, it is a fact that you have opposed the resolution. You have emphatically stated what you think about it. I imagine in a different place and a different forum you probably could express yourself a little more emphatically about it, but whether you intended or not, there is some implication of the Secretary of Labor and others in what I believe has been an honest attempt to meet the problem. It is a grave responsibility.

I think the President was just as sincere in arriving at his conclusion to propose what he felt was a method or a solution to try to resolve the question and avoid this national chaotic condition that would result from a strike. I do not think it was a hasty decision and I do

not think it was a hasty action. I think the President had carried this on and given his special attention to it—his personal attention to it—and arrived at some solution. He outlined those in his statement to the Congress and his reasons for not pursuing a different course.

He told why he thought what any punitive labor measures would do. He told Congress he thought it would not be appropriate to follow the procedure of seizure. He did not feel that this proposal was compulsory arbitration. You feel it is. He sent to Congress the reasons he did not think that compulsory arbitration was the answer.

I think the President only had in mind carrying out his responsibility in trying to arrive at some method of establishing this. You are familiar with section 5 of the Interstate Commerce Act, are you not?

Mr. DAVIDSON. Not too familiar with it.

The CHAIRMAN. You do know that in 1940 there was a procedure which was approved by the Congress to set up a method of doing something about the protection of jobs. You are familiar with that?

Mr. DAVIDSON. Yes.

The CHAIRMAN. The President and his advisers, I am sure, had that in mind at the time they arrived at this solution which they proposed.

You are familiar with the 1916 act of Congress that provided the 8-hour standard of work and pay?

Mr. DAVIDSON. The Adamson Act I presume you are referring to.

The CHAIRMAN. Yes. You are familiar with that. The President had that to go back on as a precedent for the Congress to do something toward the solution.

President Wilson was trying to do something at that time.

So I do not believe that we should leave the record open that the President and his advisers arbitrarily chose this method of referring the matter to the Interstate Commerce Commission. I happen to be one of those who has probably had some responsibility in trying to see that the major regulatory agencies of this Government did their job as fairly and impartially, without bias and prejudice, as anyone. That has been a part of our responsibility.

For the last 6 years, as you perhaps know, this committee has been rather occupied in that field in trying to bring about improved procedures. We have attacked all these problems that our study brought to light during that time. I think we have improved the procedures. I am constrained to believe that the major regulatory agencies are undertaking to do a good job.

We do not necessarily agree with them. I disagree with some of their decisions, but they are set up for the purpose of developing a particular problem and all of them are controversial. These need to be adjudicated and that necessarily lends itself to the type of decision that not everybody is going to be satisfied with.

I just cannot believe that a major regulatory agency should receive the condemnation that has been given to it, even though I have had some rather severe criticisms of these regulatory agencies in the past. I have not ever taken the position that they are prejudiced and biased in their work, and I hope we don't have one, including the ICC, that is. If it is, and what you say is true, it needs further going over, whether it is your problem or whether it is some other problem.

I am constrained to believe from my observation, and some of these are rather experienced people, that they are making a very great effort to do their job to the best of their ability.

With that in mind, and what I believe the President had a sincere purpose in mind in making his recommendation, that he was going to an organization that had 75 years of experience in this field, to an agency that has had a lot to do with railroad industries, including your problems.

There is in the act itself a rather extended jurisdiction of the Commission over those problems affecting working conditions and rules that apply to safety. When did your organization or the brotherhood organizations come to the conclusion that the Commission was such a prejudiced organization?

Mr. DAVIDSON. I don't know when, Mr. Chairman, but let me start at the beginning a little bit here myself, if you will bear with me a few minutes.

I have the greatest respect for our President, as I said. I think that he is as sincere in what he attempted to do as any man on earth could be. I don't think he recognized this as compulsory arbitration. I have said that for the record. However, we think that it is.

The CHAIRMAN. He doesn't think so and he doesn't think so now.

Mr. DAVIDSON. That is right.

The CHAIRMAN. He is sincere and you are sincere.

Mr. DAVIDSON. That is right. But we do have a right as American citizens to disagree or interpret things a little differently.

The CHAIRMAN. Absolutely.

Mr. DAVIDSON. Perhaps that is what happens here. But we still think it is compulsory arbitration. So far as the Interstate Commerce Commission is concerned, I disagree with them on some of the decisions they have made in merger cases, in situations such as protection for employees who lose in mergers because they have not always fulfilled, as we understand it—again maybe interpretation—what the law provides for these people.

We could cite you a particular case recently on that. We don't think the body was set up for this type of adjudication. They have got their bills into it a couple of times on other railroads and even said that their decision supersedes schedules, rules, and negotiated agreements. They did that in the *Northwestern* case.

The CHAIRMAN. Mr. Davidson, let me refer you——

Mr. DAVIDSON. We don't agree with them on that.

The CHAIRMAN. I can understand that, and you have a right to disagree. I am talking about this overall policy or the feeling that because you have disagreed with them that they are just bad, per se.

Mr. DAVIDSON. Are mad or bad?

The CHAIRMAN. Are bad. I guess either word would serve your purpose.

Mr. DAVIDSON. I don't say they are bad per se, Mr. Chairman. They have a function to perform and perhaps some of it they perform in such a way that I agree with. But when I disagree or when they don't perform in accordance with the belief of our people, we certainly voice our disagreement and disapproval.

The CHAIRMAN. I was a member of this committee in the 81st Congress and we had a bill here. I have gone back and obtained the record on it. It has to do with extending the jurisdiction and authority

to the Interstate Commerce Commission to establish rules, regulations, and practices with respect to the operation of trains, intended to promote safety of railroad operation, and so on.

Mr. DAVIDSON. Mr. Chairman, I understand that is their function, but not contractual rules on wages and working conditions.

The CHAIRMAN. Of course, that had to do with working conditions.

Mr. DAVIDSON. Safety.

The CHAIRMAN. Anyway, let me refer to the record. I might say that all the organizations supported that proposal at that time and we did report a bill. I have forgotten whether it has become law or not. But several testified. You remember Mr. T. C. Carroll?

Mr. DAVIDSON. I knew him very well.

The CHAIRMAN. And our old friend W. D. Johnson, who unfortunately passed away a few days ago, and I regret it very much. He has been a close friend of mine for many, many years. He testified.

There were several that testified in connection with that and what they had to say. Here is one of the brotherhoods that said:

> I want to go on record by saying that I, in speaking on behalf of the organization which I represent, have always had high regard for the integrity and complete impartiality and objectivity of the Interstate Commerce Commission in respect to its handling of the problems here under consideration.

Mr. DAVIDSON. What was the problem, may I ask, Mr. Chairman?

The CHAIRMAN. This legislation, extending jurisdiction to the Interstate Commerce Commission to promulgate rules and so forth, as I read to you a moment ago.

Mr. DAVIDSON. For the promotion of safety and safe operation.

The CHAIRMAN. Yes.

Mr. DAVIDSON. I don't disagree with them on that.

The CHAIRMAN. It had to do with working rules.

Mr. DAVIDSON. I disagree, Mr. Chairman, and most respectfully say this to you, in referring a subject or issue such as we have in this case to the ICC, which is a body not composed of experienced men in this particular type of work. I might ask the question, but I don't understand there is a railroad man on the ICC from either management or labor. Am I wrong in that?

The CHAIRMAN. Unfortunately, I am not able to answer the question because I don't have the information as to the background of any of the 11 members of that Commission.

Mr. DAVIDSON. I understand that is correct.

The CHAIRMAN. I don't know. But the Commission itself has had jurisdiction over these years in dealing with job security problems, which is a part of this whole problem. I think I would have felt much better about it, although I grant you the right to express your views and I compliment you for it today, if you had just said "We are against the Interstate Commerce Commission or any other body of men, like you said, you opposed turning it over to Associate Justice Goldberg."

Mr. DAVIDSON. Yes. I think very much of him. I like Mr. Goldberg very much.

Mr. Chairman, I want this clear to you and your committee. I am not questioning the integrity of the ICC members. That is not my purpose.

The CHAIRMAN. It seems to me it was very close to it.

Mr. DAVIDSON. But I do question a case like this going to them when they have already, and it is in the record in the passenger deficit case, they quoted the Hosmer report all the way through and then turned around and set the brotherhoods out and told us what they thought of us in no uncertain language, and our work rules. I just resent sending anything like this to the ICC for that purpose.

The CHAIRMAN. I commend you for it. I think the best way in the world is to get into an open forum like this and bring these things out.

Mr. DAVIDSON. I agree with you, Mr. Chairman.

The CHAIRMAN. We are all human beings and we are subjected to our feelings with these matters. I was trying to find—you read it into the record, I don't need to reread it—where you said they prejudged this matter and that means that they were partial.

Mr. MALIN. That is toward the top of page 12.

The CHAIRMAN. I would quarrel with your statement that labor organizations have received very poor consideration from the ICC in train abandonment cases and merger cases. You are entitled to your opinion on that. I think that is right. But then, talking about deciding problems not on the merits at all, but on second-hand information, reflecting inspiration from AAR without real investigation and without genuine study, I hope that is not true.

Mr. DAVIDSON. I think that is correct, Mr. Chairman.

The CHAIRMAN. I just wanted to highlight that because I think it is quite a reflection on a very prominent and important agency of the U.S. Government, but again, I say I grant you you are entitled to your opinion.

Mr. DAVIDSON. I want to assure you I am a good American citizen. I have no connections with any other government.

The CHAIRMAN. I know that. I don't think there is anything that has happened here today that would reflect otherwise at all. You have been here a long time. You have all been very patient. You are quite free to express your views and your opinions here today on this all-important problem.

Mr. DAVIDSON. I will tell you something else when the record is closed.

The CHAIRMAN. I just hope that out of this will come something for a little more practical and realistic effort toward a settlement.

Mr. DAVIDSON. We are most hopeful of that.

The CHAIRMAN. In full realization of what will happen, because we just don't like to be in a position, as we are in. But if we have to do it, we just have to do it. That is all there is to it. It might work. I don't know.

Let me thank you on behalf of the committee for your appearance and your presentation here today and say that I am sorry we detained you so long.

Mr. DAVIDSON. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning, at which time Mr. Gilbert will be heard.

(Whereupon, at 6:20 p.m. the committee recessed, to reconvene at 10 a.m., Tuesday, July 30, 1963.)

RAILROAD WORK RULES DISPUTE

TUESDAY, JULY 30, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The witness this morning will be Mr. H. E. Gilbert, the international president of the Brotherhood of Locomotive Firemen & Enginemen.

I observe that you have with you, Mr. Gilbert, Mr. S. C. Phillips, assistant president.

STATEMENT OF H. E. GILBERT, INTERNATIONAL PRESIDENT, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN; ACCOMPANIED BY S. C. PHILLIPS, ASSISTANT PRESIDENT; AND HAROLD C. HEISS, GENERAL COUNSEL

Mr. GILBERT. Yes, sir; assistant president. He is sitting to my right.

The CHAIRMAN. And Mr. H. C. Heiss.

Mr. GILBERT. Our general counsel, who is sitting to my left.

The CHAIRMAN. Very good. We are glad to have you.

I observe that you have a statement you wish to present. I have some documents here that purport to be a statement of yours, and then a statement before the subcommittee of the President's Advisory Commitee on Labor-Management Policy, a statement of position of your organization. Then I observe a statement of the issues and facts submitted by the Brotherhood of Locomotive Firemen & Enginemen.

Mr. GILBERT. They will be referred to, Mr. Chairman, and a request made that they be admitted in the record as I proceed with my statement, along with one other document that I would have.

The CHAIRMAN. What is the other document?

Mr. GILBERT. That is the document we have here, "What the Fireman Does." We only have three copies of that for submission for the record.

The CHAIRMAN. I would like to see it before I permit it to go into the record, Mr. Clerk, if you will let me have a copy of it.

These documents will be included in the record. On the document entitled "Statement of Issues," is this different from the statement of issues that is already included in the record?

Mr. GILBERT. I am not familiar with the statement you have reference to now, Mr. Chairman, but I do not know of these having been previously submitted to this committee.

The CHAIRMAN. Let them be received for the record, and if it develops that it is a duplication of something we already have, the staff will take note of it. I am not sure it is something different.

You may proceed.

(The documents referred to follow:)

STATEMENTS OF ISSUES AND FACTS SUBMITTED BY BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN

In compliance with the request of the subcommittee made at its meeting with the representatives of the parties to the railroad rules dispute on July 11, 1963, the Brotherhood of Locomotive Firemen & Enginemen submits the following:

STATEMENT OF ISSUES

1. Do the services of the fireman-helper contribute to the maintenance of reasonable standards of (a) safety to the public and railroad personnel; (b) efficiency of railroad service to the public; or (c) working conditions of fellow employees (specifically, will the absence of the fireman-helper result in unduly burdening other employees)?

2. Is an apprenticeshap type of training program for firemen-helpers, including off-the-job classroom training essential?

3. (a) Shall a national rule be established which will require that train crews and all classes of road train service shall consist of not less than one conductor, two trainmen, and that train and yard crews and yard beltline and transfer service shall consist of not less than one conductor (foreman) and two brakemen (helpers) with such additional employees as are required to assure maximum safety; or (b) should all existing agreements which relate to the consist of crews and road or yard service be eliminated and the carriers given the unrestricted right under any and all circumstances to determine the size of the crew to be used?

4. Shall existing rules and practices with regard to the use of operating employees on or in connection with the operation or use of any motorcar or self-propelled vehicle or machine used in maintenance, repair or construction and inspection work be retained in the interest of safety of operations, or should all such rules and practices be eliminated and the carriers be given the unrestricted right to determine when and if any of such classes of employees shall be so used?

5. In what form and to what extent shall financial and other protection be provided for employees who are displaced, suffer loss of compensation or change of working conditions as a result of mergers, consolidations, unifications, abandonments of facilities or technological changes in operations, or changes in home terminals, home locations, or other rearrangements or changes in operations or employee assignments?

6. (a) Shall the pay structure for operating employees (local freight service excepted) be changed so as to increase the hours worked or miles run by employees by as much as 37½ percent in order to earn the equivalent of a day's pay under the present wage structure, or shall the pay structure be modernized, by reduction of hours worked per week or per month in conformity with current trends of reducing hours of employment in industry generally?

(b) To what extent, if any, shall changes be made in—

(1) Basis of overtime pay;

(2) Present rates of pay which are graduated with the weight of the power used in locomotives or maximum number of cars hauled in a road movement;

(3) Guarantees;

(4) Arbitraries and special allowances;

(5) Rates higher than standard rates;

(6) Mileage limitations; and

(7) Compensation for assignments which involve a release of more than an hour?

(c) Shall employees receive additional pay for nightwork, holidays, and for expenses when away from their home terminal?

7. Shall the carriers have absolute and nonreviewable discretion to establish runs which extend over territory where more than one group of employees holds seniority rights, or shall the organizations be permitted to continue to bargain collectively with the carriers on this subject matter?

8. What changes, if any, shall be made with reference to present agreements and practices which restrict the combination of road and yard services?

STATEMENT OF FACTS

Pursuant to the request of the subcommittee, we are also submitting herewith a statement of facts with relation to each of the issues set forth in the statement of issues. This statement was prepared on the assumption that the facts in which the subcommittee is interested are facts not bearing on the merits of the disputes but, rather, the facts with relation to the collective bargaining, such as there has been, between the parties with relation to the disputes. The facts are set forth in the order in which the issues are stated.

I. The fireman-helper issue

The issue as stated is as follows:

"1. Do the services of the fireman-helper contribute to the maintenance of reasonable standards of (a) safety to the public and railroad personnel; (b) efficiency of railroad service to the public; or (c) working conditions of fellow employees (specifically, will the absence of the fireman-helper result in unduly burdening other employees)?"

This issue arises from a proposal of the carriers to eliminate all rules which presently require a fireman-helper in the operation of all types of locomotive power in freight or yard service. The basis for this proposal as broadly advertised in a vast public relations program was that the fireman-helper at the present time performs no useful function; that he is, to use their term, engaged in "featherbedding." During the hearings before the Presidential Railroad Commission, it became clear that this publicly stated position is not the true position of the carriers. The true position of the carriers was stated by Emergency Board No. 154 as follows:

"It is important to understand the real nature of the dispute on this issue. The carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab. Also, they do not contend that the bulk of the work performed by firemen on freight diesels is not needed—left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions. They contend only that such work can be combined with other work performed by employees in other classifications, and that, in the interest of economy, the job of fireman as such can be dispensed with entirely, without impairing safety or unduly burdening other employees. They believe that two, rather than three, men can adequately handle all of the work in the cab except under very unusual circumstances."

Prior to the hearings before the Presidential Railroad Commission and during the hearings, the carriers took the position that there was not a single fireman-helper necessary in any position on any railroad in the United States. The organizations took the opposite position. Following the report of the Presidential Railroad Commission, the parties met for the purpose of negotiation. The carriers remained adamant in their position that they would not make an agreement requiring the services of any fireman-helper. On March 13, 1963, in the course of negotiations, Mr. H. E. Gilbert, president of the Brotherhood of Locomotive Firemen & Enginemen, made a proposal for settlement of the fireman-helper issue. Although stating that it was the opinion of the organization that firemen-helpers were necessary in all positions presently occupied, in the interest of achieving agreement, he proposed a national rule which would result ultimately in the elimination of a substantial number of firemen-helper positions in daylight yard service and branch line service. The carriers did not give Mr. Gilbert the courtesy of listening through his proposal and made no response to it.

Emergency Board No. 154, unlike the Presidential Railroad Commission, held no hearings but, instead, received ex parte submissions from the parties. In the summary of its report, the Board stated as follows:

"The Board noted that the railroads agreed that some firemen might be needed on freight and yard diesels and the brotherhoods agreed that some firemen might not be necessary. The dispute narrowed therefor to a search for a procedure which would permit ascertaining which situations required the maintenance of

a fireman in the interest of safety and to prevent imposing an undue burden upon others in the crew."

The Board recommended a procedure whereby positions could be eliminated as they became vacant, if filling a vacancy would require taking on a new hire after notice given to the brotherhoods. The brotherhoods would be permitted to question the discontinuance of the job on the grounds of safety or undue burden; the parties would engage in negotiations for guidelines and criteria to implement these general standards. The disputes would be settled by negotiation.

Positions could become vacant in a variety of ways. The Board recommended that firemen hired after a time when they were on notice that their jobs might be temporary, might be terminated. Similarly, firemen who had not been working recently, or had been working only irregularly, might be eliminated. For those who had been working recently, a severance allowance or the choice of preferential rehiring was recommended.

The remaining employees would continue in the employ of the carriers, but those with less than 10 years seniority could be transferred to other comparable jobs (such as a brakeman's job) with a guarantee of former earnings for a period.

Educational scholarships, retraining allowances, and separation allowances were options which the Board recommended be given to all regular and permanent employees who face loss of jobs. The cost would be borne by the carriers, supplemented by government appropriations for manpower retraining.

During negotiations which followed, Mr. Gilbert, speaking for the brotherhoods, proposed certain guidelines for determining the positions which could be eliminated as coming within the broad standards of the positions not required on grounds of safety or which could be eliminated without undue burden to the remaining employees. Although the carriers stated publicly that they would accept the report of Emergency Board No. 154, they refused to make any counter offer with relation to establishing guidelines and took the position that the establishment of guidelines of the kind proposed by Mr. Gilbert was impractical. The carriers' position was that they would follow the recommendations of the Emergency Board but as they interpreted the recommendations there was no requirement for the establishment of guidelines or criteria. The carriers have remained adamant in this position and have submitted no criteria or guidelines.

II. Training program for firemen-helpers

The organization proposed a 4-year apprenticeship-type program with specified hours of off-the-job classroom training in a number of subjects be provided for firemen-helpers who aspire to qualify for engineers' jobs. Classroom training would be at the expense of the carriers and would supplement on-the-job training. The new fireman-helper would receive wages lower than present basic rates for firemen-helpers and there would be a progressive increase to the standard rate applicable to experienced firemen-helpers. The carriers have made no counterproposal.

III. Crew consist

By their notices of November 2, 1959, the carriers propose that they shall have the unrestricted right to determine whether or not brakemen in road passenger or road freight service shall be used and whether or not yard switchmen shall be used in yard service.

The organizations propose that the number of brakemen in passenger and freight service shall be not less than two, and that the number of yard switchmen in a consist shall not be less than two, and in both instances such additional employees as may be required to assure safety. The organizations' proposal also contained a provision that the consist should include one engineer and one fireman-helper. The provision for one engineer to be used in a crew consist is now contained in the engine service organizations' proposal relating to motor cars and self-propelled machines. The dispute involving the use of a fireman-helper in a crew is encompassed within the fireman-helper dispute itself.

Presidential Emergency Board No. 154 recommended that guidelines ought to be established by negotiation between the parties based upon considerations of safety, efficiency, and undue burden on other members of the crew.

The carriers on May 31, 1963, presented to the organizations a proposal which in general would have provided for the employment of one conductor and no brakemen in passenger service; one conductor and one brakeman in freight service, and one engine foreman and one helper in yard service; the number of train service employees was to be subject to adjustment upward or downward by negotiation and arbitration. The carriers also proposed that the organizations

enter into an agreement providing for employee cooperation with the carriers in seeking repeal of minimum safe crew laws and their refraining from sponsoring similar new laws.

The organizations on June 7, 1963, submitted a proposal which in general provided for a minimum of 3 train service employees (1 conductor and 2 brakemen or helpers.)

On July 2, 1963, the organizations offered another proposal providing for a minimum of 3 train service employees, but that on railroads where rules or practices provided for more or less than two brakemen in road service or more or less than two yard brakemen (or yard helpers) in yard service changes upward or downward might be made by applying certain guidelines or criteria set forth in the proposal, with provision for final resolution of unresolved disputes in such cases.

The parties have rejected each other's proposals.

IV. Self-propelled machines

In their notices of November 2, 1959, the carriers proposed the elimination of all rules, regulations and practices which required the use of engine or train service employees on motor cars and self-propelled machines.

The notices of the employees, dated September 7, 1960, made no specific proposal on this subject, except that the proposal relating to minimum safe crew consist applies to motor cars and self-propelled machines.

Emergency Board No. 154 recommended the use of operating employees (enginemen and trainmen) under certain circumstances. The Board also recognized that abuses might occur and recommended agreement on provisions to prevent such abuses. The Board also recommended protection for dislocated and displaced employees.

Several exchanges between the parties culminating in the organizations' handing the carriers on June 3, 1963, two proposals (one covering engine service employees and the other covering train service employees).

The proposal submitted by the engine service employees incorporated therein the essentials recommended by Emergency Board No. 154. The carriers rejected the proposals of the organizations and there have been no further exchanges.

V. Employee protection

The carriers did not serve any notices upon the employees regarding employee protection.

The organizations served notices upon the carriers for rules covering financial and other protection and for stablization of employment. These notices proposed financial protection for employees affected or displaced as the result of mergers, consolidations, unifications or abandonment of facilities, or technological changes or changes in employee assignments in all instances where the Washington Job Protection Agreement is not applicable. The employees also proposed that provision be made for financial protection for an employee required to move his place of residence.

The organizations also proposed that employees with certain amounts of compensated service during prior periods be assured employment, or payment in lieu thereof, in the succeeding year.

The matter of employee protection as proposed by the employees has not been the subject of conferences between the parties, except in a very limited way during May and June 1962. There have been no discussions on this issue since the National Mediation Board closed its files on the dispute in July 1962.

VI. Broad area of compensation wage structure and fringe benefits

The carriers proposal on basis of pay, dated November 2, 1959, would—

1. Eliminate daily, weekly, and monthly guarantees.
2. Eliminate arbitraries and constructive allowance payments.
3. Reduce passenger and freight mileage rates by approximately one-third.
4. Revise held-away from home terminal, deadhead, attending court and investigation payments.
5. Preserve on individual properties existing rules considered to be more favorable to the carrier.

The employees proposal on wage structure, dated September 7, 1960, would—

1. Reduce the workday, workweek and workmonth.

2. Provide a new rule to provide that overtime would accrue:
(*a*) After expiration of basic daily hours.
(*b*) When employees are used outside regular assignments.
(*c*) On any offday.

3. Establish daily, weekly, and monthly guarantees for the various classes of service.

4. Provide for split-trip compensation for employees when released from service at other than home point.

5. Provide for differential payments for nightwork between 6 p.m. and 6 a.m.

6. Convert computation of arbitrary payments to a time basis where not so computed presently.

7. Provide a holiday pay rule for 9 holidays per year.

8. Provide for payments to reimburse employees for meals and lodging when away from home point.

There were no proposals by either party for wage increases or decreases except those that would come about as the result of revision of wage structure, reduction in hours per day, days per week and days per month without loss of earnings, etc.

Emergency Board No. 154, in recognition of the need for modernization of the wage structure, stated that its suggestions were designed to ease the path to that goal. The Emergency Board further suggested:

1. That a modest increase in average compensation is a normal accompaniment of wage structure revision and that a full 2 percent be used in revising the wage structure.

2. That a long service employee have the option of choosing the "Red Circle" principle.

3. That monthly or other periodic guarantees be developed to approximate current earnings without resulting in unduly long hours.

In respect to the request of the employees for allowance of expenses away from home, the carriers in June 1962, handed the organizations a proposal which, in its application, would have provided lodging or an equivalent allowance. The proposal would not have provided reimbursement for meals. The organizations in June 1962 handed the carriers a proposal which would have provided for payment for both meals and lodging. Neither of the proposals was acceptable to the other party and no further proposals on this subject have been exchanged since June 1962.

The organizations in June 1962 modified their original demands on holiday pay to the extent that such would be applicable on 7 instead of 9 days. The carriers made no written proposals to the unions covering this subject.

The discussions between the parties in the broad area of compensation was extremely limited. However, it developed during the brief discussions that the carriers were unwilling to provide:

(*a*) for away from home expenses except lodging,
(*b*) night shift differentials, or
(*c*) holiday pay except to regularly assigned hourly paid employees.

The carriers stated that until such time as the manning issues (fireman-helper and crew consist) were resolved, it would be impossible for them to negotiate on the wage structure. Hence, no written propositions concerning wage structure were exchanged between this organization and the carriers.

VII. Interdivisional runs

1. The carriers' notice of November 2, 1959, proposed the elimination of all agreements, rules, regulations, interpretations, and practices applicable to any class or grade of road train or engine service employees which prohibited or restricted the carriers right to (1) establish, move, consolidate, or abolish crew terminals, (2) merge or consolidate seniority districts, (3) establish interdivisional and interseniority district runs, and intradivisional and intraseniority district runs. The carriers proposal also called for the elimination of all agreements, rules, etc., which prohibited or provided penalties for running crews through established crew terminals or provided for automatic release of crews upon arrival to terminals or end of run, or when off assigned territory.

2. The organizations made no proposal relating specifically to interdivisional runs. But the organizations' proposal of September 7, 1960, provided for financial and other protection for employees affected by mergers, consolidations, abandonments, technological changes in operations, or by changes in working conditions. On June 11, 1962, the carriers were handed an organizations' pro-

posal on interdivisional runs which provided in general that the carriers might establish passenger runs up to 300 miles and runs up to 175 miles through freight for train service employees; and runs up to 175 miles in freight and passenger service for engine service employees, with financial protection for employees required to move their residences. This proposal was rejected by the carriers.

Emergency Board No. 154 stated in its report that the proposal offered by the brotherhoods in Chicago on June 11, 1962, established guidelines within which the carriers would have the right to establish interdivisional runs. The Board further stated that although these specific guidelines were not satisfactory to the carriers, the basic procedure of establishing guidelines appeared sound.

On several occasions between May 16, 1963, and June 4, 1963, the organizations and carriers discussed guidelines for the establishment of an interdivisional run agreement. The carriers have taken the position that the manning issues must be settled before an agreement on interdivisional runs can be reached.

VIII. Combination of road and yard service

The carriers, in connection with combination of road and yard service, proposed the elimination of prohibitions or restrictions on the following activities:

1. Use of passenger crews to perform switching or station work in connection with the cars of their own trains or to handle light engines of their own trains.
2. Use of road crews in other than passenger service to perform any and all switching and station work and to handle light engines of their own trains.
3. Use of yard crews to perform road work, or to perform work outside of switching limits.
4. Authority of management to designate or change switching limits or to establish or abolish yard or hostling service assignments.

The proposal contemplated the elimination of arbitraries, special or constructive allowances or penalty payments to any employee, or class or grade of employees, when road or yard crews perform any of the above described work.

The organizations proposed that further combination of road and yard service be prohibited.

The carriers in June 1962 proposed in writing an agreement which would have permitted road crews to perform five types of switching and yard service within switching limits. The proposal also contained provisions that road crews could perform hostling service within the terminal, and provisions for the elimination of the last yard assignment on a shift, last yard assignment in a yard, and for the reestablishment of yard service. On June 1, 1963, the carriers handed the organizations the identical proposal that had been made in June 1962, with the addition of certain protective allowances for employees.

Because of the importance of the fireman-helper issue, we set forth in outline form in the attachment which follows the facts as they appear in the record with relation to the functions of the fireman-helper, both in road and yard service.

Respectfully submitted.

H. E. GILBERT,
Brotherhood of Locomotive Firemen and Enginemen.

OUTLINE OF FACTS RELATING TO THE FUNCTIONS OF THE FIREMAN-HELPER [1]

Road service is the movement of complete trains over the right-of-way from place to place. Yard service is the making up of trains in classification yards and their local delivery to industry in the vicinity of the yard. The need for the fireman-helper is somewhat different in the two services.

I. ROAD SERVICE

A. The fireman-helper serves as lookout from the left side of the locomotive.

1. The engineer cannot see what is happening on the left side of the train—either laterally or to the rear, and frequently not even ahead—because of the

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[1] Supporting references are to the record made before the Presidential Railroad Commission. The references given are illustrative, not exhaustive. The transcript volume, carriers' exhibits, and employees' exhibits are abbreviated as follows: Tr. CX, and EX, respectively.

For a more complete summary of the evidence, see Emergency Board No. 154, employees' exhibit 2, "What the Fireman Does," a copy of which has been supplied to the members of the subcommittee.

physical characteristics of the locomotive, cars, and track curvature. (Tr. 53, p. 7729.)

2. Motor vehicles, workmen, children and other persons and obstacles may be on or approaching from the left side of the track and defective cars or shifted lading may be observable only from a position on the left side of the locomotive. (Tr. 53, pp. 7729–7733.)

3. Both the fireman-helper and the head-end brakeman may keep the lookout on the left when they are present, but one or the other of them is frequently absent from the lead locomotive.

(a) The head-end brakeman is frequently and for a substantial part of the time on the ground performing his switching duties en route, or by carrier rule, riding in a trailing locomotive. (CX 153, p. 24; Tr. 53, pp. 7729–7733; Tr. 50, pp. 7218–7219; Tr. 51, pp. 7407–7408; Tr. 52, pp. 7515–7525; EX 29, pp. 5–6, 68, 115; EX 30, pp. 11, 30, 57, 68; EX 117, p. 6.)

(b) The fireman-helper is frequently in the engine rooms of the diesel locomotive or locomotives in the consist making periodic inspections, correcting malfunctions, or preventing damage to equipment. (Tr. 51, pp. 7297–7305; Tr. 53, pp. 7682–7686; Tr. 54, pp. 7748–7789; Tr. 57, pp. 8253–8268; Tr. 60, pp. 8917–8921; EX 11, pp. 89, 113; EX 29, pp. 6–8; EX 30, pp. 41–43, 84–86; EX 95, pp. 1–12, 17–32, 38–41, and 45–74.)

4. The fireman-helper, by maintaining lookout while the brakeman is on the ground, has avoided injuries to the public or fellow employees on many occasions. (EX 53D, pp. 359, 333(a)(b), 311–312.)

B. The fireman-helpers pass signals.

1. Track curvature, physical obstructions, or close clearances sometimes make it impossible or hazardous for the ground crew to work on the right side and pass signals directly to the engineers during switching operations en route. At such times the train crew, including the head brakeman, work on the left side and pass signals to the fireman-helper who relays them to the engineer. (Tr. 50, pp. 7218–7219; Tr. 60, pp. 8926–8936; Tr. 5, pp. 948–949; CX 13, p. 9.)

2. In 1568 road trips surveyed by the carriers, the firemen relayed signals 2,432 times. (CS 13, p. 9.)

C. The fireman-helper maintains and restores locomotive power.

1. The diesel electric engine is a "complex and intricate" piece of machinery. (PRC Report, p. 40; Tr. 45–49.)

2. It is prone to malfunctions of all sorts which the fireman-helper detects. He corrects the malfunctions or shuts down the diesel unit to prevent damage to the equipment and possible accidents and derailments. (Tr. 51, pp. 7297–7305; Tr. 53, pp. 7682–7688; Tr. 54, pp. 7748–7789; Tr. 57, pp. 8253–8268; Tr. 60, pp. 8917–8921; EX 29, pp. 6–8, 63; EX 30, pp. 41–43, 84–86; EX 95, pp. 1–12, 17–32, 38–41, and 45–74.)

3. Malfunctions, with and without alarm warnings, are frequent. (Ibid. see also, EX 28, pp. 6 and 7, and Tr. 62, p. 9420.)

4. The carriers' own written documents, instructions and rules, and previous oral statements show that malfunctions are frequent and that firemen-helpers are required by the carriers to detect and correct malfunctions. (EX 10, 11; Tr. 54, pp. 7756–7778; EX 24; EX 26; EX 29, pp. 7, 13–47, 56–58; 101–112 and 133; EX 30, pp. 11, 13–14, 16, 45–46, 50–51 and 77–80; EX's 40, 41, 50, and 51; EX 95, pp. 1–9 and 17–26 (documents and instructions); EX 109 (previous oral statements); EX 11, pp. 89 ff; EX 30, pp. 16, 50; EX 52B (rules).)

5. Many malfunctions can be detected only when the engine is under load (power) and the train is in motion. The engineer alone cannot detect and correct such malfunctions. The fireman-helper detects and corrects such malfunctions while the engineer remains at the controls. (EX 10 (preface), pp. 137, 140; EX 109, pp. 21, 58–59; EX 11, pp. 23 (card 5A), 51, 57; EX 4, pp. 139–143; Tr. 46, pp. 6688–6690; Tr. 47, pp. 6714, 6728; Tr. 48, pp. 6838–6839; Tr. 54, pp. 7751, 7756–7758; EX 30, pp. 16, 80, 89; EX 51; EX 95, pp. 10, 27, 28.)

6. Firemen-helpers make only minor or temporary repairs, not major repairs, and they have the ordinary tools, makeshift tools and knowledgeable hands to make such repairs (as shown above, where major repairs are required, the fireman-helper still has the duty of detecting such malfunctions and shutting down the affected diesel unit to prevent damage, accidents, or derailments). (See EX 10, pp. 29, 66, 81, 103, 105, 106, 107, 125, 137, 140, 144, 145, 153, 167; EX 11, pp. 5, 4, 20, 24, 26; Tr. 46 p. 6556; Tr. 5, pp. 7315–7316; Tr. 47, p. 6794; Tr. 48, 6923, 6926, 6939–6944; Tr. 54, pp. 7756–7778; EX 51; EX 30, p. 80; EX 117, pp. 19, 81, 236. As to the carriers' own prior statements, see EX 109, pp. 21, 34–35.)

7. The alarm system is no substitute for the fireman-helper: (1) many malfunctions have no corresponding alarms; (2) an alarm only indicates something is wrong, not what is wrong; (3) the alarm system itself malfunctions; (4) there are false alarms. (EX 4; Tr. 45, p. 6458; EX 109, p. 12; Tr. 49, pp. 7047–7048, 7079–7080; Tr. 50, pp. 7210–7211.)

8. The carriers have always required the fireman-helper to make periodic inspections of the locomotive consist to detect and correct malfunctions. (EX 29, p. 7; EX 11, p. 113; EX 30, p. 43; Tr. 46, p. 6661.)

9. The majority of road trips have locomotive consists of three or more units. Malfunctions increase in direct proportion to the number of units in the consist. (EX 18, pp. 49–52.)

10. The long and heavy trains of today require the full time and energy of the engineer. He cannot assume the fireman-helper's mechanical duties. (EX 109, pp. 61–84.)

11. The fireman-helper also assists the engineer in making a prerun inspection. To know whether a locomotive will operate safely, both enginemen are required to make the prerun inspection. Frequently engines are placed on the "ready" tracks although not fit for service. (Tr. 50, pp. 7207–7209; EX 109, pp. 18, 19, 35, 57; Tr. 51, pp. 7302–7304; Tr. 52, p. 7403; Tr. 53, pp. 7680–7681; EX 29, p. 126.)

D. The fireman-helper has other duties.

1. The fireman-helper "flags ahead" under varying circumstances to prevent collisions with or derailment of opposing trains. (EX 30, pp. 12, 57; EX 52(b), pp. 4, 45, 76.)

2. The fireman-helper picks up, reads, and double checks train orders. (Tr. 52, pp. 7538–7539, 7542–7548, 7553–7556, and 7575–7576.)

3. The fireman-helper flags grade crossings when the engine is operating without the train crew. (Tr. 51, p. 7407; EX 29, p. 74.)

E. The fireman-helper relieves the engineer.

1. Due to long hours of operation in good and adverse weather, by day and night, and due to cramping caused by depressing the dead-man control, engineers become fatigued. The fireman-helper provides temporary relief. Engineers also become incapacitated. In emergency situations the dead-man control devices do not always operate and the head-end brakeman is frequently out of the locomotive cab. The fireman provides emergency relief. (EX 29, pp. 63, 130; EX 30, p. 43.)

F. The fireman-helper is the source of future engineers.

1. While the fireman-helper provides temporary relief for the engineer, he also gains train handling experience necessary to becoming an engineer. (Tr. 57, p. 8247; Tr. 44, p. 6313.)

2. The fireman-helper's experience in the engineroom is also part of his training as a future engineer. (CX 3A, p. 108; EX 109, pp. 3, 13, 53, 67, 69–71, 76–79, 81, 88–89; EX 128, pp. 127–132.)

II. YARD SERVICE

A. The fireman-helper serves as lookout on the left side.

1. The engineer cannot see what is transpiring on the left side of the locomotive, nor can he look in two directions at the same time and frequently cannot even see anything that lies ahead. (Tr. 60, pp. 8782–8783.)

2. In the yards and industrial complexes there are tracks curving to the left and right, switches, viaducts, bridges, overhead wires, third rails, buildings and heavily traveled grade crossings. Close clearances are common. Operations are conducted night and day in fog, rain, snow, and sleet.

During switching operations only the engineer and fireman-helper are in the locomotive cab. The fireman-helper keeps the lookout on the left side for: vehicles and pedestrians at crossings; railway cars and other engines; other employees, including laborers, car inspectors, and repair men and others working on or about the tracks; trespassers, including children; members of the ground crew of the engine in question and other yard engines; handcars, cranes and other equipment; cars "running out"; ties, loose rails, and other debris on the tracks and in switch points; misalined switches; employees of industrial plants being served and their equipment; and the adequacy of clearances to move cars both in industrial areas and the yards. (See EX 3, pp. 6–7; Trs. 50–65, inclusive; EX's 29, 30, 97, 117; and the photographs depicting these conditions at EX's 6, 7, 12, 19–23, 25, 31–39, 42–49, and 99.)

3. Firemen-helpers, by keeping lookout, have avoided or minimized accidents on many occasions. (Tr. 50, pp. 7214–7215; EX 29, pp. 80–81, 87–88; 94–95; 128–129; EX 53 (A) (B).)

B. The fireman-helper relays hand signals.

1. The ground crew ordinarily works on the right side and gives signals directly to the engineer. Due to physical conditions such as track curvature, close clearances, adjacent track congestion, overhead and side obstructions, the ground crew frequently works on the left side and passes signals to the fireman, who relays them to the engineer. The ground crew works on the fireman's side only when it is safer or more efficient or when there is no other way possible to perform the work. (Tr. 62, pp. 9286–9287; Tr. 50, pp. 7250–7251, 7267–7268; Tr. 51, pp. 7393, 7400–7402, 7433; Tr. 52, pp. 7488–7490, 7499; Tr. 60, p. 8840; EX 97, p. 68; EX 117, p. 5.)

2. The carriers' survey showed that in 794 trips fireman-helpers relayed hand signals on 2,633 occasions and spent 271 hours of a total of 323 given to performance of all "miscellaneous" duties. (CX 13, p. 9.)

3. Mirrors, radios, and dual control locomotives, suggested by the carriers as a substitute for the fireman-helper in communicating signals, are specifically proscribed by carrier rules as unsafe or have been tried and abandoned in the past. (EX 29, pp. 8, 95; EX 30, pp. 17–18, 25, 86–88; Tr. 51, pp. 7394–7400; Tr. 50, p. 7219; Tr. 60, pp. 8783–8784.)

C. The fireman-helper detects and corrects malfunctions.

1. The carriers' 1958 survey showed that in 750 tours of duty in yard service firemen-helpers made 1,010 routine inspections and took corrective action on 421 or 41.7 percent of such inspections. In the carriers' 1959–60 survey of 762 tours of duty, firemen made 1,149 inspections and took corrective action on 499 or 43.4 percent of such inspections. (CX 13, pp. 13, 20, 24.)

2. In yard service, as in road service, there are malfunctions which require two men to detect and correct, malfunctions for which there are no alarms, or alarms which fail. (Tr. 50, 7210; Tr. 51, pp. 7402–7405; Tr. 53, pp. 7679–7680; Tr. 54, pp. 7787–7788; Tr. 60, pp 8779–8780; EX 29, pp. 88, 96, 123, 126; EX 30, pp. 4, 68; EX 97, pp. 61–63.)

D. The fireman-helper gives relief to the engineer.

1. The fireman-helper provides emergency relief for the engineer who becomes incapacitated. Yard engines are not equipped with dead-man control devices and even if they were, such devices do not always work and would add to engineer fatigue. (PRC Report, pp. 43–44; EX 30, p. 43.)

2. Switching operations on an 8-hour shift, sometimes in inclement weather, sometimes at night with glaring lights, are fatiguing to the engineer who must frequently keep the upper portion of his body out of the cab window. Even in daytime and good weather conditions, it is common practice for the fireman-helper to change places periodically with the engineer to provide temporary relief. (EX 29, p. 123; EX 30, pp. 38–39; Tr. 50, p. 7239.)

E. The fireman-helper, in affording temporary relief for engineers, also acquires the train-handling skills necessary to becoming an engineer.

STATEMENT OF POSITION OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (JULY 16, 1963)

This document summarizes the history of collective bargaining between the parties, the reasons underlying the failure of collective bargaining, and our present position. The special concern of this organization with the fireman-helper issue leads us to give this issue primary emphasis. Our discussion of remaining issues is brief in the interest of avoiding needless repetition. We anticipate that they will receive full consideration in the submissions of the other organizations.

As early as 1933, when the diesel engine began to be used on railroads in the United States, agreements were made with separate carriers for employment of locomotive firemen-helpers thereon. The National Diesel Agreement of 1937, negotiated with substantially all of the railroads, provided for the employment of firemen on all diesel power with limited exceptions. The general terms of this agreement were preserved in later agreements, the last bearing date of May 17, 1950. Thus, for a period in excess of 25 years the subject matter of employment of firemen-helpers on diesel (as well as straight electric) locomotives has been the subject of agreement between the two enginemen

brotherhoods and the railroads parties to the instant proceedings. The carriers' notices of November 2, 1959, in respect of manning of diesel locomotives, would, if given effect, vest in the carriers the unfettered discretion to determine when a fireman-helper shall be used and deny the representatives of firemen-helpers any voice in determining when and how these positions shall be filled. Such is the gravamen of the notices of November 2, 1959, and such is the carriers' current position.

Emergency Board No. 154 rejected the carriers' attempt to deny the right of the organization to represent employees of the carriers in determining the size of the engine crew. This rejection was founded in the logical application of the discussion of the manpower issue by the Presidential Railroad Commission. After relating practices outside of the railroad industry recognizing the right of unions to represent employees in the determination of the size and composition of the work force, the Commission concluded: "In this industry, whatever may be said of others, the employees have a legitimate collective bargaining interest in the matter of crew consist, and it is our view that the collective bargaining process should remain the basic method for resolving disputes concerning this matter." (PRC Report, p. 58.) Emergency Board No. 154 recommended that collective bargaining be continued with relation to the position of the fireman-helper, and suggested, as relevant criteria to guide the parties, safety of operation and appropriate distribution of workload among all members of the crew entrusted with the responsibility of operating the train.

For a substantial period of time the carriers have publicly confessed their inability to resolve labor-management issues in the railroad industry through free collective bargaining. They openly and aggressively advocate the introduction of compulsory arbitration. This concept is alien to sound labor-management relations and contrary to the traditions of a free and open economy. Determined to impose arbitration upon the organizations, the carriers have attempted to twist the words of the Emergency Board No. 154 to require arbitration. They are now seeking to have all the issues in this case resolved by this process. Unfortunately, governmental statements that a strike in the railroad industry will not be tolerated have reinforced the carriers' refusal to engage in meaningful collective bargaining. In our opinion this has been the single most important factor accounting for the failure of collective bargaining in this case. Lulled into the belief that a strike will not be permitted and with a misguided trust in having outsiders write an agreement for the parties, the carriers have observed the formal ritual of bargaining but have deprived the process of any real substance. It is, of course, fundamental to the collective bargaining process that without existence of the strike there is no ultimate weapon, and the collective bargaining system is devitalized. We respectfully suggest that this elemental and crucial fact be kept to the fore in the consideration which this subcommittee gives to this issue in its report.

We believe that it is essential that this subcomittee be informed in detail as to what has transpired in the negotiations to date, if they can be described as such, with relation to the fireman-helper issue. The carriers have maintained throughout that there are no positions anywhere in the railroad system in the United States which would require the use of a fireman. Despite the fact that the carriers recognized before Emergency Board No. 154 that there may be some positions in which the services of a fireman are needed and that the work of maintaining a lefthand lookout, communicating signals to the engineer, and correcting locomotive malfunctions, must be performed, the carriers have consistently maintained throughout negotiations that the job of every fireman can and must be eliminated.

The labor organizations contended, and still contend, that firemen are necessary in all operations. The basis for this conviction is set forth in exhibit 1, attached hereto. While adhering to their basic contention, the organizations have, nevertheless, indicated willingness to negotiate an agreement which would provide for eventual elimination of certain firing positions in daylight yard service and branch line freight service, to be determined by application of guidelines or criteria to be agreed upon by the parties. Basic in the organizations' position is the requirement that all firemen presently on the seniority rosters be retained in service.

To give tangible expression to their willingness to negotiate, H. E. Gilbert, president of the Brotherhood of Locomotive Firemen and Enginemen, on March 14, 1963, made a proposal for settlement of the fireman-helper issue.

While stating that it was his opinion that firemen are necessary in all positions presently occupied, he proposed a national rule which would result ultimately in the elimination of a number of helpers in daylight yard service and branch line service. Confirmation of his proposal is contained in a letter to Mr. J. E. Wolfe, dated March 14, 1963, a copy being attached hereto as exhibit 2.

On March 7, 1963, the brotherhoods handed to Emergency Board No. 154 a proposal dated May 7, 1963, a copy of which is marked exhibit 3. It appears that this document was not transmitted by the Emergency Board to the carriers. Following the Board's report of May 13, 1963, and early in negotiations with the carriers commencing May 20, 1963, a copy of the document of May 7, 1963, was placed in the hands of the carriers by representatives of the labor organizations upon their learning that the document had not theretofore reached the carriers.

The proposal of May 7, 1963, was revised by the labor organizations, and the revised proposal delivered to and discussed with the carriers on May 22, 1963. A copy of the May 22, 1963, proposal is attached hereto as exhibit 4. Representatives of the brotherhoods explained that their proposal evidenced willingness to modify the May 17, 1950, diesel agreement to permit the carriers to refrain from hiring firemen-helpers on approximately 5,500 jobs, this total of 5,500 jobs being approximately 25 percent of all yard and branch line jobs. In response to a request from the carriers for a breakdown of how the figure of 5,500 jobs was arrived at, the organizations provided these data in a memorandum dated May 24, 1963, a copy of which is attached hereto as exhibit 5.

Patently, the labor organizations have offered substantial concessions by way of compromise pointing toward the settlement of this dispute. The carriers, on the contrary, have adhered to original positions and have made no proposal whatever by way of compromise. Their papers to be filed with this committee will so reveal.

The proposals of May 7 and May 22 are, in the opinion of the organizations, completely harmonious with and indeed in effectuation of the report of Emergency Board No. 154 dealing with the firemen's issues, containing as they do guidelines or criteria by application of which it may be determined whether jobs of firemen in certain areas may be eliminated after vacancies occur. The proposal of May 7, 1963 (exhibit 3), demonstrated to the Emergency Board the feasibility of preparing guidelines or criteria in this area, while the proposal of May 22, 1963 (exhibit 4), refined the previous proposal during progress of negotiations subsequent to the Emergency Board's report. By references to the section of the Emergency Board's report captioned "The Firemen's Issue—The Job and the Individual," it will be observed that the Board stated that it should be possible "to establish certain categories of jobs or situations the elimination of which by the employer would probably be protested and the basis of safety or undue hardship," and to select "key situations * * * to avoid a hailstorm of grievances * * *." The brotherhoods have complied with these directives in the report, while the railroads assert that the preparation of guidelines or criteria is impracticable, hence, they have submitted none.

A word should be said about the proposal of this organization and the Brotherhood of Locomotive Engineers for a training program for enginemen. It has been the position of these organizations that with the increased complexity of the diesel electric locomotive there was a need for developing a uniform and carefully conceived program of intensive training. Such a program would take the place of widely varying present practices ranging from little or no training to thorough schooling in all problems of locomotive and train operations. The carriers have largely ignored this proposal.

This brings us to the present position of this organization with relation to the fireman-helper issue. This organization is prepared now to negotiate an agreement which would permit the carriers to refrain from hiring firemen-helpers for certain daylight and isolated branch line jobs, subject to the following conditions:

(*a*) All enginemen having seniority rights as firemen will be retained on seniority roster;

(*b*) Where there is need for an individual to perform the work customarily performed by firemen, such individual will come from the ranks of firemen;

(*c*) The establishment of a training program for firemen-helpers and engineers;

(*d*) The establishment of agreed-upon guidelines, or criteria, to determine what firemen-helper positions may be blanked in the future.

CREW CONSIST

This is an issue of most immediate concern and addresses itself primarily to the organizations representing train and yard service employees. It is a matter, however, in which engineers and firemen have an interest in considerable depth, for crew size has a direct relationship to safety, efficiency, and the burden of work to be borne by each member of the crew. The posture of negotiations and the position of the parties therein respecting this issue will be developed fully by the representatives of the train and yard service employees and it suffices for us to say that our views on this issue are harmonious with those of the other organizations.

SELF-PROPELLED MACHINES

This issue has been the subject of discussion at a number of conferences and of exchange of proposals. The first written proposal was submitted by the carriers to the organizations on May 29, 1963, and was followed by a second and different carrier proposal on May 31, 1963. These proposals are attached hereto and marked "Exhibit 6" and "Exhibit 7," respectively.

On May 31, 1963, the organizations representing the train and yard service employees handed the carriers a proposal regarding the manning of self-propelled machines by such employees, this proposal being attached hereto and marked "Exhibit 8."

Thereafter, on June 3, 1963, the carriers were handed a proposal respecting manning of self-propelled machines by engine service employees; this proposal is attached hereto and marked exhibit 9.

Conferences on this subject matter have, in the judgment of this brotherhood, been characterized by progress, however slight.

The Brotherhood of Locomotive Firemen and Enginemen stands ready to confer, and is prepared to consummate an agreement in consonance with the proposal made by the engine service organizations on June 3, 1963.

EMPLOYEE PROTECTION

The substantial reduction in work force in the industry, 48 percent from 1947 to 1961 (Monthly Labor Review, October 1962, p. 1129, table, p. 1130), resulted in serious dislocations to thousands of operating employees and their families. To alleviate for the future the impact upon employees of technological changes, mergers, abandonments, and similar on-going developments, the organizations proposed that protection be afforded to employees.

This proposal was discussed in a very limited way during May and June of 1962. There has been no discussion of this issue since that time.

COMPENSATION, WAGE STRUCTURE, AND FRINGE BENEFITS

At pages 7 and 8 of the Statements of Issues and Facts filed by the Brotherhood of Locomotive Firemen and Enginemen on July 15, 1963, the proposals of the carriers and organizations with relation to the above subject matter were briefly summarized. This broad area of compensation has been the subject of only short discussion because of the carriers' insistence upon postponement of its consideration until such time as the remaining issues were disposed of. On June 11, 1962, the carrier submitted to the organizations a proposal regarding payment for expenses incurred away from home. This proposal is attached hereto and marked exhibit 10. Except for the proposal mentioned, there have been no proposals made by either of the parties on the subject of compensation, wage structure, and fringe benefits.

Revision of the wage structure in this industry should bring about modernization pursuant to the notice of the employees dated September 7, 1960. In that context, the social and economic progress and trends in the country must be given their proper weight. Where, by general industrial acceptance and public policy, new concepts become the norm, such pattern should also be adopted in the railroad industry in the matter of wages and earnings. In light of this, a revision of the wage structure of operating employees should incorporate elements not found presently in working agreements.

Revision of the wage structure ought to accomplish the following:

1. Establish a fixed point for the threshold of overtime based upon the hours of a basic day.

2. Reduce the hours per day, days per week, and days per month without loss of earnings.
3. Provide a Red Circle principle for employees who may be adversely affected in a revision of the wage structure.
4. Provide for appropriate earnings guarantees for assigned and unassigned employees.
5. Provide for computation of arbitraries and constructive allowances on a time basis.
6. Provide for payment of expenses away from home (meals and lodging), holiday pay for all employees, and a night shift differential.
7. Provide payment for hours worked plus miles run in order to discourage excessively long and burdensome runs, as well as provide adequate compensation therefor in lieu of the present method of calculating pay on the basis of either miles run or hours worked.
8. Provide for correction of earnings factors for employees who have converted from the 6- or 7-day week to the 5-day week.

So long as the carriers are able to maintain their insistence upon postponing discussion of compensation problems until settlement of the manning issues, such discussion must abide the event of settlement. The organizations, of course, stand prepared to negotiate on this subject or any part thereof at any time.

INTERDIVISIONAL RUNS

In an effort to dispose of this issue, the organizations as long ago as June 11, 1962, made a proposal to the carriers. A copy of the proposal is attached hereto as exhibit 11.

The organizations' proposals would permit the carriers to extend freight runs up to as much as 175 miles. The present average freight run in engine service is 120 miles with an average onduty time of 5.65 hours. On this speed basis, a run of 175 miles would take approximately 8 hours. During discussion of the organizations' proposal, the carriers stated that they were thinking in terms of extending runs to as much as 300 miles, which on the basis of the present average speed per hour would require 13 hours on duty continuously for train and engine crews.

The proposal made on June 11, 1962, is, so far as the organizations are concerned, open for discussion, and the organizations are disposed to enter into an agreement according to its tenor.

COMBINATION OF ROAD AND YARD SERVICE

On this issue the organizations have received two proposals from the carriers which have been the subject of only limited discussion. The second proposal bearing date of June 1, 1963, is identical with the initial proposal made June 11, 1962, except for incorporation of new material identified as (i) in the second proposal. The second proposal is attached hereto as exhibit 12.

Agreements in effect on nearly all railroads permit road crews to perform some yard service, and yard crews to perform some road service. These agreements are of local origin and differ materially from railroad to railroad. Various considerations have been exchanged in course of the consummation of these agreements and their undoing involves much further unraveling, a difficult project if undertaken on a national basis.

The proposal of the carriers would in many instances destroy contractual seniority rights among crafts and classes of employees.

There exists a national agreement permitting railroads to provide switching (yard) service to new industries locating themselves within 4 miles of presently established switching limits. There also exists a national agreement permitting negotiation and binding arbitration on questions of extending switching limits. Having due and proper regard for the latitude already provided by national rule permitting extention of switching limits, and the demonstrated success of local bargaining in this area, the organizations are of the opinion that circumstances do not warrant the extreme position taken by the carriers.

The organization stands prepared to negotiate.

Respectfully submitted.

H. E. GILBERT,
Brotherhood of Locomotive Firemen & Enginemen.

EXHIBIT 1 TO STATEMENT OF POSITION OF BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN,[1] JULY 16, 1963

American railroads have made truly extraordinary strides in productivity since World War II. As stated by Emergency Board No. 154:

"Recent years have been years of progress and innovation for the carriers. Technological and organizational changes have been many and far reaching. Forty percent fewer employees than were employed at the beginning of this decade now handle substantially the same volume of traffic. Productivity gains have outstripped those in industry generally by a wide margin."

Significantly, this increase in productivity accompanied as it was by such a sharp decline in employment could not be accomplished without the cooperation of the brotherhoods.

The shabby denunciation by the carriers of their own employees, as featherbedders, by one of the most extensive public relations campaigns in recent history, referred to recently by a staff reporter of the Washington Post as "filicide," has obscured the real issue. In the proceedings before the Presidential Railroad Commission and Emergency Board 154, the charge of featherbedding evaporated. The record was undisputed that the fireman (helper) performed essential duties. Emergency Board No. 154 pierced through the smog of the carriers' publicity campaign. It stated as follows:

"It is important to understand the real nature of the dispute on this issue. The carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab. Also, they do not contend that the bulk of the work performed by firemen on freight diesels is not needed—left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions. They contend only that such work can be combined with other work performed by employees in other classifications, and that, in the interest of economy, the job of fireman as such can be dispensed with entirely, without impairing safety or unduly burdening other employees. They believe that two, rather than three men can adequately handle all of the work in the cab except under very unusual circumstances."

It is the position of the brotherhoods that the duties performed by the fireman both in "road service" and "yard service" cannot be shifted to other employees without impairing safety and efficiency of operations and without unduly burdening other emloyees. Road service is the movement of complete trains over the right-of-way from place to place. Yard service is the making up of tains in classification yards and their local delivery to industry in the vicinity of the yard. The need for the fireman-helper is somewhat different in the two services.

ROAD SERVICE

1. *Lookout function.*—On a locomotive, the engineer's side, where the controls are, is the right side. The other, where the fireman-helper is stationed, is the left side. The engineer, except in rare instances has a view only of the right side of the train. The reason is that when the engineer looks back, the train cuts off his view of the left side. When he looks forward, his view of the left side is cut off because the cab is almost invariably located well back from the front of the locomotive. Indeed, frequently it is at the rear of the locomotive, so that the entire bulk of the engine cuts off the left view.

A watch on the left at all times is essential for safety. Pedestrians and motorists tend to be careless of trains. Children wander on the tracks. The track ahead must be constantly observed for proper alinement of switches, landslides, washouts, open bridges, impaired trackage and the presence of other obstructions such as fallen lading, lumber, or debris. The train itself must be carefully watched at all times for hot journal boxes, projecting lading, shifting load, brake rigging, swinging or loose doors, and similar hazards. The average number of freight cars in trains today is about 80, approximately 4,000 feet in length. The average number of diesel units used to provide locomotive power for trains is over three. Trains of 150 to 200 cars, and from 1½ to 2 miles in length are common. Trains of this length cannot be adequately observed by

[1] The statements contained herein are documented with appropriate record references in the outline of facts attached to our statement to you delivered July 15, 1963. For a more complete expression of our position, see Emergency Board No. 154, employees' exhibit No. 2, "What the Fireman Does."

the conductor and flagman in the caboose. The train must be observed from the front and rear.

In addition to the conductor and the flagman who ride in the caboose, the brakeman, referred to as the head-end brakeman, usually rides in the front with the engineer and fireman-helper. On some railroads the head-end brakeman rides in the last diesel unit of the locomotive consist. Carriers urge that the left-side lookout duties can be performed by the head-end brakeman, but this contention overlooks the fact that the head-end brakeman has important duties to perform that take him out of the cab for substantial periods of time. Trains stop en route to pick up and drop off cars. The brakeman's job is to uncouple and couple cars, connect and disconnect airhoses and give appropriate signals to the engineer or fireman for movement of the train. It is precisely at this time when the train must make back and forth movements that a left-hand lookout is most essential, since such movements are frequently made in or near populated communities, near homes, and across crowded highways.

Because of the length of the trains the engineer is required to concentrate on the the operation of the locomotive consists. The head-end brakeman assists him in the lookout function on the right side of the train and, in particular, in looking out for the train itself. Because of the position in which the engineer sits and the need at all times to have his foot on the deadman control, looking to the rear would place an additional strain upon him.

During the absence of the fireman-helper from the cab of hte diese lto inspect the diesel units or to correct malfunctions when necessary, the head-end brakeman takes over the lookout duties.

During the absence of the fireman-helper from the cab of the diesel to inspect particularly important to have three men in the cab. To be sure, there are times when there is some overlap in the lookout duties of the fireman-helper and head brakeman, but such overlap is not at all unusual in industry. Manning requirements must be evaluated on the basis of the entire job to be performed.

2. *Passing signals.*—No train starts until the engineer receives a signal to do so from another crew member, usually on the ground. When doing switching en route, the train starts and stops on signal. Frequently because of track curvature, ground hazards and other physical conditions, the ground crew, including the head-end brakeman, must station themselves on the left side of the engine. In such cases the fireman-helper must relay the signals to the engineer. Absent the fireman-helper, the engineer would be unable to receive and respond to the signals. Even the carriers concede that the fireman-helper is required to do this work.

3. *Maintaining and restoring locomotive power.*—The modern diesel engine is a "complex and intricate" piece of machinery, prone to malfunction. When the diesel units malfunction it is the task of the fireman-helper to make the necessary repairs. Many of such malfunctions are minor or temporary in character and can be corrected by the fireman-helper with or without simple rudimentary tools. Even minor malfunctions if not corrected can put diesel units out of motion, endanger the lives of the crew and members of the public and result in great delays. The role of the fireman in this respect is to prevent such consequences. More than 50 witnesses from all parts of the country so testified before the Presidential Railroad Commission. This testimony was supported by surveys showing the actual malfunctions which occurred on various runs at various times. It was also supported by the booklets, bulletins and similar materials issued by the carriers explaining to the fireman-helper how the units work, what malfunctions may be expected and what to do to make a repair, or if that is not possible, then what action to take to safeguard the equipment against further damage. On almost every carrier the fireman-helper is required to take a series of examinations over a period of years as a prerequisite to promotion to engineer. The examinations almost always require extensive knowledge of the diesel unit and how to make emergency repairs en route. Another significant fact is that on most lines the firemen-helpers are required by company rule to make periodic inspections of the diesel units to be sure they are functioning properly. Finally, we must remember that on today's railroads four- and five-unit diesel consists are commonplace and much larger consists not unusual. Long trains with tonnage in excess of 5,000 tons are hauled every day on many railroads. Under these circumstances, the duties of the fireman-helper to maintain locomotive power are substantial.

The carriers concede that the correction of minor malfunctions is a function which must be performed, but they contend that this duty can be performed by the engineer. This contention overlooks vital realities:

(1) Today's trains hauling many cars extending long distances in length with many diesel units require the full time and energy of the engineer. He must give constant attention to the amount of power to be applied on the throttle and the braking power to be applied on hills, curves and various kinds of terrain in all types of weather conditions. He must, in addition, observe signals for right-of-way, approaching traffic and the condition of his own train.

(2) To correct malfunctions the engineer would be required to stop the train. The cost of stopping the train, the delay and hazard to other movements would make the practice not feasible. The mere mechanics involved in stopping the average train, sending out a flagman to warn other trains, recalling the flagman, and starting up again would take a minimum of 20 minutes even if the malfunction could be corrected in 1 minute. Apart from the delay, the expense of stopping exceeds the fireman's daily wage.

(3) Reliance would have to be placed solely on alarms. This reliance would be illusory. When an alarm sounds the alarm does not indicate what is wrong, only that something is wrong. Generally the fireman-helper must first determine which unit in the consist is the source of trouble, then find the nature of the trouble, and at last make the repair. Further, for many, indeed most, malfunctions there are no alarms. And naturally the alarm system can and does itself malfunction.

(4) Finally, many malfunctions require two men to detect or to correct and many cannot be detected unless the train is in motion.

The coming of the diesel has increased the need for the fireman-helper, not rendered him a supernumerary. He is now tending machinery instead of a fire, with increased skill and increased demands upon him. His removal would place an intolerable burden on the engineer, who today must cope with vastly greater tonnage and much longer trains.

Not to be overlooked is the prerun inspection of the locomotive usually performed by the engineer and the fireman-helper. These inspections usually require two persons. Moreover, the fireman-helper has the task of assisting the engineer in preparing a report to the shop forces on mechanical difficulties encountered enroute. Clearly the fireman-helper has more intimate knowledge of these matters than the engineer.

The straight electric engines present substantially the same problems as the diesel electrics and the duties of the fireman-helper are similar.

4. *Other duties*—

(*a*) Flagging ahead under rule 99. On all carriers the fireman-helper is required to walk (or run) ahead of the train when circumstances require. He might have to flag down approaching trains or warn trains on other tracks of shifted lading fouling adjoining tracks.

(*b*) Train orders. The fireman-helper has the duty of reading train orders and checking them with the engineer. An order overlooked or misintepreted can lead to a collision.

(*c*) Flagging railroad crossings. Where the engine is proceeding without the ground crew, the fireman-helper must flag crossings.

5. *The fireman-helper is necessary for relief of the engineer.*—The engineer in road service must work many hours, in weather good and bad, in daytime and in darkness, winter and summer. Switching work, backing up and setting off of cars is particularly strenuous due to the necessity of looking for signals from the ground crew and keeping arms and shoulders in an unnatural position in order to receive such signals and to maintain a vigilant lookout. Hence, it is the universal custom for the engineer and the fireman-helper to exchange places so that the engineer can secure relief. This custom not only aids the engineer but helps reduce accidents. And it gives the fireman-helper valuable experience so that he too may become an expert engineer.

If the engineer becomes ill, or dies while at the controls, the fireman-helper is available to take over the controls. If such event happens while the head-end brakeman is on the ground, no one but the fireman-helper is available to stop the train if the dead-man control fails to take effect as sometimes happens.

6. *The fireman-helper is needed as a future source of engineers.*—For generations all engineers have come from the ranks of firemen. If we decimate their ranks there will be no natural training ground for the engineer's role.

YARD SERVICE

The duties of the fireman in yard service are in general substantially the same as in road service. Lookout and signal passing, however, assume somewhat more importance and correction of malfunctions perhaps somewhat less importance due to differences in road and yard conditions.

1. *Lookout function.*—Yard movements are characterized by nearly continuous forward and reverse movements in order to switch cars. The engineer cannot see what is happening on the left side of the locomotive, nor can he look in two directions at the same time, and when the engine proceeds around a left-hand curve the engineer cannot see anything ahead. Hence, the fireman is necessary to maintain the lookout on the left side.

Yards are particularly hazardous because of the presence of numerous ground crews, car inspectors, repairmen and other rail employees, numerous switches, viaducts, bridges, overhead wires, buildings, and heavily travelled grade crossings. Close clearances are common. Yard operations are carried on night and day and under all weather conditions.

Yardwork also embraces switching in nearby industrial plants. To reach these plants it is frequently necessary to traverse public crossings and sometimes to proceed along public streets. Lookout must be maintained for vehicles, pedestrians, employees of the companies being serviced and other obstructions. In industrial plants close clearances and track curvature are also common.

The record contains hundreds of pages of testimony substantiating these facts, illustrated by hundreds of photographs depicting actual conditions in yard and industrial work throughout the United States. The testimony also shows that day by day firemen save the lives of other crew members and the general public and prevent or minimize damage to property.

In yard operations there are only two men in the cab, the engineer and the fireman. The other three crewmembers customarily work on the ground or on cars. In the absence of the fireman the left side of the train would be completely unprotected. Even the carriers admit the necessity of a lookout on the left side but assert that the work can be done by a ground crewmember. The impossibility of this approach is twofold. First, the carriers overlook the fact that there are situations when the traincrew is fully occupied. To use a train crewmember to do the fireman's work would underman the traincrew, expose employees and the public to greater risk of accident and seriously impair the efficiency of the operation. Second, it is not enough to station a member of the ground crew on the left to see danger. It is equally important to signal the information to the engineer. The fireman alone can perform this function in the cab of the locomotive. He observes from the left side and is in immediate oral or visual contact with the engineer, and if necessary will apply the emergency brake valve. Although yard engines are required to proceed slowly enough to stop short of obstructions, the engineer cannot stop for an obstruction or an opposing train movement he cannot see. It would be dangerous to the public and rail employees to operate yard engines without lookout on both sides of the engine.

2. *Signal passing.*—Signal passing is perhaps the most important operating function of firemen in yard service. Track curvature, close clearances, adjacent track congestion, overhead and side obstructions frequently require that hand signals be passed on the fireman's side. The ground crew works on the fireman's side in these situations not only because it may be safer or more convenient for them, but also because there may be no other way to do the work.

These facts were attested to by numerous engineers, firemen, trainmen and yardmasters and illustrated by hundreds of photographs and several movie presentations depicting yards and industrial areas where hand signals are passed on the fireman's side.

The carriers' own surveys indicate that signal passing by firemen in yard service is substantial. One of their surveys indicated that in 794 trips firemen relayed hand signals on 2,633 occasions, devoting over 271 hours out of a total of 323 hours spent on all miscellaneous service.

The carriers concede there are situations where signals are passed on the fireman's side but assert that in some instances mirrors, radios, and dual-control locomotives could be used instead of firemen. This position overlooks the carriers' own safety rules which prohibit the use of mirrors and radios as communicating devices. It is also a fact that the carriers have previously tried and abandoned dual-control locomotives as unsafe and inefficient.

3. *Correction of malfunctions.*—The duties of the fireman in yard service with respect to periodic inspections of the locomotive, answering alarms and correct-

ing malfunctions is similar to road service. The carriers' 1958 and 1959-60 surveys showed that in some 1,500 tours of duty, firemen made over 2,150 routine inspections and took corrective action on more than 900 occasions or on more than 40 percent of such routine inspections.

Yard engines operate continuously to insure the makeup of road and passenger trains for on-time departure or to insure delivery of cars to shippers when they want them. Absent the fireman to correct malfunctions as they occur, delay would be more frequent. A malfunctioning yard locomotive can easily tie up an entire terminal or a busy public crossing, causing substantial inconvenience to the public. While some malfunctions may be corrected by the engineer by stopping the train and then looking to the matter himself, there are many malfunctions which require two men to detect and correct. The fireman prevents or minimizes delay. Shop forces are not always available. Usually shop employees are located at points remote from the yards or where the yard engines are operating. Further, the number of shop employees in class I railroads has dropped 50 percent during the period from 1947 to 1960.

4. *Relief of the engineer.*—There are no dead-man control devices on yard locomotives. In the event the engineer becomes incapacitated the only protection the ground employees and the general public have is the fireman. Even if there were such devices, the record shows they do not always function.

The need for temporary relief is probably greater in yard service than in road service. During prolonged hours of switching, sometimes at night against glaring lights and during inclement weather, the engineer must keep a lookout for obstructions, other yard movements, and signals from the ground crew or fireman. Often the engineer must project his body in an unnatural position out of the cab window in order to see signals. The congestion, hazards, and temporal pressures of yard and industrial switching are conducive to engineer strain and fatigue. The relieve this fatigue the fireman periodically exchanges places with the engineer. Installation of dead-man control devices, which require constant physical exertion by the engineer, would add to engineer fatigue. Removal of the fireman clearly would impose an undue workload on the engineer.

5. *Training of future engineers.*—What we have said above under road service regarding the position of fireman-helper as a training for the position of engineer applies equally to yard service.

EXHIBIT 2

MARCH 14, 1963.

Mr. J. E. WOLFE,
Chairman, National Railway Labor Conference.
Mr. G. W. KNIGHT,
Chairman, Eastern Carriers' Conference Committee.
Mr. E. HALLMAN,
Chairman, Western Carriers' Conference Committee.
Mr. C. A. MCREE,
Chairman, Southeastern Carriers' Conference Committee.

GENTLEMEN: Despite your disdainful rebuffing of our sincere efforts to resume negotiations on March 13, including the unprecedented proposal of the president of the Brotherhood of Locomotive Firemen & Enginemen to settle the helper (fireman) question, we are writing you to reemphasize our willingness to engage in meaningful collective bargaining.

For the record, our March 13 meeting was the result of our efforts, as stated in letters dated February 5 and February 15, to persuade you to return to the bargaining table. While you finally agreed to meet, you conditioned your participation upon the organizations' willingness to deal with the helper (fireman) question. The organizations agreed, on March 13, to place that matter at the top of the list of issues in dispute.

In conference March 13, you reiterated the adamant position that you would not negotiate beyond the confines of the Presidential Commission Report, even though you admitted that "inequities existed," within the recommendations of that report. Further, you stated the unions had not presented any new proposal on the helper (fireman) question.

The organizations, through President H. E. Gilbert met this last requirement. His proposal clearly asserted that his organization was prepared to negotiate eventual reduction, through attrition, of the roster of helpers (firemen) in certain

yard and branch line service, an estimated 20 percent. President Gilbert stated, settlement must also include adoption of a training program for engineers and firemen.

With great dismay we watched you walk out of the conference, your third such departure, virtually in the midst of President Gilbert's statement.

We had profound hope for the March 13 meeting despite your letters of February 11 and February 28 belittling our suggestion for meetings at three levels:

1. Technical data is essential to intelligent and effective agreements, hence our suggestion for meetings at the technical level to analyze and utilize the data compiled by the Department of Labor and not previously available to the parties involved.

2. The determination of issues in dispute is absolutely essential for expeditious bargaining. Your recent handling of this dispute has obscured the issues, therefore our suggestion for meetings at the bargaining level.

3. Procedures for the use of available material and for the handling of the various issues are quite obviously necessary. We suggested meetings at the "summit" level to establish such procedure.

Full exposure of all the facts surrounding your actions in these proceedings will, we believe, convey to the public and the Government the basis of our condemnation of the existing situation. Our efforts to encourage fruitful negotiations in the American spirit of "give and take" have thus far been nullified by your continued evasion and obvious reluctance to negotiate on issues which both sides agree must be settled, and which can be really settled only by conscientious negotiation across the bargaining table.

To review briefly, as long ago as June 1962, our representatives submitted to you written proposals covering: (*a*) interdivisional service; (*b*) self-propelled machines; (*c*) expenses away from home; (*d*) wage structure. Each of those proposals represented modification of a previous position, especially those with respect to interdivisional service and self-propelled machines, two areas which involve demands management has been pressing over a period of years. We could not avoid noting that your termination of the June meetings came literally in the midst of our submission of the above listed proposals.

It was evident that you were uneasy when confronted with such constructive proposals by the organizations and a clear effort on the part of the unions to engage in real collective bargaining. However, we thought perhaps you were motivated by a desire to jockey for strategic advantage during the increasing clamor arising from potential crisis in other areas of transportaion.

When you accepted our invitations of February 5 and 15 to resume bargaining, we felt you were at last prepared to shoulder your responsibilities at the bargaining table even at the risk of being confronted with additional organization proposals. Unfortunately we were wrong.

We think it incredible that you would prate to the public press about "collective bargaining" while you exert every effort to shift your responsibility to those outside the industry, to a busy Labor Department or an already heavily burdened Congress.

We are now forced to conclude that you never wished to hear or receive valid organization proposals or to engage in collective bargaining. Clearly, you are attempting to evade your statutory and moral responsibilities. It would appear that you wish others to solve a problem you are unwilling to solve yourselves.

In the event you should awaken to your obligation, our representatives remain prepared to meet with you at your call.

Sincerely yours,

R. E. DAVIDSON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
LOUIS J. WAGNER,
President, Order of Railway Conductors & Brakemen.
H. E. GILBERT,
President, Brotherhood of Locomotive Firemen & Enginemen.
C. LUNA,
President, Brotherhood of Railroad Trainmen.
N. P. SPEIRS,
President, Switchmen's Union of North America.

EXHIBIT 3

MAY 7, 1963.

Subject to retention of all firemen on the seniority rosters, adoption of a training program, and generally the conditions identified with the proposal made by Mr. Gilbert on March 13, 1963, we could enter into an agreement permitting the railroads to refrain from hiring helpers (firemen) in the future to fill the following jobs:

(*a*) Daylight yard jobs, except where by reason of conditions such as switching passenger cars and equipment, belt line, transfer-interchange and industrial work, total time on duty exceeds 8 hours, operation of more than one yard engine in the same area during the same period, curvature of track, overhead or other obstructions, close clearances, unprotected crossings, dangers arising out of main line movements, presence of the public or railroad employees, or nature of commodities handled, or imposition of onerous working conditions on engine or traincrew, there is need for a helper (fireman) on the locomotive to relay signals or perform lookout functions.

(*b*) Daylight branch line jobs, except where number of units in the locomotive consist exceeds one, total time on duty exceeds 8 hours, or total miles run exceeds 100, maximum speed on branch line exceeds 30 miles per hour, maximum number of cars in the train exceeds 35, or imposition of onerous working conditions on engine or train crew, continuous movement of the train or engine exceeds 2 hours without relief, there is need for a helper (fireman) on the locomotive to relay signals or perform lookout functions.

The railroads will not be permitted to refrain from hiring helpers (firemen) to fill jobs on locomotives which are not equipped with dead-man control.

Work customarily performed by helpers (firemen) on diesel locomotives will be done by helpers (firemen) taken from the seniority ranks of helpers (firemen).

EXHIBIT 4

Revised May 22, 1963.

Subject to retention of all employees on the firemen's seniority roster, adoption of a training program, and generally the conditions identified with the proposal made by Mr. Gilbert on March 12, 1963, we could enter into an agreement permitting the railroads to refrain from hiring helpers (firemen) in the future to fill the following jobs:

(*a*) Daylight yard jobs, other than those—

1. engaged in switching passenger cars and equipment, or
2. engaged in belt line, transfer, interchange or industrial work, or
3. which are consistently on duty more than 8 hours, or
4. whose operations are not confined to an area from which other engines operated without helpers (firemen) are excluded during the period the job works; or
5. on which there is need for a helper (fireman) on the locomotive to relay signals or perform lookout functions by reason of such conditions as curvature of tracks, overhead or other obstructions, close clearances, unprotected crossings, dangers arising out of mainline movements, hazard to the public or railroad employees, or imposition of onerous working conditions on the engine or train crew.

(*b*) Daylight branch line jobs, other than those where—

1. the number of units in the locomotive consist exceeds one, or
2. the total time on duty may be expected to exceed 8 hours, or
3. the total miles run exceeds 100, or
4. the maximum speed on branch line exceeds 30 miles per hour, or
5. the maximum number of cars in the train may be expected to exceed 35, or
6. the continuous movement of the train or engine exceeds 2 hours without relief, or
7. onerous working conditions would be imposed on the members of the engine or train crew if a fireman were not used.

The railroads will not be permittted to refrain from hiring helpers (firemen) to fill jobs on locomotives which are not equipped with deadman control.

Work customarily performed by helpers (firemen) on diesel locomotives will be done by helpers (firemen) taken from the seniority ranks of helpers (firemen). This is intended to mean that where there is need for a man on the

locomotive to perform fireman's lookout duties, communicate signals to the engineer and/or perform operational work in connection with the locomotive to expedite its operation, such man will be a fireman.

We would be willing to modify the May 17, 1950, diesel agreement which modification would permit the carriers to refrain from hiring helpers (firemen) in the future on approximately 5,500 jobs. The formula for ascertaining the 5,500 jobs is as follows:

It is estimated that there are approximately 20,000 yard jobs, about 10,000 of which are considered as daylight yard jobs.

Of the 10,000 daylight yard jobs, 5,000 are in passenger equipment switching, belt line, transfer-interchange, and industrial service.

This leaves 5,000 jobs on daylight yard engines for which new firemen would not have to be hired. This assumes that the effect of other restrictions requiring the retention of firemen positions would be balanced out by carrier ingenuity in the rearrangement of assignments.

There are roughly 1,500 branch line jobs, of which about 1,000 would require the hiring of firemen after the seniority rosters are exhausted.

This leaves roughly 500 jobs for which new firemen would not have to be hired in branch line service, or a total of approximately 5,500 jobs in yard and branch line service.

This total of 5,500 jobs is approximately 25 percent of all yard and branch line jobs.

Source: Interstate Commerce Commission Statement M-300 plus inclusion of some 3,000 yard assignments on terminal and switching railroads not covered by ICC M-300s.

EXHIBIT 6

(Submitted to organizations by carriers 2:30 p.m., May 29, 1963)

MANNING OF MOTORCARS AND SELF-PROPELLED MACHINES

(*a*) Existing rules, agreements, regulations, interpretations, and practices, however established, which require the use of engine, train, or yard service employees on or in connection with the operation or use of any motorcar or self-propelled vehicle or machine used in maintenance, repair, construction of inspection work are eliminated, except where such vehicle or machine is used to provide motive power to move or switch other cars, vehicles, or machines (other than a maximum of two such other cars or vehicles used exclusively in hauling material or personnel to be used in connection with the work to which the vehicle or self-propelled machine is assigned).

(*b*) Every employee deprived of employment as the immediate and proximate consequence of the application of paragraph (*a*) of this rule shall be entitled:

(1) to the schedule of allowances set forth in section 7(a) of the Washington agreement of May 21, 1936; or

(2) to the option of choosing the lump-sum separation allowance set forth in section 9 of the Washington agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph (1) above.

In addition to the foregoing, such employees, if qualified, may elect within 1 year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans' Administration under the Veterans' Readjustment Assistance Act of 1952), with the carrier paying 75 percent of the tuition costs of such training for a period not exceeding 2 years. Whenever and to the extent that the U.S. Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

(*c*) This rule shall not be subject to reopening for at least 5 years from the effective date hereof.

EXHIBIT 7

(Handed to organizations by carriers May 31, 1963)

MANNING OF MOTOR CARS AND SELF-PROPELLED MACHINES

(*a*) Existing rules, agreements, regulations, interpretations, and practices, however established, which require the use of engine, train, or yard service employees on or in connection with the operation or use of any motor car or self-propelled vehicle or machine used in maintenance, repair, construction, or inspection work are eliminated, except where such vehicle or machine is used to provide motive power to move or switch other cars, vehicles, or machines (other than a maximum of two such other cars or vehicles used exclusively in hauling material or personnel to be used in connection with the work to which the vehicle or self-propelled machine is assigned).

NOTE.—"Other cars, vehicles or machine" as used in this paragraph (*a*) is intended to mean standard railroad cars; "a maximum of two such other cars or vehicles" is intended to mean a maximum of two such other cars or vehicles at any one time.

(*b*) Limitations upon the number of cars that may be moved or switched by motor cars or self-propelled vehicles or machines and upon the material or personnel that may be hauled in such cars without the use of engine, train, or yard service employees, contained in paragraph (*a*) of this rule, shall apply on the properties of all of the carriers that are parties to this agreement.

(*c*) Every employee deprived of employment as the immediate and proximate consequence of the application of paragraph (*a*) of this rule shall be entitled:

(1) to the schedule of allowances set forth in section 7(a) of the Washington Agreement of May 21, 1936; or

(2) to the option of choosing the lump sum separation allowance set forth in section 9 of the Washington Agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph (1) above.

In addition to the foregoing, such employees, if qualified, may elect within 1 year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans' Administration under the Veterans' Readjustment Assistance Act of 1952), with the carrier paying 75 percent of the tuition costs of such training for a period not exceeding 2 years. Whenever and to the extent that the U.S. Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

(*d*) This rule shall not be subject to reopening for at least 5 years from the effective date hereof.

EXHIBIT 8

(Handed to carriers by train service organizations May 31, 1963)

MANNING SELF-PROPELLED MACHINES

When a self-propelled machine is operated on tracks within switching limits it will be considered as an independent assignment and will be manned by a yard conductor (foreman) at the yard foreman's rate of pay.

When a self-propelled machine is operated in road territory it will be manned by a road conductor or qualified trainman at the conductor's rate of pay.

When additional employees are needed to provide flag protection or other related duties under the foregoing paragraphs, they will be taken from the appropriate rosters (yardmen or trainmen, as the case may be).

When self-propelled vehicles or machines, covered by this rule, are used to provide motive power to move or switch cars, each of such machines will be manned by a yard conductor (foreman) and two brakemen (helpers) if within switching limits, and by one conductor and two brakemen if in road territory.

Agreements in effect on individual properties defining the division of work between yard and road crews, will be retained.

Every employee deprived of employment as the consequence of the application of this rule shall be entitled to:

(1) the schedule of allowances set forth in section 7(a) of the Washington Agreement of May 21, 1936; or

(2) the option of choosing the lump sum separation allowance set forth in section 9 of the Washington Agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph (1) above.

In addition to the foregoing, such employees, if qualified, may elect within 1 year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans' Administration under the Veterans' Readjustment Assistance Act of 1952), with the carrier paying 75 percent of the tuition costs of such training for a period not exceeding 2 years. Whenever and to the extent that the U.S. Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

This rule will become effective on all carriers and appropriate exceptions on specified equipment is remanded to the individual carriers for negotiations.

EXHIBIT 9

(Handed to carriers 2 p.m., June 3, 1963 by organizations)

ENGINES SERVICE EMPLOYEES

I. *Assignment rule.*—An engineer taken from the seniority ranks of the locomotive engineers shall be employed on all locomotives and shall have the exclusive right to operate and control the locomotive while en route or in service.

II. *Definition of locomotive.*—The term "locomotive" is defined as any unit of motive power:

1. Operated singly, in tandem, or in multiple, however controlled.
2. Electric cars and similar cars operated singly or in multiple.
3. Self-propelled motor cars, vehicles and machines used in maintenance, repair, construction or inspection work, provided such motor cars, vehicles and machines are used to provide motive power to move or switch other cars, vehicles or machines.

NOTE.—A locomotive engineer need not be assigned to self-propelled motor cars, vehicles and machines, used in maintenance, repair, construction or inspection work provided:

(*a*) The number of other cars, vehicles or machines handled do not exceed two and are used exclusively in hauling material to be used in connection with the work to which the vehicle is assigned.

(*b*) Distance traveled does not exceed 3 miles from a terminal, siding, spur or other initial point, to place of work.

(*c*) Self-propelled machines operated in conformity with (*a*) and (*b*) above will not require the employment of helpers (firemen).

III. A locomotive engineer taken from the ranks of locomotive engineers will be employed to operate rail detector, inspection and wire repair cars placed in service on and after ———— and will continue to be employed on such cars where now employed by agreement or practice.

IV. Where locomotive engineers and/or locomotive helpers (firemen) now have the right to operate self-propelled machines, such right is preserved.

V. *Substitution of power.*—Whenever and wherever there is a substitution for the propelling type of power, a transfer of power, or a transfer in the control of operations of such power, an engineer taken from the seniority ranks of engineers shall be assigned to operate such power or equipment.

NOTE.—Training required as result of the foregoing will be provided engineers and paid for accordingly.

VI. This rule shall be strictly complied with by the carrier and shall be subject to a payment of not less than $50 to each employee entitled thereto for each violation thereof, and this section will not be subject to time limitations for claim insofar as the employees are concerned.

VII. *Employee protection.*—Every employee deprived of employment and every employee suffering a loss of earnings as the immediate and proximate consequence of the application of this agreement shall be entitled.

1. To be made whole for a period of not less than 4 years.
2. To the option of claiming the lump sum separation allowance set forth in section 9 of the Washington agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph 1 above.

In addition to the foregoing, employees deprived of employment may elect within 1 year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans' Administration under the Veterans' Readjustment Assistance Act of 1952), with the carrier paying 75 percent of the tuition costs of such training for a period not exceeding 2 years. Whenever and to the extent that the U.S. Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

EXHIBIT 10

(Handed by carriers to organizations June 11, 1962)

AWAY-FROM-HOME TERMINAL EXPENSE

Each member of a road service crew (except short turnaround passenger crews) who is obliged to be at a terminal other than his home terminal 5 hours or more after being released from duty on his inbound trip and before the time of reporting for duty for his outbound trip, shall be provided suitable lodging or an equivalent allowance.

On railroads where agreements have been made to pay higher-than-standard rates, or special allowances, in lieu of furnishing lodging as a result of agreements which permit the pooling of cabooses, the higher-than-standard rates, or special allowances, may be retained by the employees in lieu of the requirement that suitable lodging be furnished by the carrier. If lodging is furnished by the carrier, the higher-than-standard rates, or special allowances, now being paid will be eliminated.

EXHIBIT 11

Handed to carriers by organizations June 11, 1962

INTERDIVISIONAL RUN PROPOSAL

Interdivisional, interseniority district, intradivisional, and intraseniority district runs in passenger and through freight service presently in effect on the date of this agreement shall not be amended or canceled by this agreement and will continue in effect under the provisions of the individual agreements or of the Railway Labor Act, as amended.

On and after the effective date of this agreement, if a carrier considers it advisable to establish interdivisional, interseniority district, intradivisional, or intraseniority district service in through freight or passenger service, it will notify the interested general chairman, or general chairmen, having jurisdiction, in writing, at least 30 days in advance, setting forth the conditions under which the proposed run will operate and will conduct negotiations including the following provisions:

1. (*a*) Provisions which provide that new runs or sets of runs in such service shall not be established to exceed 300 miles in passenger service and/or 175 miles in through freight service for train service employees; 175 miles in freight and passenger service for engine service employees.

(*b*) Runs shall be confined to a carrier, or portion thereof, covered by a specific contract and under the jurisdiction of a single general committee.

(*c*) Constructive mileage, arbitraries, special allowances, and guarantees in effect on any district or division, at the time interdivisional, interseniority district, intradivisional, or intraseniority district runs are established, are preserved. If more than one rate of pay applies on an extended run, the highest rate will be paid for the entire trip.

(*d*) The runs so established shall not create working conditions that are unreasonably burdensome or onerous.

(*e*) That the mileage on such runs shall be distributed ratably as between employees from the seniority districts affected in accordance with rules and practices in effect on the property.

(*f*) That arrangements shall be made for a meal period at the terminal or points en route where eating accommodations are available between 4 and 6 hours on duty.

(*g*) Straightaway and short turnaround service shall not be combined.

(*h*) Establish and define home and away-from-home terminals.

(*i*) Compensation for qualifying for foreign territory.

(*j*) Understanding of physical qualifications of employees on the extended runs.

2. In the event such proposed run, or runs, are to operate through an established home terminal, or will result in the elimination or abolishment of a home terminal, or terminals, which makes it necessary for an employee to move his home or change his place of residence, such employee will be protected against property or other losses as follows:

(*a*) Each homeowner may, at his option, be paid 85 percent of the established value of his property and be permitted to retain ownership; or

(*b*) If a homeowner elects to sell his property, he shall be paid the established appraised value, but in no event shall this be less than the original purchase or construction cost, in addition to improvements made thereafter. In the event of a dispute arising under this section (*b*) the dispute may be referred by either party, on a local basis, to a board of three competent real estate appraisers, to be selected in the following manner: One to be selected by the representatives of the employees and one to be selected by the carrier and these two so selected will select a third appraiser and their appraisal shall be final and binding on both parties.

(*c*) If an employee holds an unexpired lease of a dwelling occupied by him as his home, the employing carrier shall protect him from all losses and costs in securing a cancellation of said lease.

(*d*) Employees required to move their homes as a result of the establishment, movement, abolishment, or consolidation of crew terminals shall be compensated for moving expenses in connection with any such moves and shall be given reasonable allowances for wage loss directly attributable to the time involved in relocating, and that the carrier shall not arbitrarily establish, move, consolidate, or abolish terminals so often as to require unduly frequent relocation of homes of employees affected and in no case in less than 5 years except by agreement.

3. Any employee in road or yard service adversely affected as a result of the establishment of interdivisional, interseniority, intradivisional, or intraseniority runs shall be entitled to the schedule of allowances set forth in sections 6, 7(a), and 9 of the Washington job protection of May 21, 1936, without diminution of earnings in outside industry during the guarantee period applicable, in addition to the protection against property and other losses as set forth in paragraph 2 of this agreement.

NOTE.—Refer to employees' request for adequate retraining program.

4. If a carrier desires to establish interdivisional, interseniority district, intradivisional or intraseniority district service except as herein provided, such assignments may be established in accordance with the provisions of the present national interdivisional run agreements.

EXHIBIT 12

(Handed to organizations by carriers June 1, 1963)

COMBINATION OF ROAD AND YARD SERVICE

(*a*) The carrier shall have the right, regardless of whether yard crews or hostlers are employed or are on duty in the terminal or yard where such services may be performed, to require road crews:

(1) to accompany or handle engines of their own trains from engine facilities or ready tracks to departure tracks or from arrival tracks to engine facilities or ready tracks;

(2) to switch out defective or "no bill" cars from their own trains;

(3) to handle cabooses of their own trains and to exchange cabooses from one train to another, provided the road crew handles either train into or out of the terminal;

(4) to pick up or set out cars of their own trains as required from or to the minimum number of tracks which could hold the same; and

(5) to pick up or set off cars which are part of the road train consist in more than one yard in consolidated terminals subject to reasonable restrictions concerning the maximum number of such yards.

(*b*) Where yard crews are not on duty, road crews may be required to perform all the work enumerated in paragraph (*a*) hereof and, in addition may be required to handle all switching in connection with their own trains. Road crews operating in other than through freight service or passenger service where yard crews are not on duty may be required to preform any switching or station work.

(*c*) In requiring road crews to perform the services described in paragraph (*b*) hereof, the carrier shall not arbitrarily transfer switching work to road crews to be performed on line of road which normally would be performed by yard crews.

Nothing in these rules shall be construed as depriving any carrier of any preexisting right to require road crews to perform services under any existing agreement, rule, regulation, interpretation, or practice, however established.

(*d*) Road crews are not entitled to any additional compensation other than that contemplated by the basic day, initial and final terminal delay rules, applicable to the class of service for which called, for the performance of the services described in paragraphs (*a*) and (*b*) hereof, and no yard crew or hostlers shall have any claim by reason of the road crew engaging in such work.

(*e*) Where more than one shift of yard assignments is worked and yard service requirements during the period of assignment of a given shift diminish to the extent that less than an average of 4 hours' yard work is required on that shift over a period of 10 consecutive working days, the last remaining assignment on such shift may be abolished. Conversely, when yard service requirements in such yards increase to the extent that over a period of 10 consecutive working days an average of more than 4 hours of yard work is performed within a period of time constituting a normal work shift, the yard assignment shall be reestablished.

(*f*) Where only one yard assignment remains in a given yard and yard service diminishes to the extent that less than an average of 4 hours' yard work remains to be performed on that assignment over a period of 10 consecutive working days that assignment may be abolished. Conversely, when yard service requirements in such yards increase to the extent that an average of 4 hours' yard work is required over a period of 10 consecutive working days within a period of time constituting a normal work shift, the assignment shall be reestablished.

(*g*) Time spent by road crews in performing the services enumerated in paragraph (*a*) hereof, shall not be counted in computing the 4-hour average to which reference is made in paragraphs (*e*) and (*f*) hereof.

(*h*) When yard service assignments are abolished under the conditions set forth in paragraph (*e*) or (*f*) hereof, yard crews shall be considered as "not on duty" for the purpose of applying the provisions of paragraph (*b*) hereof.

(*i*) Every employee deprived of employment as the immediate and proximate consequence of the application of this rule shall be entitled:

(1) to the schedule of allowances set forth in section 7(a) of the Washington Agreement of May 21, 1936; or

(2) to the option of choosing the lump sum separation allowance set forth in section 9 of the Washington Agreement of May 21, 1936, in lieu of the benefits set forth in subparagraph (1) above.

In addition to the foregoing, such employees, if qualified, may elect within 1 year from the date of their separation or furlough to prepare themselves for some other occupation for which training is available (of the type approved by the Veterans' Administration under the Veterans' Readjustment Assistance Act of 1952), with the carrier paying 75 percent of the tuition costs of such training for a period not exceeding 2 years. Whenever and to the extent that the U.S. Government makes provisions for retraining out of public funds, the obligation of the carrier shall be reduced correspondingly.

Mr. GILBERT. Thank you, Mr. Chairman and members of the committee.

My name is H. E. Gilbert. I am president of the Brotherhood of Locomotive Firemen & Enginemen, one of the parties to the dispute between the railroads and the operating brotherhoods.

My organization has a membership of 78,000 individuals who at the time of their admission were locomotive engineers, locomotive firemen or helpers, hostlers or hostler helpers employed on railroads of the

United States and Canada. For collective bargaining purposes, the brotherhood represents primarily locomotive firemen (helpers) and has more than 200 agreements with the railroads covering this craft of employees.

Mr. WILLIAMS. What is a hostler?

Mr. GILBERT. He is the individual who handles the locomotives in and around the roundhouse, and the outside hostlers between the roundhouse and the house and the passenger station.

Mr. WILLIAMS. He is not an engineer?

Mr. GILBERT. In the days of coal, we called him the cinder pit engineer, as such. That is the term we used. He does handle a locomotive. He handles the controls and moves the locomotive as I indicated. The hostler helper, as we refer to it here, is the individual who helps an outside hostler.

The CHAIRMAN. You may continue.

Mr. GILBERT. In addition, we represent a substantial number of locomotive engineers, principally on smaller railroad properties.

The dispute with the railroads involves, as the committee knows, a number of distinct, but sometimes interrelated issues. The special concern of my organization presently is with the fireman-helper issue, and it is upon that issue that I will lay primary emphasis so far as it is pertinent to these hearings.

The five organizations have heretofore cooperated and been unified in the process of handling this dispute with management, and that cooperation and unity continues. Since the committee will hear from the executives of the other organizations with respect to most of the other issues, it is not vital that I discuss them at any considerable length.

I should like to say this about the railroads' rules generally: They have been depicted and publicized in carrier-sponsored advertising campaigns of unprecedented scope as fair and generous to employees, and the transfusion needed to vitalize what is represented to be a dying industry. These rules, to the contrary, are oppressive and completely out of harmony with trends in industry. The railroads' rules would cut pay by more than one-third, or require the employees to work a third more hours to earn the same pay; they would wipe out the jobs of almost an entire craft of employees; they would destroy in one stroke the whole railroad wage and rules structure constructed in collective bargaining and tested for several decades.

When given their full effect, the rules and programs of the railroad companies will reduce the number of employees in the railroad industry by nearly 50 percent, and instead of having 760,000 employees, as at present, they will have in the not far distant future about 400,000 employees. When this is understood, can a rational individual wonder why we have so vigorously resisted the railroads' efforts to impose these rules and programs upon our people?

The Brotherhood of Locomotive Firemen & Enginemen, along with the other organizations, is opposed to House Joint Resolution 565.

Reduced to its essence, the joint resolution provides for a 2-year solution of the rules dispute in this fashion:

(1) It would permit the railroads to apply to the Interstate Commerce Commission for approval of the proposed work rules; and

(2) It would empower the Commission to impose such rules and make them operative for a period of 2 years. During that period, the

approved rules would establish the rates of pay and working conditions of the 200,000 employees in the operating group. The interim rules could indeed go so far as to deprive an indeterminate number of our members of employment in the railroad industry.

It has been stated that the procedures by which these radical results could be accomplished is not compulsory arbitration. I have sought advice on the meaning of the term "compulsory arbitration." I believe the definition to be verifiable in readily available legal texts.

I understand arbitration to be defined as a mode of settling differences through investigation and determination, by persons selected for the purpose, of some disputed matter, submitted by the contending parties for decision and award in lieu of a judicial proceeding.

Compulsory arbitration, as explained to me, is an arbitration proceeding to which the consent of at least one of the parties is enforced by statutory provision. I would not want to undertake a legal discussion of the definition and its application to the proceedings outlined in the resolution, but I have no hesitation in saying that, to me as a layman, the permitted reference of the carriers' rules to the Interstate Commerce Commission, and our enforced consent to such an award as the Commission may issue, appears to fall within the definition of "compulsory arbitration."

The term "compulsory arbitration" is not found in the President's message to the Congress, and administration spokesmen seem eager to deny that the proposal sets forth a scheme of compulsory arbitration. I think it obvious that the Congress is being asked to impose upon the railroad workers a form of compulsory arbitration, regardless of the name some may wish to attach to the proposed plan.

But call the procedure what you will, my organization is firmly and completely opposed in principle to processes having as their final terminal the imposition upon employees of rates of pay, rules, or working conditions not arived at in free, collective bargaining in its traditional concepts. We are opposed especially to the grant of authority to anyone to approve a rule having as its objective the elimination of the vast bulk of jobs now occupied by members of our craft.

My organization is affiliated with the AFL–CIO. The policy of that organization—indeed that of organized workmen generally—is opposed to compulsory arbitration and imposed settlement of disputes of the character with which we are here concerned.

But we do not appear before this committee simply to oppose House Joint Resolution 565. We are as firmly convinced as Secretary Wirtz that satisfactory solutions of labor disputes can be achieved only through collective bargaining. Hence, with your permission, I shall, before I conclude, offer what I believe to be constructive suggestions respecting the utilization of the collective bargaining process in the future handling of the dispute and the role Congress may play in the bargaining.

The joint resolution patently provides for drastic procedures, proposed as a desperate remedy for what has been depicted as a desperate situation. I do not believe that the situation need be desperate, nor that drastic remedies need be prescribed by Congress.

Some of the proponents of the resolution have testified to the anticipated dire results of a nationwide railroad strike. They have, by inference at least, stamped upon the brotherhoods the responsibility

for a strike on such a broad basis. I ask you to bear in mind that the scope of a strike, and whether one occurs at all, are strictly in the control of the railroad companies.

First, the fact that this dispute embraces practically all of the Nation's major railroads is of the railroads' own fashioning. It is they who conceived and formulated and served simultaneously on nearly 200 railroad properties notices of the most sweeping and horrendous rules changes in the nearly 100 years of bargaining in this industry.

Second, while it is within the power of the railroads to withhold a promulgation of their rules, in whole or in part, it is they who have chosen to simultaneously promulgate these rules on the total number of railroad properties on which they were originally served, with but two exceptions, having full knowledge that the only protective recourse of the brotherhoods is a strike coextensive with the promulgation.

I say to you in all sincerity that in my humble judgment, the railroads have deliberately and calculatedly refused to reach the point of an agreement with us, with the purpose and objective of creating a crisis of national proportions and establishing an environment for consideration of compulsory arbitration as a means of disposing of the dispute.

I do not regard it inconsistent for me to say that, despite this, in latter weeks the mediatory efforts of Secretary Wirtz, Assistant Secretary Reynolds, and Chairman O'Neill of the National Mediation Board have drawn the railroads and the brotherhoods closer to the point of agreement. In fact, I believe that sufficient progress has been evident to warrant continuation of negotiations under conditions which I will shortly respectfully suggest.

My brotherhood has understaken to promote compromise by making settlement proposals of the fireman's issue. This issue, by general appraisal, is regarded as the central or key issue in the controversy. While our proposal has not been accepted by the railroads, I think it represents progress toward agreement, and I believe that Mr. Wirtz and his associates would support me in this evaluation of what has been accomplished. The extent to which the B.L.F. & E. has contributed toward a settlement can best be comprehended and understood if I give the committee a brief description of unfettered discretion to determine when and if a fireman-helper shall be used and deprive the representatives of firemen-helpers completely of any voice in determining when and how these positions shall be filled. These notices will go into effect on August 29 unless the railroads are stopped from making them effective.

In meeting these notices of the railroads, we were and are firmly convinced in our own minds from our personal experience as fireman and engineers that the presence of the fireman in the engine crew is essential to the safe and efficient operation of trains.

Having that conviction, we were determined to defend our right to a voice in the collective bargaining process concerning employment of firemen.

Emergency Board No. 154 rejected the attempt of the carriers to deny us the right to represent the employees in determining the size of the engine crew. This rejection was founded in the logical ap-

plication of the discussion of the manpower issue by the Presidential Railroad Commission. After describing in its report the various practices outside of the railroad industry recognizing the right of unions to represent employees in the determination of the size and composition of the work force, the Commission concluded:

> In this industry, whatever may be said of others, the employees have a legitimate bargaining interest in the matter of crew consist, and it is our view that the collective bargaining process should remain the basic method for resolving disputes concerning this matter. (PRC Report, p. 58.)

Emergency Board No. 154, in its report of May 13, 1963, recommended that collective bargaining be continued with relation to the position of the fireman-helper and suggested as relevant criteria to guide the parties' considerations of safety of operation and appropriate distribution of the workload among members of the work crew.

I inform you of these things because I want the committee to know of the commands given both parties to bargain, and the direction which the bargaining should take. As I mentioned earlier, I want to tell you of the progress and position of negotiations and of our contribution to them. But also I want Congress to be convinced as much as we are convinced that the fireman is not an unneeded employee. I think that with the report of Emergency Board No. 154, the charge of "featherbedding" by firemen evaporated from this case. The Board said in its report:

> It is important to understand the real nature of the dispute on this issue. The carriers have always accepted the continued use of firemen on passenger diesel operations, where there are now only two men in the cab. Also, they do not contend that the bulk of the work performed by firemen on freight diesels is not needed—left-hand lookout, the communication of signals to the engineer, and the detection and correction of locomotive malfunctions. They contend only that such work can be combined with other work performed by employees in other classifications, and that, in the interest of economy, the job of fireman as such can be dispensed with entirely, without impairing safety or unduly burdening other employees. They believe that two, rather than three men can adequately handle all of the work in the cab except under very unusual circumstances.

The report of the Emergency Board thus contains a forthright recognition of our contention that firemen-helpers perform useful and essential functions in the operation of locomotives, three of those functions being mentioned in the foregoing quotation, namely, maintaining a left-hand lookout, communicating signals to the engineer, and detection and correction of locomotive malfunctions. These functions do not comprise the entire job content of the fireman's position, and I should like to tell you somewhat more about the fireman's job—again in brief compass.

The fireman's seat on a locomotive is on the left side of the cab opposite the engineer, who is stationed on the right side. In freight service there may—and I emphasize "may"—be another employee in the cab besides the engineer and fireman—the head-end brakeman. In passenger and yard service, there are only two employees in the cab—the engineer and fireman.

Some individuals have an impression that if the fireman were removed from freight trains, two employees would remain in the cab. The impression is not a correct one. In the first place, on many railroads, and on others under certain conditions, the brakeman rides in the back of the locomotive and not in the cab, in order to observe the cars in his train.

In the second place, during progress of switching movements on the line of road, the brakeman must dismount from the locomotive to the ground for the purpose of throwing switches or uncoupling cars and otherwise assisting in switching movements.

The railroads' own evidence before the Presidential Railroad Commission showed the brakeman to be on the ground 33⅓ percent of the time. The brotherhood's showing was 50 percent. It is, hence, clear that should the fireman be removed, there would be only one employee in the cab, not only in passenger and yard service, but a great deal of the time in freight service as well.

Questions asked us from time to time about the number of employees in the cab reveal public concern about one-man operation of trains, with its obvious and patent dangers, and expose the fact that this is the sort of operation which the carriers are seeking to offer to the public as safe and efficient railroad service.

The fireman's work is not only performed from his position on the left-hand side of the cab, but throughout the diesel units comprising the locomotive consist. I think you know that almost any number of diesel units can be coupled together and controlled from one cab. Today, in road service, the average number of diesel units in a locomotive consist exceeds three, and locomotive consists of from four to seven units are common. In fact, we have knowledge of as many as 12 or 14 comprising one locomotive. But whatever the consist, it is in the charge of the same size crew.

The long freight trains hauled by these huge locomotives are awesome. They are symbolic of modern railroading. In 1959 the national average number of cars per train was 70.7. On principal railroads, the average is higher, and trains of 150 to 200 cars are common. There have been trains consisting of as many as 300 cars, and since 100 cars equal about one mile, we in this country are running many trains from 1½ miles to as many as 3 miles in length.

Translated to tonnage hauled, the national average is 3,500 tons per train, but trains from 7,000 to 10,000 tons are hauled every day throughout the country. I have found from my personal experience that some trains haul in excess of 20,000 tons.

While locomotive and train size increase, railroad employment diminishes. Total employment on class I railroads has declined more than 40 percent since 1947. At the same time, worker productivity has increased 70 percent, principally because of dieselization—one of the largest productivity advances among all industries. The productivity figure gives lie to any charge that employees are "featherbedding" or that they resist technological improvements.

On the diesel locomotives which haul these huge trains and are responsible for high worker productivity, the fireman-helper performs six principal job functions which we believe require his retention in service:

1. He is required to maintain a lookout on his side of the locomotive for wayside signals, obstructions, and people, and to warn the engineer of impending danger.

2. He is required to observe hand signals given by the ground crew and to relay them to the engineer when the ground crew finds it necessary, safer, or more expeditions to work on the fireman's side.

3. His services are necessary to maintain and restore locomotive power. This includes making periodic patrols of the diesel units, making temporary repairs where necessary, investigating the cause of trouble and warning alarms, and otherwise looking after the mechanical and electrical functioning of the locomotive.

4. He performs a quantity of miscellaneous duties such as flagging and protecting public crossings, and assists in executing train orders.

5. He is necessary to relieve the engineer at the controls of the locomotive when the engineer becomes fatigued or disabled.

6. He is needed as a potential source of future engineers.

I could, of course, expand upon the duties performed and the responsibilities carried by firemen-helpers in the six categories which I have mentioned.

However, because of limitations of time, and in lieu of more extensive discussions here, I request that the committee receive for its records the "Outline of Facts Relating to the Functions of the Fireman-Helper" which is an attachment to a document filed by me with the subcommittee of the President's Advisory Committee on Labor-Management Policy under date of July 15, 1963, and entitled "Statements of Issues and Facts submitted by Brotherhood of Locomotive Firmen & Enginemen," together with exhibit 1 to a document entitled "Statement of Position of the Brotherhood of Locomotive Firemen & Enginemen" filed with the subcommittee under date of July 16, 1963.

Both of these documents have been distributed to members of the committee, and I understand from the chairman will be admitted into the record.

These attachments describe the work of the fireman-helper in greater detail than I will be able to give you today.

In addition, I ask leave to file with the committee for incorporation in its records copies of employees' exhibit No. 2, filed with Emergency Board No. 154, this exhibit being entitled "What the Fireman Does."

To all who may be in doubt of the essentiality of the service of firemen-helpers in the movement of trains on the railroads of this country I commend this exhibit, and I would be most grateful for whatever time the members of the committee and its staff can give to examining and studying this document and the others which have been filed.

The CHAIRMAN. So we might understand, is this the exhibit that you are talking about?

Mr. GILBERT. The third one.

The CHAIRMAN. Entitled "Employees' Exhibit No. 2"?

Mr. GILBERT. Entitled "What the Fireman Does."

The CHAIRMAN. Under the circumstances, I might say it should go in the record. I might say it will be a voluminous record. Even though it is going to be rather voluminous I think it is important that every bit of this information be included. So it will be included.

(The document referred to follows:)

EMPLOYEES' EXHIBIT No. 2

Before Emergency Board No. 154 Created by Presidential Executive Order No. 11,101 Dated April 3, 1963

MODERNIZATION OF THE WAGE-RULE STRUCTURE OF RAILWAY OPERATING EMPLOYEES

WHAT THE FIREMAN DOES

Summary of Evidence With Comments Showing Need for the Fireman-Helper in Road Freight and Yard Service

Filed on Behalf of Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen & Engineman Order of Railway Conductors & Brakemen, Brotherhood of Railroad Trainmen, Switchmen's Union of North America

I. INTRODUCTION

In his opening statement, Mr. Lester P. Schoene presented the position of the Brotherhood of Locomotive Firemen and Enginemen together with that of other labor organizations respecting the fireman (helper) question. We do not propose to cover again the ground he has covered. Our purpose is to demonstrate that the record before this Board establishes that the fireman (helper) has an important role to play in modern railroading and that it would be hazardous and inefficient to attempt to do without him.

The issue of the retention or the removal of the locomotive fireman-helper on road freight and yard locomotives was the most important issue before the Presidential Railroad Commission, as it is the most important issue before the Board. Involved are 30,000 railroad jobs and the 45,000 railroad employees who work as firemen-helpers on those jobs.

One of the basic questions this Board must face is the relationship of the report of the Presidential Railroad Commission to the work of the Board and particularly to its report. As will be made clear, the establishment of the Presidential Commission was a procedure outside the framework of the Railway Labor Act. We do not state this fact to suggest that this Board should ignore the work of the Commission. Months of efforts and great sums of money were expended by the parties and the Government on the Commission. Most of the material presented to the Commission has a bearing upon the issues before this Board. We want this Board to consider all of the evidence presented to the Presidential Commission on the fireman-helper issue.

We emphasize that the Presidential Commission was created outside the Railway Labor Act in order to make a point which to the organizations is of the gravest importance: This Board has the duty under the statute and a duty to the President, the country and to themselves, to reach their own independent judgment as to what the facts are, and what conclusions should be drawn therefrom. In the course of its deliberations, this Board should of course carefully consider the report and recommendations of the Presidential Commission, but we cannot too strongly state the proposition that this Board should not consider itself bound by the report and recommendations of the Commission. No purpose would be served in the appointment of this Board and the proceedings before it, if this Board were to act merely as a rubber stamp for the Commission. Section 10 of the Railway Labor Act under which this Board was appointed places on the Board the duty to "investigate and report" respecting the dispute. The statutory command to investigate and report means to make an independent investigation and an independent report and not to rely upon the investigation and report of another body. As the Board knows, the U.S. Supreme Court had occasion to consider in March 1963, the lawfulness under the Railway Labor Act of the carrier demands. See *Brotherhood of Locomotive Engineers* v. *Baltimore & Ohio Railroad*, 31 Law Week 4240. At the end of its opinion the Court said:

"What is clear, rather, is that both parties, having exhausted all of the statutory procedures, are relegated to self-help in adjusting this dispute, subject only to the invocation of the provisions of section 10 providing for the creation of an emergency board."

In a footnote to its opinion which occurs at this point, the Court further stated:

"Neither party in this Court has contended that the 1960 agreement would affect the applicability of such intent. In any event, it is clear that no private agreement can interfere with the duty of the National Mediation Board or the power which section 10 confers upon the President of the United States."

Thus we see that this Board has a duty under the statute as interpreted by the Supreme Court of the United States to make its independent determination of what the facts are and to make its independent recommendations to the President.

We come now to a consideration of the Presidential Commission's Report and recommendations. The main body of the report runs 186 pages. Of these 186 pages exactly 9 pages—pages 37 to 46—are devoted to weighing the fireman-helper issue. When one considers that more than 10,000 pages of transcripts and about 200 exhibits were devoted to this question, the superficial character of the Commission's treatment becomes apparent. The fact is the report was written in disregard of the record and the recommendations are not supported by the record.

All the facts this Board need consider were presented to the Presidential Railroad Commission as both sides made a complete presentation. Even though new evidence of the need for the fireman is constantly being brought to our attention, we are content to rest on the record. Accordingly, we ask this Board to consider as the record before it, all of the testimony and all of the exhibits introduced by the organizations before the Presidential Commission.

Employees' Exhibit 1 which we now offer is a document upon which we lay much emphasis. Prior to th issuance by the Commission of its report, its staff prepared an Index Digest of the record for the Commission members which was held out as "a convenient tool for using the record." This Index Digest, somewhat revised, is attached as Appendix Volume I to the report of the Commission. Because of the size of the record, this Board may turn to it as a ready means for comprehending the record. To look simply to the Index Digest for this purpose would give the Board a false view of the record. Employees' Exhibit 1 is intended to rectify the impression which the Index Digest would create. Prior to the publication of the Index Digest by the P.R.C., copies were circulated among members of the Commission for their comments. The organization members of the Commission submitted a point-by-point commentary on the Index Digest. The final draft reflects some revision based upon these comments but the bulk of the suggested revisions was overlooked or ignored. The result is that there are serious omissions and distortions of the record in the Index Digest. Because of these serious omissions and distortions in Employees' Exhibit 1 we have taken the *entire* text of the P.R.C. Index Digest relating to the fireman-helper issue and have added appropriate comments. The comments are intended to bring to the attention of this Broad evidence in the record of a significant character overlooked by the Commission. We earnestly request that the members of this Board read this exhibit in its entirety for a full appreciation and understanding of the organizations' position.[1]

We come now to an analysis of the record before the Commission. On the record the carriers did not make a case for the removal of the fireman-helper. On the contrary, the record demonstrates that the fireman performs essential functions on today's railroads.

DUTIES OF THE FIREMAN

Distinction Between Yard and Road Service

Operating employees on railroads are divided into two broad services: road service and yard service. In general the operation of trains consisting of one or more locomotives, freight cars and the caboose from one point to another on the right of way constitutes road service. Yard service consists in the making up of trains in classification yards for dispatch on the road, the delivery of cars to industries located in the vicinity of the yard and picking up cars from such industries. Since the conditions which require the retention of the firemen in road service and in yard service are somewhat different, we find it convenient to

[1] Record references in this exhibit as well as in what follows are to the transcript of testimony before the Commission indicated by the symbol "Tr." or to exhibits submitted to the Commission by number preceded by CX for carrier exhibits and EX for organization exhibits.

discuss the need for the retention of the firemen separately with respect to road service and yard service.

II. Road Service

There are six principal job functions which require the retention of the firemen in road service:

1. He is required to maintain a lookout on his side of the locomotive and to warn the engineer when necessary, of danger.
2. He is required to take hand signals from the ground crew and relay them to the engineer when the ground crew find it necessary, safer or more expeditious to work on the fireman's side of the train.
3. He is necessary to maintain and restore locomotive power. This includes making periodic patrols of the locomotive units in the consist, making temporary repairs where necessary, investigating the cause of trouble and warning alarm sounds, and otherwise looking after the mechanical features of the locomotive.
4. He has a number of miscellaneous duties to preform which include such matters as precautions to be taken when the train makes an unscheduled stop, flagging of railroad crossings where required, and performing other duties of related character.
5. He is necessary to relieve the engineer at the controls of the locomotive when the engineer becomes fatigued or disabled.
6. He is needed as a potential source of future engineers.

1. *The lookout function.*—In addition to the engineer and the fireman, the road freight crew usually consists of three other persons—the conductor, who is in charge; a rear-end brakeman or flagman, and a head-end brakeman. Normally the flagman and the conductor are stationed in the caboose. The head-end brakeman rides in one of the diesel units. This may be the lead locomotive unit where the fireman and engineer work. On a number of lines, however, by rule of the carrier, the head-end brakeman is required to station himself in one of the other diesel units on the train, frequently the last locomotive in the consist (Tr. 50, p. 7218; Tr. 51, pp. 7407–7408).

In railroad parlance, the engineer's side where the controls are located is referred to as the right side of the engine. The other side which does not have controls and where the fireman stations himself, is referred to as the left side of the engine. It is a fundamental characteristic of the railroad locomotive that except in rare instances the engineer has a view of one side of the train only. He cannot have a view of the left side of the train. The reason for this is obvious: Usually the cab of the locomotive is located at the rear or toward the rear of the engine as it moves forward. Under these circumstances it is perfectly clear that when the train is moving forward, the hood of the locomotive makes it impossible for the engineer to observe what is happening immediately ahead on the left side of the train. When the locomotive is put into reverse, the situation is even worse because then the length of the train itself completely cuts off his view as to what is going on on the left side. Also, when the train proceeds on a curve to the left—regardless of whether the train is moving forward or backward—the engineer cannot see anything ahead of the train.

Granted that the engineer cannot keep watch on the fireman's side of the engine, why is a lookout on the fireman's side essential? The reason is obvious. A watch on the fireman's side is essential for the safety of operations, for the safety of the general public, for the safety of the other members of the crew, and, in fact, for the safety of the firemen and the engineers themselves.

Unfortunately, pedestrians and motor vehicle drivers are not always as careful for their own safety as they should be. Automobiles attempt to beat trains to crossings. Pedestrains, too, frequently disregard flashing signals or duck under crossing gates. Children sometimes wander on the right-of-way. In many instances these conditions can only be known by someone maintaining a watch on the left side of the train. What's more, the train itself requires constant watch on the left side. Hotboxes in the general-bearings journal boxes must be detected as soon as possible, for if left undetected they can cause an axle to freeze, resulting in derailments and wrecks. Many flat cars carry large pieces of machinery and other bulky commodities which are tied or chained down. Chains and ropes can break and the load being carried may shift causing a portion of the equipment being carried to protrude, obviously causing a hazardous situation. These conditions must be detected immediately. Of course a watch is maintained on these conditions by the conductor and the flagman, both of whom are stationed in the caboose at the rear of the train. But the human eye cannot spot these con-

ditions at an infinite distance. Today trains have become longer than they ever were before. A train of 100 cars, for example, is approximately a mile long. Trains of 150 to 200 cars are not uncommon these days, which means we have trains of 1½ to 2 miles in length. Under these circumstances it is manifestly impossible for a conductor and a flagman stationed in the caboose to see the entire length of the train and to spot all hazardous conditions which might arise. It is absolutely essential to have someone maintaining a lookout from the front along the left side of the train in order to spot these conditions.

The carriers recognize the need for this lookout but contend that it can be performed by the head-end brakeman who normally rides in one of the locomotives. The head-end brakeman is necessary to perform the lookout function when the fireman is engaged in making his routine and regular inspection of all diesel units in the engine consist or when correcting malfunctions. In road service the average number of diesel units in an engine consist is in excess of three. (See Tr. 53, p. 7733; EX 29, p. 6; Tr. 57, p. 8257.)

When the head-end brakeman is on the ground doing his job the fireman is left alone to carry out the lookout function.

A normal road service movement is not simply a movement of a train from one terminal to another—a normal road service movement requires the train to stop from time to time to drop off (or "set out" as railroad men say) cars at siding along the right-of-way and to pick up cars. Frequently at points where two lines cross, cars will have been left at sidings by an interconnecting line which must be picked up or cars dropped off at such a siding to be picked up later by trains along the other railroad. Whenever a stop is made for this purpose the head-end brakeman must be on the ground to perform his special function—he must uncouple cars, disconnect the air hoses, reconnect air hoses when required, and, of course, with the other members of the ground crew, give appropriate signals to the engineer or fireman for the movement of the trains. Usually such switching movements involve a number of movements both backward and forward, and, as we said a few moments ago, when the train is proceeding forward the view of the engineer ahead is limited to the right side of the train and when he is proceeding in reverse he has no view whatsoever of what is going on on the left side. The result is that if the lookout on the left side is to be left to the head-end brakeman, then there will be no lookout maintained while the head-end brakeman is on the ground. The record establishes that the head-end brakeman is on the ground a substantial portion of the time. (See, for example, CX 153, p. 24; Tr. 53, pp. 7731–7733; Tr. 50, pp. 7218–7219; Tr. 52, pp. 7515–7525; EX 29, pp. 5–6, 68, 115; EX 30, pp. 11, 30, 57, and 68; EX 117, p. 6.)

Moreover, these switching movements are not conducted in isolated places where there is little traffic and few people. The record establishes that such switching movements are frequently performed in heavily populated areas with the train working back and forth across public highways used by both pedestrains and motor vehicle traffic. (See, e.g., EX 29, p. 5; EX30, pp. 13, 57, and 83; Tr. 53, pp. 7729–7732.)

This telling argument, in fact what we consider an unanswerable argument showing the need for the firemen in road service, was never really faced and dealt with by the Commission, but was avoided by it. The report of the Commission confirms this statement.

The Commission correctly states that in freight service a high percentage (80–90 percent) of the fireman's time is spent in performing the lookout function. The Commission then points out that in steam service the fireman was unable to perform this function a substantial portion of the time since his principal work was firing the locomotive. Much of what the Commission has said up to this time is true, but it fails to come to grips with the heart of the situation. The plain hard fact which the Commission nowhere faces up to is simply that in road service it is essential to maintain a lookout on the left side of the engine; that the lookout must be maintained at all times by someone on the engine, someone who can immediately notify the engineer when trouble develops on the left side.

What the Commission overlooks is that in both yard and road service members of the ground crew, if they are stationed on the left side of the locomotive and observe trouble, have no way of relaying that fact to the engineer. We see thus that the fireman serves as the essential link between the ground crew who may be on the left side of the engine and the engineer. The fireman thus is the only man, in fact the key man, who is able to relay signals from the ground

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crew to the engineer in time for prompt action to be taken. And of course he is able himself to observe trouble on the left side of the train and to notify the engineer immediately of that fact. Again, if the ground crew station themselves on the right side of the train then of course they can communicate by signals and warn the engineer of trouble, but, when they do so, who is to maintain a lookout on the left side of the train? The need for a lookout at all times on the left side was expressed by one witness as follows:

"Firemen are necessary in road service for three basic reasons of safety. Safety to the general public, safety to fellow employees, and safety to the equipment.

"Put another way, the primary duties of firemen are to maintain a lookout and to maintain and restore locomotive power by finding and correcting engine malfunctions.

"Because of the physical characteristics of locomotives and trains, it is not possible for the engineer to see what is happening on the left side. It has always been the duty of the fireman to maintain the lookout forward for traffic approaching from the left at public grade crossings, for unauthorized persons in or about the tracks, or workmen along the right of way. The fireman must also watch for right-of-way signals over the road and also from time to time take hand signals from the ground crew in switching en route. He also looks back at the train to detect defective equipment, such as hot boxes and brake rigging, shifting loads or anything that might cause a derailment or injury to fellow employees.

"Firemen must also watch for lumber, rocks, and other obstacles along the track which cause derailment.

"I have encountered such obstacles particularly between 79th Street and Blue Island in Chicago where children play along the tracks and put debris on the rails. Of course, you must also keep a pretty sharp lookout for these children since in many areas there are no fences or other protection.

"Emergency stops are made frequently because of loose air hoses, dragging parts, sticking brakes, hot boxes, swinging doors or shifted loads. At such times the head end brakeman, who may or may not be riding in the lead cab, always goes back to check the train and in compliance with the carrier's own operating rules the fireman goes ahead of the train to flag the opposite main line or track ahead.

"In addition, as I previously indicated, our local freights make frequent stops and our through freights may make as many stops as necessary to pick up full tonnage.

"During all of these switching operations to cut cars in or off or deliver them to various industries, the head end brakeman is on the ground away from the engine to help carry out the operation. Frequently during such operations the train movements are over grade crossings or onto industrial sidings where there are pedestrians or vehicular traffic or other members of the ground crew as to whom a sharp lookout must be maintained from both sides of the locomotive.

"Q. Mr. Redmond, you said frequently during such stops. I think you meant operations; isn't that correct? It is during these operations that train movements are over grade crossings.

"A. Yes, that is right.

"In these situations, however, the brakeman cannot serve as a lookout. Also, during the swtiching operations there are certain places where signals must be passed on the fireman's side because of track curvature or close clearances.

* * * * * * *

"For example, at the freight house and the Milling Company at Nappanee, Ind., there are curves and close clearances which prevent signals being passed on the engineer's side.

"Moreover, on some Chicago Division trains the head end brakeman does not ride in the locomtive but rather in a second caboose located directly behind the engines. In those situations, of course, he cannot and does not serve as a forward lookout. Even when he does ride in the head end unit the brakeman cannot always serve as a forward lookout because his primary duties are to look back at the trains for defects. This duty requires him to move from one side of the locomotive to the other and he will be looking out of the engineer's side of the locomotive just as frequently as the fireman's side. It is particularly difficult for the engineer to look backward at the train because of his position with one foot on the dead man's pedal.

"The head end brakeman also performs a useful and necessary lookout function when riding in the head end unit. The fireman must frequently be in the engine room of the leading or trailing units to maintain or restore locomotive power and at such times someone is necessary on the left side of the locomotive to maintain a lookout.

"Even when the fireman is also in the cab, there are times when it is necessary to have three men for lookout.

"As I previously indicated it is difficult for the engineer to look backward on his side of the train because of the dead-man control. The head end brakeman looks back from both sides of the train.

"Moreover, railroads unlike airlines, operate in all weather conditions, including heavy fog, rain, and snow. During such adverse weather conditions it is important to have three men for lookout.

"* * * This is particularly true because present day trains are longer and faster than they used to be and the engineer's attention must be given over almost entirely to what is happening ahead and cannot look back." (Tr. 53, pp. 7729–36.)

This is an appropriate place to consider the B.L.F. & E. safety awards program instituted in 1957, and to consider also the shocking misuse by the Commision of the evidence presented by the organizations with respect to this program. During a 43-month period there were 138 applications for safety awards involving the performance of lookouts on the left side of the cab in freight service (Report of PRC, p. 38).

This, the Commission says, is an average of a little over three such applications per month among an average of 16,000 freight firemen on duty. These applications for safety awards indicate to the Commission altertness by the fireman, but, they add, it is difficult to say what would have happened in the cases cited if there had been no fireman on the left side. And, the Commission concludes, note must be taken of the fact that another member of the crew either occupied or could have occupied a lookout post on the left side of the cab.

We think it is most regrettable that the Commission has converted an award program into the sole measure of the need for a fireman. In the Armed Forces of the United States during World War II there were literally millions of men called to the colors. Of these an infinitesimally small number, a tiny fraction of a percent, received awards or even commendations for exceptional services and valor. Would anyone dream of measuring the need for the size of our Armed Forces by the number of awards for valor or for meritorious services that were rendered during World War II? It is most common for our police and fire departments to present awards for exceptional service. Do we measure the size of our local police force by the number of policemen who are cited for bravery or for extraordinary service in the apprehension of criminals? Do we measure the need for the size of our fire department by the number of firemen who are cited for bravery in the protection of property and the saving of human lives? An award program by its very nature singles out those individuals who performance is unusually meritorious and frequently those whose performance involves a personal risk to themselves. An award program serves simply to pay appropriate tribute to exceptionally alert and courageous individuals. It was never intended to and should not be used as the index of the need for the group from which the exceptional individuals are selected.

The Commission finds it difficult to say what would have happened in the safety award cases cited if there had been no fireman on the left side. We think it is perfectly clear what would have happened. There would have been accidents and deaths.

In many of the safety awards the fireman's lookout in road service prevented serious injuries at a time when the head brakeman was on the ground performing his work and unavailable for lookout. Illustrative is Award No. 189 (EX 53 D, p. 359), where the head brakeman crisply described the incident as follows:

"I was head brakeman on 1–669 heading in at Canby for No. 20 and we coupled into PFE No. 10041 which had siding blocked. We had to shove it in clear on back track at Canby after we cut off engine in clear. I had cut off car and gave a back up signal for engine to back up and couple on train. As I started to climb up to set handbrake on car I looked and saw swing brakeman C. Johnson standing in middle of track watching No. 20 go by and not watching movement of our engine. If it had not been for Fireman L. E. Tate seeing what was going to happen and a quick action on his part by stopping engine

by telling engineer what he saw, swingman would have been killed as this was on a curve and engineer could not see swingman."

Similarly, in local freight service while the brakemen were on the ground uncoupling cars, the fireman observed what the engineer was unable to see: An old man and a child entering the track dead ahead just as the engineer was about to move the engine. (See EX 53D, pp. 333(a)(b); see also EX 53D, pp. 311–312.)

It is most significant that the carriers' rebuttal was limited almost exclusively to putting someone else in the fireman's seat (see CX 174 and EX 117, pp. 11–13); and in many of the cases where safety awards were given the carriers issued letters of commendation to the employees. (See, e.g., EX 53D, pp. 221, 233, 233e, and 349.)

2. *The fireman is needed to pass signals in road service.*—Because of physical conditions it is frequently impossible in road service for the ground crew to pass signals directly to the engineer on the right side of the train. Frequently the ground crew is compelled to work on the left side of the train and to pass their signals to the fireman who then relays them to the engineer. Here again we remind the Board that the head-end brakeman must be on the ground to perform his duty, and the fireman is the only man left in the cab of the engine who can possibily station himself on the left side in order to perform this work.

Illustrative of the need for firemen to relay signals in road freight service is the statement by a Pennsylvania Railroad engineman (at Tr. 50, pp. 7218–7219):

"* * * The fireman helper is also necessary in road service for signal passing because many times during a trip cars are picked up and set off at various locations.

"The head-end brakeman, of course, is then on the ground performing his duties and because of curvatures, close clearances, and other obstructions, it is frequently necessary for the trainmen to pass signals through the firemen to the engineer.

"Take the Waverly yard, for example, which is just outside of Jersey City. In setting off cars, we must back into the yard through crossovers and around track curvatures. It is necessary here at all times for the fireman to maintain a lookout for other switch movements in the area, other ground crews, and also take signals from his own ground crew.

"Such a setoff takes about 20 minutes, and during this time, of course, the head-end brakeman is on the ground, away from the locomotive, lining the switches for the tracks involved in the movement."

Illuminating also is the detailed account by an engineer for the Great Northern Railroad of a typical trip in through freight service. He points out clearly that even with a six-man crew (engineer, fireman, conductor, and three brakemen) the fireman must frequently receive and relay signals because of track curvature, close clearances, and other physical conditions. (See Tr. 60, pp. 8926–8936.)

It is significant also that the carriers' own surveys show that approximately 60 percent of the time spent by firemen in so-called miscellaneous duties was spent in signal passing and that in 1,568 trips surveyed firemen relayed hand signals 2,432 times (CX 13, p. 9; see also Tr. 5, pp. 948–949 for carrier admission).

We regard it as significant that the majority of the PRC at no point considers the need for the firemen to pass signals to the engineer in road service. They do consider the signal passing function but only in connection with yard service, and we will comment upon this in due course.

3. *The fireman is needed for maintaining and restoring locomotive power.*—Another vital function of the fireman in road service is the maintenance and the restoration of motive power. The brotherhoods put great stress upon the duties of the fireman in connection with maintenance of power and correcting of malfunctions. The majority of the PRC recognized that the diesel electric engine is a "complex and intricate" piece of machinery. (Rept., p. 40.)

Carrier witnesses argued that diesel-electric and straight-electric locomotives were relatively simple machines, practically trouble free, and of such a nature that if malfunctions occurred en route, nothing need be done by the fireman because of the builtin automatic devices and alarm system, and that such work that might have to be done could be done by the engineer alone (e.g., CX 13; Tr. 6, pp. 1061, 1967–1968, 1074; Tr. 7, p. 1169 and Tr. 28, p. 3996).

The Commission's assertion (p. 40) that "few doubt that it (the diesel) is a 'complex and intricate' piece of machinery" is diametrically opposed to what the carriers sought to have the Commission believe. The PRC, while thus recog-

nizing that the carriers were wrong about the claim of diesel simplicity have upheld their claim that diesels are practically trouble free and that when malfunctions do occur the fireman is still unnecessary. But the record against these latter contentions is also overwhelming.

The complexity of the diesel locomotive and its proneness to malfunction were first brought to light systematically by the employees.

Several brotherhood witnesses testified to the complex character of the diesel locomotive and presented detailed evidence as to the nature of malfunctions which did occur and what the fireman could do and did do about such malfunctions. The testimony of the brotherhoods was introduced by two fireman witnesses, William H. Wilkerson and Kenneth Clark, both of the Milwaukee Road, who outlined for the benefit of the Commission the major components of a locomotive. These were presented visually to the Commission by means of cardboard cutouts which were mounted on a flock board. After this presentation had been completed, Mr. Wilkerson and Mr. Clark then presented to the Commission two model diesel electric locomotives which had been appropriately wired in order to demonstrate visually to the members of the Commission the normal functioning of the diesel locomotive. By means of these models it was possible to demonstrate the normal functioning of a single diesel locomotive and also the modifications in operation necessary where one or more locomotives are coupled together in a consist and the entire consist operated from the controls of the lead locomotive. The locomotive models were also capable of demonstrating a large variety of malfunctions. It was possible to demonstrate to the Commission what had gone wrong and what corrective steps the fireman was able to take. Unfortunately it is not possible for us to duplicate that presentation before this Board. The Board will find it helpful to read the testimony of Mr. Clark and Mr. Wilkerson which starts at tr. volume 45.

The testimony of these witnesses—that the diesel-electric and straight electric locomotive was prone to malfunctions of all sorts and that the fireman was essential to keep the units running or to shut down one or more of the units to avoid expensive repairs and possible accidents and derailments—was supported and corroborated by more than 50 firemen and engineers who testified either in person or by written statements. These enginemen testified from their own personal knowledge and railroad experience concerning the need for firemen to detect and correct malfunctions. (See, e.g., the following: Tr. 51, pp. 7297–7305; Tr. 53, pp. 7682–7686; Tr. 54, pp. 7748–7789; Tr. 57, pp. 8253–8268; Tr. 60, pp. 8917–8921; EX 29, pp. 6–8, 63; EX 30, pp. 41–43, 84–86; and with respect to straight-electrics, see EX 94, EX 95, preface, pp. 1–12, 17–32, 38–41, and 45–74.) This testimony showed first, that various malfunctions occurred with frequency and that their correction was a regular duty, not an isolated phenomenon; and, second, the need of the fireman to detect and correct these malfunctions.

Documentary evidence showing the type, nature, and frequency of malfunctions was also submitted. The number and types of malfunctions occurring on various railroads was put into the record by means of several surveys conducted by the B.L.F. & E., the results of which were summed up in employees' exhibit 28. Thus, for example, the survey of 21 railroads conducted during July and August 1961 showed 6,201 total alarms and 3,529 total malfunctions without alarms. The nature and extent of malfunctions on various carriers was also indicated by the written work reports submitted to the carriers on the ICC forms. (See, for example, EX 28, pp. 6 and 7, and Tr. 62, p. 9420.)

Conclusive evidence that malfunctions are frequent and require attention of firemen-helpers appears in numerous documents issued or prepared by the carriers showing the nature and type malfunctions that occur on the diesel locomotive and what the fireman is expected and required to do to detect and correct such malfunctions. These documents include bulletins, operating and other manuals, trouble-shooting books, and promotional examination material.[2] Many of these instruction books, bulletins, and manuals are exceedingly elaborate and indicate that the carriers require a vast amount of detailed knowledge by the fireman. The bulk of this documentary evidence is collected or discussed by various witnesses at the following record references: EX 10 and 11; Tr. 54, pp.

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[2] In addition, many documents were not available in sufficient quantity to produce for the Commission as exhibits and accordingly single copies were deposited with the Commission. These latter documents were listed by the staff of the Commission in the document entitled "Materials Introduced by the Parties—Not Identified as Exhibits" consisting of 8 pages, dated Oct. 26, 1961. See app. vol. I to the PRC, pp. 123–126.

7756–7778; EX 24; EX 26; EX 29, pp. 7, 13–47, 56–58, 101–112 and 133; EX 30, pp. 11, 13–14, 16, 45–46, 50–51, and 77–80; EX 40, 41, 50, and 51; and EX 95, pp. 1–9 and 17–26.

Because these carrier documents were admissions against interest, some discussion in depth is warranted here. The Baltimore & Ohio blue book on diesel electric locomotives (EX 10) includes the following in the general notice and preface:

"GENERAL NOTICE

"This book is issued to firemen and engineers for their information for the purpose of building up their efficiency, in order that they may become competent locomotive engineers and firemen. It is, therefore, desirable that they devote a portion of their time to the study of the questions contained herein. * * *

PREFACE

"In order to improve the efficiency of our firemen and engineers on diesel-electric locomotives, this booklet has been prepared.

"There are generally preferred methods of procedure in cases of breakdowns and mishaps with which the firemen and engineers should be familiar.* * *

"* * * The engineer and firemen must work together in harmony, each recognizing his dependence upon the other if best results are to be obtained."

The B. & O. book also describes how malfunctions are to be corrected without tools or by means of crude tools such as flagsticks, knives and similar tools. (EX 10, pp. 29, 66, 81, 103, 105, 106, 107, 125, 137, 140, 144, 145, 153, and 167.)

Illustrative of the instructions given is the following:

"The unit causing the wheel slip relay to operate, will be unloaded, take that engine off the line and examine the traction motor contactors and the position of the reverser in the electric cabinet. If it is found that a contactor is closed with the engine off the line, pry it open with a dry flagstick. If it is found that the reverser is in the wrong position, again stop the train before changing the position of the reverser. If nothing can be found wrong, leave the affected unit off the line and keep a close check for sliding wheels as the wheel slip relay will not longer operate." (EX 10, p. 137.) Note also the answer to question 99 on page 140:

"No alarm is given when a traction motor blower fails other than the smoke or fire coming from the affected motor * * *."

One can turn to almost any page in the book and find that the carrier anticipates malfunctions of various kinds and expects that the fireman will correct them or shut down the unit and keep it off the line to avert serious damage or other adverse consequences.

The B. & O. also furnishes its firemen and enginemen with trouble-shooting cards for various types of locomotive power which the men carry with them in their pockets. These cards describe various malfunctions, what to look for and how to correct them. (Samples of these are reproduced in EX 11, at pp. 2–44.) These trouble-shooting cards also show that the firemen are expected to correct various malfunctions with such devices as a knife, key, nail file, flagstick, fusee cap, and pieces of cardboard. (See EX 11, pp. 5, 14, 20, 24, and 26.)

These trouble-shooting cards also show that many malfunctions cannot be detected or corrected except by a two-man engine crew. These are malfunctions which can be detected and corrected only when the engine is under load (power) and the train is in motion. With respect to such malfunctions, one man must remain at the controls to keep the engine in operation and the second man—the fireman (helper)—must inspect the lead and trailing units to find the malfunction. Thus, for example, card 5A at EX 11, p. 23, provides:

"Most partial loads are because the equipment failed to make transition. If so, try shoving in on manual layshaft lever to slightly increase engine speed. Do not hold lever in as the overspeed will trip. If this does not help, have engineer notch off to the fifth notch and with a spare 150A fuse short across fourth terminal stud on left side of P.R. relay * * *."

For other record references establishing the great number of malfunctions which require two men to detect or correct. (See, e.g., EX 4, pp. 139–143; Tr. 46, pp. 6688–6690; Tr. 47, pp. 6714, 6728; Tr. 48, pp. 6838–6839; Tr. 54, pp. 7751, 7756–7758 and EX 10, preface, pp. 137, 140; EX 11, pp. 51, 57; EX 30, pp. 16, 80, 89; EX 51; EX 95, pp. 10, 27, 28.)

Illustrative is part V of EX 4, entitled "Malfunctions That Require Presence of Two Men To Detect" which lists 55 such malfunctions. As stated at EX 4, page 139:

"This is a list of the malfunctions or defects which are those difficulties that show up and are troublesome only while train is in motion and the unit is under load and/or in dynamic braking. They are evidenced by feel, movement, observation, or alarm.

"However, these difficulties are not in evidence, nor are they detectable by inspection when the throttle is closed—unit is not under load—dynamic brake is not in use or the train stopped.

'But these defects or malfunctions will, and do, reappear and become evident when the throttle is again opened, locomotive is again moving under load and/or dynamic brake applied.

"Therefore, the engineer could not locate them if he first stopped the train. They can only be detected by the fireman making inspection while the engineer remains at the throttle and keeps the units working and the train moving."

The PRC report completely fails to discuss this type of malfunction except to say (p. 42) there were "no data to show how frequently such malfunctions occurred." Yet almost every employee witness testified as to this type of malfunction (see Tr. 45–61, EXs 29, 30, 95) and the carriers' own documents bore them out. The carriers didn't challenge the fact that there are many malfunctions which require two men to detect and correct and certainly the record does not show such malfunctions are infrequent.

Some of the bulletins issued to the engine crews by the B. & O. Railroad are reproduced in EX 11, pages 49–88, inclusive, and include bulletins promulgated since the proposed rule change by the carrier. The importance of these bulletins and the high duty imposed by them on the firemen is typified by two of the bulletins appearing at EX 11, pages 51 and 57. These bulletins provide in effect for the fireman to isolate a defective traction motor, but point out that in the majority of locomotives, when one of the traction motors is cut out, the wheel slip indication is nullified. This is important not only for the reason mentioned in the bulletin, that wheel slippage can cause flashover damage on the remaining motors of the unit, but also because wheel sliding which remains undetected for an unreasonable period of time will cause a false flange on the wheel and can readily cause a derailment, serious damage, and personal injury.

The preface to the B. & O. bluebook (EX 10) quoted above, particularly the phrases, "There are generally preferred methods of procedure in cases of breakdowns and mishaps with which the fireman and engineer should be familiar" and that "the engineer and the fireman must work together in harmony, *each recognizing his dependence on the other* if best results are to be obtained." [emphasis supplied] is not an isolated example of carrier concern. Identical language is found in the preface to the Railway Fuel & Operating Officers' Association Diesel Electric Locomotive Book referred to and quoted at pages 56 and 57 of employees' exhibit 29. The latter book[3] is used currently as the basis for the promotional examination of the Louisville & Nashville Railroad. The promotional examinations, like the instruction books and various bulletins and trouble shooting manuals, indicate that malfunctions are expected on the road, and that firemen as well as the engineers are required to take all necessary action to correct or prevent serious damage. (See, for example, question 53, in the Railway Fuel & Operating Officers' book referred to and quoted in full at EX 29, pp. 57–58.)

In the light of the carriers' own documents, it is not surprising that when not testifying before the PRC the carriers were quick to concede that the diesel is prone to malfunction and that a trained fireman is essential to get trains over the road (see EX 109). The carriers cannot and did not dispute the statements of their own officials recorded before the Railway Fuel & Operating Officers' Association and set out in EX 109.

Finally, the carriers' own rules impose the duty of maintaining and restoring locomotive power on the fireman. See, e.g., EX 30, pp. 16, 50; EX 52B and EX 11, p. 89 ff.) Thus, operating rule 911 of the Central of Georgia Railway, effective September 1, 1958, provides as follows:

"On engines in road service fireman must patrol engines and make inspection of engine, temperatures, steam heat facilities, and other parts and give such attention as may be required. Special attention must be given battery charging

[3] A single copy of this book also was deposited with the Commission.

circuits. Any unusual condition or irregularity detected must be reported to engineman and fireman must be governed by engineman's instructions.

"Patrol of engnes must be made at initial stations and at other stops. Unless otherwise provided when time between stops is 30 minutes or more, and at such other times as may be directed by engineman, fireman must patrol engine while train is in motion."

Other rules of the carriers and particularly those noted at EX 11, pages 89–91 are similarly instructive as to the duties of the fireman with reference to maintaining locomotive power, as are the many promotional examinations put into the record by the employees. (EX's 26, 41, 52A; EX 30, pp. 13–38.)

The record also shows that the role of the fireman-helper in detecting and correcting malfunctions on the straight-electric engine is substantially the same as on the diesel-electric (EX's 94, 95, and 96). The carriers admit that in the major respect, the duties of the fireman on diesel and straight electrics do not differ materially (CX 32, p. 14).

In the light of this record the PRC was clearly wrong in its assumption that diesels are not prone to malfunction.

The PRC Report is also ambivalent. It says that even if the diesel malfunctions, the fireman has no essential function. To show this the PRC discusses (report, pp. 40–43) various considerations it deems relevant in this regard. It is important to examine these considerations, their validity, and support or lack of support in the record.

1. The very first consideration the PRC suggests as relevant (p. 40)—that firemen cannot make major repairs—is totally irrelevant and its characterization by the PRC inaccurate and misleading. The type of malfunction which the employees said diesels are prone to and as to which they detect and correct are the minor ones, not the major ones.

This distinction should be kept firmly in mind. The malfunctions which the firemen described as those which they can and do correct are those which involve the use of the tools they have available, including the regular tools, such as screwdriver, pliers, and wrenches (see, e.g., Tr. 51, pp. 7315–7316 and EX 117, p. 19) and the makeshift tools such as blocks of wood, files, pieces of cardboard and other such items (Tr. 47, p. 6794; Tr. 48, p. 6923, 6926, 6939–6944; EX 10 and 11 and Tr. 54, pp. 7756–7778; EX 51 and EX 30, p. 80; and EX 117, p. 19; Tr. 46, p. 6556) or for which no tools are necessary—just a pair of knowledgeable hands. It is these minor or temporary adjustments which the firemen make on the road. Obviously, the PRC swallowed the carriers' deliberate attempt to confuse the issue by indicating that major repairs cannot be performed by the fireman and that only the shop forces are equipped with the delicate instruments with which to make such repairs. The employee witnesses did not contend that it is possible to change a crankshaft or to make such other major repairs on the road. (See, e.g., EX 117, pp. 81, 236; Tr. 51, p. 7315.) Firemen have more than enough to do correcting minor malfunctions. Of course the minor malfunctions, if not corrected, will put diesel units out of commission, endanger the lives of the crew, and result in great delays unless corrected by the fireman. The record shows, moreover, that shop forces and facilities have been continually trimmed to the point where locomotives are not receiving adequate shop maintenance resulting in additional responsibilities with respect to malfunctions being cast on the fireman.

The employees emphasized that it is frequently possible to take temporary minor measures to correct or alleviate the effects of the malfunctions until the locomotive can be brought to the repair shop where a complete repair can be made. In many instances, of course, malfunctions are caused by transient factors which do not require the services of the shop forces. In other cases the malfunction is of such nature that the fireman cannot make a temporary repair to keep the engine operating, but he serves a valuable preventive function by shutting down a unit, thereby minimizing or avoiding damage to the equipment.

The carriers' attempt to confuse is in conflict with their true position as revealed by their own officials' statements in other forums. Thus the supervisor of locomotive operation of the B. & O. Railroad told the Railway Fuel & Operating Officers' Association:

"On road operating difficulty, there are two classes:

"1. Beyond one's control.

"2. Within one's control.

"First let us take, 'beyond one's control.' This means mechanical or electrical trouble that would demand shop maintenance. A shop incident is conclusive in itself, such as a broken wheel, axle, an unseen short in the electrical equipment such as broken wire or insulation worn off due to vibration; these would eliminate the unit partially or wholly. The engine crew under these circumstances would terminate the run under whatever power they had left, or proceed to a side track and wait for help.

"Second, let us consider, 'within one's control.' This would also be different in two ways:

"1. Freight service.

"2. Passenger service.

"In freight service (there) being a third man or brakeman, the fireman would go into the engine room, proceed to correct any trouble within the scope of knowledge he had obtained. This means proceeding under circumstances without stopping the train, if possible.

"Today, high speed passenger road operation demands the utmost cooperation of the engineer and fireman combined with the utmost coordination of all the steps these two men will take in facing the correction of a road difficulty." (EX 109, p. 21.)

The PRC also refers (report, p. 40) to the ICC regulations regarding road diesel inspections but then fails to record the undisputed fact that the percentage of diesel engines failing inspection today are as high as ever and also greater than in steam days (EX's 13–18, Tr. 55, p. 7827). Thus, the shop forces are putting out more engines on the ready tracks which in fact are not fit for service and this casts a greater burden on the fireman.

2. The second factor asserted by the PRC as relevant (report, p. 41)—the proportion of time spent by the fireman answering alarms or correcting malfunctions—is also irrelevant and characterized in inaccurate and misleading fashion.

The PRC infers from the data cited that since the amount of time which the fireman devotes to malfunctions is limited, therefore the services he performs are not important. This argument has as much to commend it as evaluating a city fireman by dwelling upon the number of hours per month spent fighting fires and the number of hours awaiting call in the firehouse. The record shows that minor mechanical troubles causes delays and breakdowns and if left unattended soon become major troubles. The essential point is not the amount of time spent correcting malfunctions, but rather that there is somebody present to do the work. It is not time but performance that is the test. That the qualitative test is conrolling was clearly recognized by the Chairman of PRC. (See Tr. 56, pp. 8120–8121.)

The data cited by the PRC is also misleading. The carrier surveys relied on show alarms occurred on 14–15 percent of the freight trips. But the carrier surveys do not show and the PRC report fails to note the corrective work performed on trips where the malfunction was not of a type which set off an alarm. The PRC also refers to the organizations' surveys only with respect to percent of time answering alarms but fails to note that alarms occurred on about 32 percent of the trips surveyed.

The report also notes (p. 41) that the B.L.F. & E. surveys showed that malfunctions increase in direct proportion to the number of units in the locomotive consist; but would dismiss this uncontroverted fact simply by concluding that time alone is the test.

3. The "relevant considerations" discussed by the PRC in paragraph c on page 41 are directed toward the ability of the fireman to correct malfunctions. They are stated so inaccurately as to warrant sentence-by-sentence dissection.

(*a*) "Locomotive malfunctions corrected by firemen are fairly minor." As previously shown the firemen never claimed they corrected major trouble. The problem is one of semantics created by carrier design and not perceived by the PRC. A "minor" malfunction is one which the fireman can detect and correct. A "major" malfunction is one he cannot correct; but one he may detect and prevent serious damage or personal injury by shutting down the unit or stopping the train. Any malfunction—"major" or "minor"—may put an engine out of service and cause delay. Hence, whether the malfunction is "major" or "minor" the fireman plays an invaluable role.

(*b*) The second sentence is devoted to EX 4 and the list of electrical and mechanical malfunctions. These and other malfunctions were described and exlpained at length by many qualified witnesses. (See Tr. 45–50.) The PRC's statement (p. 41) as to the list of malfunctions that "fireman-helper witnesses

conceded they were unable to explain or to correct" is totally unfounded and grossly misleading. Subsequent to the introduction of EX 4, the organizations presented nine witnesses who testified in person before the Commission with respect to the duties and functions of the fireman generally. Of these nine witnesses the carriers directed questions in cross-examination with respect to EX 4 only as to three of such witnesses. (Tr. 57, pp. 8402–8408; Tr. 59, pp. 8739–8742; Tr. 60, pp. 8750–8752, 8765–8767; Tr. 62, p. 9260.) Significantly, not one of these three witnesses had currently been acting as firemen and two were promoted on the steam locomotive. (Tr. 57, pp. 8401–8402; Tr. 59, p. 8640; Tr. 61, p. 9120.) Of the remaining six witnesses, one of whom was queried on EX 4, three were actively serving as firemen (Tr. 50, p. 7204; Tr. 53, p. 7668; and Tr. 53, p. 7724). Whatever the background and current employment status of the witnesses interrogated with respect to EX 4, it is inaccurate to state that firemen conceded they were unable to explain the malfunctions. It is clear, for example, that the employee witness testifying at Tr. 57, pages 8405–8406, clearly knew the answer to the question respecting malfunction No. 44M on page 124 of EX 4. His statement is obviously consistent with the last paragraph on page 124 of EX 4 as to what the fireman does; namely, "he keeps a close watch to see that it does not heat to the danger point before the unit can be set off."

Wholly apart from whether or not engineers who have not had diesel firing experience or have not been firemen for many years can answer readily the questions put with respect to EX 4, the most that such cross-examination tended to show is perhaps that engineers promoted during the steam era may not be qualified to go back and act as firemen without some additional training or refresher course. Such cross-examination should also be considered in the light of the admission of the carriers that "if there arises anything which the (new) fireman cannot handle, the engineer does it * * *" (CX 151, pp. 107–108). By such statement the carriers acknowledge that the engineer obtained his knowledge by working as a fireman. If the carrier cross-examination on this point proved anything, it indicated the need for a more expansive and continuing training program for firemen, which, of course, is what the organizations sought.

(*c*) The statement that firemen receive no specific training flies in the face of the record. The oral and written statements of the employee witnesses and the wealth of troubleshooting materials, promotional examinations, and other written documents prepared or supplied by the carriers and introduced into the record by the employees and referred to above, show conclusively that firemen do receive training—even though most of the training is on their own time and expense or on-the-job training. The statement that few railroads furnish firemen special tools to correct malfunctions has already been shown irrelevant. The firemen carry their own tools (Tr. 51, pp. 7315–7316); and also use, at carrier bequest and approval, such "tools" as fusee caps, flagsticks, rubberbands and cups (Tr. 46, p. 6556).

(*d*) The PRC's conclusion (p. 41) that firemen have at most a limited "'craft skill' in maintaining locomotive power" is wholly inconsistent with the record and the PRC's own statement on the same page (par. d) that the "engineer * * * is skilled in the operation of the locomotive." The engineer attains his craft skill only by his experience and training as a fireman-helper.

(*e*) Finally, the PRC makes an argument based on the fact that firemen usually receive only a "few student trips." This argument overlooks several important points: First, an untrained fireman is not given sole responsibility for handling malfunctions en route. He is always working under the supervision of the engineer who can guide and instruct him during the early stages of his career. Indeed a carrier witness sustained the employees' contention on this point, saying: "If there arises anything which the (new) fireman cannot handle, the engineer does it * * * (CX 151, pp. 107–108). Second, during the first years of his career, he is expected to study and prepare himself to take the promotional examinations. Thus, day by day, week by week, and year by year he is gradually adding to his fund of knowledge through his studies for the promotional examination and through his practical experience on the road. Third, in every line of endeavor it would be ideal if human beings could be found trained and able to step into the shoes of their predecessors without the loss of time and efficiency necessarily involved in training. Unfortunately, such conditions do not exist in an imperfect world. Everyone, whether he comes to a position schooled or unschooled, must learn the specifics of his job. The same is true of the position of a railroad fireman. The PRC's argument comes down to this: During the initial months during which the fireman

is learning the rudiments of his craft, he is not able to make the contribution he is able to make in later years. Therefore, they say: "Let us dispense with his services altogether, because at first he cannot make the same contribution he is able to make later."

3. In paragraph (d), pages 41–42, the PRC again assumes contrary to the record that malfunctions are infrequent but that in any event the engineer alone can correct them, although admittedly with "some delays." The PRC also assumes in paragraph (e), page 42, that the periodic inspections made by firemen while the train is in motion are unnecessary. The PRC is compelled to this conclusion since it holds the engineer can do everything necessary to detect and correct malfunctions. The majority, by proposing to place the entire burden of operating the train and maintaining the motive power on the engineer, leaves the engineer with two choices: To continue to operate the train ("at reduced power") with an alarm bell sounding; or stop the train completely and make a standing inspection. Let us look at the effect of these proposals on safety and efficiency.

First, there are many malfunctions which will be discovered only by making periodic inspections when the train is in motion (EX 4, pp. 139–143; Tr. 46, pp. 6688–6690). Some of these malfunctions, if not detected in time, will cause fires, explosions, and derailments (EX 109, pp. 34–35; Tr. 46, p. 6661). There may be no alarm, for example, preceding a fire or imminent explosion. During periodic inspections, the fireman by his senses of sight and smell can detect these malfunctions in the offing and frequently do something to avoid them (Tr. 46, p. 6660; EX 109, p. 69). Another example is the condition of locked wheels causing flat spots to be developed on the wheels and false flanges which, if undetected for a length of time, will cause a derailment. Similarly, a defective gear on a traction motor, if undetected by the fireman on periodic patrol may break, causing the gears to lock suddenly and lead to a derailment. It is hardly necessary to add that derailments always present the hazard of disastrous consequences to the members of the traincrew and the public in the immediate vicinity.

The record also shows that the alarm system is no substitute for the fireman for many reasons. First, there are many malfunctions for which there are no alarms. (See, e.g., EX 4; Tr. 45, p. 6458; EX 109, p. 12.) Second, even when a malfunction occurs and an alarm sounds, the alarm does not indicate what is wrong, but only that something is wrong (e.g., Tr. 45, p. 6458; Tr. 49, pp. 7047–7048; EX 109, p. 12). Third, the alarm system itself malfunctions and hence a malfunction may occur without the alarm sounding (e.g., EX 4, pp. 144–154; Tr. 49, pp. 7079–7080; Tr. 50, pp. 7210–7211). Fourth, there are false alarms, that is alarms that sound when in fact there is no malfunction (e.g., Tr. 50, p. 7211).

Directly related to the malfunctioning of the diesel and straight electric locomotives is the duty and function of the fireman to make periodic inspections of the unit or units in the locomotive consist. The fireman is required by oral and written instructions of the carriers to make these periodic inspections of the units. (See, e.g., EX 29, p. 7; EX 11, p. 113, and EX 30, p. 43.) The reason for requiring these inspections is obvious in the light of the many malfunctions that occur on the diesel and straight electric locomotives, the fact that the alarm system does not alert the engine crew as to the type of malfunction, and the ability to discover such malfunctions only by periodic inspections.

It is taxing the credulity of any reasonable person to ask him to accept the proposition that periodic inspections are unnecessary. From the time diesel electrics were first put into service, the carriers have required firemen (helpers) to make periodic inspections of the lead unit and all trailing units in the locomotive consist and continue to do so today. The fact is that periodic inspection is required by carriers because of the realization that mechanical maintenance is directly related to the safety and lives of the employees, passengers, and the public (Tr. 46, p. 6661).

Moreover, the engineer cannot, consistent with the safety of the public and his fellow employees, continually stop and start the train, as suggested by the PRC to answer an alarm or to make a periodic standing inspection to detect and correct malfunctions. It is undisputed that it is inherently dangerous to stop and start heavy trains on the road. Whether operating in single track, double track, or CTC territory, there is always the danger of rear-end or head-end collisions with following or opposing trains, including passenger trains. In starting and stopping there is also always the risk of breaking trains

apart, derailment, and also the possibility of damage to lading (Tr. 50, pp. 7212–7213; IIX 95, p. 28).

Unlike ordinary manufacturing and other corporations, railroads are affected with a strong public interest. This interest requires that carriers afford prompt and efficient service to the shipping public. The principal product that the carriers have to sell is ontime delivery. When every effort is being made by the Government to promote production to bolster our economy and the national defense, this is not a time to experiment on systems which admittedly will produce train stoppages. That the carriers are willing to accept delays should not be the controlling consideration. The public interest should also be considered.

The record shows that the fireman is ordinarily able to detect and correct malfunctions while the train is in motion and avoid the necessity of stopping the train. The PRC's suggestion that the engineer alone can handle the detection and correction of malfunctions and when necessary stop the train to do so, is unsupported by the record and contrary to the carriers' prior statements. (See, e.g., EX 109, pp. 21, 58–59.) As previously stated, the record shows many malfunctions which the engineer can never detect from the cab. These include many malfunctions that do not have a corresponding alarm. But if we assume there is an alarm indicating a malfunction of some kind, or that the train is not responding properly indicating something wrong in one of the units, the engineer's only alternative is to stop the train; he can do virtually nothing from his seat in the cab. Stopping is not only dangerous as indicated above but also inefficient. A long and heavy freight train cannot be stopped in a matter of seconds. The brakes must be applied gradually, and it may take minutes to stop a train. The brakes must then be secured. The rear flagmen, on signal from the engineer, must descend and move back along the track as much as a mile or more to flag any train that may be following to avoid collision. The engineer must then proceed from unit to unit to find which of several units is malfunctioning and correct the malfunction or shut down a unit. This would be time consuming. After the malfunction is located and corrected, assuming that this can be done with only one man, the flag must be whistled in, and again time allotted for the flagmen to return to the train. This procedure may consume at least 20 minutes assuming the engineer can find and correct the malfunction in 1 minute (Tr. 46, pp. 6690–6693). Finally, if the train is stopped on a grade, it may be impossible to start the train without doubling; that is without uncoupling the train and starting up with one-half of the train to the crest of the grade and then returning for the second portion of the train (Tr. 46, pp. 6693–6694). In addition to the matter of time, there is the added expense. The record shows that the cost of stopping and starting a typical freight today—that is, one with 4 diesel units and 100 cars—would be in excess of the daily wage paid the fireman (EX 97, pp. 4–5; EX 30, p. 15).

Efficiency of operation would also be impaired if the periodic inspections of firemen were discontinued and along with it the making by the firemen of inspection reports showing what malfunctions occurred en route and any other erratic action which should be called to the attention of the shop forces for permanent and major repairs. The shop forces are dependent on such reports. The shop forces are not in a position to detect malfunctions and their work is greatly expedited by the postrun inspection report. Without a fireman aboard, the engineman would be handicapped in learning what went wrong on the lead or trailing units and hence his report will be of far less value to the shop forces. (For carriers' recognition of these facts, see EX 109, pp. 26, 50, 55, and 69.)

In road freight service, the record demonstrates that the operation of trains without firemen is, in fact, impossible, because of the fact discussed above that many malfunctions require two men to detect and correct, since they can be discovered only when the train is under load; that is, moving at ordinary rates of speed (EX 4, pp. 139–143). Obviously this condition cannot exist when the engineer stops his train.

The PRC by its suggestion that in lieu of stopping the train the engineer may reduce power, has in effect accepted the carriers' argument that the engineer can simply ignore the alarm signals (Tr. 71, pp. 1158–1161; EX 28, pp. 41–46). This is a tongue-in-cheek argument. It hardly squares with the emphasis placed by the carriers in their case in chief on the value and reliability of alarm systems as a replacement for the fireman. Met with testimony that the engineer is in no position to answer alarms, the carriers, in rebuttal, claimed the engineer can ignore the alarm. Let us assume that the engineer is in-

structed to ignore the alarm. Assuming that the engineer can survive in sanity to listening to the alarm bell for the many miles that may intervene between the sounding of the alarm and the next stop, what happens to the diesel units while the alarm is being ignored (Tr. 49, pp. 7057–7058, 7072–7075). For example, a low oil alarm may be sounded when the engine oil has reached such a critically low point that if the unit were continued in operation serious damage to the entire engine mechanism would result. The manufacturers of diesel locomotives and the carriers installed expensive and elaborate alarm systems for a definite purpose and that purpose obviously was not that the alarms should not be answered. The record shows that if malfunctions are not detected and attended to promptly the consequence may be serious damage to expensive equipment (Tr. 46, p. 6688) as well as possible derailments or personal injury.

The diesel revolution has increased the need for and responsibility of the fireman with respect to maintaining and restoring locomotive power and this function represents the efficient use of a substantial part of his workday. Thus where the fireman used to have only one fire to tend, he now has many diesel units to keep running. To do so, he must make periodic inspections to detect and correct the malfunctions that may develop on any one or on several of the units. More than half of the road trips involve the use of locomotive consists of three or more units (EX 18, pp. 49 and 51). Malfunctions increase in direct proportion to the units in the consist (EX 18, pp. 50–52).

But, the important consideration in the fireman's role in maintaining and restoring locomotive power is not the total time in minutes and hours that are involved in this duty. The important factor is qualitative. While it may take the fireman only a few minutes to find and correct a malfunction on a periodic patrol as part of his ordinary duties, it may take 20 minutes to half an hour for the engineer to find it by stopping the train, assuming that it is one of those malfunctions that will appear when the train is not under load or in dynamic braking.

Removing the fireman and transferring the duty of detecting and correcting malfunctions solely to the engineer would place an intolerable burden on the engineer. In the first place, with the trains of today having many diesel units or straight electric units in the consist, trains hauling many cars extending long distances in length require the full time and energies of the engineer. (See, e.g., EX 109, pp. 61–84 ,for carrier recognition of this fact.) The heavy tonnage of today's freight trains demands constant attention as to such matters as the amount of energy to be applied on the throttle and the braking power to be applied on hills, curves, and various kinds of terrain in all types of weather conditions. To the great skill required of the engineer in the actual operation of the locomotive consist must be added the necessity to closely observe signals, the right-of-way, and approaching traffic, pedestrian and vehicular. It would be unreasonable to require the engineer in addition to his present heavy responsibility to assume the responsibility for the detection and correction of malfunctions. Even though he is today responsible, under the operating rules, for the operation and safety of his train, historically the fireman has always had the primary burden of maintaining and restoring locomotive power and this is where it should remain. This division of authority is essential for efficiency as well as for safety. Moreover, the fact is that many engineers were promoted during the steam days, or have been running trains as engineers for many years without having returned to the service of fireman. Because of these facts they freely admitted that they rely almost exclusively on their fireman to maintain and restore locomotive power, detect and correct malfunctions, and keep the units running and get the train over the road (EX 29, p. 84; EX 30, pp. 36, 68, 70).

The PRC discusses the prerun inspections with respect to road service at page 42 of this report. Actually this inspection is made in road and yard service. The PRC of course, gives no inkling of what work is involved here. The job function of the fireman with respect to the prerun inspection was summarized in the record as follows:

"It is standard operating procedure in both yard and road service for the fireman and the engineer to make an inspection of the locomotive prior to each run or tour of duty. The inspection is carried on with respect to both electric and diesel locomotives. During the course of the inspection, we will check the brakes and rigging for loose or dragging parts to be sure that there is proper rail clearance, the supply of sand and the operation of the sanders, brake applications and piston travel and brake cylinders, position of angle cocks and shutoff valves, the

supply of flagging equipment, such as fusees and lanterns, the supply of water for cooling and drinking, the governor oil level, loose or broken belts on the generator or other parts, the ammeters, temperature and pressure gages, the fuel oil level, the ground relay buttons, lube oil pressure switches, fuel and speed indicators, the operation of front and rear headlights, position of rotaire valves and for any water or fuel leaks. We also listen for unusual sounds which may indicate defects.

"In order to save time the various aspects of these inspections are divided between the fireman and the engineman. On the other hand, however, a good number of important aspects of the inspection must be carried out by both the engineer and the fireman.

"For example, in checking the airbrakes, the engineman will apply them while the fireman is on the ground to see that the brakes actually apply and release. At the same time the fireman notes the piston travel and the operation of the sanders, that is to see whether or not sand is coming out from sand pipes properly.

"Two men are also necessary to check motor circuits when there is multiple-unit operation. To carry out this phase of the inspection the engineman usually operates the throttle in the lead locomotive and the fireman proceeds through the trailing locomotives to check the amperage gage to determine whether or not the traction motors are receiving electrical energy. If the gages indicate amperage the fireman signals the engineer with the whistle and then proceeds to the next trailing unit.

"In road operations we normally have from two to four units together and of course a complete inspection as I have just described is made of each of the locomotives." (Tr. 50, pp. 7207, 7208; see also EX 3, pp. 1, 2, and EX 94, pp. 1, 2.)

The PRC report does recognize, however (p. 42), that prerun inspection tests require two men to make in a safe and efficient manner. In testing the brakes and the sanders, one man must be in the cab to apply the brakes and sand valves and one man must be on the ground to determine whether the brakes apply and release properly and whether the sand is deposited on the rails in front of and behind the wheels properly (Tr. 50, p. 7208; EX 29, p. 126; Tr. 52, p. 7403). Two men are essential to perform this function. Few mechanical matters are as important to safety as the brake and sand operations. As to the carrier contention that the shop forces can and do assist in the prerun inspection, numerous employees testified that frequently engines are placed on the ready tracks by the shop forces which are not fit for service (e.g., Tr. 50, p. 7209; Tr. 51, pp. 7302–7304; Tr. 53, pp. 7680, 7681; and EX 109, p. 19). The importance of the prerun inspection, by a two-man engine crew is recognized by the carriers also. (See e.g. EX 109, pp. 18, 35, 57.)

The PRC also glosses over the fact that the traincrew is not always with the engine crew when the latter crew picks up the engine (e.g., EX 29, p. 74). Hence a two-man engine crew is essential to make the inspection. Notwithstanding this record, the PRC brushes aside this function on the basis of time spent and the assertion that this duty is primarily the engineer's responsibility (p. 42).

Conclusion.

In sum, the fireman has a duty to detect and/or correct malfunctions wherever he possibly can. Where he cannot make appropriate corrections then he has a duty to take whatever action is necessary to avoid or minimize damage to the locomotive and promptly to make an appropriate report to the shop forces. This is the work which the carriers require of him and it is the job which the firemen on American railroads today perform each day.

4. *The fireman has other duties to perform.*—The fireman is required to perform numerous other duties in road service. Some of these duties are as follows:

(1) Flagging ahead under rule 99: Under the operating rules of all carriers, the fireman is required to flag ahead whenever the circhmstances require. That is, he is required to walk ahead and sometimes to run ahead of the train, a sufficient distance to flag down any trains which may be approaching his own train on the same track, or to flag down trains on adjoining tracks where the adjoining tracks may be fouled or otherwise rendered dangerous by an accident on his own train. The following testimony which appears in EX 30, page 12, is typical:

"Sometimes a freight train has to make an unscheduled stop because a piece of equipment being carried has become loose and shifted its position or because

of derailment or because of any of a hundred other causes. Often the reason for the stop, particularly in an emergency stop, causes danger to a train coming down an adjoining track. The adjoining track may have been fouled, hence it is absolutely essential to send the fireman on ahead in front of the engine at a safe distance so that he can flag down any train that is passing on the adjoining track. In the meantime, of course, the brakeman makes an inspection of the train in order to find out what has happened and to make any necessary repairs; and the flagman goes to the rear of the train in order to flag down any trains that may be approaching in the same direction."

The fireman may have to flag ahead even when the train is making scheduled stops. (See, e.g., EX 30, page 12.) Failure to have a man ahead to flag down opposing trains obviously can be disastrous.

(2) Train orders: The fireman assists the engineer in picking up train orders when train orders are passed up on the fireman's side or when it is safer for the fireman to move to the engineer's side to pick them up. More importantly, a fireman reads the train orders and checks them with the engineer to be sure that both the engineer and the fireman understand the orders. The fireman also checks to see that the engineer complies with the orders. While train orders are supposed to be read and checked by the head-end brakeman, and he does so when he is available in the cab of the lead unit, there are many occasions when the head-end brakeman is riding on a trailing unit or on a caboose and thus is unable to perform this duty. This work of the fireman is essential to the efficient operation of the train. (See Tr. 52, pp. 7538–9, 7542–48, 7553–56, and 7575–6.)

(3) Flagging railroad crossings: There are a number of situations where the engine proceeds alone without the ground crew. Some of these situations are where a road engine moves from the ready tracks to the yard to pick up the train, or upon completion of tour of duty a road engine or yard engine yards its train and proceeds to the roundhouse. Under these circumstances the fireman and the engineer work alone on the engine. It is necessary in these situations frequently for the light engine to proceed over public crossings and under these circumstances the fireman is required to flag the crossing. No flagman is available to do this work. The importance of this duty is apparent. (See Tr. 51, p. 7407; EX 29, p. 74.)

5. *The fireman is necessary for the relief of the engineer.*—Testimony before the PRC showed that engineers in road service become fatigued because of the strain of operating the train. Operation of the locomotive for long hours at night in fog, sleet, snow, rain, and hail—in all sorts of adverse weather conditions and for many hours is most tiring. Switching work, picking up and setting off cars during adverse weather conditions can be particularly strenuous due to the necessity for maintaining an exceptionally vigilant lookout, looking for signals from the ground crew and keeping arms and shoulders in an unnatural position in order to maintain the most vigilant lookout. Under these circumstances, in the interests of safety an engineer is entitled to have the fireman as a relief man.

While on road service the engineer has an additional factor making for fatigue—the necessity for keeping his foot at all times on the deadman control of the locomotive. Hence, it is customary for the fireman and the engineer to exchange places from time to time, each carrying out the other's duties so that the engineer may secure appropriate relief. Also while the fireman takes the place of the engineer temporarily, he is performing the important function of learning to become an engineer himself. Actually the best way to learn to operate a locomotive is to have experience doing so while working under the constant supervision of an older man with many years of experience. We will have more to say in this connection subsequently, when we discuss the need for the fireman as a future source for engineers.

The majority of the PRC rejects the above argument on a basis that is almost without understanding. They equate the need for the fireman to relieve the engineer with the number of safety award applications filed under the B.L.F. & E. safety award program. See page 43 of the report. Again, as we said above, a safety award program calls attention only to exceptional instances of heroism above and beyond normal duty. It is most unjust to measure the need for the fireman for the relief of the engineer by looking to the safety awards statistics. We suggest that relief is needed for the engineer to permit him to take care of physical needs and to rest from fatigue, eyestrain and similar factors which reduce efficiency. It is incredible for the majority to say, as they do on page 43:

"When the engineer needs temporary or emergency relief, the locomotive can be stopped on road service with minimal delay in the absence of a fireman, * * *." Clearly the carriers will not tolerate the engineer's stopping for rest. Any suggestion that he might be permitted to do so is inappropriate. Further, we have already discussed at some length the dangers, hazards, and expense of a nonscheduled stop on the train. Another consideration is that emergency situations arise. The engineer does become ill suddenly and occasionally dies while at the controls. If the head-end brakeman is on the ground performing his own duties, no one will be on the engine to stop the train in the event of an emergency. Since the head-end brakeman may be on the ground as much as 50 to 65 percent of the time (EX 29, pp. 63, 130) the danger is not a minimal danger. Moreover, while road engines are equipped with deadman controls, the engineer's body can slump down on the controls preventing the deadman equipment from functioning. (See EX 30, p. 43.)

6. *The fireman is needed as a source of future engineers.*—The importance of the fireman as a source of future engineers was stressed by the witness Arnold M. Strommen of Willmar, Minn., who is a locomotive engineer on the Great Northern Railway and who has been in railroad service since February 1937. He had the following to say, and we quote from Tr. 57, p. 8247:

"The position of locomotive fireman is essential training ground to becoming an engineer, because it is through this training that he becomes familiar with the locomotive. He acquires experience and judgment which is vital to becoming an engineer."

Another witness, R. E. Davidson, grand chief engineer of the BLE, put it this way (Tr. 44, p. 6313):

"Not the least of the fireman-helper's duty and privilege is to receive training and experience in becoming an engineer. * * * You will find that today's engineers have not only had years of experience as firemen-helpers and tutelage by the engineers before assuming the responsibility of working regularly as a locomotive engineer, they have also had extensive experience as an engineer in the 'trading off' process in which they operate the locomotive but at the responsible direction of the engineer. Thus, the helper becomes confident to operate the locomotive and train, and in reciprocity so to speak, he is then able to spell out the engineer and relieve him in case of fatigue, illness, and incapacity. This has an additional factor of safety and efficiency to the operation."

Furthermore, the 1963 diesel board stated that engineroom experience of firemen was essential to the training of engineers (CX 3A, p. 108). Railroad operating and mechanical officers have emphasized the importance of training and working as a fireman-helper. (See, e.g., EX 109, pp. 3, 13, 53, 67, 69–71, 76–79, 81, 88–89; and also EX 128, pp. 127–132.)

III. Yard Service

The fireman in yard service has essential functions which are similar to those of the fireman in road service. These include (1) lookout on the left side of the locomotive, (2) signal passing, (3) correcting malfunctions, (4) relief for the engineer, and (5) training of future engineers.

1. *The lookout function.*—It is a fact that (1) the engineer cannot see what is transpiring on the left side of the locomotive; (2) the engineer cannot look in two directions at the same time; and (3) when the engine is proceeding forward around a lefthand curve the engineer cannot see anything that lies ahead, even if there are no cars ahead of the engine. It is also a fact that the yards and industrial areas in which the engine service and train service employees work generally pose as hazards right and left curves, switches, viaducts, bridges, overhead wires, third rails, buildings, and heavily traveled grade crossings. Close clearances are common. Such yards are operated night and day in fog, rain, snow, and sleet.

As one veteran engineer put it, Tr. 60, pages 8782–8783:

"The fireman's chief function, as far as I am concerned, is to look where we are going, to avoid damage to the equipment, avoid injury to individuals employed and individuals who are not employed and are otherwise near or adjacent to the tracks, and to receive and relay signals. The standard books of rules, I think, on all properties, require the fireman helper to keep a constant lookout.

"This is by no means a new rule. It has been in existence at least as long as I have been on the railroad, which is some 38½ years. There are a large number of workmen in and about the yards where we work and, of course, there

are always the three men in our own ground crew who are near the tracks almost all the time.

"We switch under almost all weather conditions by day and by night and there are only a few floodlights in the Proviso yard to help illuminate the areas in which we work. One man, be he fireman or engineman, cannot look in two directions at the same time. Moreover, the physical conditions inherent in railroad operations make it impossible to see on both sides of the train. Even when there are no cars ahead of the engine, the engineer has a blind spot on the left side of the engine, which varies from 30 to 150 feet, depending on which way the engine is headed.

"Should a man or some other obstacle fall upon the tracks within 30 to 150 feet ahead of the engine, it would be physically impossible for the engineer to see him. Therefore, it is essential to have a fireman looking out on the other side of the engine."

Nor is it disputed that in these yards and industrial complexes a lookout must be kept from the engine for (1) vehicles and pedestrains at crossing, (2) railway cars or other engines, (3) other employees, including laborers, inspectors, car repairmen, and others working on or about the tracks, (4) trespassers including children, on or under cars, (5) members of the ground crew of the engine as well as other yard engines working in the area to be sure that they are all in the clear before the movement is begun, (6) cars being handled by the locomotive to spot hotboxes, dragging equipment, shifting or protruding lading, open doors, end gates that are down and cars being handled by other crews for the same defects, (7) miscellaneous equipment such as handcars, motorcars, cranes, tool and supply cars, that may be working in the area, (8) cars "running out" because of an incline or grade in the yard, high winds, or defective brakes, (9) obstructions such as ties, trees, rails, debris, and other rubbish on the tracks and in switch points, (10) misalined switches, (11) employees of industrial plants being served and their equipment, such as handtrucks, and (12) adequacy of clearances to move cars both in industrial areas and in the yards.

This outline of conditions in yards and industrial areas is a brief summary of hundreds of pages of testimony and hundreds of photographs submitted by the employees which indicate the necessity for a lookout on both sides of the locomotive. We call your attention particularly to employees exhibit 3, pages 6-7; transcripts 50 to 65, inclusive, EX 29, 30, 97, 117; and the photographs depicting these conditions at EX 6, 7, 12, 19-23, 25, 31-39, 42-49, and 99.

We invite this Board to search the record to find any evidence, let alone substantial evidence, that yard operations can be conducted safely without a fireman to maintain a lookout on the left side of the locomotive. The number of railroad employees and other persons killed and injured, notwithstanding the lookout by the fireman on the left side, makes clear that such lookout must be continued if the accident rate is not to soar. This conclusion is supported by the many incidents related by firemen, engineers, and other employees describing how serious accidents, personal injury, and property damage were avoided by the lookout maintained by the fireman.

A typical incident was related by a fireman on the Pennsylvania Railroad who has been employed in engine service since 1942 and who has also served as a supervisory officer, assistant road foreman of engines, for a 10-year period from 1947 to 1957. In his testimony, at Tr. 50, pages 7214-7215, which testimony was unchallenged, he said:

"There have been many instances where firemen by maintaining constant lookout have been able to minimize or avoid serious accidents. For example, on November 25, 1960, we were backing in the Enola yard to pick up some cars on track 37. A brakeman was on the ground on the engineman's side passing signals. From my side of the cab I was looking in the direction the move was being made. * * * I was serving as fireman on this occasion. The brakeman who was giving the signal was in such a position that he could not see another engine moving down the same ladder track. The engineman could not see the other engine because he was watching the head brakeman for the signal. I yelled to the engineer to stop. He replied 'But the brakeman is giving me a backup signal.' I said 'Yes, but you can't go anywhere unless it is right into the engine behind us on the ladder.' This type of incident occurs frequently and is very difficult to avoid in the nature of things when you have several yard crews operating in close proximity in a very busy yard. Without the fireman, accidents would occur with much greater frequency."

Numerous examples of instances where firemen have avoided or minimized accidents may be found in the record at EX 29, pages 80–81, 87–88, 94–95, 128–129, and EX 53A and 53B.

Significantly, the carriers admitted before the PRC that it was essential at times to have a lookout on the left side of the locomotive. The thrust of their contention was not a lookout was unnecessary, but that it could be performed by someone other than a fireman. (See, e.g., CX 174 and EX 117, pp. 11–13; CX 156, p. 27 and EX 117, p. 342; Tr. 5, p. 952.) This argument is an explicit recognition of the need for a lookout in some cases.

The suggestion that a trainman be stationed on the left side of the locomotive in lieu of the fireman must be considered in relation to the evidence bearing not only on what the fireman does but what the traincrew does. The PRC received evidence with relation to the duties of the traincrews. This evidence concerned the present operation—that is, operations with train crews operating as a team with the engine crew. The Commission found, as previously stated, that the job content of the traincrews has increased because of such factors as increased lengths of freight trains and attendant increased responsibility. The Commission also recognized that in both road and yard service a team operation is involved and that a full, adequate team is essential to the safety of the operation given the workload and responsibility of each member of the crew. The Commission also acknowledged the organizations' contention that the carriers in recent years have tended to tighten the operating rules and that these jobs are therefore more demanding than was previously the case. (PRC Report, p. 56.) It was the Commission's conclusion that the evidence did not support the carriers' demand for the elimination of present rules or practices governing the size of the traincrew. In reaching this conclusion, the Commission found that there was some overmanning but that the operating conditions existing throughout the country would make impractical any approach to the subject. The Commission recognized that there were situations where there would be little or no change in the manpower requirements.

One of the serious weakness of the PRC Report was the failure to relate the evidence with relation to the manning requirements having to do with the engine crews with those of the train crews. The two issues were treated as though they were separate and unrelated, even though there is a general consensus among the parties that the engine crew and the train crew operate as a team. This schizophrenic approach to the manning requirements led the Commission, in effect, to accept the carriers' contention that somehow a member of the ground crew could take over the function of the fireman, and in particular could maintain a lookout on the left side of the engine. Having recognized, as the Commission has, that there are numerous situations where the size of the train crews is not in excess of the requirements, the obvious result of attempting to allocate the fireman's lookout duty to a member of the train crew would be the undermanning of the operation, exposing employees and the public to greater risk of accident and seriously impairing the efficiency of operation.

Other important reasons require the fireman on the left side of the locomotive. In yard work, while the engineer is going slow enough to stop short of an obstruction, he will not stop for an obstruction or for an opposing train movement which he cannot see. Further, under the carriers' proposals, it will be necessary for all of the ground crew to work predominantly on the engineer's side of the locomotive and therefore there will be no member of the ground crew to see a car, engine, pedestrian, or other obstruction approaching on the left-hand side of the train. Even if it were possible for a train crew member to station himself on the ground on the lift side, ordinarily he will be unable to signal the engineer on the right side and in the exceptional case where he could do so it would be only by another crew member. Obviously, it would be no benefit to have the train move slowly with the danger apparent to a crew member if no warning could be relayed to the engineer to stop the train.

We consider it most dangerous to operate trains without a lookout on both sides of the engine.

2. *Signal passing.*—Because of the physical conditions which are described above, such as track curvature, close clearances, adjacent track congestion, overhead and side obstructions, hand signals are frequently passed on the fireman's side. This is done sometimes because it is safer to do so, sometimes because it is more convenient to do so, and sometimes because it is impossible to do it any other way. Numerous witnesses, including yardmasters, switchmen, and enginemen testified that signals are passed on the fireman's side not only because it is

frequently impossible to do so otherwise but because it is the safest and most efficient way of carrying out the work. As one yardmaster with nearly 50 years' experience put it: "As a general practice switchmen will do their work on whatever side is the safest for them and the most efficient. Ordinarily, the safest method of switching is to pass hand signals directly to the engineer and whenever possible, this is the way switching is carried out. However, one thing you can be sure of, is that when the switchmen are working on the fireman's side it is only because that is the safest side to work on" (Tr. 62, pp. 9286–9287).

For illustrations of circumstances when signals are passed on the fireman's side because of efficiency (see Tr. 52, p. 7499; EX 97, p. 68; EX 117, p. 5.) For illustrations of circumstances when signals must be passed on the fireman's side because of physical conditions (see Tr. 50, pp. 7250–7251, 7267–7268; Tr. 51, pp. 7393, 7433; Tr. 52, pp. 7488–8490; Tr. 60, p. 8840.)

By means of oral and written testimony and more than 1,000 photographs and slides and several movie presentations before the PRC, the employees visually and verbally portrayed the varied situations in the yards and industrial areas throughout the United States in which hand signals are in fact passed on the fireman's side (Tr. 50–62; EX's 29, 30, 6, 7, 12, 19–23, 25, 31–39, 42–49, 97, and 99).

This qualitatively and quantitatively large amount of evidence is summed up in one paragraph of the PRC report at page 39 as follows:

"In yard service, the fireman's function is almost exclusively that of a 'lookout.' The carriers' surveys show that nearly 96 percent of his time is spent in maintaining lookout. (The organizations' surveys did not cover yard service.) Part of the fireman-helper's function on yard diesels, the organizations contend, is in passing signals to the engineer when the ground crew must work on the fireman's side. Although the evidence is conflicting, there appear to be very few occasions when signals must be passed on the left side from the ground crew and relayed by the fireman to the engineer. In the vast majority of cases, one or more members of the ground crew can position themselves on the engineer's side and pass signals directly to him. In some cases, this might involve some small delay, but slowing down the operation so that signals can be passed directly to the engineer from the ground should be within the area of managerial judgment. There are also a number of mechanical devices, such as mirrors, radios, and dual controls, that could be used or installed to facilitate the work."

Wholly ignored in this conclusion of the PRC is the uncontradicted evidence that when the ground crew works on the fireman's side it is because it is safer to do so. Safety is not a matter which is solely within the "area of managerial judgment." For this reason alone the issue of the fireman in yard service should have been remanded to the parties for collective bargaining just as was the crew consist rule.

In connection with those situations where it is admittedly not possible to pass signals except on the fireman's side because of physical conditions, the carriers suggested and the Commission apparently accepted the conclusion that there are "a number of mechanical devices such as mirrors, radios, and dual controls that could be used or installed to facilitate the work." The Commission makes this statement as though it were uncontroverted. But the fact is that many of the carriers' own rules prohibit the use of mirrors and radios as communicating devices to relay signals. For example, Union Pacific operating rule 7A provides in part (EX 30, p. 25):

"On engines so equipped, the engineer or fireman must not use rear view mirrors for observing conditions or hand signals in backup movement or in making couplings."

Other testimony showing the unsafe and unreliable qualities of mirrors and radios as communicating devices and additional carrier safety rules expressly prohibiting the use of such devices for signaling are at EX 29, pages 8 and 95; EX 30, pages 17–18 and 88; and Tr. 51, pages 7398–7400.

The employees pointed out also that mirrors would be totally useless in inclement weather such as rain, snow, or sleet. The foolishness of the suggestion was demonstrated also by one witness who said:

"Through a mirror you can't get a correct reading. A mirror is misleading. For example, if you look in your mirror of your automobile and you attempt to read a sign in back of you, it will be backward. Now it's my practical experience on a railroad, if I was going to look over in that mirror at the brakeman back there giving me a backup sign when I see it, it would be a go ahead sign" (Tr. 51, p. 7399).

Moreover, the foregoing reasons apply with greater force during all hours of the night and at dusk.

As to dual control locomotives, the record shows that such locomotives are not only unsafe and inefficient but that the carriers have tried them in the past and abandoned them. The testimony of an engineman for the Long Island Railroad, whose railroading career began in 1917, is particularly instructive with respect to dual controls. He testified in Tr. 51, pages 7394–7397 as follows:

"At one time the Long Island tried to meet the problem of passing signals in a float yard operation by using dual controls. Every time the engineer had to change sides in order to see the brakeman, however, he had to cut out the brake valve on that side and cut it in on the other. Then a test would have to be made.

"This meant the brakeman had to walk down and observe the brakes on both sides to check the brakes.

"Ordinarily it takes 20 to 25 minutes to empty a float. With dual controls it took an hour. As a result of the delay, the carriers abandoned this attempt to use dual controls in a float operation."

Other examples of significant testimony with respect to the inefficient and unsafe qualities of dual control locomotives and their abandonment is contained in the record at Tr. 50, page 7219; Tr. 60, pages 8783–8784; and EX 30, pages 86–88.

The employees' testimony with respect to the unsafe and inefficient qualities of mirrors, radios, and dual control locomotives was scarcely refuted by the carriers' rebuttal.

The Commission's statement quoted previously—"Although the evidence is conflicting, there appeared to be very few occasions when signals must be passed on the left side from the ground crew and relayed by the fireman to the engineer" and "In the vast majority of cases one or more members of the ground crew can position themselves on the engineer's side and pass signals directly to him," is contrary to the record. A large part of the employees' oral and written testimony and a large proportion of the photographs and slides and several movie presentations were directed to showing the varied situations in the yards and industrial areas of more than 30 railroads in the United States in which hand signals are passed on the fireman's side. A large portion of this oral and written testimony and demonstrative evidence was directed to showing specific situations in which it is physically impossible to pass signals except on the fireman's side. In their rebuttal exhibits the carriers left unchallenged or expressly admitted that in a significant number of the areas portrayed it is physically impossible to pass signals except on the fireman's side.

Because of the importance of this testimony generally and the Commission's erroneous conclusion that there "appeared to be very few occasions when signals must be passed on the left side," we are attaching to this statement as attachment 1 some of this testimony and some of these photographs which depict situations in which it is essential to have a fireman to pass hand signals on the left side because of the physical characteristics of the yards and industrial areas. We wish to repeat that the carriers admitted either expressly or by silence that these conditions exist and that signals must be passed on the fireman's side in these situations. The photographs to which we refer are contained in the attachment.

We do not want to leave the impression with this Board that these few photographs represent the only areas depicted by the employees and contained in the record where physical conditions require signals be passed on the fireman's side. To indicate the frequency with which signals must be passed on the fireman's side in yard service, we shall quote one more small portion of the record. This testimony was given by an engineman on the Long Island Railroad whose service with railroads in an operating capacity goes back to 1917. The witness said at Tr. 51, pages 7400–7402:

"There are countless other situations in which it is physically impossible to reposition a crew in such a way as to pass signals directly to the engineer.

"As a final example, however, I will take the common situation in which engines are pushing a line of cars up a straight track onto and around a curve to the left. On a move ahead, the signal can be passed on the engineer's side because the train is on a straight track. However, when a train starts around a curve, the brakeman on the right side of the cars, that is, on the engineer's side, will pass from the view of the engineer as the cars proceed around the left curve.

"Under standard operating rules, the engineer must stop—Rule 108 says in case of doubt, stop, take the safe course.

"Therefore, it is necessary for the brakeman to give the move ahead signal on the fireman's side, and climb and stand on the ladder on the left side of the car so that when the cars move around the curve to the left, the brakeman will be still in line of vision of the fireman whose position is on the inside of the curve.

"Although there may be a few situations in which the crew can conveniently reposition itself to pass the signals direct to the engineer—I am not saying that there are no such cases—such repositioning will always involve a delay and frequently will be unsafe.

"Delay is of the greatest importance on the Long Island Railroad, even in yard movements, just as it is on many other railroads. Our yard engines are in constant use, and there is practically no idle or down time by an engine crew. As a matter of fact, the Long Island could use 10 more yard engines to get out the work that has to be done.

"Assuming contrary to the fact that the brakeman could take the 5 or 10 minutes necessary to walk to a point from which he could be seen by the engineer, the repositioning might place a brakeman in constant jeopardy.

"For example, he might have to walk over a half-dozen or dozen or more tracks, including main line tracks, where high-speed freight trains pass, or high-speed passenger trains. Even if a brakeman could get at the necessary point and return, other yard and road movements may pass in between while he is walking, cutting him off again from the view of the engineer, thus causing further delay."

This Board should bear in mind also that the carriers' own surveys indicate that signal passing by firemen in yard service is a substantial and important function. Thus the carrier survey showed that in 794 trips in which so-called miscellaneous duties were performed by firemen in yard service, firemen relayed hand signals on 2,633 occasions and the time spent in relaying such signals involved 271 hours and 55 minutes of a total of 323 hours and 28 minutes given to the performance of all miscellaneous services. This survey is referred to in CX 13, page 9.

In sum, the fact is that today, as in the past, signals are passed and relayed through the fireman because it is safer to do so or because operations are carried on more expeditiously in this manner, or because there may be no other way in which signals can be passed.

3. *Correction of malfunctions in yard service.*—The duties of the fireman in yard service with respect to detecting and correcting malfunctions is similar to that in road service. He must make periodic inspections of the unit, answer alarms, and detect and correct malfunctions of a character similar to those found in road service. The report of the Commission again takes the erroneous approach that the relevant factor in determining the essentiality of the fireman in yard service with respect to this duty is quantitative (PRC Report, p. 42). But even the carriers believed that the qualitative aspect was of importance here, and their own 1958 survey showed that in 750 tours of duty in yard service, 1,010 routine inspections were made and that corrective action was taken on 421 or 41.7 percent of such routine inspections. The carriers' 1959–60 survey showed that in 762 tours of duty in yard service, 1,149 routine inspections were made and that corrective action was taken on 499 or 43.4 percent of such routine inspections (CX 13, pp. 13, 20, 24). These surveys of the carriers establish that there is indeed work for the fireman to do with respect to this function in yard service and that he does perform a function.

The removal of the fireman in yard service would seriously impede the efficiency of railroad operations in the yards and elsewhere. Although yard engines do not ordinarily obtain high speeds, nonetheless fast and efficient operation in the yard is essential for it is here that trains are made up and broken up for delivery to local customers or transshipment on the road to other destinations. A road freight schedule depends in large measure on the work done by the yard engine and thus yard service efficiency must also be maintained. As a veteran yardmaster stated:

"The carrier applies pressure on the yardmaster to see that cars are delivered promptly and efficiently and the yardmaster directs the engine crews in doing the work as efficiently and safely as possible." (Tr. 62, p. 9283). Other testimony of yardmasters on this point may be found at EX 97, pages 61 and 63.

The testimony of the employees shows also that in yard service as in road service there are malfunctions which require two men to detect and correct, malfunctions for which there are no alarms, or alarms which fail. Hence a two-man engine crew is also essential in yard service. For examples of such testimony, see Tr. 50, page 7210; Tr. 51, pages 7402–7405; Tr. 53, pages 7679–7680; Tr. 54, pages 7787–7788; Tr. 60, pages 8779–8780; EX 29, pages 88, 96, 123, 126; EX 30, pages 4, 68; EX 97, pages 61–63.

In addition, yard engines frequently operate on ascending and descending grades as well as in hump yard operations. Here it is particularly important to have a fireman in the cab to correct malfunctions and reset such devices as the overspeed trip or ground relay before the engine loses momentum on the grade or hump. This is necessary to avoid being compelled to back the train down and start over again with consequent loss of time. Moreover, in a hump yard operation, if there is a loss of power at a critical time, the car being humped at the crest of the hill may roll back and may strike the pin puller. (See, e.g., the testimony at Tr. 51, pp. 7403–7404.) Many yard engines work in heavily congested terminal areas. In such places the breakdown of a locomotive which cannot be restored to service because of the absence of a fireman may result in the tying up of the entire terminal area with consequent delay to the passenger public. In this regard see the testimony at EX 29, page 123.

The contention that malfunctions on yard engines can be handled by the engineer alone when the engine is stopped cannot be squared with the record to which we have adverted which shows that there are malfunctions which require two men to detect and correct and malfunctions which must be corrected while the engine and cars are in motion.

Nor does the record support the conclusion that "mechanical forces are readily available in yards if any serious malfunctions occur" (PRC Report, p. 42). The employees pointed out that the tendency of railroads is to reduce to minimum or below minimum standards the number of shop force employees available (see, e.g., EX 29, pp. 8 and 116). It is an undisputed fact that the number of shop employees employed on class 1 railroads dropped 50 percent during the period 1947 to 1960 (Monthly Labor Review (BLS), October 1962, vol. 85, No. 10, p. 1130). In addition there are many outlying yards where there never have been shop forces available. Even in those areas where shop forces are available, yard engines are not always quickly within reach but may be many miles from the point where the shop forces are located. (See, e.g., Tr. 51, p. 7405 and Tr. 54, p. 7788.) The public should not have to wait for extended periods at blocked street crossings for want of a fireman and while a shop force employee is on his way to a stricken yard engine. (See EX 29, p. 96.)

4. *The fireman is necessary to relieve the engineer.*—The Commission conceded that a fireman is necessary to provide emergency relief in yard service but proceeded to provide for his elimination by substituting deadman control features on all yard locomotives (where none now exist). (See PRC Report, pp. 43–44.) But the record shows the deadman control is not a perfect instrument and the engineer may slump on the control and prevent the safety device from functioning. (See, e.g., EX 30, p. 43.) Obviously this safety device is no answer to the admitted need for emergency relief.

Further, the requirement of deadman control features on yard locomotives would only add to the burden and strain on the engineer. This additional burden only adds to the necessity for temporary relief, a fireman function which the carriers largely ignore.

Wholly forgotten is the testimony of numerous engineers that they need temporary relief because of the present burdens and strains of switching in the yards and industrial areas. An engineer for the Washington Terminal Railroad, the carrier which performs switching in the Union Station in Washington, D.C., said at EX 29, page 123:

"Enginemen generally—and Washington Terminal enginemen particularly—are under severe tension and mental fatigue due to the congestion in the terminal area and the short time available for switching trains in the terminal and the generally hazardous conditions in the area. The fireman helps to alleviate this tension and fatigue by taking over the controls of the locomotive periodically."

Consider the following testimony by an engineman for the Pennsylvania Railroad Tr. 50, p. 7239):

"Q. Does the presence of floodlights have anything to do by way of making visibility difficult?

"A. Yes. It is very fatiguing to the eyes when you are down in that field and you are working against those lights. And it does restrict the visibility to a certain extent.

"Q. Does that have any influence on your opinion on the desirability of having a fireman on the engine along with the engineer in the switching operation?

"A. Oh, yes. In other words, it spells the engineer off from time to time, and it overcomes a great deal of fatigue that he would have if he had to sit there working against those lights for 8 hours, particularly on a night turn."

Consider also the statement by an engineman for the MKT Railroad, at EX 30 pages 38–39:

"Many of the yard crews work overtime and the number of assignments has been curtailed to such an extent that the switching operation is almost continuous. When the fireman relieves the engineer for short periods of time it is therefore not only a very good practice, but almost a physical necessity. When switchmen are working close to the cut of cars we are handling, the engineer usually must have the upper portion of his body sticking out the cab window. After a long period of time this position becomes very tiresome and painful."

In ignoring this body of testimony and suggesting that the yard engineer may merely stop his train to obtain temporary relief, the Commission indicates a lack of understanding of railroad operations. The need for temporary relief for fatigue is both frequent and periodic. Certainly neither the carriers nor the public would or should tolerate stoppages for this purpose. Accordingly, the fireman is necessary for the purpose of securing temporary relief for the engineer.

In this regard it is significant also that the Commission report does not find—indeed it does not even discuss—whether elimination of firemen will impose an unduly burdensome workload on the engineer, or whether retention of the fireman is necessary to avoid such a workload. Yet the Commission deemed this criterion a relevant factor as to the train crew consist issue (PRC Report, p. 58). Obviously it should be relevant to the engine crew consist also.

5. *Training of future engineers.*—We shall not repeat here what we have said already with respect to the training of engineers in road service. What was said there applies with equal force in yard service. In affording engineers temporary relief, firemen also perform a positive function in their own development toward becoming skilled locomotive engineers. The best way to learn to operate a locomotive is to have experience with varied numbers of diesel units, varied numbers of cars, both loads and empties, over different kinds of terrain at different grades and track curvatures and under the full spectrum of weather conditions. This type of training and experience is indispensable in learning to handle properly trains in the yard and over the road.

IV. Conclusion

We conclude with certain observations which we believe may be of help to this Board.

First, the public at large and communications media have been brainwashed into believing that the railroad industry has been held back in its attempts to modernize by the organizations appearing before you. Nothing could be further from the truth. The truth is that technological change has gone forward more rapidly in the railroad industry than in most other industries. The truth is that this has been accomplished with a minimum of resistance from the labor organizations involved. The truth is that total employment in the industry has been greatly reduced, and this reduction has come about in large part because of technological change. The truth is that accompanying this reduction there has been a sharp increase in the productivity of railroad employees, a productivity gain larger than in most other industries.

Total employment in class I line-haul railways after World War II dropped precipitously from about 1.4 million in 1947 to less than 800,000 in 1960, a decline of more than 40 percent. Preliminary data from the Interstate Commerce Commission indicates that by 1961 railroad employment had fallen to an estimated 730,000, or 48 percent of 1947 (Monthly Labor Review, October 1962, p. 1129, table p. 1130). The number of operating employees declined approximately 31 percent from 1947 to 1960, with the rate of decline for engine crews exceeding that of train crews. From 1948 through 1959, employment of road freight engineers declined 43 percent, the number of firemen-helpers 36 percent. In yard service, the rate of decline for the same period was 28 and 23 percent respectively (PRC Report, app. vol. III, pp. 7–8).

The Bureau of Labor Statistics, in a special study made for the Presidential Commission, concluded as to technological advance and increased productivity:

"Total car-miles per production worker man-hour on class I line-haul railroads and switching and terminal companies increased 70 percent between 1947 and 1959. A number of technological advances contributed importantly to this increase. One outstanding example was the replacement of the steam locomotive by the diesel. The number of diesel locomotives, which require less maintenance, increased from 8,089 in 1948 to more than 28,000 in 1959. At the same time, average pulling power (tractive effort) per locomotive unit increased from about 55,000 to 61,400 pounds. Moreover, several diesel units can be coupled and controlled from one cab, whereas, formerly, each steam locomotive had to be controlled independently. Other technological gains which affected manpower requirements included increases in freight cars per train (including caboose) from 54.8 cars per train in 1948 to 70.7 cars in 1959; in car capacity from 51.9 tons per car to 55.0 tons" (PRC Report, app. vol. III, p. 5).

The increase of 70 percent in productivity referred to came about through dieselization, a change unopposed by the railroad labor organizations. How was productivity increased? By making possible longer and heavier trains—with a single engine crew. Prior to dieselization as indicated in the excerpt from the BLS study quoted above, steam locomotives could and were frequently coupled together in order to haul longer trains or to haul trains over steep grades. Since each locomotive had to be handled separately, an engine crew was assigned to each. Thus when three locomotives were required, six men were in the cabs of the train, three engineers and three firemen. In contrast, any number of diesel units can be coupled and controlled from one cab. The fact is today that in road service the average number of diesel units in a locomotive consist exceeds three, and locomotive consists of four, five, and six units are common. The long freight train has become a symbol, sometimes an annoying symbol of modern railroading. The average of 70.7 cars per train in 1959 is a national average—on principal railroads the average is considerably higher and trains of 150 to 200 cars are common. Translated to tonnage hauled, the national average is 3,500 tons per train but trains from 7,000 to 10,000 tons are hauled every day throughout our land. This is the fruit of technological progress, and the railroads have harvested it with the aid of their employees.

But this is not the story the American public has been told. Nor has the American public been told the well-kept secret that although railroad employment has declined by more than 40 percent, the number of executives, officials, and staff consultants has remained almost constant. The Bureau of Labor Statistics reports a decline of only 1 percent in this occupational classification for the period between 1947 and 1960 ("Employment Changes in Railroad Occupations, 1947–60," table I, vol. 85, Monthly Labor Review, October 1962, p. 1130). We will not stoop to the carriers' level and say that featherbedding is rampant in the executive suites of our class I railroads. Let us say simply that Parkinson's law is at work in reverse.

There should be laid to rest forever the insiduous and false notion that the railroad labor organizations have held up the march of technological progress in the railroad industry.

Second, the underlying issue presented by the carriers' proposals to remove the fireman-helper is whether the consist of the engine crew should be one subject to managerial prerogative or subject to the collective bargaining process. In essence the carriers are asking this Board to place its stamp of approval on giving them unfettered discretion in determining how engine crews should be made up.

The Presidential Railroad Commission did not discuss this issue specifically in relation to the use of firemen-helpers but implicit in their recommendations was the endorsement of the carriers' position. The same fundamental problem relates to the consist of the train crew. As a matter of fact, both the engine crew and the train crew are one team responsible for the operation of a train. When the Presidential Commission approached the issue of the consist of train crews they adopted a position which we believe is correct, a position which logically and consistently should be applied to the consist of engine crews.

In discussing the consist of the train crew, the Presidential Commission posed the issue as follows:

"The fundamental question before us is whether existing procedures (i.e., those of collective bargaining) are adequate to meet any crew consist problem which exists. The carriers believe that these procedures are unsound in prin-

ciple and inadequate as shown by experience. They consider that the determination of crew consist is a basic managerial function, which has been lost through legislation and collective bargaining, and should now be restored. They contend that the necessity of negotiating changes in crew consist rules and practices has meant, in effect, that the organizations have had a virtual veto power, thus making necessary or desirable changes either impossible or unduly difficult to achieve.

"The organizations, on the other hand, believe that the collective-bargaining process as hitherto employed with respect to crew consist issues is sound both in principle and in the light of its long history in the railroad industry and that it is adequate to meet any real problems which may exist. They say that in proper instances changes have been negotiated, and that this process will continue. They regard any withdrawal of this issue from the area of free collective bargaining as retrogressive" (PRC Report, pp. 57–58).

Having stated the issue, the Commission first summarized the handling of this issue outside the railroad industry as follows:

"Outside the railroad industry, it is generally considered to be a function of management to determine the size and composition of the work force. Yet there are some significant exceptions in the airlines, maritime, construction, and printing industries, among others. Moreover, some agreements permit employees or their union representative to challenge crew size, normally through the established grievance procedure, in grounds of alleged safety hazards or undue workload. The matter of crew size is commonly a subject of grievance procedure or negotiation in connection with the operation of some kinds of incentive plans. The ratio of helpers to skilled craftsmen is frequently the subject of agreement, as is the number of employees to be admitted to apprenticeship. Production standards are not infrequently the subject of grievance procedure or negotiation in manufacturing industry; the question of production standards indirectly may involve the number of men to be used in particular operations" (PRC Report, p. 55).

After a review of the situation in the railroad industry, the Commission came to the conclusion:

"In this industry, whatever may be said of others, the employees have a legitimate collective-bargaining interest in the matter of crew consist, and it is our view that the collective-bargaining process should remain the basic method for resolving disputes concerning this matter" (PRC Report, p. 58).

Having reached the conclusion that the collective-bargaining process should be the basic method of resolving issues such as consist of train crews, there is no logical reason we can conceive of for reaching a different conclusion with relation to the engine crew. All of the underlying reasons apply with equal force to all members of the crew responsible for the operation of the train.

Third, we believe that the governing criteria which this Board should adopt in guiding the parties to a collective-bargaining solution, both in the interests of the parties as well as the public, are—

(1) The adequacy of the crew with relation to safety of railroad operations;

(2) The adequacy of the crew with relation to efficiency of railroad operations and specifically with reference to—

(*a*) The overall utilization of the railroads' resources:

(*b*) The efficient utilization of the total operating labor force of the railroads;

(*c*) The nature and quality of the service involved:

(*d*) In longrun terms, securing an adequate and efficient supply of railroad labor in times of national emergency as well as in times of peace; and

(3) The adequacy of the crew with relation to workload; that is whether the size of the crew is sufficiently large to avoid imposing an unusually burdensome workload on the members of the crew.

The first and third standards are expressly set forth by the Commission in its discussion of the adoption of supplementary procedures if collective bargaining fails to produce agreement. These standards appear in the following passage:

"Our recommendations, which follow, envisage a preservation of the principle of collective bargaining in this area, but contemplate the adoption of supplementary procedures which will provide for the final determination of crew consist disputes. Each party shall remain free, as in the past, to press upon the other in collective bargaining whatever considerations it deems relevant. How-

ever, if bargaining fails to produce agreement, and a dispute is then submitted for arbitral determination, we think it appropriate that the issue be determined in the light of the following criteria: (1) Adequacy of the crew consist, whether existing or proposed, in terms of the safety of the operation; and (2) whether the proposed crew consist will impose an unduly burdensome workload on the members of the crew, or is necessary to avoid such workload" (PRC Report, p. 58).

The Commission's adoption of the standard of efficiency is implicit rather than explicit. For example, in further discussion of the consist of the train-crew, the Commission states:

"There is, however, some basis for the view of the organizations that job content has tended to increase because of such factors as increased length of freight trains and attendant increases in responsibilities. The organizations make the point that in both road and yard service a team operation is involved, and certainly a fully adequate team is important to the safety and efficiency of the operation, given the workload and responsibilities of each member of the crew. Moreover, the organizations contend that carriers in recent years have tended to tighten the enforcement of operating rules, and that this indicates that these jobs are more demanding than was previously the case" (PRC Report, p. 56).

Applying the standards of safety, efficiency, and adequacy of crew to the record made before the Presidential Commission which we have summarized, we believe that a clear case has been established for the retention of the fireman-helper.

Fourth, the national rule requiring the presence of a fireman-helper on diesel locomotives has been in effect for more than 25 years. This important fact was given no recognition by the Presidential Commission. Indeed, the majority of the Commission put the issue as follows:

"The basic question involved in this issue is whether the fireman-helper's job is so essential for the safe and efficient operation of diesels in road freight and yard operations as to require a national rule on the subject" (PRC Report, p. 37).

As the question is stated, it is as though the Board is called upon to decide whether for the first time in railroad practice there should be a national rule. It is the carriers who are asking for a change in rules and upon them rests the burden of proof.

The record before the PRC does not support a change. After the presentation by the organizations of its massive and compelling case, the carriers changed their course. No longer did carrier witnesses say the fireman-helper does nothing. The charge of featherbedding evaporated. It was conceded the fireman-helper is indeed a busy man and there is ample work for him to perform. But at the same time it was contended his tasks can be performed by others—engineers, brakemen, switchmen, mechanics, diesel-maintainers—employees both in and out of the bargaining unit. It was also claimed that mirrors, dual controls, and other mechanical devices would obviate the work done by firemen.

As to the matter of devices, the record shows they have been tried and abandoned.

As to the effect of placing the burden of the fireman's duties on others, the record is devoid of any evidence. An assumption is present, accepted by the PRC without proof, that the shift of duties can be accomplished without unduly burdening other employees. As a matter of fact, the PRC, as we have shown, concluded that as to traincrews there were enough operations where all members of the present crew were necessary to warrant denial of the carriers' proposals. This conclusion is in direct conflict with the assumption that there is enough manpower slack to take up the fireman's duties.

A final word about the offer of the organizations to give up firemen's positions in daylight trainyard and classification yard jobs and the isolated branch job. The offer was made in the interest of bringing about settlement of an issue which has been a roadblock to settlement of all issues. It is the organizations' position that firemen are necessary in all operations. However, if the public safety is to be sacrificed, the risk is least in the positions which are placed on the bargaining table for surgery. In daylight switching, there is better vision, the energy of the men is at a higher point and conditions of work are more natural than in night switching when more eyes are required for safety and efficient performance. On branch lines where trains are small and scattered, highway crossings are few, traffic is light and only one crew works, operational

problems are reduced, and expedition of movement is not an especially significant factor.

We believe that the offer is a statesmanlike approach to the settlement of the issue. We would add that it was not easy for the president of the B.L.F. & E. to obtain the necessary concurrence of those directly affected. As to the remaining positions—the risk of their elimination to the safety of the public and fellow employees, to efficiency, and to the welfare of all concerned is too great to contemplate. The facts—the reality of present day railroading—require their retention.

Mr. GILBERT. As I have said, it was with firm conviction of the vital character of the services of firemen-helpers that we entered into negotiations with the carriers following receipt of the notices of November 1959.

We took the position in conferences, such as were held, and likewise before the Presidential Railroad Commission, the firemen-helpers were necessary on all positions to which presently assigned.

We were poles apart from the carriers, who took precisely the opposite position; namely, that not a single fireman-helper was necessary on any job.

These antipodal positions were maintained until March 13, 1963, when in the course of negotiations in Chicago, I made a proposal of settlement of the fireman-helper issue.

The offer was made in the interest of bringing about settlement of a problem which had been a road block to settlement of all issues.

I proposed a national rule which would result ultimately in the elimination of a substantial number of fireman-helper positions in daylight yard service and daylight branch line service. It was basic to my proposition that all firemen presently in employment be retained and that vacancies be created in the particular daylight yard jobs and daylight branch line jobs only on an attritional basis.

I believed that the offer was a reasonable approach to settlement of the issue. However, at the time I made the offer, the carriers were packing their bags in preparation for leaving the meeting room and did not give me the courtesy of listening to my proposal and made no response to it at the time.

The offer involved a substantial number of firemen-helpers' jobs, and I felt it represented an important sacrifice. My offer was confirmed in a letter dated March 14, 1963, addressed to the railroad representatives by the chief executives of the five brotherhoods. The letter appears as exhibit 2 to the "Statement of Position," one of the the documents just handed the committee.

To demonstrate the good faith of our proposal and the feasibility of establishing guidelines or criteria by the application of which it could be determined which daylight yard jobs and daylight branch line jobs would be eliminated and which retained under my proposal, we delivered to Emergency Board No. 154, a detailed proposal dated May 7, 1963.

A copy of the proposal is attached as exhibit 3 to the "Statement of Position" of the B. of L.F. & E. just filed with this committee.

We found later that the Emergency Board did not transmit this document to the carriers during the course of proceedings before the Board. In a report handed by the Emergency Board to the President on May 13, 1963, the Board states as follows:

On the other hand, the brotherhoods do not contend that there are no jobs presently occupied by firemen which cannot be abolished. As a matter of fact,

just as the carriers, being realists, have suggested that there may be a few freight situations in which the services of a fireman are needed, so the firemen have implied that there may be some significant number of jobs on daylight yard and branch line freight diesels which can be eliminated.

The basic problem, therefore, becomes one of establishing a procedure for ascertaining those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety, and to prevent placing an undue burden upon the remaining crew members.

The Board further stated that—

It should be possible * * * to establish certain categories of jobs or situations the elimination of which by the employer would probably be protested on the basis of safety or undue hardship—

And that—

The selection of key situations is the way to avoid a hailstorm of grievances while providing assurance that safety is protected and hardship avoided.

We believe that the Board's references to the establishment of job categories and the selection of key situations to be the equivalent of a suggestion that guidelines be prepared to determine questions of elimination or retention of certain jobs.

Subsequent to the Board's report, and pursuant to its suggestions which I have just referred to, we revised our proposal of May 7, under date of May 22, 1963. A copy of our proposal of May 22 is attached as exhibit 4 to the "Statement of Position" filed with the committee.

Representatives of the brotherhood explained that their proposal evidenced willingness to modify the May 1950, diesel agreement to permit the railroads to refrain from hiring firemen-helpers on approximately 5,500 jobs, this total being approximately 25 percent of all yard and branch line jobs.

In response to a request from the railroads for a breakdown showing how the figure of 5,500 jobs was arrived at, the organizations provided these data in a memorandum dated May 24, 1963, which is attached as exhibit 5 to the "Statement of Position."

The railroads have manifested some interest in our proposal but have expressed doubt that its effectuation would bring about elimination of as many as 5,500 jobs. They have told us that in their opinion the number of firemen's jobs which would be eliminated would not exceed 700 and might even result in the elimination of none at all.

To remove whatever skepticism there may have been, we delivered to Mr. Wirtz on July 21, 1963, and presumably through him to the carriers, a letter signed by Mr. S. C. Phillips, assistant president of my organization, and Mr. A. F. Zimmerman, an assistant grand chief engineer of the Brotherhood of Locomotive Engineers, agreeing to the positive selection of 5,500 jobs for elimination within a 2-year period.

This letter is not a part of the "Statement of Position" filed with the President's Advisory Committee, and hence I would like to read it. The letter is as follows:

Secretary WIRTZ. We appreciate your personal efforts in this past week to bring about a settlement of the helper-fireman issue. In that connection we believe we ought to confirm to you in writing the information you obtained from us verbally and on the basis of which you have been attempting to obtain concurrence from the carriers.

1. We agree there ought to be negotiated settlement of this matter, one which should cover the foreseeable future.

2. In furtherance of such a settlement and despite our reservations, we would agree, as indicated to you on previous occasions, to the selection of 5,500 jobs for elimination within a 2-year period consistent with safety, efficiency, and burden of work. Job vacancies would be accomplished by attrition and with protection of the rights of individuals as suggested in your proposal of July 5, 1963, including voluntary supplemental annuity provisions. It is also anticipated that implementation of the 5-day workweek proposal will be of assistance.

3. It is assumed that both parties will participate in the selection of the particular jobs to be eliminated. It is anticipated that the jobs to be eliminated will be selected from certain existing daylight yard jobs and daylight branch line jobs.

4. We would agree to a binding third-party procedure to assure the implementation of a written agreement based on the foregoing.

5. We are also agreeable to the establishment of a Joint Board in this industry, with authority to review and recommend changes for the parties' consideration on the basis of developing experience under the proposed agreement.

In summary, some time ago we proposed a settlement based on the eventual elimination of 5,500 helper-fireman jobs. The carriers indicated their interest, but later expressed the thought that the formula we proposed would not, in fact, result in the elimination of more than several hundred jobs.

We then undertook to make our offer fully meaningful and again so confirm. If the carriers will still not accept our proposal for a bargained agreement, it is evident they prefer compulsory arbitration rather than a negotiated settlement.

What needs to be done is to get items 1 to 5 above worked out in intensive collective bargaining. The mediatory influence of the Government should make itself felt to accomplish that result.

Going back to the proposal of May 22, I want to say that it is, in the opinion of the organizations, completely harmonious with and in effectuation of the report of Emergency Board No. 154 dealing with the fireman's issue.

It contains guidelines or criteria by application of which it may be determined whether jobs of firemen in certain areas may be eliminated after vacancies occur. The proposal of May 7 demonstrated to the Emergency Board the feasibility of preparing guidelines or criteria in this area, while the proposal of May 22 refined the previous proposal during progress of negotiations subsequent to the Emergency Board report.

I should say that we have never received from the railroads any statement of guidelines or criteria. The railroads have asserted that the preparation of meaningful guidelines or criteria is impracticable. In this they are in disagreement with the Emergency Board, as well as with the brotherhoods.

All this history is pertinent because of my belief that progress has been manifested during negotiations, and that conferences have not been sterile and futile. If I am correct in my evaluation of developments, as I believe I am, the predicate is laid for my proposition that collective bargaining ought to continue and the decisional process of the joint resolution avoided.

The committee has listened at great length to the railroads' detailed version of the historical background of this case and to what they describe as the repeated refusals of the brotherhoods to accept various Board reports and proposals in prior years and months.

The relevance of the bulk of such material is dubious to me. It seems to me that the present inquiries must relate to the current status of negotiations and current attitudes, if a decision is to be made whether current conditions and circumstances demand desperate remedies, such as compulsory arbitration, or milder and more orthodox treatment.

I would assume that Congress prefers that the dispute be channeled into continued collective bargaining, to which the parties have become accustomed under the Railway Labor Act, as compared with recently improvised remedies to cope with a situation which may not be nearly as bad as pictured.

The present position of the parties in negotiations is disclosed in the "Report to the President on the Railroad Rules Dispute by the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy, dated July 19, 1963." That report would be regarded by this committee as authoritative.

While the report of the special subcommittee contained no recommendations or conclusions, it appears to me that there is in that report implicitly, if not expressly, a finding that negotiations have been productive on practically all of the issues in dispute, which were stated by the subcommittee to be eight in number.

I have made a succinct inventory of the findings of the subcommittee, which are interesting, significant, and instructive.

Taking the issues serially following the firemen's issue, the report notes that—

> On the question of the crew consist, developments since the report of the Emergency Board have moderated considerably the area of disagreement.

As respects manning of self-propelled machines, the subcommittee stated that—

> Indications are that this matter may be settled if other issues are resolved.

As to the issue of interdivisional runs, the report says that—

> Recent discussions indicated that agreement may be reached once the manning issues (firemen and crew consist) and the compensation issues are resolved.

The findings respecting progress or lack of progress in disposition of the dispute involving combination of road and yard work are less precise, but it seems to me that the report intends to leave the impression that future negotiations will not be conducted in vain.

As to the issue of compensation (wage structure and fringe benefits), the report states that the carriers—

> take the view that further discussions on compensation issues cannot be undertaken until the fireman and other manning questions are resolved.

The report shows that the issue of employment security will be withdrawn from the case by the employees if satisfactory settlement can be reached on the other matters in dispute.

On the issue of training of engine service employees, the report recites that the Presidential Railroad Commission and Emergency Board No. 154 recommended that the parties negotiate a training program to insure an adequate supply of qualified engine service employees and that discussion of this proposal has been largely deferred pending resolution of related manning issues.

Since the carriers profess to have accepted the reports of both the Commission and the Board, it is reasonable to anticipate that this issue will not be a stumbling block.

Not much can be said in praise of the negotiations which took place before those of recent weeks. However that may be, the discussions which have been held lately under the guidance and sponsorship of the Secretary of Labor and associates in his Department and in the National Mediation Board have, in my judgment, been fruitful.

The sky is not entirely black and I think I can see the light of the dawn—a turn for the better in our negotiations. The report of the President's Advisory Committee bears me out.

Before closing, I should like to comment further on Resolution 565. I am not given to pessimism, but I cannot believe that the procedures contemplated by the resolution will produce a permanent solution to our dispute. Procedures before the Interstate Commerce Commission would be adversary in character and would inflame rather than compose feelings.

One of the early regrettable aspects of this dispute was the adversary nature of the procedures adopted by the PRC contrary to our counsel and pleading.

Preoccupation with adversary procedures, and feelings engendered by them, I believe were in a large measure responsible for the futility of the Presidential Railroad Commission's efforts.

I believe that if this resolution passes, it will not mean the end of Congress' connection and concern, but rather its introduction to the details of contract negotiations in the railroad industry.

I suspect that those who support this resolution know that it provides for compulsory arbitration, but they believe it to be just a little bit of compulsory arbitration. But even a little bit will be the hole in the dike.

Introduction of compulsory arbitration, so history shows, portends the end of that kind of collective bargaining which Government, industry, and labor ought to promote—that kind of bargaining which has become associated with and a part of our system of free enterprise.

It marks the beginning of a process wherein one or both parties shuns responsibility and passes the buck to the arbitration tribunal to dictate the terms of the contract. That process, in my opinion, will be pursued in future contract negotiations if the resolution passes, and Congress again will be confronted with identical problems.

At this point I wish to make a brief comment on the qualifications of the Interstate Commerce Commission to serve as a tribunal of arbitration to make an award on the issues which will be referred to it, those issues running the gamut of rates of pay, rules, and working conditions.

Those rules in the railroad industry have everywhere been characterized as complex and intricate. It is my opinion that the ICC is not gifted with expertise in either personnel or staff to cope with problems as involved as these.

Contrary to some testimony, the ICC has never undertaken to decide questions of this nature or those even remotely resembling these types of questions. It has had no experience whatever in the area of railroad work rules.

This is not to be construed to be an attack on the Commissioners or the employees of the Commission. The resolution simply would refer to good people a problem with which they are unequipped to cope, and they ought to be as reluctant to undertake the task as I would be to perform an appendectomy. We believe it would be an error to establish the Interstate Commerce Commission as a labor court.

I return to my basic theme. In my judgment the only solution to this case is to be found in collective bargaining—collective bargaining which has had a shot in the arm. That shot in the arm—that stimulus

which our negotiations need—can be provided by Congress in the form of critical congressional scrutiny and appraisal of future negotiations.

Hence, I propose respectfully that collective bargaining be resumed under congressional direction and observation. And, if a further suggestion may not be regarded as impertinent, I would make the proposal that Congress might choose to proceed through the instrumentality of a joint committee, appropriately staffed, under instructions to observe and scrutinize the course of negotiations and to report periodically to Congress the attitudes of the parties and their conduct or good faith toward negotiations.

I am encouraged that negotiations carried on under those conditions have much to offer in the way of bringing about the agreement of settlement which we want and the country needs.

I feel that with the knowledge that the heavy hand of congressional power may be laid punitively on the party failing to meet his public and private responsibilities during negotiations—be it the railroads or the brotherhoods—a full awakening to the requirements of good faith negotiations will eventuate.

I invite the scrutiny of Congress that it may see for itself who is dragging his feet and preventing settlement of this dispute. This would be a rash invitation indeed if I expected the finger of culpability to be pointed at me.

It seems to me that many cogent reasons will be advanced in the testimony of the railway labor organizations which should impel the House of Representatives to reject Resolution 565.

It has been the purpose of my appearance here today to do my part in persuading the House of Representatives to reach that conclusion. I am most grateful for the privilege of appearing before the committee.

Thank you very much.

The CHAIRMAN. Mr. Gilbert, does that conclude your statement?

Mr. GILBERT. Yes, sir; Mr. Chairman.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Gilbert, you have presented a most forceful and cogent argument of your position in this controversy. Indeed in the 30-odd pages of your testimony you have presented a very forceful and virtually unanswerable argument in behalf of the principle for collective bargaining.

I am sure that most of the committee, if not all of the committee, agrees completely with the principle that you have advanced in your statement.

It appears to me in this particular controversy that collective bargaining seems to have broken down and has reached the point now where we are going to have to look beyond collective barganing since collective bargaining apparently has failed to resolve the dispute in fairness to both parties to the controversy, and particularly in protecting the interests of the public.

The alternative that you have suggested here, as has been suggested by those who have preceded you in support of the brotherhoods' position, is that the negotiations be conducted under congressional direction and observation. Just what would be the mechanics for congressional direction and observation?

Mr. GILBERT. I believe if it has not already been introduced there will be an effort made of a joint resolution under the sponsorship of the AFL–CIO designed to accomplish the suggestion that I have just mentioned.

I am sure as Mr. Meany appears on behalf of that organization he will go into as great detail as you desire him to do in the explanation of it.

Mr. WILLIAMS. The suggestion has been made by you here. Mr. Meany has not appeared before this committee, as I understand it. I would like to know because I am very much interested in the procedures that would be followed.

Would a joint congressional committee be expected to sit in on the actual negotiations?

Mr. GILBERT. No; I do not believe it is contemplated, Mr. Congressman, that that would be done. They would have periodic reports from whoever they desired to accomplish this purpose and relate to the committee the progress or lack of progress or who was dragging their feet or who was making a contribution to the collective bargaining process.

Mr. WILLIAMS. Does that mean that the committee would assign employees or staff members to sit in on the negotiations?

Mr. GILBERT. They would have an opportunity to decide whatever watchdog proceedings they desired to accomplish the purpose.

Mr. WILLIAMS. Assuming that the joint committee or the watchdog committee, as the case might be, should receive reports that one side or the other would be dragging its feet, then what would be expected of the congressional group?

Mr. GILBERT. If you would permit me, I would like to make some very candid observations that I have made in the time that I have spent in the negotiations, because of other commitments that require my time as international president I have not attended all. But I have attended a number.

This is the observation that I think can be related without fear of contradiction. It appears that when we get into a negotiating session someone—and I think probably the first I recall offhand as having made the statement was former Secretary of Labor, Mr. Goldberg—says to us, "You know this country will not stand a railroad strike."

With that utterance it appeared to me that onerous of management to bargain collectively in disposition of these disputes was immediately lifted.

That has been repeated on more than one occasion and on each occasion that it is repeated I detect a sort of an attitude of pipe and slipper position on their part because somewhere along the line they have held hopes that someone would take this cross from their back.

That is the thing that this resolution is designed to do—to relieve them of their obligation in collective bargaining which they have not thus far fulfilled.

Mr. WILLIAMS. Do you feel that the country could stand a prolonged railroad strike?

Mr. GILBERT. That is a rather difficult question to answer. I have to approach it in respect to my own position from a circuitous route to make my position clear.

The organization I represent has not had a record of being strike happy. We have been in business now approximately 90 years, and

we have resorted to self-help only as a last resort in protecting the interests of the people we represent.

Mr. WILLIAMS. I would certainly agree with that.

Mr. GILBERT. Whether or not the alternative to a strike, the people of this country are willing to pay is one of indeterminable value at this moment. The sacrifice of the right of an employee of withholding his service in the event of sacrifice of life and limb, and that is something if it is imposed on an individual in this dispute may well be expanded to other disputes to other people in this Nation.

I have had the opportunity to visit in foreign countries where such legislation as this was enacted first, and then the right to defent themselves was removed from employees, and I am sure that no red-blooded American would like to see that imposed in this country.

That is why I so vigorously try to relate to you my position on a matter of this kind.

Mr. WILLIAMS. Mr. Chairman, I would like to follow that up but my time has expired.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. Mr. Gilbert, I wish to commend you for making a very excellent presentation of this dispute. I want to subscribe to the views you have expressed that all means of voluntary collective bargaining have not yet been exhausted, and that before we consider the proposal for compulsory arbitration that we ought to give every possible consideration to a further bargaining of this dispute between the parties on a voluntary basis.

Therefore, I support the proposal suggested by the president of the AFL–CIO, George Meany, which I believe would not place any great burden or onus on the part of congressional committees but would get this dispute where apparently the executive department wants to get it, out of their hands, and into an area where Congress could take a more careful look at it.

I believe this is the way to do it. The executive agencies have dealt with it for a couple of years and have thrown up their hands and admitted failure. Maybe they are right. I do not know.

But I sincerely believe, as you have indicated in your statement, that all avenues of collective bargaining have not been exhausted, and that if we pass this resolution before we are completely satisfied in our own minds that all avenues of free collective bargaining have been exhausted, we would be doing a great disservice to the future of free collective bargaining such as we have known it in this country heretofore.

Therefore, I hope that before we embark on the kind of a resolution that has been presented by the President we will do something along the lines that you have suggested.

Thank you, Mr. Chairman. That is all I have. I have no questions.

The CHAIRMAN. Mr. Staggers?

Mr. STAGGERS. Thank you, Mr. Chairman.

Mr. Gilbert, I, too, think you have made a very fair, moderate, and temperate statement of your position and I would like to make only one or two observations.

You say in your statement that you have made a positive proposal for settling the firemen-helper dispute.

Mr. GILBERT. Yes, sir; I have, Mr. Congressman.

Mr. STAGGERS. Have there been counterproposals in writing or vocally from the other side?

Mr. GILBERT. I understand one is en route but I have not as yet had an opportunity to see it.

Mr. STAGGERS. Then there is hope that if there are proposals and counterproposals that this might be settled?

Mr. GILBERT. That is right, Mr. Congressman. The experience that we have had in the months past and that goes back quite a while, that as we were preparing a proposal and mentioned and presenting it, the people that we have to compose the dispute with walked out. It has never been my experience in the many years that I have engaged in collective bargaining that you could solve an issue unless you are willing to talk. You can't do it by walking out. You have to do it sitting down.

In the processes of collective bargaining as I have understood them all these years, you have to engage in it if you are going to settle it across the table. You can't do it by walking out. You have to stay there and hammer it out, outargue them or let them outargue you, as the case may be.

Mr. STAGGERS. In constructive mediation or arbitration of labor disputes where a proposal is made, usually a counterproposal is made giving some on the other side. I believe that has been the procedure through the years where there is a dispute to be resolved.

Mr. GILBERT. Yes. Mr. Congressman, every one we have had in the years that now reach more than 30, in my own experience we have resolved them through that process of collective bargaining.

Mr. STAGGERS. That has been one of the strengths of the labor movement in America. I believe the fact of the spirit of working together for a common cause for an industry and for the benefit of the land.

Mr. GILBERT. We believe it is as much our way of life as our right to vote and any restraint upon labor that takes away from them the right that we consider so imperative in our process is a step we would hope we would never live to see in this country.

Mr. STAGGERS. In our enlightened communities if Congress legislates the work rules of men, do you think they will have the incentive to do a job in this land or will we have to get the military out to drive them to do the work, if Congress enacts some of these?

I do not expect you to answer that. To me this is only the start. There are those who say now, "Do this, and do it to all the other workingmen." Also that passage, "This legislation would tend to nationalize the industry of this land as they did in England and some of the other countries have tried."

I believe we better try to get together if we can as free people working together. There is no question that does not have two sides or that we can't talk on both sides of it and argue it out; perhaps both sides have complaints, but reasonable men can resolve differences.

But to me it is compulsory arbitration that is proposed in this House resolution.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Schenck?

Mr. SCHENCK. Thank you, Mr. Chairman.

Mr. Gilbert, I have been deeply interested in your statement. I am sorry I was unable to see or hear you on "Meet the Press." I have heard many nice things about it.

Mr. GILBERT. Thank you, sir.

Mr. SCHENCK. I have read your views and there is much to merit the most careful consideration of them.

As I understand, you feel that the Interstate Commerce Commission is not properly set up or equipped to deal with a labor dispute?

Mr. GILBERT. Mr. Congressman, it is not the purpose for which they were created.

Mr. SCHENCK. That is right.

Now, Mr. Gilbert, as I recall I think it was around July 10 on which President Kennedy indicated that he would not request an additional postponement of the action by the management of the railroads.

After having received their assurance that they would take no action until midnight July 29. Therefore, it became necessary for this committee and the committee of the other body to request management to extend that deadline in order to give consideration to this proposal.

It would appear to me that the best and most competent Federal agency to assist in dealing with these programs is the Department of Labor. Is that your feeling?

Mr. GILBERT. That is the purpose for which they were established, I believe—to help and under certain of our statutes they have an obligation to become engaged in this.

Mr. SCHENCK. The Secretary of Labor has indicated that all efforts of his own and his associates in the Department have been rather fruitless thus far.

Mr. GILBERT. I did not intend to leave out the National Mediation Board. You said the Department of Labor and I included them in my mind without making a statement, Mr. Congressman.

Mr. SCHENCK. In the event, Mr. Gilbert, just as you have made a suggestion that might be adopted by this committee or the Congress, and the Secretary of Labor and the Mediation Board and other auxiliary agencies were unable to bring the parties together under your free collective bargaining system, and if the management of the railroads is unwilling to further extend the deadline for their promulgation of the work rules they have proposed, then where does that leave the Congress and where does that leave the public interest and what steps should be taken?

Mr. GILBERT. I am firmly convinced as a result of the recitation I made a moment ago about their failure to bargain that once the prospects of somebody taking this from their shoulders as has been in evidence even up to now, they will have a little greater interest in obtaining what benefits that have been offered in these negotiations in their operation.

If not, then, I think that the public should be made fully aware of who are the moving parties in this dispute and who may be the ones that are creating this crisis in this country. Because they have the power within their own volition to institute or withhold the promulgation of these rules. None who are fully acquainted with the aspects and what will happen from them could charge us with not fulfilling some responsibility to this Nation, if you please, in resisting the imposition of such work rules on a segment of American labor in this country.

We feel rather assured with the full facts before the public about the responsibilities of the party, what the imposition of these rules will work as to hardship on the people who toil for a livelihood in this industry, as well as what is contemplated in furtherance of their demands and plans, we feel that our position is rather sound and that the support that will come from the public once they are aware of the facts, will bring the pressures to bear that will be needed to make both sides assume their responsibility in collective bargaining.

Mr. SCHENCK. Mr. Gilbert, of course, the committee of the Congress has a tremendous responsibility both to the labor organizations, to the management, but primarily to the entire Nation as a whole.

Therefore, we are in the very difficult position to choose the wise course. The word "compulsion" is certainly one which is not desired or liked by anyone. Yet if the situation finally goes to a court for its decision, then there is not much question but what compulsion required by the court will be brought about.

So it seems to me we must somehow or other resolve this situation in time to take proper legislative action, if necessary, before August 29. If that cannot be accomplished voluntarily, however, then we find ourselves in an extremely difficult position and will perhaps be required to either request another delay, which certainly would be most undesirable from our point of view, I should think or we shall be forced to recommend legislation to the Congress which may have widespread effects not yet anticipated.

Mr. GILBERT. Mr. Congressman, I think the resolution contemplated being introduced, if not already, by Mr. Meany will stay any execution of the work rules on July 29, if adopted, or August 29, and will at the same time keep the organizations from doing anything that we have not even threatened to do in connection with our own rules, which are as important to us in keeping with the other industries as the carriers may feel that their rules are to them.

Mr. SCHENCK. Then you would feel that such a resolution as proposed or as it may be amended would prohibit the industry management from taking the position to which they are entitled if in their best judgment they feel obligated to take. Therefore, Congress would be exercising certain degrees of compulsion against management, which nobody desires to do, and neither does the Congress, as far as I can determine, desire to indicate any compulsion on the employees.

Mr. GILBERT. If that is their desire, we think that the resolution submitted, or that will be submitted by Mr. Meany is a much better vehicle to accomplish no compulsion than the one presently before you for consideration.

Mr. SCHENCK. It is my hope that the entire matter can be resolved before August 29.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Gilbert, do you agree that most of these matters at issue between the organizations and the carriers could be settled if you could resolve these two, the fireman-helper issue and the crew consist issue?

Mr. GILBERT. Mr. Congressman, I believe the manning issues that fit in the category you just mentioned are or have been the knotty issues for disposition thus far. If they are resolved, I feel that the remainder would be less difficult than these.

Mr. ROGERS of Texas. Everyone else seems to feel that way, including Secretary Wirtz. As I understand this resolution that is before the committee at the present time, it is confined to treatment of those two issues insofar as the ICC is concerned. Is that your understanding?

Mr. GILBERT. No, it is not my understanding.

Mr. ROGERS of Texas. What is your understanding? I think we ought to get it clear, because I would like to get it clear in my own mind.

Mr. GILBERT. I get my understanding from the contents of the resolution. I have heard Mr. Wirtz make an explanation of it.

The CHAIRMAN. I believe it is section 1.

Mr. GILBERT. Section 1?

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That changes in work rules involving the manning of train or engine crews and the protection of the interests of employees affected thereby, which changes come within the area of those proposed by a carrier in the notices of November 2, 1959, or by a labor organization in the notices of September 7, 1960, shall become effective upon application to and approval or modification by the Interstate Commerce Commission in accordance with the procedures and provisions of section 5 of the Interstate Commerce Act, such rules to be operative only as interim rules and until the current controversy regarding such rules is resolved by the parties through continued collective bargaining; and no provision in this joint resolution shall be construed as limiting the right and responsibility of the carriers and organizations to reach agreement regarding such rules.

Mr. ROGERS of Texas. What I am referring to is the manning provision, which, as I understood Secretary of Labor Wirtz, this resolution confined the authority of the ICC to primarily.

Mr. GILBERT. It does not, Congressman Rogers. Section 6 covers that, I am told here, that says the parties shall proceed immediately to bargain collectively with the assistance of the National Mediation Board concerning any unresolved issues regarding any proposals which were included in the notices of November 2, 1959, or September 7, 1960, but which do not involve the manning of train or engine crews and the protection of the interests of the employees affected thereby.

Mr. ROGERS of Texas. Then it is your opinion, Mr. Gilbert, that this resolution would affect all matters at issue, and the ICC would have jurisdiction to work on all matters at issue?

Mr. GILBERT. If you will permit, I will read the next sentence which says about that—

If agreement has not been reached within 60 days following the effective date of this joint resolution, any party may submit its proposal to the Interstate Commerce Commission for disposition by such special procedures not confined to those set out specifically in this joint resolution.

Mr. ROGERS of Texas. My time is limited on questions. I just wanted to get your understanding. You differ with the Secretary of Labor if he feels that this is limited only to the manning matters primarily.

Mr. GILBERT. I get my information through my conversation with him that he doesn't feel it.

Mr. ROGERS of Texas. You feel it is not limited to that?

Mr. GILBERT. It is not.

Mr. ROGERS of Texas. Let me ask you this, Mr. Gilbert, if you can tell me very briefly, why you consider this compulsory arbitration?

Mr. GILBERT. Because it imposes, without the right of the employees to resist any decision that the Interstate Commerce Commission may decide is right.

Mr. ROGERS of Texas. Do you agree with Mr. Malin that if this adopted and the ICC makes a decision as to ground rules to be used during the continued collective bargaining, that whichever party felt that they were favored by that finding, that they would not bargain in good faith from that date on?

Mr. GILBERT. If 30-some-odd years of experience teaches me anything, it teaches me that. That whatever party thinks they are favored, they will resist any encroachment upon that from any other source.

Mr. ROGERS of Texas. I have one other question, Mr. Gilbert, with regard to the 5,500 jobs. As I understand you, you have submitted the proposition that these 5,500 jobs will be eliminated within 2 years.

Mr. GILBERT. By attrition.

Mr. ROGERS of Texas. By attrition; yes.

Mr. GILBERT. Yes.

Mr. ROGERS of Texas. Do you mean by that that if attrition does not do it in 2 years, you would have to have a longer time?

Mr. GILBERT. We think with all of the aspects and prospects working, there will be no question about it because of the other elements in the proposition.

Mr. ROGERS of Texas. The reason I am saying that is this: Is the 2 years a deadline, Mr. Gilbert, or is that just an estimate of how long it will take to do that in attrition?

Mr. GILBERT. No; we have in essence guaranteed the period of 2 years because of our knowledge about the other aspects of it.

Mr. ROGERS of Texas. One thing further. Your statement was an excellent statement, presenting your position. I presume it was presented to the Presidential Commission and also to the Emergency Board.

Mr. GILBERT. Much more than this, I should say.

Mr. ROGERS of Texas. How do you account, Mr. Gilbert, for the conclusions of the Presidential Board on this subject matter—the Presidential Commission—and also the Emergency Board. That is of some concern and worry to me.

Mr. GILBERT. You have opened up a question there that is going to take me some time to explain to you, and as long as you have asked it, I think this committee is entitled to know as to why we resisted with everything at our command the recommendations of the Presidential Railroad Commission. The same is not true of Emergency Board No. 154.

When we agreed to the establishment of the Presidential Railroad Commission, we did so with utmost confidence that they would perform a job that would lead to the solution of this large problem which we recognized to be such as contemplated by the notices of the carriers and our notices of September 7, 1960.

We pleaded with them not to commence adversary proceedings. But our pleadings were in vain. They started them and there were mountains of evidence of the adversary nature presented to them that would take an individual about 15 years to read. I think that is the conservative estimate of the evidence and the other material submitted to them.

We had asked that they go to the job, see what conditions these employees work under, what actual contributions they make to safe and efficient operation. They did that in a limited degree. But we warned them as they set this up. "Do not make your observations known to either party, because we had had some experience about staging." We said, "You will not get the true picture if you go onto any of these railroads unannounced." That was our experience.

We had known what had been done. As this developed, the trips were announced. We have reports from our people who not only rode the trips, but were familiar with the type of operations that had gone on on these particular runs on other days, and the type of locomotives that we would receive under normal circumstances.

They would hold them in the shop and have crews go over them and all of these things that convince us that this conclusion that they reached could not be in keeping with what we know to be ordinary railroading practices that we experience every day. We had men, I think approximately 50 in number, who came from the locomotives—actually operating in either service as an engineer or fireman-helper—who conveyed to this Commission and the public members what they actually did in their contribution to safe and efficient operation.

We set up a model and we had our people who do this work for the carriers perform for the Commission what they actually did to correct malfunctions, what was necessary under some circumstances, that one man could not do alone. All of this was presented to them.

Mr. ROGERS of Texas. Mr. Chairman, I don't want to impose on other members' time, and I didn't mean to trigger this long answer. If Mr. Gilbert could furnish this for the record, it would be satisfactory to me unless the other members want to hear it.

Mr. GILBERT. I want to make one other statement here because it disturbed me as I heard it. Notwithstanding all of this, I have heard on four occasions that information came from members of that Commission, the public members, that as far as the firemen issue was concerned, that was decided before we started to present our evidence.

Then you wonder why we got so fired up about accepting the results of this Commission's report? I have heard that on four occasions. I think we are entitled to better treatment than that from a Commission established for that purpose.

You asked me why we were so reluctant to accept it and why it was rejected so strongly. I think you are entitled to know that.

Mr. ROGERS of Texas. My question, Mr. Gilbert, was what you thought prompted them to really make these findings, rather than as to why you contested them.

Mr. GILBERT. I told you why we didn't accept them. I don't know what prompted them to make them.

Mr. ROGERS of Texas. The Emergency Board is the same?

Mr. GILBERT. No; the Emergency Board is not the same.

Mr. ROGERS of Texas. You better furnish that for the record, because the other members want to ask questions and I don't want to impose on their time. If you can, it would be appreciated, Mr. Gilbert.

Mr. Chairman, if those could be included, I would appreciate it.

The CHAIRMAN. Mr. Gilbert may include such additional remarks as he wishes to make.

(No additional material was furnished.)

Mr. ROGERS of Texas. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I, too, would like to compliment you for a very fine statement and a failure to use exaggerations which we have had in this case on many occasions.

Mr. GILBERT. Thank you, sir.

Mr. YOUNGER. On page 5 of your statement, beginning with:

> My organization is firmly and completely opposed in principle to processes having as their final terminal the imposition upon employees of rates of pay, rules, working conditions, not arrived at through free, collective bargaining in its traditional concept.

What do you mean by that?

Mr. GILBERT. That we feel we are better qualified to negotiate the type of rules under which the people we represent work, and it is our obligation as officers of the organizations to accomplish that rather than permit it to be done by someone else. We feel that is our responsibility.

Mr. YOUNGER. Am I to interpret that, that you are opposed to arbitration?

Mr. GILBERT. Your interpretation is correct.

Mr. YOUNGER. How do you answer the question, then, going back to the testimony which was presented here starting way back, in 1913, by the Brotherhood of Firemen & Enginemen. You agreed to arbitration at that time with regard to scope and manner that the engineers agreed to.

In 1915 you agreed to another arbitration which had to do with western regional rules governing the compensation and certain working conditions on engine service.

You agreed in 1927 to an arbitration relating to the graduated rates of pay and other rules governing the compensation of firemen employed in the southern district.

Another one in 1927, another one in 1946 that had to do with the class I railroads involving proposals of wage adjustment.

Another one in 1952, and so on. You have had a lot of abritration.

Mr. GILBERT. Yes, but I think you will readily appreciate by reading those, Congressman Younger, that they involved rates of pay and the irony of the situation is the only protest I have heard from any of the carrier representatives in the conversations we have had in connection with this dispute is that they will be willing to arbitrate everything but any of that that relates to money.

Mr. YOUNGER. You have had some arbitrations here with regard to work rules.

Mr. GILBERT. I was about 6 or 7 years old when you mentioned that first one.

Mr. YOUNGER. You come up to even a later date in 1960.

Mr. GILBERT. In 1960 was the application of a rule, Congressman, not the establishment of a rule. We are not opposed now, Congressman, to what we call terminal procedure over the application of an

existing rule which we have participated in the establishment of through the process of collective bargaining. Whatever you call it, it still amounts to arbitration. But that is voluntary arbitration.

Mr. YOUNGER. I am talking about voluntary arbitration.

Mr. GILBERT. There is a big difference.

Mr. YOUNGER. I know there is, but from your statement here, one would interpret this statement that you were opposed to any settlement that had a terminal agreement.

Mr. GILBERT. On rates of pay, rules, or working conditions.

Mr. YOUNGER. Rates of pay. Your own organization has participated in voluntary arbitration many times and agreed to it. I don't think you mean this.

Mr. GILBERT. There is a little differentiation; I will agree with you there. There is some. Terminal procedure by any other means is still arbitration.

Mr. YOUNGER. I am not speaking of the compulsory. I am one of those who believes this resolution is compulsory arbitration. I don't care by what other name you want to call it. A rose with any other name smells as sweet. This is compulsory arbitration in the resolution we have before us. I agree with you on that.

Yesterday we had a statement by the engineers that said the engineers and other operating employees can still be worked up to 16 hours a day, can be worked 7 days a week, and can be worked every day of the year.

Mr. GILBERT. That is correct.

Mr. YOUNGER. Can you give me an example of that, where anybody has been worked that way?

Mr. GILBERT. Yes. There are railroads in this country where we represent firemen who have not as yet converted to the 5-day week. We have runs in this country where, under the mileage limitation, they can work every day of the year and not exceed the limitations thereon, what we call the minimum runs, and they can be required to work every day. There are runs in this country that they can work 16 hours without getting paid overtime.

Mr. YOUNGER. Just a minute. I am asking you for an example where a fireman has been worked 16 hours a day, 7 days a week, 365 days out of the year.

Mr. GILBERT. I don't think that was your question.

Mr. YOUNGER. Yes, that is my question.

Mr. GILBERT. I mean your reference was that it could be done. I couldn't tell you Joe Blow does that, because I am not that familiar with each of our employees. But that can be done under existing rules. There is no question about that. But I couldn't name you the individual who may have done it.

Mr. YOUNGER. This is a case of exaggeration which I was pointing out that I don't think has any real bearing in this case because I doubt if you can point to any road that has worked its people to that extent, even though they could do it. It has not been done.

Mr. GILBERT. Again, we are talking about a potential rather than something that actually has happened. I couldn't give you the name of an individual. The example was made in the form of a potential and that is a true potential.

Mr. YOUNGER. That's all, Mr. Chairman.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I, too, want to join my colleagues in commending Mr. Gilbert on his very fine statement.

I notice on page 20 you say the attrition is the basis of your proposition. I would like to know, does that include all furloughed men?

Mr. GILBERT. Yes, it did in its contemplation. It includes all those that are presently on the seniority roster. You understand, there are certain sections of our country where we have seasonal business and these men may have in some instances spent their entire working life for this carrier. They could not be trained to go anyplace else. They could not find a job if they were trained, because if training was the answer, we would not have 4,500,000 people not now working.

We think they have spent their lives in the employ of those carriers and they have some responsibility to provide what employment is there until they have fulfilled their working life.

Mr. FRIEDEL. Would your proposition include the ones who were employed after November 2, 1959?

Mr. GILBERT. Our proposition includes everybody on the seniority roster. That was the manner in which it was presented.

Mr. FRIEDEL. I understand if they work for 30 days, or 31 days, they are considered permanent employees and have seniority.

Mr. GILBERT. They have seniority the day they work for the service, and are paid by the carrier. That is the date they establish their date of seniority. In practice, most railroads, they have what they call a probationary period, which may vary in length, during which time the application for employment might be checked by the carrier to find out about the individual they are employing. During that time——

Mr. FRIEDEL. In other words, anyone that was employed, whether on the permanent payroll or not, would be included in your proposition.

Mr. GILBERT. They would be if they answer the call of the service under the rules that they are employed under, and they are working under.

Mr. FRIEDEL. When would you want to put the attrition into effect?

Mr. GILBERT. The attrition could go into effect when we sign the agreement and when a job that we would agree to blank came to that point where they would have to hire men for it. Then that job would be blanked under the agreement that we would reach in the guidelines and the criteria.

Mr. FRIEDEL. If a man on a daylight job moves up to a job as an engineer, can a man on the night job bid in the daylight job?

Mr. GILBERT. We have said, in explanation to the carriers about this proposal, that we would not permit sharpshooting on the part of our people to evade the agreement that we would consummate with them. That question was asked by the attorney for the railroads and I gave him the same answer I am giving you.

Mr. FRIEDEL. I have another question here: I have a memorandum here by the Association of American Railroads, Washington, D.C. I would like to know if these facts are true.

In one of the paragraphs they say one of the major issues before the Commission was the question of firemen on freight diesels where there was a third man in the cab in a yard diesel which has no fire to

tend or stoke. Firemen would be retained on passenger and yard service with 10 or more years seniority, and will be kept on the full-time job rights until retirement.

Mr. GILBERT. What is your question?

Mr. FRIEDEL. They say "death or other attrition ends the job." The 13,000 firemen with less than 10 years' seniority would be phased out with 3 to 12 months' notice, receiving dismissal pay wages up to $13,380, while keeping all outside income.

Mr. GILBERT. That sounds like a press release.

Mr. FRIEDEL. I am asking you if it is true or not.

Mr. GILBERT. That, again, is comparable to what the public has been fed up with, I hope, this acceptance bit of all these things, and when we try to negotiate with them the acceptance is dissipated because we have not received any offer like they say is in that.

Mr. FRIEDEL. In other words, this is not true?

Mr. GILBERT. We have not received such an offer. There, again, is one of the big problems, and the reason why I said a moment ago if the public is fully aware of all the ramifications of this, we fear no problem about them understanding why we are so strong in our position about what should be done.

I know it may sound real good to somebody who gets that in a press release, but we don't see that when we get into negotiations. It is fine to tell the public we accept, but when we negotiate we have to have it in writing that it will be this for the period of the contract.

The CHAIRMAN. Would the gentleman yield there?

Mr. FRIEDEL. Yes.

The CHAIRMAN. Mr. Gilbert, are you telling this committee that you have had no offer that has been firm in any of the considerations of this problem affecting the approximately 40,000 firemen of the country to the effect that all firemen with 10 years' service or more will continue on their jobs until they retire, or death or attrition will take care of it? You have had no firm offer to that effect?

Mr. GILBERT. I am telling you, Mr. Chairman, that unless the one we are supposed to be——

The CHAIRMAN. I am not talking about what might be underway. I am talking about what has already been presented.

Mr. GILBERT. The only thing that has been presented to us in writing is the notices that they were going to promulgate November 2, 1959, section 6 notices, first July 11 and then July 29, which does not have any of these features in them.

The CHAIRMAN. I am going to ask you again, because this is important. You have had no offer—firm offer—through negotiations or otherwise, that all firemen, 10 years or more in service, would remain on their jobs the rest of their lives, or until they retire or unless they go to something else?

Mr. GILBERT. I am sure you noticed I asked Mr. Phillips, because I want to be sure before I make the answer.

We have had no such proposition in writing to this date.

The CHAIRMAN. That is surprising to me because even before the President, the Chief Executive of this country, the Secretary of Labor, and many Members of Congress, both the Senate and the House, this statement was made categorically, that all those with 10 years or more of service, and those less than 10 years of service, arrangements would be made for them as was stated by Mr. Friedel a moment ago.

I am really confused about this now. You say categorically you have had no proposition like that made?

Mr. GILBERT. In writing, that is correct, sir. To us to be firm it must be where we can see it. We have made our commitments in writing in order that there be no misunderstanding.

The CHAIRMAN. Has the Secretary made such a proposition to you verbally?

Mr. GILBERT. I have not been present all the time and this is a double check.

The CHAIRMAN. Have you been present all the time, Mr. Phillips?

Mr. PHILLIPS. Yes, sir.

The CHAIRMAN. Has the Secretary verbally or any other way made such a proposition?

Mr. PHILLIPS. The 10-year proposition?

The CHAIRMAN. Pardon?

Mr. PHILLIPS. The 10-year proposition?

The CHAIRMAN. I will state it for the third time. That all of the firemen, approximately 40,000 total, who have 10 years or more of service will be continued on their jobs the rest of their lives or until they retire or until by attrition they move on to something else.

Mr. PHILLIPS. No, sir; we have not had any such proposal.

The CHAIRMAN. You have had no proposal that the matter could be settled on this basis and the 10-year people be taken care of in accordance with what Mr. Friedel has just indicated?

Mr. PHILLIPS. No, sir.

The CHAIRMAN. That is amazing to me.

Mr. FRIEDEL. If this were put in writing, would it be acceptable to your union?

Mr. GILBERT. Sir, I do not want to appear rude but I don't think I should be put in the position of negotiating with you, Mr. Congressman, unless you are in a position to negotiate with me and make an agreement.

I don't want to appear rude, but it has been my experience that you have to do your negotiating with the people you can trade with.

Mr. FRIEDEL. I understand that. I understand my responsibility. I am trying to get answers for the record on both sides. I do not imply that I am in favor of the railroads just because I am asking these questions, or that I am opposed to them.

I want to get the record clear. I have been getting the pro and con from labor and brotherhoods and the railroads. I am trying to sift all the information I have.

Was this proposal ever made by any of the Presidential Commissions?

Mr. GILBERT. You mean during the process of the Commission?

Mr. FRIEDEL. Yes.

Mr. GILBERT. No; no such proposal was made in the process of the Commission.

Mr. JARMAN. Would the gentleman yield?

Mr. FRIEDEL. I yield.

Mr. JARMAN. On the 10-year recommendation, did not the Presidential Commission make that recommendation and were not the recommendations accepted by the carriers?

Mr. GILBERT. I think, Mr. Congressman, that they have publicly announced they accepted them and I think that the 10-year recom-

mendation may have been in the report. But if I understood Congressman Friedel, he asked me whether a proposition had been presented to us during the course of the Commission and it was on that basis that I answered "No."

Mr. JARMAN. It is your understanding that the Commission did make firm and definite recommendations on the 10 year?

Mr. GILBERT. They made recommendations which under the understanding that the PRC was established were not binding on either party.

Mr. JARMAN. But the carriers did publicly state acceptance of the recommendations that had been made?

Mr. GILBERT. I think they did there as they have many others. But again I am repeating now that what they accept for public consumption and what we get put in an agreement are two different things always.

Mr. JARMAN. Thank you.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. If a proposal as has been mentioned here were made to your organization for the resolution of the firemen problem, are you in a position to say whether or not your organization would consider it?

Mr. GILBERT. We would consider any proposal, Mr. Chairman. We have always been willing to do that. But I do not think that I can fulfill my responsibility to the members I represent and answer your question with definity about what the resolution of the proposition will be.

The CHAIRMAN. On July 17, 1962, the carriers served notice—Mr. Jarman mentioned this—on the organization that effective August 16, 1962, the carriers would place in effect changes in rates of pay, rules, and working conditions which had been recommended by the Presidential Railroad Commission.

The notice to the organizations is contained on pages 125 to 157 of the appendix to the statement. Are you familiar with that?

Mr. GILBERT. Yes, sir; that was withdrawn in the court.

The CHAIRMAN. That was withdrawn?

Mr. GILBERT. In the court; yes, sir.

The CHAIRMAN. In other words, you do not consider those recommendations because of the action taken in the consideration of the court proceedings to be actually in effect?

Mr. GILBERT. They could not be, they were withdrawn before Judge Perry in Chicago.

The CHAIRMAN. I think this would be a very good time to recess in view of the fact that the House is going into session and we have a conference report that will be coming up right away.

The committee will recess until 2 o'clock at which time we will reconvene.

(Whereupon, at 12:05 p.m., the committee recessed to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p.m., Hon. Oren Harris, chairman of the committee, presiding.)

The CHAIRMAN. The committee will come to order.

In view of the questions and the responses just before the recess, and for the information of the committee, in order that we can be reminded of the information which is already in the record, regardless of how it might have been approached prior to this time, I would like to read a few sentences from the report to the President on the railroad rules dispute by the special subcommittee of the President's Advisory Committee on Labor-Management Policy.

As a matter of fact, I thought that this was a factual statement and brief summary giving the background of what the facts are, and it was agreed to by these parties, including Mr. Joseph L. Block, Mr. E. E. Leighty, Mr. George Meany, Mr. Stewart T. Saunders, W. Willard Wirtz, Chairman, Luther Hodges, Vice Chairman. It was agreed upon what the problems are, and what the issues are, and the position of the parties boiled down to a very brief statement for the benefit of the Congress.

I would also say that I believe that during the course of the hearings, not many have kept in mind this information that was given to us by this distinguished group of people which, it seems to me, brings to the attention of the Congress the issues that are to be resolved, and that if these issues can be resolved, everything else follows.

There were questions asked of Mr. Gilbert about the proposed offer insofar as the firemen are concerned, raised by our colleague from Maryland, Mr. Friedel. There were replies to the effect that there had been no firm offer made in writing or orally by the Secretary.

On page 14 of this agreed statement as to the issues and the position of the parties, I read:

> The Presidential Railroad Commission concluded that firemen "are not so essential for the safe and efficient operation of road, freight, and yard diesels that there should continue to be either a national rule or local rule requiring their assignment on all such diesels." It recommended that the firemen with less than 10 years seniority be separated from service with various provisions for severance pay, retraining, and preferential hiring rights on other railroad jobs. Firemen with over 10 years seniority were to be retained with full job rights.
>
> In its report, the Emergency Board concluded that there should be determination by bargaining and by neutral proceedings, if necessary, of "those situations, if any, which will continue to require the presence of a fireman in order to assure adequate safety and to prevent placing an undue burden upon the remaining crew members."
>
> The Board, speaking of the Emergency Board, suggested negotiating a procedure whereby positions could be eliminated as they became vacant, but which would permit the brotherhood to question the elimination on the grounds of safety or undue burden. Disagreements will be settled by local negotiations, or failing agreement, by special referee procedure.
>
> All firemen, except those hired recently or those working only irregularly, were to continue in the employ of the carriers, although firemen with less than 10 years seniority could be transferred to other comparable jobs with an earning quarantee. For those electing to withdraw from service, education, scholarships, retraining allowance, and separation allowance were recommended.

Would you say that is a factual statement from your knowledge and information about it, Mr. Gilbert?

STATEMENTS OF H. E. GILBERT, S. C. PHILLIPS, AND HAROLD C. HEISS—Resumed

Mr. GILBERT. That is a quotation, Mr. Chairman, but it doesn't bear out all that was said in connection with it, and particularly is

that true as it relates to the Emergency Board report. If you want all of the record, I would like to read that now.

The CHAIRMAN. I want all the record because I think it is important. This is the real crux of this whole question, and if some solution can be arrived at, we have been lead to believe that all other matters could be resolved.

Mr. GILBERT. I recognize what you have read there as a quotation from those reports.

The CHAIRMAN. This is not all quotation. I read some quotations, too, but the rest of it is a statement of this committee.

Mr. GILBERT. This is the portion of the Emergency Board report prior to their recommendations. I quote:

> The issues here involve rules which have been developed by negotiation over a period of decades to meet the needs of both parties as they viewed them at the time they were made. They govern the working conditions of almost 200,000 employees with varied and sometimes conflicting interests. The issues permit more than a single and exclusive solution. Our recommendations are designed to aid the parties to explore several solutions, in order to find those which best fit their vital needs at this time.
>
> We have not attempted to specify precise solutions to these problems. We believe that true collective bargaining will more likely succeed if we suggest general directions rather than specific solutions.

The CHAIRMAN. What I am trying to point up, Mr. Gilbert, is that these continual statements of an attitude on the general policy of "Let us have collective bargaining" is one thing, and then getting down and talking about the question is another thing.

What I am doing and what Mr. Friedel brought up this morning, and what others asked about, was the specific issue itself. That is what we are trying to talk to, and that is the point itself.

You made it very clear this morning that insofar as your position is concerned, and your organization, that you had not had any firm offer or proposal to you to settle this matter.

Mr. GILBERT. That is correct, Mr. Chairman, notwithstanding our efforts to obtain them during the interim.

The CHAIRMAN. I read to you this statement which was agreed to by these gentlemen who have given their time and efforts on a very difficult problem, too. I doubt if anybody could say that these people that were selected on this committee could be prejudiced one way or another. I do think that this colloquy here, the questions started this morning and now, should be emphasized over and over again, and all of the parties on both sides should go over it very carefully, and if what I think I have heard is a fact, somebody better start something positive, or at least bring about an understanding between those of you who are very definitely engaged in this problem on the one side, and those on the other.

I think we have to assume that reasonable men can join the issues and understand what they are and come to a solution to the problem where the entire public of the United States is involved.

Mr. Williams has just called my attention—you remember, I asked you the question this morning, "Did Secretary Wirtz orally propose this as a solution to the problem?" and as I understood, you said he had not—Mr. Williams calls my attention to page 66 of Mr. Wirtz's transcript on July 24, 1963, where he talks about this problem and

Mr. Friedel, incidentally, asked him about it then, which brought his statements.

He states the proposition again, as I stated this morning, and further, he says, "I don't want to commit either party, but there has been a pretty good acceptance of that attrition principle."

I think the proposition has been proposed in some form, Mr. Gilbert, and I would like to suggest that you take judicial notice of it.

Mr. GILBERT. Acceptance on whose part, may I ask?

The CHAIRMAN. On the attrition problem, I think, the Secretary had in mind both parties.

Mr. GILBERT. I don't know. Immediately the question comes to my mind, on whose part has it been accepted?

The CHAIRMAN. If there is any difference of understanding what it is, I think it would be most appropriate for the Secretary of Labor to take it up with you.

Mr. GILBERT. I appreciate that, Mr. Chairman, and I am sure he will if there is any question about it.

The CHAIRMAN. I would suggest that he do so, so that there can be an understanding about it. It seems to me in view of these things, where apparently there is lack of understanding, if it can be pointed out and an understanding reached, there might be a greater opportunity for a solution.

Mr. GILBERT. I see many applications, Mr. Chairman, to what the Secretary has said there. We have proposed an attrition formula on our own.

The CHAIRMAN. He says that.

Mr. GILBERT. We have put it in writing, I might add, too.

The CHAIRMAN. It also states in the report that I was reading from in the very next paragraph what your position was and what the railroad position was along the question of attrition.

Mr. WILLIAMS. Mr. Chairman——

The CHAIRMAN. Mr. Wiliams?

Mr. WILLIAMS. I notice in the testimony of Mr. Wolfe, beginning on page 217 of the transcript, when he was giving the history of this, that, on the following day the carriers served notice on the organizations that as of August 16, 1962, the rules changes recommended by the Presidential Railroad Commission will be placed into effect.

On July 26, 1962, the organization brought suit in the District Court of the United States for the Northern District of Illinois, seeking a judgment that the proposed rules changes would violate the Railway Labor Act.

On August 6, the carriers with leave of the court, and without objection from the organizations, withdrew their July 17, 1962, notices and substituted therefor the notices which had been served on November 2, 1959, to become effective August 16, 1962.

The organization's complaint was amended, and so forth. He goes on further on page 219 and he says that the report and recommendations of Emergency Board No. 154, dated May 3, 1963, were accepted by the carriers. The organizations announced that they would neither accept nor reject the Board's recommendations, that they were willing to use the report of the Board as a basis for further negotiations.

I am quoting Mr. Wolfe here.

The position subsequently taken by the organizations on the issues involved constitute an unqualified rejection of the Emergency Board's recommendations. Conferences between the carriers and the organizations were resumed in Washington on May 20, 1963, and continued through June 1, 1963.

Then going on to page 221, he says that on July 5, 1963, the Secretary of Labor submitted to the parties his statement and proposal for the disposition of the entire dispute. Specific proposals for the settlement of the fireman-helper issue and crew consist issue were submitted.

The Secretary stated to the parties that if these specific proposals were accepted, companion proposals and recommendations could be made for the expeditious settlement of the other disputed issues. The Secretary urged acceptance of his proposals. The carriers accepted the proposals and recommendations of the Secretary without qualification. The organizations rejected them.

Is that basically the situation?

Mr. GILBERT. If I followed you, Mr. Congressman, there are a few things there I would like to make a statement about. I would not categorize a promulgation such as Mr. Wolfe mentioned that these rules are going into effect, period, as being any proposal, as I understand it, in collective bargaining. They were telling us they are going into effect. "Now what are you going to do about it?" I don't think that quite would be my understanding of collective bargaining.

It is true that an outline was presented to us by the Secretary which contained arbitration over the consist of the rule which we turned down because of the removal, again, of the desire on either party or the desire on the moving party to do any negotiating. There is just no atmosphere for negotiation if you tell one side, "Now, you negotiate for 60 days or 30 days and if you don't do anything, then we will do this. Each of those proposals contain negotiating, and if you don't come to an understanding, you agree to arbitrate now."

You just can't create an atmosphere for collective bargaining under those circumstances.

The CHAIRMAN. At least we have the thing thoroughly talked out here, whether it is in a formal way or not, or regardless of how it developed. It is in the air, and I think those responsible for getting it into proper form of presentation ought to take cognizance of what has been said here today.

Mr. GILBERT. Mr. Chairman, I hope you understand that the proposals we made were in writing, and upon request from the carriers we even amplified their meaning in order that there could not be any misunderstanding about the offer we were making to dispose of this issue.

The CHAIRMAN. I insist that insofar as a discussion is concerned in an effort to try to get you people together, these statements can be presented, but the technical aspects would be carried on in the proper way.

Mr. Nelsen?

Mr. NELSEN. Thank you, Mr. Chairman.

I noted in the report to the President on the rail dispute, on page 3, carrying out the discussion a little further, it says here:

The carriers accepted the Commission's recommendations; the brotherhoods rejected most of them as unsatisfactory, and following unsuccessful negotiation

and mediation, the carriers announced on July 17, 1962, their intention to put into effect on August 16 new rules based upon recommedations of the Commission.

This, then, was taken to court, as I understand it, by the representatives of the unions and then this was withdrawn by the carriers; is that not true?

Mr. GILBERT. That is correct, Mr. Congressman.

Mr. NELSEN. But the action was brought by the brotherhoods, was it not, in the case that went to court?

Mr. GILBERT. My recollection is part of the promulgation had not even been subject to even notices, let alone negotiations. Part, at least.

Mr. NELSEN. The thing that I am interested in finding out is this: I note this morning that you mentioned that you were willing to reduce firemen by attrition by 5,500.

Mr. GILBERT. Yes, sir.

Mr. NELSEN. Over a period of how many years?

Mr. GILBERT. Two years. Almost a guarantee—well, it was a guarantee in that period of time.

Mr. NELSEN. Under the carriers' proposition, how many do they anticipate will be removed by the 10-year provision and the retraining?

Mr. GILBERT. I couldn't answer that because we have not seen their proposition.

Mr. NELSEN. How many do you estimate would be removed by their proposal?

Mr. GILBERT. I would not be in a position to even make a guess on that until I see what they may offer.

Mr. NELSEN. Does the suggestion of the 10-year provision plus the retraining and job preference proposition have appeal to you? Does it look like a proposition that might have merit and could be brought to agreement?

Mr. GILBERT. Again, Mr. Congressman, I don't want to appear rude, but I do not feel that I can serve the best interests of the people who pay my salary by endeavoring to negotiate the terms of an agreement with someone who can't make one with me.

Mr. NELSEN. I wouldn't expect a yes or no answer.

Mr. GILBERT. There are not many you can give to that except yes or no.

Mr. NELSEN. How many employees are affected by the work rules under the Presidential Commission's Report—total employees, not just firemen. Aren't there others involved?

Mr. GILBERT. That's one of the real tragedies in this thing, that the public has not been made aware of those people that would be adversely affected who are not even represented by the transportation organizations involved here. If these reports were implemented into an agreement, I would hazard a calculated guess that there are more nonoperating employees who would lose their job opportunities through the implementation of the PRC Report than would lost their jobs in the operating organizations. They are not even represented here. That, I say, is a rather tragic situation that has not been revealed to the public, what is anticipated in the long-run picture of the program of the railroads as inaugurated through these rules.

Mr. NELSEN. I have here the proposed joint resolution, I think you referred to it as the Meany suggestion of the AFL–CIO. This proposal suggests a committee of the House and Senate to in effect supervise collective bargaining. If agreement is not reached, I notice on page 2, in section 3, it says there that this committee shall report to the Congress, together with recommendations for further action by the Congress.

It would seem to me that we may well wind up in the same position we are in right now under the proposal that you have recommended because it will be back in the lap of the Congress. I might say this:

As far as I am concerned, this is compulsory arbitration that we are dealing with here. I am wondering where do we wind up under this proposal if you fail to get together, which I think you should, because it has got to be settled. We might wind up in the same position we are in right now with your own proposition.

Mr. GILBERT. Mr. Congressman, as I stated this morning, from my observation of collective bargaining over a period now in excess of 30 years, I feel that if the atmosphere of collective bargaining is in its proper perspective where there is not any evidence that somebody might come along and put their arm around the shoulders and promise of compulsory arbitration that there will be an atmosphere in which true collective bargaining might be engaged.

Under such circumstances, I feel, as we have in the several years before now on problems where disputes of this kind have arisen, that a collective bargaining agreement has been reached.

Mr. NELSEN. I might compliment the gentleman for his statements before this committee. I think you have been very fair and have done a very good job. I might say this:

My mail now coming in from the district, with the harvest on and the farm people, and I am one of them, are very much worried about this deadlock and I do hope that the parties involved can get together. It would seem to me that with the Presidential Commission recommendation which does make an approach to the so-called featherbedding or fireman situation, and your own proposition, they are both moving one toward the other.

There should be a way for an agreement to be reached. If an agreement is not reached, we are in this very unenviable position of having to do something which we think interferes with collective bargaining, and we think it is one of the bulwarks of the economy of our country.

I have no further statements, Mr. Chairman.

The CHAIRMAN. Mr. Rhodes?

Mr. RHODES. Mr. Gilbert, on page 8 you say that you believe the railroads deliberately refused to reach a point of agreement because they seek to create a national crisis and an environment favorable to them in compulsory arbitration.

Do you believe that the railroads would welcome a walkout on the railroads?

Mr. GILBERT. I do not think they would welcome a walkout but there has not been anything thus far happened in this process that has led them to believe that somebody or anybody would let us walk out. That has been one of the barriers that has been in the way of true collective bargaining.

They have had no incentive to bargain because in these various steps as I mentioned this morning, Mr. Congressman, from way back yonder somebody said, "You know this country can't stand a railroad strike." Well, what does that mean?

They don't have to negotiate. Somebody will come along and lift the cross from their back, down the road. We do not believe that is the right atmosphere in which collective bargaining can be conducted.

Mr. RHODES. The fireman issue you say is the key in the controversy. Do you feel that there is anything that this committee can do that would help to resolve that controversy?

Mr. GILBERT. I would not want to wish it on anybody. It is a big enough burden for ourselves.

As I think the chairman said, "Good men of good will without any promise of somebody relieving them of the responsibility will get the job done." But it must be in that atmosphere or one side is going to just sit and wait until somebody takes it off their shoulder.

Mr. RHODES. In large industries other than railroads, compulsory arbitration is generally opposed by both labor and management. Why would you feel that the railroads in this case favor compulsory arbitration?

Mr. GILBERT. It will relieve them of their responsibility to negotiate with us for one thing. Up until recently I think they have been opposed to arbitration. I think that is what the record will show. But of recent months I have seen a change in the attitude of management as they have spoken on this subject.

Mr. RHODES. I have here a copy of a newsletter by General Electric and I would like to quote from it on this question of compulsory arbitration—

> More and more thoughtful observers have noted that the prospects of Federal intervention tend to undermine good faith bargaining. There is a natural tendency for an employer to hold back something he would otherwise offer and for union officials to press for demands that he might otherwise not.

What do you think of that statement from General Electric?

Mr. GILBERT. There is not much I can agree with as far as principle is concerned as advocated by management of General Electric.

I am not sure that I understand this well enough to give you a yes or no answer, Congressman. I have heard some pretty rough things about them but I have never had to negotiate with them so I would not want to pass judgment on them.

Mr. RHODES. What they are saying is that compulsory arbitration causes the parties to hold back offers that would otherwise be made.

Mr. GILBERT. I agree with that because again you have the responsibility lifted from you that we have to make and maintain agreements under the Railway Labor Act.

That is an obligation on both labor and management, to make and maintain agreements. We want to fulfill our responsibility.

Mr. RHODES. Thank you.

The CHAIRMAN. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Gilbert, for how long has this manning problem and the consist of crew problem been a real live issue between the organizations and the carriers?

Mr. GILBERT. Our present notice, Mr. Congressman, was filed on the employees on November 2, 1959.

Mr. CURTIN. That is correct, but were these in issue for any period before that date?

Mr. GILBERT. We have had an agreement covering the employment of firemen-helpers on diesel locomotives since about 1933.

Mr. CURTIN. I am aware of that. But has this issue of whether or not some of these jobs were expendable been a real issue for any period before November 1959.

Mr. GILBERT. If we are talking about an issue, we had a notice served on us in 1956 comparable to this one which they withdrew without discussing it 5 minutes.

Mr. CURTIN. Then when would you say that these two issues become such that a strike became a distinct possibility?

Mr. GILBERT. I thought I made that statement a moment ago; on November 2, 1959.

Mr. CURTIN. You said earlier that you feel that these issues could be resolved rather quickly in an atmosphere of true collective bargaining. Has there not been that atmosphere at any time since November 1959?

Mr. GILBERT. Unfortunately no.

Mr. CURTIN. You feel the only time there was really a real effort for collective bargaining has been within the last few weeks?

Mr. GILBERT. Regretfully I have to say yes to that, Mr. Congressman.

Mr. CURTIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. Thank you, Mr. Chairman.

Mr. Gilbert, I know you are the international president of your organization and as such you commented this morning on the system and the approach for handling disputes in various countries.

In this connection, I wanted to ask you particularly about Canada. Is it not a fact that in Canada two conciliation boards under Canadian law and Royal Commission found that firemen were unnecessary in freight and yard service?

Mr. GILBERT. Yes, sir; Mr. Congressman, and propounding that question gives me an opportunity to say something that I regret that I have to say. I would hope that I would never see the time in the United States that an agreement so repugnant to what we think is honorable or satisfactory would be forced on any group of people who labor in this country as the agreement you mentioned was forced on our people in Canada.

That did not receive the approval of the international president nor has it ever been recognized as either being honorable or satisfactory.

Mr. JARMAN. Am I correct in understanding that in the agreement to which you refer that the officers of your Canadian organization did sign an agreement with the Canadian railroads putting the findings of the two conciliations boards into effect.

Mr. GILBERT. First a general chairman on the Canadian Pacific, not approved by either our vice president, Canada, or the international president. In fact, it was disapproved by me about 11:30 at night and the next thing I knew it was an agreement foisted upon our general chairman by pressures from the then Prime Minister, Mr. Diefenbaker, and his Minister of Labor.

Mr. WILLIAMS. What was the date of that agreement or when was it finalized? What year?

Mr. GILBERT. It seems like it was 1958 or 1959, Mr. Congressman, but these last 4 or 5 years have kind of welded themselves together. So I would not want to be held to that date. My recollection is 1958. Is it 1958?

Mr. JARMAN. I do not know, sir. I do not have the date.

Mr. WILLIAMS. Do I understand that it was in the late fifties? Do I understand then that the railroads in Canada have been operating without firemen during that period of time?

Mr. GILBERT. No; your understanding is not correct. They still have firemen employed on practically all of the locomotives and there are still some firemen on furlough who will be recalled as the situation may warrant. That is an erroneous impression that has been conveyed, however, through the news media of this country. But that is not a fact.

Mr. WILLIAMS. What was the effect of it?

Mr. JARMAN. I would be interested also in hearing what the effect of the agreement was?

Mr. GILBERT. The effect of the agreement was that they would not be required to hire any more firemen after attrition took these away for freight and yard service.

Mr. WILLIAMS. In freight and yard service they operate without firemen?

Mr. GILBERT. No, sir. That is the erroneous impression that has been conveyed through regular news media in this country. In fact, I noticed one man in his demonstration of assistance to, not us, of course, said they had been operating in Canada for firemen since the date of this agreement, which nothing could be farther from the truth.

We have approximately 4,000 firemen operating on those locomotives in Canada, and have some furloughed on many of the seniority rosters.

Mr. WILLIAMS. Thank you.

Mr. JARMAN. The attrition policy is in effect under this agreement at the present time in Canada; is it not?

Mr. GILBERT. Yes; as such; that is correct, Mr. Congressman.

Mr. JARMAN. Then, as I understand it, you are estimating as to the time of the agreement. Was it not actually prior to the dispute in which the brotherhoods and railroad management have been involved since 1959?

Mr. GILBERT. It would be prior to that, I am sure.

Mr. JARMAN. Even 1958 or 1959?

Mr. GILBERT. That is the best of my memory.

Mr. JARMAN. I am asking for information because I do not have the dates.

Mr. GILBERT. I am trying to be as helpful as I can but it was somewhere prior to the time that the notices before us were served.

Mr. JARMAN. Do you remember how long prior to the agreement being reached in Canada that recommendations were made by the Royal Commission and those who investigated the problem?

Mr. GILBERT. I made a trip with that Commission in Europe in 1957. So with that recollection, 1958 would be about the right year.

Mr. JARMAN. 1958 was the year of their recommendations?
Mr. GILBERT. Yes, sir.
Mr. JARMAN. I thank you very much.
That is all, Mr. Chairman.
The CHAIRMAN. Mr. Sibal?
Mr. SIBAL. Thank you, Mr. Chairman.
Mr. Gilbert, as I understand it your objection to this resolution is complete, but you do indicate in your statement that even if such a bill was favorably considered, the ICC would be the wrong authority to turn this matter to; is that correct?
Mr. GILBERT. I think the statement made was that they were not created for a purpose such as this. We felt that it would be a job imposed upon people not equipped to do what is necessary to bring about a solution.
Mr. SIBAL. Who would you think is equipped to do this?
Mr. GILBERT. The people who are parties to the existing agreement, the railroad management on one side and the labor organizations on the other.
Mr. SIBAL. I understand your position that you do not want any part of any third party having any compulsory authority.
Mr. GILBERT. Insofar as writing the rules is concerned, you are correct.
Mr. SIBAL. Granting that, and I am not for a minute for the present purposes arguing that point with you, but granting that you feel that no authority would be satisfactory, is there any authority which you feel is better equipped to do it even though you do not want anybody to do it, than the ICC?
Mr. GILBERT. I thought I made it rather clear that the people I think who ought to do it are the ones who are party to the agreement.
Mr. SIBAL. What I am getting to is that yesterday we listened to another brotherhood testify and we heard a lot about the ICC's lack of qualifications for this particular job. But that really is not important if you are opposed to the principle to the point where you are against anybody doing it.
Mr. GILBERT. We are unalterably opposed to compulsory arbitration in relation to writing the rules under which our people must work.
We are thinking, and it is our obligation to the members who pay their dues into these organizations, to do everything within our power to negotiate the type of rules that would insure safety to them.
We are talking, or I am talking now, about the organization—we are talking about the lives and limbs of these people.
Mr. SIBAL. I understand that, Mr. Gilbert. I am trying to get a response to something that this committee may have to consider. If I may put this in the form of a hypothetical situation which I am not suggesting may ever come about: suppose there was a consideration of this committee and the Congress that despite our objections and other brotherhoods' objections to this legislation, that legislation of this type was called for under the circumstances.
Is it your position that if this is the judgment of the committee that you do not care which authority is given this right to impose compulsory arbitration, if you will?

Mr. GILBERT. We would be opposed to this. To something I would be opposed I don't have any choice who will do it. If I am going to be hung whether it is a rope or a chain I have no selection.

Mr. SIBAL. In other words, what we ought to do in this committee is decide whether or not we are going to support or propose this approach, and if we do decide to support it we might as well leave it right in the ICC?

Mr. GILBERT. We still have to accept what you decide. But my purpose here is to urge you not to adopt this Resolution 565.

Mr. SIBAL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Gilbert, I want to join my colleagues who have commended you on the general tenor of your statement this morning. However, I have some questions I want to direct, but before doing so I would like to point out, as I did yesterday, that I doubt there is a single member of this committee who welcomes the assignment given us.

I think we must view very carefully the context in which we receive it. I can recognize the validity of the plea you make here for a change of atmosphere in which to undertake further collective bargaining.

I think I voice sentiments of the entire committee when I express the hope that you can by collective bargaining settle this before it has to be dealt with otherwise. But I am concerned with whether or not that new start can actually be achieved.

We have a vehicle that brought this to the committee, the Presidential message and legislation introduced in response to it. The question of the impact of a strike is dealt with and a finding is made by the President of the United States and transmitted to the Congress in that message.

I do not think that the committee can just summarily put aside something which must be very carefully evaluated. Would you not agree?

Mr. GILBERT. I have no quarrel with your obligation. I may quarrel with what you may wind up with.

Mr. Moss. I am just going to take it on its face quoting some of the findings of the President.

> Indeed a prolonged strike could well break the back of the present expansion and topple the economy into recession before tax reductions and other measures now before the Congress for reinforcing the expansion have had a chance to take hold.

That is a statement of the President, a finding, we assume, carefully considered.

Mr. GILBERT. I imagine, Mr. Congressman, that is very calculated on the basis he has been given.

Mr. Moss. Then in reference to the legislative setting the President makes a further observation:

> In short, the cost to the national interest of an extended nationwide rail strike is clearly intolerable.

So that, then accompanied by the request for legislative action introduced by the chairman of the committee, brings the resolution which you are appearing in opposition to today.

The resolution proposes an action which has two objectives: To continue the operation of the rails, and to permit to a maximum the continuation of a collective bargaining procedure. Those two, I think, are the objectives, are they not, of that resolution?

Mr. GILBERT. That is as I understand them, although I think I could propose another one.

Mr. Moss. You have, and that is what I want to come to. You have proposed an alternate to this. I think that is appropriate. It has the same two objectives, does it not? It has the objective of continuation of the operation of the rails and the continuing opportunity to bargain collectively?

Mr. GILBERT. Yes, sir.

Mr. Moss. But as a condition precedent to this continuation of bargaining you have made a plea for a change in atmosphere, one which removes the threat of imminent action by any outside party.

I am just wondering how well you have succeeded, because on page 3 of the resolution that I have a copy of, House Joint Resolution 579, I understand it is similar to a number introduced in the Congress on yesterday. Page 3, line 21:

> If at any time the Special Joint Emergency Railroad Committee finds that the procedures herein provided afford no prospect of resolution of disputes within reasonable time it shall so report to the Congress, together with recommendations for further action by the Congress.

Certainly there we have clearly implicated the threat, the promise, the commitment, whatever you migh call it, of an action from outside of the two parties bargaining over the issues involved here, have you not?

Mr. GILBERT. But in an atmosphere somewhat different than is presently presented to you. I think that the matter that has been presented here, Mr. Congressman, shows that we have not had collective bargaining.

You are asked to refer this matter to some tribunal for adjudication on matters that collective bargaining have not had an opportunity to work.

The request that has been made is to get an opportunity without this freedom of one side to sit on their one spot with the hope that somebody will come along and do the job.

Mr. Moss. What is in the background then intended by this direction to the Joint Committee?

Mr. GILBERT. That they may have an opportunity to see who is at fault in these circumstances.

Mr. Moss. Are we here to place blame or find guilt, or are we here to try to seek a better solution to a most vexatious problem?

Mr. GILBERT. I think, Mr. Congressman, that may be working in two directions. But we seem to be getting the brunt end of it in the existing joint resolution before us. We are the ones to be seized, so to speak, while the carriers will be free to operate in the atmosphere they have been operating in for some time, foisting their obligation onto somebody else.

If somebody has to be seized, why don't both of us be seized? If you want an atmosphere that will really create bargaining where bargaining should be done—I have heard the carriers say, "That would be unfair, if you seize the railroads."

We feel unalterably that it is unfair to deprive us of the opportunity to defend the people we represent by taking the only leveling weapon that the workers have, to withhold their service if the burden is onerous that is imposed upon them by the carriers.

That is the basic thing that bothers us in a proposition like this.

Mr. Moss. The adoption of this resolution would not remove the Presidential findings. So they are also in the background on this dispute as long as it continues on its current basis, are they not?

Mr. GILBERT. I am not sure, Mr. Congressman, that I understand what you mean by that.

Mr. Moss. The President's message clearly made findings which he transmitted to the Congress as to the impact of a work stoppage, whoever might be responsible.

Mr. GILBERT. Yes.

Mr. Moss. They were characterized as being of such dimensions as to be intolerable. So we would assume, therefore, that the Executive would feel that action, whatever occurred in this alternate proposal, would have to be of such nature as to avoid that which is characterized as intolerable.

Mr. GILBERT. You are talking about 579 now?

Mr. Moss. I am talking about the atmosphere. We are talking here of getting back to the bargaining table. I sincerely hope it can be achieved. But I am wondering if the atmosphere you prescribe as being that required can actually be recaptured either under your resolution or the other procedure.

Mr. GILBERT. If there is any thought that they can sit out whatever period of time that the Congress would permit us to try to engage in collective bargaining and then come back to this same posture, then I think that would be a useless endeavor because that is the atmosphere we have been working in too long. But if there was a threat—I don't mean this as a threat—if that relief they have sought all this time is not in evidence, I feel that they may have a greater desire to take advantage of some of the propositions that are already before them, rather than wait and let somebody do what they think they might do better.

Mr. Moss. Let us take your proposed resolution. What would you say would be a reasonable time to have this continued effect in the absence of some significant progress at the bargaining table?

Mr. GILBERT. In my judgment, Mr. Congressman, I think that whatever the committee that might be set up to serve in the so-called watchdog committee should have the freedom to set that date.

I cannot help but think of the period of time we have just passed through where every once in a while we wake up and hear the deadline—something has to be done before this deadline comes.

Not only has it placed the Mediation Board and the Secretary of Labor, but also our President, in an embarrassing position, in my opinion, because here is a deadline, something has to be done now.

With the absence of a deadline I think that whoever constitutes the committee would have an idea from the reports they get as to whether any progress is being made, and who is dragging their feet. I think that should be fluid enough that the determination would be made and void this dull prospect of again working toward a deadline.

Mr. Moss. We on this committee are supposed to proceed with fair-

ness toward both sides. I know you expect that and I think the other side should expect that.

How long could we continue to permit this matter to be deadlocked in negotiations and be fair to both sides? Because we are freezing in the one sense the position of one side very definitely, granted at the same time we freeze the position of the other side.

I recognize the pendency of rule changes on the part of both parties. But where you freeze on the one side, you continue a situation where they are not deprived of anything threatened by the action of the other, while the other is deprived of the entirety of its package of proposals which it feels, justly or unjustly, it must have relief from.

How long can we go without having some deadline? There is a deadline in everything we do whether or not we recognize it.

Mr. GILBERT. Mr. Congressman, I don't think it can be overlooked that we have some requests in here that we think are necessary to bring our rules up in keeping with what is recognized as common in other industries.

Mr. Moss. I recognize that fact. But you have no suggestions as to what would be in fact a reasonable period of time.

Mr. GILBERT. I think that the actual happenings in this situation would have to be the governing factor. If progress is being made, maybe 4 months wouldn't be too much. But if there is not any progress being made, maybe 4 weeks would be too long.

I think that is a situation that must be left in a state of flux in order that the watchdog committee would make the determination when they think this should come to an end.

Mr. Moss. Of course, whatever the watchdog committee finally recommends if it requires any further action, has to come back to this committee and its counterpart in the Senate.

Mr. GILBERT. I am repeating now, Congressman, but I think in such an atmosphere you will find you won't have to report to anybody other than that there is an agreement reached.

I feel very strongly about that or I wouldn't make the observation.

Mr. Moss. You feel very sincerely and very deeply convinced that you are much nearer now than at any other time to a resolution of these issues?

Mr. GILBERT. I understand that we have a proposition on the way in writing and that is a lot nearer than we have been for 4 years. If that is any criteria to make a statement on.

Mr. Moss. That is all the questions, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Gilbert, first I want to say I am one who believes it is dangerous and unwise to employ compulsory arbitration, just as I believe it dangerous and unwise to seize the railroads.

Following up the discussion of the Canadian situation, I am wondering if you have any view as to whether that unwise settlement as you referred to it had anything to do with the downfall of the Diefenbaker government?

Mr. GILBERT. I am not that familiar with Canadian politics. But I am sure that the people who are in our industry that have been suffering from this would not be sympathetic to him. I know that from the conversations I had with them. It didn't help him any.

I am pretty sure, and I base that on the information I received from our members. We just had a hundred of them in convention in St. Louis recently. They are still smarting under that treatment.

Mr. CUNNINGHAM. Mr. Gilbert, I want to now refer to several passages in your statement and I am going to start on page 10. To save time I am going to paraphrase. You say in their proposals the railroads asked you to agree to a rule providing that management should have the right to determine when and if a firemen-helper shall be used in the service.

These notices you say would vest in the carriers unfettered discretion to determine when and if a fireman-helper shall be used and deprive the representatives of the fireman-helpers completely of any voice in determining when and how these positions shall be filled.

Without arguing that point, I am wondering if you could explain why it is not management's prerogative to determine how many members shall compose a crew or how many employees they need to operate. I have in mind that in other industries, I wonder if a labor contract is so rigid as to dictate to management how many people they shall have on a particular job or how many they should employ.

As I say, I am not arguing the point. I am wondering why you are in a different position, as I understand it, in that you want to determine how many people shall, for example, make up a crew.

Mr. GILBERT. We have had a voice in this, Congressman, for now more than 25 years, and if there is not anybody in the world interested in the life and limb of the members I don't know why it wouldn't be the organizations who represent them.

Mr. CUNNINGHAM. I know you are. You have made a very fine presentation. I am sure you convinced the committee you are.

I am trying to find out why you have this view of determining what some other people might feel is a management determination.

Mr. GILBERT. We have entered into agreement with these people, now, as I say, willfully. They have never been forced into this agreement. We have negotiated with them about the positions that the men represented by this organization would fill for these many years.

Under the Railway Labor Act we have an obligation to make and maintain agreements with the carriers, and we feel this is one that fits in that category and we maintain it through the union.

Mr. CUNNINGHAM. Is this your answer, that because for 25 years or longer you have entered into an agreement that gives you a voice in this matter?

Mr. GILBERT. I think the old saying, "the proof of the pudding is in the eating," and we have had it here, and there is nothing in the laws of the land that deprives us of the right.

In fact, it obligates us to do that, to make and maintain agreements and the size of the crew is one we have entered.

Mr. CUNNINGHAM. I know your agreements require you to do that. I am wondering why your industry is different than other industries in this regard.

Mr. GILBERT. I don't know that it is, Mr. Congressman. I am not in a position to argue that with you. I didn't think you raised it to make an argument. I understood you to say you didn't want to argue.

Mr. CUNNINGHAM. Sir, I am only seeking information. Then, turning to page 16, about the middle of the page.

Mr. YOUNGER. Will the gentleman yield for one question he just covered?

Mr. CUNNINGHAM. Yes.

Mr. YOUNGER. Do you have an agreement with the carriers now, or did your agreement expire in November when the new work rules were presented?

Mr. GILBERT. Under the Railway Labor Act, Congressman, our rules do not expire unless the terms so specify. It is open to change on 30-day notice under the Railway Labor Act.

Mr. YOUNGER. And it is continuing all the time?

Mr. GILBERT. Yes, sir.

Mr. YOUNGER. Thank you.

Mr. CUNNINGHAM. On page 16, about the middle you say total employment on class I railroads has declined more than 40 percent since 1947. We have heard a great deal of testimony about the need for these people as a safety factor and we are interested in that.

I am interested in it because I spent 7 years full time in accident prevention work. The employment has declined more than 40 percent since 1947. What happened to the accident rate in that same period?

Mr. GILBERT. According to the ICC figures, it has gone up.

Mr. CUNNINGHAM. Do you know exactly how much it has gone up?

Mr. GILBERT. We had an economist testify in some of the proceedings and I am sorry, Congressman, I do not recall the figure.

Mr. CUNNINGHAM. Employment has gone down 40 percent. You would not think that accidents have gone up 40 percent, would you?

Mr. GILBERT. I think the percentage would be relative and that is my recollection.

Mr. CUNNINGHAM. Do you know whether the figure would be available as to the accident experience?

Mr. GILBERT. I think if it is relevant to the situation here, I think we could have Mr. Oliver prepare a statement in that respect.

Mr. CUNNINGHAM. Is he a consultant to you?

Mr. GILBERT. Yes, sir.

Mr. CUNNINGHAM. I think it is very relevant because we hear about the need for the position which you maintain and all through these hearings we have heard that one of the basic reasons for your position is safety.

Mr. GILBERT. Not solely, Mr. Congressman.

Mr. CUNNINGHAM. I understand not solely. But it has been mentioned dozens and dozens of times. I am wondering if employment declined 40 percent, whether accidents went up to any degree.

With the permission of the chairman, may we have that figure for the record?

Mr. GILBERT. I think, Mr. Congressman, that I should explain our own experience in the period since 1947.

Our job opportunities have diminished somewhere between 55,000 and 60,000 people in that time due to the dieselization which permits 1 crew to do the work that 2 or 3 used to do.

In fact, I know on the railroad where I come from we have one division that two crews now can haul what more than six crews did before they dieselized. That is just symbolic of the manner in which dieselization has destroyed the job opportunities for people we represent.

Mr. CUNNINGHAM. I, too, am not familiar with the accident rate among the railroads. But having been full time in accident prevention, I was under the impression that the safety record of the railroads has been gradually improving for the last 20 years.

I could be subject to error and I would like to find out about the accident experience in the period referred to in your statement.

The CHAIRMAN. I think we have that somewhere in the tables in the last few years. We will undertake to get it and let it be included at this point in the record.

(Mr. Cunningham later submitted the following information for the record:)

THE RAILROADS' REMARKABLE SAFETY RECORD

According to the National Safety Council, 19,000 deaths resulted from work injuries of all kinds in all U.S. industries in 1928—the first year for which such information is available. This was at the rate of 158 deaths per 1 million population. By 1961, the safety council reports, such deaths had fallen to 13,500—a rate of 74 per 1 million population. Thus, the death rate declined by 53 percent for workers generally.

Now look at safety progress for railroaders. The Interstate Commerce Commission reports that the number of railroad employees suffering fatal injuries in 1961 was only little more than one-tenth of the 1,327 fatalities of 1928. The fatality frequency rate per million employees declined by 75 percent during this period or half again better than the progress made for industrial workers generally. Stated in another way, the average industrial worker was more than twice as safe in 1961 as he was in 1928—but the average railroad worker was more than four times as safe.

One of the big reasons for this striking improvement lies in the sweeping modernization program carried out by railroads over the years and especially since World War II. This program has brought into being all kinds of new equipment and facilities, all engineered not only for greater efficiency and improved transportation service but also for new peaks of safety. Here are examples of what has happened through this industry's postwar investment of more than $17 billion of private funds for modern railroad plant:

Rail in track is heavier and stronger, with the average weight per yard rising from 99 pounds in 1946 to 106 pounds today.

Marvelous modern signal devices have steadily increased coverage of operations. Track mileage guarded by centralized traffic control, for instance, has quadrupled from 8,500 miles in 1946 to 38,000 miles in 1961.

And certainly the diesel locomotive is a far safer machine than its steam counterpart. Today, diesels number 28,000 units and account for better than 97 percent of all locomotive service on class I lines.

Here are highlights of the railroads' resulting safety achievements:

SAFETY OF ENGINE CREWS

One of the major benefits of the swtich from steam to diesel power has been a dramatic reduction in accidents resulting from failure of some part of a locomotive. According to the Interstate Commerce Commission, not a single fatality has been caused by such accidents during the past 6 years, as compared with 84 persons killed in the first 6 postwar years, before the conversion to diesel power. Injuries from failure of locomotive parts declined from a postwar high of 505 in 1947 to only 73 in 1962.

PASSENGER SAFETY PERFORMANCE

Travel by train in 1962, as far as fatal accidents were concerned, was more than twice as safe as travel by domestic airline and 15 times as safe as travel by automobile.

Long-term compartive safety performance, based on the rate per hundred million passenger-miles, shows that the average number of fatalities per year for the 10-year period 1953–62 was 0.13 for passengers on trains; 0.17 for passengers on buses; 0.51 for passengers on domestic air carriers; and 2.45 for passengers in automobiles and taxis.

KANSAS SEP 23 MANHATTAN, KANSAS

THE OPERATING SAFETY RECORD, SINCE WORLD WAR II

NOTE.—Because of changes made in 1957 by the Interstate Commerce Commission in rules for reporting railroad accidents, the only fully comparable railroad statistics on accidents are those recorded prior to 1957. On this basis—

There was a reduction in the number of train accidents from 1946 to 1956 of 39.1 percent.

There was a reduction in the number of fatalities to employees on duty from 1946 to 1956 of 62.7 percent.

There was a reduction in the number of nonfatal injuries to employees on duty from 1946 to 1956 of 52.4 percent.

Based on the rate per hour worked, there was a reduction in the number of fatalities to employees on duty, from 0.19 per million man-hours worked in 1946 to 0.11 in 1956—a reduction of 42 percent.

Based on the rate per hour worked, there was a reduction in the number of nonfatal injuries to employees on duty, from 10.32 per million man-hours worked in 1946 to 7.61 in 1956—a reduction of 26 percent.

While changes in reporting rules have distorted comparisons of statistics of injuries since 1956, data on employee fatalities show a further drop from 234 in 1956 to 178 in 1962.

THE OPERATING SAFETY RECORD, 1923–56

Since 1923, there has been an almost continual downward trend in the number of casualties to employees on duty and passengers on trains.

In the case of employees on duty, fatalities dropped by 87 percent and nonfatal injuries dropped 89 percent.

Based on the rate per hour worked, the number of fatalities to employees on duty fell from 0.38 per million man-hours worked in 1923 to 0.11 in 1956—a reduction of 71 percent, and

The number of nonfatal injuries to employees on duty dropped from 30.35 per million man-hours worked in 1923 to 7.61 in 1956—a reduction of 75 percent.

Accidents and casualties caused by failure of some part or appurtenance of steam locomotives and locomotives other than steam

Fiscal year ending June 30—	Number of accidents	Killed	Injured	Total
1950	220	10	234	244
1951	221	16	299	315
1952	196	4	203	207
1953	134	12	150	162
1954	105	3	302	305
1955	83	3	142	145
1956	73	4	79	83
1957	75	0	90	90
1958	72	0	86	86
1959	66	0	90	90
1960	50	0	81	81
1961	71	0	77	77
1962	67	0	73	73

Source: Annual reports of I.C. Director of Locomotive Inspection.

Mr. CUNNINGHAM. Now I will skip over to page 20, sir, a little over halfway down. In your statement.

It was basic to my proposition that all firemen presently in employment be retained and that vacancies be created in the particular daylight yard jobs and daylight branch line jobs only on an attritional basis.

Do I infer from that statement that you do believe that there is justification for reducing these jobs?

Mr. GILBERT. We have made an offer, sir, to reduce them by 5,500 in the next 2 years.

Mr. CUNNINGHAM. I heard your testimony on that. But you do agree, then, that there is no longer a need for as many of these firemen jobs today as are presently in existence?

Mr. GILBERT. That proposition was based on the guidelines suggested by Emergency Board No. 154.

Mr. CUNNINGHAM. Did you agree with that?

Mr. GILBERT. We offered it. We are the ones who made the offer.

Mr. WILLIAMS. Would the gentleman yield at that point for a question on this subject?

Mr. CUNNINGHAM. Yes.

Mr. WILLIAMS. Mr. Gilbert, could it be construed that you have made a counterproposal to permit an attritional reduction of 5,500 firemen over a certain period of time as an admission on the part of your organization that these firemen are not actually needed?

Mr. GILBERT. Not necessarily, Mr. Congressman. I think I made that in my statement, that we were making an effort to get collective bargaining underway. In the guidelines that we proposed to be bargained would preserve the elements that were recommended in the Emergency Board report, that safety, efficiency and undue burden be given consideration in the elimination of these jobs.

Mr. WILLIAMS. What would take the place of these 5,500 firemen in promoting the interests of safety and efficiency?

Mr. GILBERT. The position of safety would have some effect, but the selection of the jobs would be made on the basis of their contribution to these three elements.

Mr. WILLIAMS. I thank the gentleman.

Mr. CUNNINGHAM. Mr. Gilbert, I asked the engineers yesterday this hypothetical question, and I would like to ask it of you because I did not feel that the answer yesterday was inclusive or entirely clear to me.

I am going to get back to the bill before us. If a carrier proposes a rule and the ICC approves it, and you disapprove, and it goes into effect, and it will be in effect for 2 years. Then after the 2 years and you objected to this rule that the ICC agreed to, would you feel inclined then to strike?

Mr. GILBERT. I don't see in this proposal that it ends in 2 years.

Mr. CUNNINGHAM. There has been some debate as to whether this is effective for 2 or 4 years, but whatever that year is, and you did not like this rule, would you be inclined then to have a strike?

Mr. GILBERT. We would be inclined to use every element at our command to defend our position. As I read section 8 of this, there is no assurance in section 8 that this wouldn't continue as long as we were alive because it says prior to such expiration the President shall report on its operation to the Congress and makes such further recommendations, if any, as he deems appropriate, including his recommendation as to whether this joint resolution should be extended.

Mr. CUNNINGHAM. We have had some discussion about that.

Mr. GILBERT. There is no termination there.

Mr. CUNNINGHAM. The President may propose, but the Congress disposes. Just because it provides that he would make a recommendation does not necessarily mean that this resolution would be extended.

Now, Mr. Gilbert, at the present time, if under free collective bargaining you feel compelled to call for a strike of your members, there is no remedy at law to do anything to break that strike or by the same token, if management should impose a lockout, there is no legal recourse in that regard; is that true?

Mr. GILBERT. That is what my understanding of the Supreme Court decision contemplates. At the expiration of the statutory element of section 10 of the Railway Labor Act, either side would be free to exercise self-help.

Mr. CUNNINGHAM. I think it is quite clear that under free collective bargaining under the Railway Labor Act if either side should lock out or strike there is no court that can intervene and break the strike or stop a lockout.

Now under this resolution, as I read it, it does provide for an injunctive procedure. So that if you should be of the mind to call a strike, a proceeding could be taken and an injunction could be entered against continuation of your strike.

Is that what your understanding is?

Mr. GILBERT. I think that is what this contemplates. It would remove the element of freedom that the Supreme Court gave us to exercise self-help.

I think it contemplates that in its present form.

Mr. CUNNINGHAM. In other words, this would be a new weapon to either break a strike or to break a lockout, which is the terms used in the resolution. This would be something new and different than we have at this moment on the statute books. Do you agree to that?

Mr. GILBERT. I will have to take a look to what it does about management.

Mr. CUNNINGHAM. It refers to both lockouts and strikes. The resolution itself.

Mr. KORNEGAY. Section 5(8) of the Interstate Commerce Act.

Mr. CUNNINGHAM. If you will look at the resolution, Mr. Kornegay says it is section 5, subparagraph 8.

Mr. KORNEGAY. It is section 5 of the resolution.

Mr. GILBERT. Section 5 of the resolution, I believe, Mr. Congressman. It mentions lockout.

Mr. CUNNINGHAM. I do not want to take any more time. It is in there because I studied this bill at some length. I do not have my marked copy with me at the moment. But it is in there. I only wanted to point out that this does permit injunctive procedure against either management or labor which does not at the present time exist.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Gilbert, I would like to commend you for a very fine and clear statement today. Let me ask you several questions. You heard Mr. Moss read you the President's findings with regard to the impact of a railroad strike upon the economy.

Let me ask you: Are you in disagreement with his finding of fact with regard to the impact of a nationwide rail strike of any duration upon the American economy?

Mr. GILBERT. I think that the President made that as the result of some studies performed by his people that he assigned to do it.

I would think he made it based on the information that was given to him.

Mr. DINGELL. Are you in fundamental agreement with him that the impact of a strike of this kind would be intolerable upon the American economy?

Mr. GILBERT. I assume it would be as he said. But we also have to in our system of free enterprise surely put some assessment upon what would happen to some of the freedoms that we may have.

As we view which would be the greater, the exercise of the freedoom that we fight and die for, or whether it would be as expensive in that respect as it would be to tie the hands of those who have only this as their weapon to defend themselves against onerous rules under which they do not desire to work and the cut of pay such as is contemplated.

Mr. DINGELL. Let me make it abundantly plain. I have traditionally opposed compulsory arbitration. I am in the present in the process of opposing such a proposal before another committee in this Congress.

The situation there is a little different in that the President has sent no message to that committee advising us of the adverse affect upon the economy and also that the President has not presented us with a specific legislative proposal as of this time, to my knowledge.

Now to continue, there is no question but what it would have a very harsh effect upon the economy; am I correct, sir?

Mr. GILBERT. Again I think because of my high regard for the President I would not question the accuracies of the statement he has made in that respect.

Mr. DINGELL. I note that the AFL–CIO has sent to the Congress a suggested legislative substitute for the proposal now before the committee, which I believe has been sponsored by some of our colleagues on this committee.

Would I be unfair in saying, this is a recognition of the gravity of the situation and the need for the Congress to act?

Mr. GILBERT. I think that is recognized by all. None of us who are in the labor movement ever look forward to the launching of a strike. That is only used as a last resort. Everyone is cognizant of the effect of a strike.

Mr. DINGELL. I am aware of the position of responsible labor with regard to strikes. I have a great deal of respect not only for that position but also for the responsible members of the labor movement, among whom I would number yourself and your very fine organization.

Would I then be unfair in saying that it becomes very plain that unless the Congress acts in one form or another that there is grave danger of strike of nationwide proportions in the railroad industry?

Mr. GILBERT. Again that is a responsibility, Mr. Congressman, under its present posture rests directly at the doorsteps of railroad management. They are the ones that are inaugurating these wage cuts and the elimination of these jobs.

I think the sooner the public becomes aware of that the more sympathetic they might be to some of the things we have tried to get across to them with little or no effect.

Mr. DINGELL. I am not discussing that particular thing, sir. I am merely discussing the fact. I would be fair in inferring from everything I have been able to read and from what I have been able to hear that in the event that the work rules suggested by the employers are posted that there will be a nationwide railroad strike; am I correct?

Mr. GILBERT. It will be so extensive with the number of properties on which they serve notice that they are going to cut the pay of the men and eliminate these jobs and uproot the men from their homes and reserve to themselves the unilateral right to do all these things that have been in the past subject of negotiation of rules with them.

Mr. DINGELL. Let me then ask this question: Is there any alternative to a strike as broad as the publication of those work rules, aside from legislative action in your mind, by the Congress?

Mr. GILBERT. Collective bargaining agreement may sound facetious. But that is the answer to it.

Mr. DINGELL. I recognize the truth of your position. But I observe that for a period of several days now I have been sitting in this chair listening to representatives of both management and labor telling me that collective bargaining has been impossible because of the intransigence of the other side.

Without making comments as to who is right and who is wrong, I think that it would be a fair thing to say that collective bargaining has broken down here. We know of no alternative in the event the work rules are posted to strike save legislative action by this committee and by the Congress.

Am I correct?

Mr. GILBERT. Mr. Congressman, I don't agree with your statement that collective bargaining has broken down. It has not even gotten started. You have to work at it before you break it down. We have not started to work at it.

Mr. DINGELL. I will accept your statement on this point for purposes of the discussion.

The next question is: With regard to the resolution which has been sent up as a substitute, I would be fair in inferring for a substitute to be accepted by the Congress it must be superior to the proposal which has been before the committee. Am I correct?

Mr. GILBERT. Mr. Congressman, we think it is superior in that it does not contemplate a resolution by compulsory arbitration of these disputes which gives comfort to the people who have thus far not fulfilled their obligation in collective bargaining.

Mr. DINGELL. This dispute has been going on for how long?

Mr. GILBERT. Since November 2, 1959.

Mr. DINGELL. Which is a matter of approximately 4 years?

Mr. GILBERT. That is correct.

Mr. DINGELL. I would be fair in inferring here that the heart of the legislation proposed by the AFL–CIO is a proposition which says—or rather in which by legislation Congress directs the parties to negotiate, to bargain collectively.

Mr. GILBERT. Yes, sir.

Mr. DINGELL. We have had 4 years during which time there has been no collective bargaining according to your statement.

How are we to infer that by the simple passage of this legislation that the parties will initiate collective bargaining in good faith?

Mr. GILBERT. I have to repeat myself now. It is my firm conviction that once the thought that their cross may be borne by somebody else, the carriers will then be more willing than they have manifested in these past few years to sit down and bargain with us.

When they do that and if they do it, then we will reach an agreement as we have on all other disputes of more than 30-some years of my personal experience in the industry.

Mr. DINGELL. Is it your position that the reason we are in this impasse is that the President has stated that there is no possibility or rather that the Nation will not accept a railroad strike of nationwide dimensions?

Mr. GILBERT. He has said that and so have many others in Government dating back to the first one that was made in connection with this group by former Secretary of Labor, Mr. Goldberg, when the Presidential Railroad Commission Report was delivered to the President.

Mr. DINGELL. Is it your assumption that plays a part in the intransigence of the railroads to bargain collectively?

Mr. GILBERT. I am sorry, I didn't hear your first statement.

Mr. DINGELL. Is it your position that statement plays a part in the refusal of the railroads to bargain collectively?

Mr. GILBERT. They have not exercised their part in it. I think I can say that without fear of contradiction.

Mr. DINGELL. Would it be fair to assume that they have been reluctant or have refused to do so because of this statement?

Mr. GILBERT. I don't know. You say this statement. I am not sure which statement you are talking about.

Mr. DINGELL. The statement that the Nation would not tolerate a national railroad strike.

Mr. GILBERT. That could well be: That has added to their position that it will not tolerate a strike. So long as that situation prevails they have no reason to bargain. They have no reason to try to bring an end to this if they think somewhere along the line someone will relieve them of that obligation.

Mr. DINGELL. In view of that, how are we to expect that the mere passage of the proposal suggested by President Meany of the AFL–CIO will sufficiently change the climate that the railroads will in good faith bargain? It is your assumption that this will take place. But I ask you on what concrete basis can the Congress predicate such a finding in this circumstance?

Mr. GILBERT. I believe this committee and I know the public has been flooded with statements that the carriers have offered to do this and do that and we find here today, and I think the record will bear out the statements I have made, that to this date we have not received any counterproposals to the offer we have made in connection with the firemen dispute, although I understand one is underway.

But that is a little late after 4 years, or almost 4 years. I think this resolution may be in a measure designed to clarify the atmosphere. Who is the one who has been responsible for not reaching an agreement? I think that is borne out by the watchdog proposition in here.

Mr. DINGELL. In the circumstances in which we find ourselves I very much want to prevent a railroad strike. I think like most of the members of the committee I very much want to avoid compulsory arbitration because of the evil implications which that bears.

But I think anyone coming forward with a substitute for the proposal that the President sent up here bears the heavy burden of establishing very clearly the superiority of his alternative proposal.

I must confess that as of this moment, sir, I have heard no clear statement by anyone which indicates that the ultimate resolution lies either in the President's proposal or in the proposal which has been urged upon us by the brotherhoods.

I agree with you that the solution to this lies in collective bargaining. But no one has yet demonstrated to me how we can make the parties to this matter bargain collectively. It is a little like the story of taking a horse to the water and not making him drink.

I hope you and others who appear before this committee in support of the proposal offered by AFL–CIO will come forward with some very persuasive statements as to why this proposal is better and as to why it will work more rapidly, more efficaciously or, indeed, why it will work in the resolution of the problem we have before the committee.

Mr. GILBERT. Mr. Congressman, I would anticipate as Mr. Meany appears here he would give you his views about that.

Mr. DINGELL. You are supporting it, sir?

Mr. GILBERT. Yes, sir.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Brotzman?

Mr. BROTZMAN. Thank you, Mr. Chairman.

We are trying to assess exactly where we are in this dispute right now, Mr. Gilbert.

In the last few days I have been listening to the terminology concerning "atmosphere." What is a proper atmosphere for collective bargaining?

Mr. GILBERT. An atmosphere that in the process of give and take that the employees will be in a position to obtain some of the things that they desire in improvements and the management will obtain some of the things that they believe they need in the operation of the railroads.

That has been the process through the years, and we have traded in that atmosphere. Management wanted something and we wanted something and the true collective bargaining spirit we start from the outside wall and we keep moving until we reach this plateau in the center where we can dispose of the issues on the basis that is satisfactory to both sides.

Mr. BROTZMAN. Is that atmosphere at its best when just the two negotiating parties are present and working on the transaction?

Mr. GILBERT. There are times that it is conducive to that. But we have found through the years, and I can think of some personal experience where we seem to be miles apart and through some active mediation a suggestion would appear on both sides which seemed to come from the other side and it sold the settlement.

I found out that it did not come from either side somewhere along the line and the other side thought it was a proposition.

There are many times that the third party can make a very worthwhile contribution in the atmosphere of true collective bargaining that will result in an agreement.

Mr. BROTZMAN. You have anticipated my next question.

I was trying to reconcile the "proper atmosphere" with energetic and active mediation. Would you say as of this point there has been no active mediation engaged in?

Mr. GILBERT. There are degrees that would have to be assessed to that. I think those who have represented the Mediation Board have worked hard in their endeavor to bring about the desired results. They are not miracle men either. If one side says, "I want to sit on the position I started with, and the other side is going to have to come here to meet me," regardless of the abilities and agilities and all the other associated matters with good mediation, that is almost an impossible task.

Mr. BROTZMAN. If I understood your testimony correctly a moment ago, you were objecting to House Joint Resolution 565. I think you said that one side was seized but the other side was not. I think you were probably referring to the fact that you do not have the right to strike under that resolution; is that correct?

Mr. GILBERT. A settlement would be imposed on us. I don't want to leave the impression that only the Mediation Board have exercised their energies in this. The Department of Labor has likewise been helpful and have done much in these proceedings. I have lost the trend of your question.

Mr. BROTZMAN. I shifted gears on you.

Mr. GILBERT. I am afraid you did. I got left in neutral.

Mr. BROTZMAN. I asked as to House Joint Resolution 565, if I understood one of your principal objections to that proposal in addition to the compulsory arbitration, was the fact that it seized only one side.

It barred your right to strike is what I suppose you were talking about.

Mr. GILBERT. It denied to us the only tool that we have to bring into balance the power of the employer.

Mr. BROTZMAN. Is that the right to strike?

Mr. GILBERT. Yes, sir.

Mr. BROTZMAN. I understand from the testimony here you are sponsoring some resolution now, and I think the gentleman from Michigan, Mr. Dingell, said some colleague had introduced it.

Can you tell me if the resolution you are sponsoring has any prohibitions on the right to strike?

Mr. GILBERT. It does. It also has some prohibition about the right of management, too, but it does not leave to determine of the issues to enforce it upon either side.

It creates an atmosphere where each of us could be operating toward making an agreement.

Mr. BROTZMAN. But the answer is that the offensive provision in 565 is also present in yours in that one regard?

Mr. GILBERT. No.

Mr. BROTZMAN. Prohibiting the right to strike.

Mr. GILBERT. Prohibiting the right to strike; yes. That factor is involved.

Mr. BROTZMAN. Maybe this was explained a moment ago, but I didn't quite understand it. I understand the attrition rule is presently operative in Canada. If I understood you correctly, there are still firemen operating.

Mr. GILBERT. Yes, on practically every diesel.

Mr. BROTZMAN. Is there some magic thing that produces firemen or where do they come from? I can't figure out, if the attrition rule is operative, how do you have firemen?

Mr. GILBERT. They have not exhausted the seniority roster. They still have men furloughed to be recalled to service.

Mr. BROTZMAN. So they are calling people back. Then the attrition rule really is not operative.

Mr. GILBERT. It is as I understand attrition and as we have proposed in this instance. When it comes time for the carier under the proposal that has been made to fill a job by hiring a man, that we have agreed to blank, they will not any longer have to fill that job.

Mr. WILLIAMS. Does that mean that all diesels in Canada now operate with firemen?

Mr. GILBERT. Practically all of them.

Mr. WILLIAMS. Practically all?

Mr. GILBERT. Practically all; yes, sir.

Mr. WILLIAMS. Some are operating without firemen?

Mr. GILBERT. That is true.

Mr. WILLIAMS. Is that a result of this attrition?

Mr. GILBERT. In a large measure, I think that is true; yes, sir.

Mr. BROTZMAN. Under your proposed resolution, who is going to provide the energetic leadership to resolve the dispute?

Mr. GILBERT. I think there is a recommendation for that. The Secretary of Labor and National Mediation Board shall report to the Special Joint Emergency Railroad Committee. I would contemplate that they would be in a position to conduct the efforts that have been going on.

Mr. BROTZMAN. Do you think that they can do more than what they have, these named individuals? They have had a pretty good crack at this thing now, have they not, Mr. Gilbert?

Mr. GILBERT. Always with the atmosphere of the relief management has in the picture, that you just can't strike, and they have no desire or no incentive to make an agreement with us. They had hoped, and I think I said in my statement, have purposely perpetrated this with the hope that we would get compulsory arbitration somewhere along the line.

The objective is contemplated in this Resolution 565.

Mr. BROTZMAN. This is really getting down to what I am talking about. You have the same people that are going to be the catalytic agent; you have the same prohibition against striking in your resolution that there is against 565. I can't see the difference in the things that you are objecting to.

Mr. GILBERT. We have not been the ones who have failed in our effort to bargain. The people who have, in my opinion—and the record, I think, bears it out—been responsible for the failure of collective bargaining even to get started have done so in my honest opinion on the basis that somewhere along the line somebody would relieve them of that responsibility.

This 565 would pass that responsibility on to the Interstate Commerce Commission to do it. They would make the decision rather than the railroads about what they would do. We would be helpless to resist.

Mr. BROTZMAN. In paragraph 8, you say it is your judgment the railroads have deliberately and calculatedly refused to reach the point of the agreement with the purpose and objective of creating a crisis of national proportions and establishing an environment for con-

sideration of a compulsory arbitration as a means of disposing of the dispute.

Are you implying that the railroads had any part in the creation of House Joint Resolution 565?

Mr. GILBERT. Only the atmosphere in which it became necessary in the opinion of the President to do it.

Mr. BROTZMAN. So you think that the President is an unwitting party to this conspiracy, is that right?

Mr. GILBERT. I would not want to be harsh about the situation. He is dealing with a situation he found existing.

Mr. BROTZMAN. If I understand your testimony, you think that he doesn't think this is compulsory arbitration, is that right?

Mr. GILBERT. I don't know what he thinks, to tell you the truth. But he didn't say anything about it being compulsory arbitration as I reviewed his message.

Mr. BROTZMAN. I think he said it wasn't, as I remember his message.

Mr. GILBERT. I don't think he said anything about this being compulsory arbitration.

Mr. BROTZMAN. The thing is that you don't believe that the carriers had a hand in the preparation of House Joint Resolution 565 to bring about this specific result?

Mr. GILBERT. Only by their actions. I do not think they had a mechanical hand in it; no, sir.

Mr. BROTZMAN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Gilbert, are you familiar with the situation with reference to the Southern Railway Co. in connection with this dispute?

Mr. GILBERT. Rather vived situation; yes, sir.

Mr. KORNEGAY. As I understand it, they are not technically a party to it, although they could be affected by what is done.

Mr. GILBERT. They are not a party to it of their own volition. They withdrew from the national movement on the day we signed the agreement to present the situation to the Presidential Railroad Commission on November 17, 1960.

Mr. KORNEGAY. Did they not devise some plan to take care of this question of the firemen?

Mr. GILBERT. They endeavored to. They violated the law, according to the courts of the land, and they were caught at it. They were directed to comply with rules negotiated under the Railway Labor Act until such time as they were changed.

Mr. KORNEGAY. Their plan or violation or whatever you call it, was it not a plan not to hire any more firemen and let attrition take care of the matter without laying off any firemen?

Mr. GILBERT. I really have to state just exactly what information comes to me. They made a large number officials on the Southern Railroad. I find them as highly staffed by official personnel as any. They would put officials on the engines to take the place of our people. Our rule says that the firemen-helpers will come from the ranks of locomotive firemen-helpers from the seniority ranks, and they operated very few actual trains without a man in the cab performing the work ordinarily performed by firemen.

But they were not taking them from the seniority ranks. They were using everybody else but our people.

Mr. KORNEGAY. In other words, they were not reducing the number of the crew, but putting a vice president in the cab instead of a fireman.

Mr. GILBERT. Or a trainmaster or road foreman of engines or assistant road foreman of engines. I think they had several hundred officials, the record shows, that they promoted to do these tasks that were formerly performed by the people taken from the ranks of firemen-helpers.

Mr. KORNEGAY. They did not act according to the rule of taking them from the roster of fireman. They took them from the ranks of management.

Mr. GILBERT. That is correct.

Mr. KORNEGAY. The brotherhood objected to that scheme, I believe.

Mr. GILBERT. Very strongly.

Mr. KORNEGAY. And prevailed in the court case.

Mr. GILBERT. That is correct.

Mr. KORNEGAY. Do you feel that the brotherhood would have objected had they not placed anybody else in the cab but had merely eliminated firemen in certain runs and let attrition take care of the situation?

Mr. GILBERT. We sure would have, because we have an agreement with the Southern Railroad that they will employ firemen-helpers on these locomotives. Our objective at all times was to get them to respect that agreement.

Mr. KORNEGAY. Of coures, as you have outlined, collective bargaining is a system of give and take, and of ultimate compromise in reaching an answer or a solution to the controversy, is that correct?

Mr. GILBERT. That has been my understanding of it for more than 30 years.

Mr. KORNEGAY. Is it not true that the biggest stumbling block to the settlement of the firemen issue is the fact that it is a whole loaf or no loaf?

Mr. GILBERT. I didn't get the last part of your question or your statement.

Mr. KORNEGAY. The situation of all or nothing, so to speak, with reference to certain individual firemen. In other words, in the firemen issue there is not a lot to negotiate over whether a man does or does not lose his job. The whole loaf or no loaf. All or nothing.

Mr. GILBERT. That is the part I didn't understand.

Mr. KORNEGAY. I am asking you that.

Mr. GILBERT. That is the situation.

Mr. KORNEGAY. In your opinion, that is one of the big reasons you are having difficulty in getting an answer to this problem.

Mr. GILBERT. That is a problem in the circumstances. We have made a proffer that we thought was reasonably in keeping with the Emergency Board 154 outline, and we are back to the beginning now. We haven't as yet seen any counterproposal.

Mr. KORNEGAY. Thank you very much for your statement here. I think you made a good presentation of your position in this matter.

Mr. GILBERT. Thank you, sir.

Mr. KORNEGAY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. Mr. Gilbert, you testified once this morning, and at least once this afternoon, to the understanding that a proposition was on the way in writing in regard to the points at dispute. Might I ask where this proposition is coming from?

Mr. GILBERT. It was being transmitted to us, as I understand it, from the Secretary of Labor, originating, however, from the carriers.

Mr. VAN DEERLIN. Presumably this proposition would have originated with the bargaining committee of the carriers and transmitted to you through the Secretary of Labor.

Mr. GILBERT. I would assume that; yes, sir.

Mr. VAN DEERLIN. Do you have any knowledge of what is contained in this proposition?

Mr. GILBERT. I have not had an opportunity any more than to know that it has arrived at our office in the Dodge House. I have not had an opportunity to review it. I would not be at liberty to make any comments about it until I do, but it has reached the Dodge House. That is my understanding, Congressman.

Mr. VAN DEERLIN. Might I assume that the longer we keep you here this afternoon, the longer we are prolonging the agony?

Mr. GILBERT. I don't know about the agony business. I don't know which context you put the agony in.

Mr. VAN DEERLIN. The agony of delay over a realistic solution outside of the passage of legislation by Congress. I notice that the lone spokesman for the carriers in this dispute, Mr. Wolfe, is in the hearing room. I assume he is the party who originated this proposition which has arrived at the Dodge House.

I wonder if we wouldn't be well advised to let you return to the Dodge House.

Mr. GILBERT. Right at the moment, you are the one that is holding me here.

Mr. VAN DEERLIN. Right at the moment, then, I am saying no further questions, Mr. Chairman.

Mr. GILBERT. Thank you, Mr. Congressman.

The CHAIRMAN. The Dodge House is a hotel where your headquarters are; isn't that right?

Mr. GILBERT. That is right, Mr. Chairman.

The CHAIRMAN. Mr. Williams, do you have any further information?

Mr. WILLIAMS. Mr. Chairman, I don't have any further information. I have one or two more questions to ask Mr. Gilbert about the proposition of safety on the railroad.

As I understand it, a person becomes an engineer on a seniority basis after he is promoted to the position of engineer from fireman.

Mr. GILBERT. That is right. Each of the railroads has a series of questions that we call progressive promotion; that you hire out as a fireman. After 1 year, you have a series of questions you must successfully answer to stay in the service. After the second year, and after the third year, and you have passed those successively and successfully, then you are what we call a qualified engineer. But until you are actually put on the list or perform service, you stay in that category. But you must pass these required examinations to qualify.

The training ground for successful operation of a locomotive is through this process.

Mr. WILLIAMS. In other words, a fireman is in a sense a copilot or an apprentice engineer who is serving an apprenticeship as fireman until his name comes up on the seniority list to become an engineer.

Mr. GILBERT. That is right.

Mr. WILLIAMS. What physical standards are required of engineers and firemen?

Mr. GILBERT. They vary from time to time. I know when I hired out a long while ago I had to have a high school education and be 21 years of age and would have to pass the required physical examination.

Mr. WILLIAMS. How often does an engineer have to undergo a physical?

Mr. GILBERT. That varies with his attained age. They have periodic examination.

Mr. WILLIAMS. Do they have standards?

Mr. GILBERT. Yes.

Mr. WILLIAMS. Does he have to submit to a physical examination periodically?

Mr. GILBERT. The railroad from which I now come, the Gulf, Mobile & Ohio, now we had to take a physical examination every 2 years. Under certain physical impairment that they might detect in this examination, we might have to then, following that time, undergo an examination in shorter periods of time. Then after a given age required by the rules, then we have to take them more frequently anyway.

Mr. WILLIAMS. Is that policed by the company, by the brotherhoods, or the Interstate Commerce Commission?

Mr. GILBERT. No; that is a requirement of the railroads themselves.

Mr. WILLIAMS. Of the railroads themselves?

Mr. GILBERT. Yes, sir.

Mr. WILLIAMS. Then you don't have any standards that are actually set by the Interstate Commerce Commission as to physical requirements for engineers and for firemen?

Mr. GILBERT. Not to my personal knowledge.

Mr. WILLIAMS. You say these are set by the railroads themselves?

Mr. GILBERT. Yes. Under certain circumstances we do have agreements. If they say I have high blood pressure and my personal doctor says I don't have, then we have agreements that contemplate that a third or neutral doctor will come in and make an assessment of my actual physical condition.

But that type of agreement runs to the situation after they have found me physically defective, rather than setting up the standard.

Mr. WILLIAMS. Mr. Kornegay asked you about some activities of the Southern Railroad. Does the Southern Railroad have any physical standards for firemen?

Mr. GILBERT. They have had.

Mr. WILLIAMS. Or educational standards?

Mr. GILBERT. They have had.

Mr. WILLIAMS. Do they now?

Mr. GILBERT. That is a rather good question under the present effort on the part of that management to distort their obligation under the court order, and we are dealing with that.

Mr. WILLIAMS. Is that a matter for negotiation properly?

Mr. GILBERT. Only as it relates to those matters which I have just mentioned.

Mr. WILLIAMS. I was just reading an item in the local paper here where I notice the Southern Railroad doesn't discriminate, either.

Mr. GILBERT. That is a real good question about what is happening in the circumstance, I think, Mr. Congressman.

Mr. WILLIAMS. If you don't mind, I would be very much interested in having you comment on this for what it might or might not contribute to the edification of the committee. I notice this item in this morning's Washington Post, July 29, rather, yesterday morning—I should know that; that was my wife's birthday—datelined Chicago and taken from the Chicago Daily News Service:

> Southern Railway has just hired as locomotive firemen 100 unemployed Negroes, aged 60 to 85 years, who never worked on the railroad. All they do for the day's pay is ride in the diesels of freight trains. A Southern Railway spokesman said that a railroad supervisor "goes along on the first trips to show the new firemen where to sit and the location of the comfort station, not to train or teach him anything, for there is nothing for him to learn."

You probably saw this because I notice it quotes you in here.

Mr. GILBERT. I read every word of it and it is a rather detestable article and it is just indicative of the manner in which the Southern management is continuing to flaunt the law of this land and their obligation under the court order and we expect to take appropriate action about it.

Mr. WILLIAMS. As I understand it, this matter is in litigation right now.

Mr. GILBERT. It will be as soon as we can get it there. This is bad faith compliance of an order of the court of this land. It is not, further in my estimation, something that dignifies the position of an industry like the Southern Railroad.

Mr. WILLIAMS. In view of the complexion of the employees who were taken on, I suggest you be careful that you don't run headlong into this crazy civil rights situation we have. You need not comment on that.

Mr. GILBERT. I won't.

Mr. WILLIAMS. That is all.

The CHAIRMAN. Have you checked to find out if that story is correct?

Mr. GILBERT. That is the information we have, and it is our position.

The CHAIRMAN. I know what your position is.

Mr. GILBERT. That is not the whole story, however, and I don't think it adds or detracts anything from the hearing here if I tell you the rest of it.

The CHAIRMAN. I agree with you.

Mr. WILLIAMS. Except to the extent, Mr. Chairman, that the Southern Railroad at least seems to think that a 60- to 85-year-old man, regardless of his color, is competent to act as fireman. I think perhaps that is a matter in issue and probably they are trying to make a point. I don't have any sympathy one way or the other for it. I just pointed it up.

If they can operate with these people, then there is a question as to whether they do need a fireman.

Mr. GILBERT. Again, the whole story is not revealed here and it is a rather sordid one, too, I might add.

Mr. YOUNGER. Just one question, Mr. Chairman.

Several times today you have stated that "the other side sits on their original proposal." As I understand it, the carriers have agreed to these other proposals that have been made by the various Boards and the 154 Commission, or whatever you call it, which contained a different status of work rules than they originally proposed. Isn't that true?

Mr. GILBERT. They say they have, Mr. Congressman, but the notices served on us that will go in effect first on July 11 and again on the morning of July 30 is their original notices converted into contract language that they served on us November 2, 1959.

Mr. YOUNGER. But wasn't that a result of the court action? They had to go back and serve the original work rules?

At least that is the testimony we have now from Mr. Wolfe. They had to return to that original in order to comply with the court order.

Mr. GILBERT. I am not qualified to pass judgment on the legality, Mr. Congressman. I am not an attorney. I would not care to pass judgment on it.

Mr. YOUNGER. That has been the consistent position. Mr. Wirtz also mentioned that in his testimony. I just want the record to be straight because I think from the testimony only one conclusion can be drawn, and that is they have agreed to these other proposals which are different from the original proposals.

Mr. GILBERT. They have not agreed with us because they have not presented them to us.

Mr. YOUNGER. They have agreed with the Boards and with the Secretary of Labor.

Mr. GILBERT. That posture might add to the weight of my testimony, that they are endeavoring to perpetrate this kind of situation in the hope that they will get somebody else to make the resolution of the issue.

Mr. YOUNGER. Rather than by bargaining.

Mr. GILBERT. Yes, sir.

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

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Mr. Gilbert, I am sorry I didn't see your appearance on "Meet the Press" on Sunday. I heard you did quite well.

Mr. GILBERT. Thank you, sir.

Mr. DEVINE. When were you elected president of the B.L.F. & E. the first time?

Mr. GILBERT. July 1953. I took office September 1, 1953.

Mr. DEVINE. Ten years ago.

Mr. GILBERT. Yes, sir.

Mr. DEVINE. I understand you were recently reelected by acclamation; is that correct?

Mr. GILBERT. Yes, sir; in St. Louis, July 8.

Mr. DEVINE. Is that for a given period of time?

Mr. GILBERT. For a period of 4 years; yes, sir.

Mr. DEVINE. You are serving at the pleasure of the members of your brotherhood; is that correct?

Mr. GILBERT. That is correct.

Mr. DEVINE. Is there any other job security connected with your position?

Mr. GILBERT. Yes; I have seniority rights on the Gulf, Mobile & Ohio Railroad. I can go back and run a locomotive.

Mr. DEVINE. You can?

Mr. GILBERT. Yes, sir. I hope I can.

Mr. DEVINE. How about in the brotherhood itself?

Mr. GILBERT. No. If I don't have a job as president, I don't have a job.

Mr. DEVINE. What I am getting to, and I think it is probably a very basic philosophical point, the railroad is, for all intents and purposes, an independent, free enterprise industry, although it does qualify as a public utility. Is there a basic philosophy that the railroad management has a right to run the railroad or whether it is the employee groups that are going to decide how to run the railroad?

Mr. GILBERT. I think the railroads have an obligation to run them according to the rules the law imposes upon the railroads to make and maintain agreements with their labor organizations. We have been recognized now for some 90 years that we have been in existence, of maintaining rules with these railroads throughout the country.

Mr. DEVINE. I understand that. I certainly respect your agreements. In response to a question by Mr. Cunningham, you said "That is the way it has always been done," or words to that effect.

Mr. GILBERT. I think that is the American way of life. I know some places that can't be done, but I don't think we would want it here.

Mr. DEVINE. I might say a number of years ago when I became the district attorney in my area, and asked some questions about why things were being done a certain way, they said "That is the way they have always been done." That, to me, was a red flag that maybe things ought to be changed a little bit.

Mr. GILBERT. We change them and we try to change them now, but we can't do it by ourselves.

Mr. DEVINE. Actually, in listening to your testimony and that of the management here, I am reminded perhaps of a juvenile reference to Western TV. They are always talking about good guys and bad guys. In your testimony you have indicated here that there has been no true collective bargaining because the other guys are the bad guys, and you are always willing. On the other hand, when management testified here, it appeared to be just the contrary.

Mr. GILBERT. We are willing to stand on the record.

Mr. DEVINE. That is a good answer. I would take it, Mr. Gilbert—and I want to say I want to compliment you on a very long and tedious day and you have tried to supply objective answers to many of the questions—you are not in favor of abolishing the diesels?

Mr. GILBERT. We have never thought the technological improvements that have come on the rails—in fact, we have lost many job opportunities as a result of them. We have lived with them and expect to continue to live with them.

Mr. DEVINE. You would not suggest we go back to the steam engines.

Mr. GILBERT. No; I have no desire to go backward. I think we have to go forward if we are to keep our position in the world. Above everything else, a nation of free enterprise.

Mr. DEVINE. You have a very strong obligation to the members of your brotherhood and I think you are serving them quite well. I think your primary interest could properly be described as job security for your members. Isn't that correct?

Mr. GILBERT. In the position I have held for now about 30 years in some capacity as an officer of this brotherhood, I have felt that I had three obligations: One, to the carriers who serve as employer for the people I represent. One, to the public who is always present in these negotiations, and the third which may be put in any of those categories by preference, to the members who have selected me to serve them.

Mr. DEVINE. Yes; and properly so. You don't really down inside feel that the railroads would abolish the position of fireman or the extra man in the diesel cab for economic reasons only, and jeopardize the safety of the equipment or the personnel on the trains, do you?

Mr. GILBERT. I think that would be an objective that they would like to attain.

Mr. DEVINE. They would take that chance from a safety factor or ruining of equipment just to save a few dollars?

Mr. GILBERT. I think from the evidence, Mr. Congressman, they have not said that we do not perform a service. They want to do away with us and let somebody else do our work. I don't think we are going to just voluntarily do that.

Mr. DEVINE. In winding up, I think you have reiterated time and again today that you consider this House Joint Resolution 565 as compulsory arbitration; is that correct?

Mr. GILBERT. That is correct.

Mr. DEVINE. Were you present or did you at least read the testimony of the able Secretary of Labor, Mr. Wirtz, when he said that he did not feel it was?

Mr. GILBERT. I had heard that he made that statement. I was not present nor have I as yet had the opportunity to read it. I have been on the waiting list to get first before the Senate and second over here. I still have to carry on the work of international president that requires some time each day. I just have not had an opportunity to read that.

Mr. DEVINE. You would agree, would you not, that compulsory arbitration is repugnant to our free enterprise system generally?

Mr. GILBERT. Wholeheartedly I agree with that conclusion, that it is repugnant to our free enterprise.

Mr. DEVINE. You consider that type of legislation that is offered here in 565?

Mr. GILBERT. Yes, sir. In my understanding, it cannot be separated from compulsory arbitration because it imposes upon either party something they have not agreed to.

Mr. DEVINE. Now, finally, do you have any other alternative other than 565 or Mr. Meany's proposal, of course, keeping in mind all of this time arbitration is supposed to be going on.

Mr. GILBERT. Collective bargaining, sir.

Mr. DEVINE. Collective bargaining; yes. Are there any other proposals that meet with your approval or disapproval?

Mr. GILBERT. There is not any substitute for collective bargaining in this area, as I view it, and the success it has accomplished through

the years. We have not found a better solution to our differences thus far.

Mr. DEVINE. But you maintain your position that although nearly 4 years have transpired, that there has been no true collective bargining on the issues involved in this case?

Mr. GILBERT. I am impelled to that conclusion by my personal experiences in these past 4 years.

Mr. DEVINE. Do you think if your brotherhoods would go forward with the strike that it would drive people to the well and finally actively collectively bargain if you are correct that they have not been?

Mr. GILBERT. I have been responsible for such a statement; yes, sir.

Mr. DEVINE. Thank you, Mr. Chairman.

The CHAIRMAN. Is it your position, Mr. Gilbert, that if the firemen jobs were eliminated, that management would have some person other than of the operating organizations to perform the task that the firemen are presently performing?

Mr. GILBERT. That has been their objective, as I understand it. In fact—I don't want to get back to the Southern any more often than I have to—I asked Mr. Brosnan who he is going to have do our work, and he said that is his business. I feel it is ours as long as we have a contract to do it.

The CHAIRMAN. He contends there is no work to do.

Mr. GILBERT. I know what he contends; yes. But he has other people doing it anyway.

The CHAIRMAN. In other words, you think if the firemen were not contending, as they are today, that there would be somebody else doing nothing as is contended by the other side anyway?

Mr. GILBERT. I think the statement contained in Emergency Board 154's report stated they do not contend that we do not perform a useful service. We know that was not their position before the Presidential Railroad Commission, and the evidence which they submitted which corresponded to a great extent to that to which we submitted.

Only by degree did they differ that there is work for us to do. We have the contractual right to do it. We have an award of an arbitration board that we would do it. In the interpretation of our rules, too. So there is not any question about our right to do it. We want to continue to do it. We will insist to that degree that it is there to do that we shall continue to do it.

The CHAIRMAN. I interpreted the Emergency Board statement on it that some of the jobs were justifiable, needed, and appropriate, and some were not. That is my own interpretation of it.

Mr. GILBERT. That is ours, and we are trying to establish those.

Mr. CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. As I understand, it is your feeling, which you have just stated, that the present proposal would be compulsory arbitration. Is it your feeling, that it is compulsory arbitration just for the 2 years?

Mr. GILBERT. I don't see that terminal point in there.

Mr. ROGERS of Florida. It is my understanding, and I asked the Secretary of Labor, if you would be permitted to strike if you didn't agree at the end of the 2 years, and the Secretary stated yes. This

would not be prevented. In that situation, what would be your feeling as to the bill? That you could strike at the end of the 2-year binding period?

Mr. GILBERT. I am opposed to the principle contained in the resolution that contemplates compulsory arbitration. I cannot divorce 1-month compulsory arbitration from a lifetime of compulsory arbitration, because once it gets established, and I say this from experience I have had in talking to our counterparts in other nations where it is imposed upon them, their freedom to protect themselves has been removed and there is not any end to it, even to the point where in one country they say it is not a government-owned railroad, and yet they own 95 percent of the railroad and the Queen appoints the president. It is just difficult for me to separate.

Mr. ROGERS of Florida. It is your feeling that even if it were for 1 week and the Board said the decision would be binding for 1 week, and you could strike at the end of 1 week, as far as you are concerned that is still compulsory arbitration because it was taken out of your hands and other parties and decided by a third party?

Mr. GILBERT. And I further have a strong feeling that at the expiration of the week or 2 years or 10 years, the same medium to oppose us from the exercise of our self-help would be imposed upon us.

Mr. ROGERS of Florida. Have you tried voluntary arbitration in this dispute?

Mr. GILBERT. No; we have not.

Mr. ROGERS of Florida. Have you proposed it?

Mr. GILBERT. It has been suggested, but we have not accepted it because we have been opposed to arbitration of any kind for the establishment of the rules under which we work. We have been agreeable, as we are in this instance, once the rules are established by collective bargaining, that we would agree to terminal procedure to adjudicate any disputes arising over the application of the rules.

Mr. ROGERS of Florida. Your letter that you discuss on pages 24 and 25 is in conformance with that, then.

Mr. GILBERT. Yes, sir. It is stated in there, I believe.

Mr. ROGERS of Florida. That you would agree for binding third-party procedure for implementation of the written agreement based on the foregoing.

Mr. GILBERT. That is right.

Mr. ROGERS of Florida Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Are there any other questions?

Mr. NELSEN. The thing that bothers me at this point, Mr. Gilbert, you mentioned you were willing to negotiate or reach an agreement on about 5,500 jobs. You further indicated you have no way of knowing how many would be involved under the Presidential Commission's suggested work rule. I understand your main objection is the principle involved in the Presidential Commission approach.

But it seems to me that there should be some way of us knowing actually how many jobs are involved, and basically that is an item of consideration as well as the principle involved. The number of jobs involved is an item that we are all concerned about. I would like to know who is right and who is wrong. We get different figures from different groups. It seems to me your organization should have some idea how many jobs are involved.

Mr. GILBERT. Mr. Congressman, I think that one or the other of us misunderstood what I said. I think the question that I responded to was how many jobs was contemplated under the proposal from the management. I have not seen it yet and I could not answer it then and I cannot answer it now.

That was the answer that I recall making, rather than the situation you brought up.

Mr. NELSEN. Do you have an answer to the work rules proposed by the Presidential Commission as to how many jobs might be involved?

Mr. GILBERT. That was rejected, but it contemplated all the jobs in freight and yard service. Eventually they would all go, plus a lot of other jobs that were not mentioned. I could not accurately predict how many would be involved to the job, because the fluctuation of business alters the number of job opportunities we have.

Mr. NELSEN. I presume there must be some estimate as to the total number involved, and if it is true, as you say, that the railroads are concerned about the dollars involved, I presume the total dollar figure would have some bearing. I presume in your instance you would be interested in the total number of your membership involved.

I would like to know about how many people are involved because I think we are all concerned about the individual welfare of people that have a family and a job and a future.

If you have any estimates as to the number, I would be interested in getting that figure. I presume I could not expect you to answer at this point because very likely you would not know. But I would like to know sometime.

Mr. GILBERT. I have seen a number of estimates proposed by the carriers as to how many would be involved all the way from 11,000 up to 65,000 and as high as 85,000.

They have stated an estimate of $65 million, I believe, and most of that would come out of the economy of this country as it represents money in the pockets of individuals.

Mr. NELSEN. Thank you very much. No more questions, Mr. Chairman.

The CHAIRMAN. Are there any further questions on the part of the committee?

Mr. Gilbert, you have been here a long time and you have presented your case well. I want to compliment you for it. I appreciate the attitude that you have assumed here today and doing a very fine job for your organization and presenting your viewpoint.

On behalf of the committee I want to thank you and those associated with you for your appearance here today and your testimony.

The committee will adjourn until 10 o'clock tomorrow morning at which time we will hear Mr. L. G. Wagner, president of the Order of Railway Conductors & Brakemen.

I will say for the members of the committee that it is my hope that we can conclude with these organizations tomorrow.

Mr. GILBERT. Mr. Chairman, I want to thank you and the other members of your committee for the courtesy extended to me.

The CHAIRMAN. Thank you. The committee is adjourned.

(Whereupon, at 4:40 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, July 31, 1963.)

RAILROAD WORK RULES DISPUTE

WEDNESDAY, JULY 31, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. L. J. Wagner, president of the Order of Railway Conductors & Brakemen. Mr. Wagner is accompanied by Mr. Harry Wilmarth, counsel, and Mr. C. F. Christiansen, research director.

Mr. Wagner, we are very glad to have you and Mr. Wilmarth and Mr. Christiansen with us today and to present your views regarding this situation. You may proceed as you desire. I believe you have a statement which you probably would like to present.

STATEMENT OF L. J. WAGNER, PRESIDENT, ORDER OF RAILWAY CONDUCTORS & BRAKEMEN; ACCOMPANIED BY HARRY WILMARTH, COUNSEL; AND C. F. CHRISTIANSEN, RESEARCH DIRECTOR

Mr. WAGNER. That is correct, Mr. Chairman.

On my left is Mr. Wilmarth, from our general counsel's office in Cedar Rapids, and on my right is Mr. Christiansen, who is our research director in our headquarters in Cedar Rapids.

The CHAIRMAN. You may proceed, then, if you desire.

Mr. WAGNER. Thank you.

My name is L. J. Wagner. I am president of the Order of Railway Conductors & Brakemen, an international railway labor organization which was founded in 1868 and has its headquarters in Cedar Rapids, Iowa. I am very appreciative of the opportunity to appear before your committee and express the views of our organization in respect to the joint resolution under consideration.

I will say at the outset that we are very happy that you have insisted on time in which to investigate this legislation. It would be most unfortunate if the Congress enacted new legislation in the field of railway labor relations in haste, and without an adequate opportunity of considering its ultimate effect or possible alternatives.

With due respect to the Interstate Commerce Commission, we believe that the proposed legislation must be recognized as an authorization to a Government agency to dictate the wage structure and

working conditions of railroad employees by mandatory directive. If it were to be enacted, we would be helpless to prevent this result if the carriers choose to force all the issues in this dispute to the orders of the Interstate Commerce Commission. This legislation may well bring a complete termination of bargaining by the carriers on the issues in the dispute.

You have been told that this dispute has been subjected to more than 4 years of collective bargaining without a settlement, and that it can't be settled by the normal course of collective bargaining. We see it in an entirely different light. In our view, collective bargaining has only been tried for a relatively short period of time. Even that statement is subject to qualification because there are major issues in this dispute which have recieved little or no discussion across the table and in which collective bargaining has been frustrated by the carriers because of their interest in settling other issues.

Let me review briefly the various periods through which this dispute has passed. When the carriers simultaneously served notices for contract changes on November 2, 1959, it was apparent that these proposals were of the most sweeping nature. Our several chairmen, when discussing these notices with their management, attempted to ascertain what specific rules were involved. They were generally informed that every rule in our contracts were involved in the November 2 notices. Some managements even told our chairman that they, themselves, didn't know what all the notices might include. While local managements went through the motions of a few conferences, there was no real attempt to engage in collective bargaining as that term is usually understood.

Subsequently, it was agreed to refer both the carrier notices of November 2, 1959, and the organization notices of September 7, 1960, to national handling. Throughout this period, there had been no negotiations of any substance.

The Presidential Railroad Commission was formed on November 1, 1960, on the basis of an agreement between us. We understood that it would be a study commission designed to accumulate facts and make recommendations as an aid to future bargaining. We have never proposed to ignore these recommendations. On the other hand, the carriers did sign an agreement with us that the recommendations of the Commission would not be binding. We had no intimation, therefore, that they would later assert that these recommendations must be treated as a finality.

The Commission made its report on February 28, 1962. Thereafter, the parties held meetings in the period from April 7 to May 17, 1962, On May 29, 1962, the National Mediation Board entered the meetings which continued until June 22, 1962. Throughout these meetings, the carriers insisted that a settlement would only be made on the basis of the recommendations of the Commission, and refused to discuss settlement on any other basis.

Since the recommendations of the Commission were vague and general on many issues, the carriers' so-called acceptance of them could in no way be treated as a settlement proposal which could be written into an agreement. It was a bargaining position from which they refused to budge, but it was not a settlement offer.

The fact is that in this period we received actual settlement proposals on only two specific issues. In June 1962, the carriers made

a written proposal incorporating their interpretation of the Commission recommendations on the road-yard combination issues and the expense-away-from-home issue. While these two issues are of great importance to us, they are perhaps relatively of less importance as compared to the revision of the entire wage structure on which the carriers have never made a written proposal to this day.

On April 4, Emergency Board No. 154 was created by the President. This Board convened on April 11, 1963, but held no hearings and made no formal record. Most of the Board's efforts were devoted to an attempt to mediate a settlement of the fireman issue. Accordingly, the Board devoted only a relatively short time to mediation of the other issues in this dispute.

The Emergency Board reported on May 13, 1963. Negotiations were resumed on May 20, 1963, assisted by the mediatory efforts of the Secretary of Labor and the National Mediation Board. Since then, discussions have been confined mainly to the fireman issue and the crew consist issue as it pertains to conductors and brakemen.

Mediatory assistance produced the first sign of progress on the crew consist issue. On May 31, 1963, the carriers submitted their first and only written proposal on this issue. It was not based on Board recommendations. In fact, it retreated toward the carrier notice of November 1959. It suggested a campaign to repeal State full-crew laws. These laws were not within the issues before any Board. It proposed that crew size, above a conductor and one brakeman, be left to the unilateral determination of management. This suggestion has been rejected by all boards, including the Presidential Railroad Commission.

The carriers further departed from the Commission's recommendations in proposing that we agree that all train and line-of-road observations could properly be performed by less than a standard-size train-crew. Such a commitment was not only without support in the Commission's recommendations, but was deemed by us to be untrue. We also believed that it would be used by the carriers in the future to condemn and discipline every trainman who failed to make some particular train or line-of-road observation, irrespective of the circumstances and irrespective of the strongest evidence of lack of fault.

The carrier proposal of May 31, 1963, is particularly noteworthy insofar as it suggested a train crew less than the generally prevailing standard number of a conductor and two brakemen in road freight service. The Presidential Railroad Commission found this to be the prevailing standard throughout the United States. It is important to note that this number is not fixed by any national rule. Crew consist rules exist on some railroads, and others have none. Even on railroads with negotiated rules, these rules frequently only apply on some particular division of the railroad.

Nevertheless, the standard crew size in road service is generally recognized as a conductor and two brakemen. In local freight service, however, the carriers themselves sometimes assign a third brakeman of their own volition in order to speed the service and on some carriers a third brakeman is required by rule in local freight service.

There are vital operating reasons for the standard crew of a conductor and two brakemen which were not seriously challenged by the carriers in the hearings before the Presidential Railroad Commission.

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On the contrary, they offered to the Commission the testimony of Mr. William White, a railroad president with long years of operating experience, who testified in a prepared, written statement that although his railroad had no crew consist rules, it nevertheless, of its own volition, used more than the standard size traincrew "in the interests of safety, service, and efficiency." In Mr. White's prepared statement, offered on behalf of all carriers, he expressed the opinion that even if the carriers were given managerial discretion to determine crew size:

> Not very many freight trains or yard crews would be operated with a crew consisting of less than an engineman, a conductor, and two trainmen.

On July 2, 1963, the train service organizations submitted a written proposal to the carriers for the settlement of the crew consist issue which provided for recognition of the standard crew size of a conductor and two brakemen and further proposed that disputes concerning the provisions of the proposed rule governing the use of a greater or lesser number of brakemen be settled, if necessary, by a special board to be created under the provisions of the Railway Labor Act.

The carriers rejected this proposal without explanation or discussion. However, during the recent proceedings before the subcommittee of the Presidential Committee on Labor-Management relations, information was transmitted to us that the carriers were now willing to recognize the standard crew size with certain modifications. The report of this subcommittee, which has been made a part of this record, contains the following statement at page 9:

> On the question of the crew consist, development since the report of the Emergency Board have narrowed considerably the area of disagreement. Based upon a proposal made by the Secretary of Labor on June 19, both parties have agreed in principle to a procedure for handling the problem. However, the brotherhoods proposed to limit its application to crew consist situations which deviate from the generally prevailing pattern of one conductor and two brakemen. The carriers indicated that the brotherhoods' modification would be acceptable if it did not apply to certain classes of service; they referred specifically to branch lines, secondary main lines, and main lines equipped with newly developed or automated control equipment.

In spite of the foreging statement by the subcommittee, we have not to this day received a settlement proposal from the carriers relating to the three items referred to by the subcommittee.

In the light of the foregoing facts, it is particularly ironical that we should now be accused of a failure to bargain and be under a threat of legislation providing for dictation by Government fiat in a matter which has been handled by free collective bargaining for more than a half century, and in which our very real bargaining interest has been recognized without dissent by any board. Crew size involves the personal safety of the men we represent. It also involves the safety of their jobs since an inadequate crew may lead to a failure to carry out operating rules and mean dismissal after years of service. The conductor is particularly vulnerable in this respect since he is frequently held responsible for an omission by any other member of the crew even though he is not in the immediate vicinity of the violation.

Mr. WILMARTH. Mr. Wagner, may I interrupt you briefly?

Yes, sir, there were some questions by the committee in reference to the practice of other industries regarding the question of bargain-

ing on crew size. I would like Mr. Wagner to read into the record two brief excerpts from the report of the Presidential Railroad Commission, one of which appears on page 55 of that report, and the others appear on page 58. They are in connection with the testimony which he has just given and are factual regarding bargaining practices in other industries on this point.

If you will read from page 55, Mr. Wagner, from the report of the Presidential Railroad Commission.

Mr. WAGNER. Mr. Chairman, may I read that into the record?

The CHAIRMAN. Surely.

Mr. WAGNER (reading):

> Outside the railroad industry, it is generally considered to be a function of management to determine the size and composition of the work force. Yet there are some significant exceptions in the airlines, maritime, construction, and printing industries, among others. Moreover, some agreements permit employees or their union representative to challenge crew size, normally through the established grievance procedure on grounds of alleged safety hazards or undue workload. The matter of crew size is commonly a subject of grievance procedure or negotiation in connection with the operation of some kinds of incentive plans.

If you will turn to page 58, again beginning in the second paragraph, I quote:

> In this industry, whatever may be said of others, the employees have a legitimate collective bargaining interest in the matter of crew consist, and it is our view that the collective bargaining process should remain the basic method for resolving disputes concerning this matter.

Mr. WILMARTH. Now you may return to your statement, Mr. Wagner.

Mr. WAGNER. I will now turn to the issue of wage-structure revision. This issue has never even approached a bargaining stalemate. The subcommittee report to the President at page 13 has this to say:

> The Emergency Board proposed two modifications of the Commission's recommendations: a full 2 percent of current payroll be used to work out adjustments in the pay structure and provision be made to assure that "incumbent employees will not be unduly (adversely) affected by the structural changes."
>
> The brotherhoods have indicated a willingness to discuss these issues. The carriers, having accepted the recommendations, take the view that further discussions on compensation issues cannot be undertaken until the firemen and other manning questions are resolved.

If the carriers' "acceptance" is as definite as they would have you believe, then why has settlement discussion been postponed? The fact is that the Presidential Railroad Commission proposed substantial wage cuts. We rejected them. After the Emergency Board No. 154 eliminated these wage cuts, the carriers' interest in this issue declined. Nevertheless, they accuse us of a failure to bargain and now support legislation which would commit this issue to the "disposition" of the Interstate Commerce Commission.

I invite your particular attention to section 6 of the joint resolution here under consideration. The Interstate Commerce Commission would be accorded unlimited power to dispose of the wage-structure issue by whatever "special procedures" it may deem appropriate. There is no specific limitation, as in other sections, that such a disposition be limited to a 2-year period.

Does this mean that even though this joint resolution would expire after 2 years, that, nevertheless, an order of the Interstate Commerce

Commission would continue to freeze the wage structure of these railroad employees? Sections 5 and 6 of the proposed joint resolution seem designed to freeze this issue as far as the employees are concerned.

At the same time, we do not find in these sections any effective procedure for preventing changes by the carriers. Furthermore, there is no specific reference to protection for displaced employees who may lose jobs due to wage-structure revision. Conceivably, many men might lose jobs as a result of wholesale revision of assignments growing out of wage-structure revision, yet no explicit provision is made for their protection.

In conclusion, we have believed that the issues in this dispute could be settled by realistic bargaining by both parties. We have felt, however, that the carriers were more interested in achieving some form of compulsory arbitration than in achieving settlement. Certainly they have made only a relatively few actual settlement offers which were restricted to two or three issues, have made no offers on other issues, have rejected all of our offers, and have repeatedly failed or declined to make counterproposals.

It is extremely difficult to conduct any effective bargaining in these circumstances. In this situation, we submit that suggestions for legislative compulsion on employees to submit to working conditions which they deem unfair and oppressive ought to be given thoughtful and thorough consideration.

Mr. Chairman, in order that there be no misunderstanding, let me say that we are opposed to this legislation or any other form of legislation which would provide for arbitrary dictation of the rules governing the work conditions of the men we represent.

I thank you.

The CHAIRMAN. Thank you, Mr. Wagner, for your very forceful statement, however brief in the presentation, of the views of the organization you represent.

Mr. Staggers?

Mr. STAGGERS. I, too, would like to say that I believe your statement is clear and forceful and above all brief, which I am sure the committee appreciates.

In listening to your presentation I believe that all through it runs the thread that if true collective bargaining is engaged in, you can settle the issues which are between your organization and the carriers.

Mr. WAGNER. I sincerely believe that, Mr. Congressman. I believe if we can get down to what we have always been able to do, that is, bargain the way we understand collective bargaining, I believe these issues can be settled.

Mr. STAGGERS. There runs through the whole statement the belief that you are not too far apart when you get down to collective bargaining.

Mr. WAGNER. Of course, Mr. Congressman, there is a certain amount of assumption connected with that. It has been generally understood, I believe, by both parties that if we could get by the manning issues, the rest of it would not present near as complex a problem and would kind of fall in place.

However, I do want to point out that there are issues besides the manning issues that are very, very dear to the organizations.

But again I say the indications that have been given a lot of thought by both sides are that we could perhaps get by the issues if we once get by the manning issues. We certainly will give all the consideration in the world to them and hope that they can be settled.

Mr. STAGGERS. Thank you, Mr. Wagner.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Wagner, first I want to congratulate you. You are one of the few who has ever appeared before this committee on this issue who has been brief and to the point and who has made a presentation in such order that I can understand it one point after another.

This is an excellent statement of your position.

Mr. WAGNER. Thank you, Mr. Congressman.

Mr. SPRINGER. There has been a great deal said here and I have had some confusion myself in listening to both sides, as to whether or not recommendations—or whether or not the matters in dispute—would increase earnings. I am talking about the recommendations of the Railroad Commission and also Emergency Board 154.

Let me read to you from page 140 of the Report of the Presidental Railroad Commission under the tiltle "The Cost and Earnings Impact of Recommendations":

> Our recommendations would yield increases in earnings to about 75 percent of the employees. Substantially all yard and local freight employees would receive higher rates. Similarly, road service runs—

And this would affect you now—

> Similarly, road service employees on runs under 100 miles (150 in passenger train service) and those who work long hours in all classes of service will benefit from the higher pay rates and overtime provisions in the recommendations.
>
> Approximately 25 percent of operating employees whose trips are in excess of 100 miles but require less than 8 hours on duty will have their earnings reduced.
>
> The impact of these rate reductions on earnings, for employees who are now averaging 24 to 32 hours on duty per week, will be substantially minimized under the recommended pay structure as a result of a moderately longer workweek. The workweek of these employees would still be on the average well below 40 hours a week.

Are you familiar with that particular recommendation?

Mr. WAGNER. Mr. Congressman, we have lived with that. We have tried to study it and come up with those figures. We have not been able to come up with the same answer that the PRC did in their explanation of it.

I do have our research man here who will or could give you a brief outline on that, but I should say this to you now: That I have been, and our organization has been, somewhat concerned over this and we intend to present to these committees some actual facts and evidence and figures so that can be clearly understood.

However, if you would like to have a brief outline of it now we will be glad to give it to you.

Mr. SPRINGER. If he could give a brief comment, I would appreciate it. You understand I have only 5 minutes for my questions.

Mr. WAGNER. I thank you.

Mr. CHRISTIANSEN. The PRC in their studies found that the average run today was 5 6/10 hours. The average run was 120 miles. On that particular run the conductor would lose $2.90. That is the average.

Bear in mind on interdivisional runs they have suggested that we agree to 240-mile runs. On a 240-mile run the conductor would lose $14.91 per trip.

Mr. SPRINGER. You are talking about the conductor now?

Mr. CHRISTIANSEN. Yes, sir.

Mr. SPRINGER. What about the brakemen?

Mr. CHRISTIANSEN. Just about the same. Slightly less.

Mr. SPRINGER. To clarify this, do you have a brakeman on the passenger train the same as a brakeman on a freight train?

Mr. CHRISTIANSEN. Yes, sir.

Mr. SPRINGER. Are you talking about a brakeman on a passenger train or on a freight train?

Mr. CHRISTIANSEN. On a freight train. Relatively the same in both classes of service as to the loss.

Mr. SPRINGER. Would a freight train be much slower? Doesn't it stop to switch cars off and on?

Mr. CHRISTIANSEN. Some do and some don't. What they quoted as 5⅚ hours was through-freight service. But there is a slight deception in that. We have through-freight service which convert to local pay. They might do one little bit of local work. They are on duty over 8 hours.

Mr. SPRINGER. On a conductor-brakeman does he get paid at the present time by the hundred miles?

Mr. CHRISTIANSEN. Yes, sir.

Mr. SPRINGER. Is a hundred miles supposed to be a unit of work or a day's work?

Mr. CHRISTIANSEN. It is either one.

Mr. SPRINGER. In other words, he gets paid for the day for 100 miles?

Mr. CHRISTIANSEN. That is right.

Mr. SPRINGER. If he travels 200 miles he gets paid for 2 days?

Mr. CHRISTIANSEN. Yes, sir.

The CHAIRMAN. Would the gentleman yield?

Mr. SPRINGER. Yes, sir.

The CHAIRMAN. Do you get paid by the day or by the hour?

Mr. CHRISTIANSEN. In road service you get paid by the mile or hour.

The CHAIRMAN. The days or hours have nothing to do with it, then. It is just the mileage?

Mr. CHRISTIANSEN. Not necessarily. Some of our men in local freight service are on the hour because they don't travel enough miles. Our overtime is figured on miles or hours. You don't get overtime until you divide by 12½. If you are on a 150-mile run and make it in 8 hours. If you are on 100 miles and make it in 12 hours, you get paid 4 hours overtime. It is kind of complicated but it is miles divided by 12½.

Mr. SPRINGER. If you do your 100 miles in less than 8 hours you get paid for the day?

Mr. CHRISTIANSEN. That is right.

Mr. SPRINGER. If it is a slow freight and it takes 12 hours, you would get, when you finished the 100 miles—if you took your 12 hours—you would get a day plus 4 hours of overtime?

Mr. CHRISTIANSEN. That is right; if it is only a 100-mile run.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Mr. Wagner, you addressed yourself to the manning issues, and, I think, of course everyone recognizes that they are the primary issue in this whole matter. But from your testimony I would gather that your crew-consist issue is pretty well close to settlement; is that right?

Mr. WAGNER. I hope you are correct. We are hoping that but up until now, Mr. Congressman, we have not received a counterproposal on the proposal we gave the carriers.

Mr. ROGERS of Texas. Do you feel that if there is some ray of hope in that direction that then the final issue or the only issue involved in this whole situation would be the firemen issue, would it not?

Mr. WAGNER. No. As far as the manning is concerned, no; there are several other issues involved in that. How they got into the manning issue is somewhat of a mystery to me, but they do have combination road and yard involved in the manning issue.

They have interdivisional runs also involved in the manning issue. And the manning of self-propelled machines is also involved in the manning issue. I don't believe, Mr. Congressman, that they would—or I should qualify that and say they shouldn't—create the problem of the crew consist and the firemen issue, although they are very important to certain crafts in the operating industry.

Mr. ROGERS of Texas. Then these matters that you are talking about like yard service and that sort of thing, they are not included in the crew-consist issue that you are addressing yourself to?

Mr. WAGNER. I am not speaking about that as far as yardmen are concerned but they are definitely involved; yes, sir, Mr. Congressman.

Mr. ROGERS of Texas. Do you see any ray of hope for the settlement of that if you get the firemen's issue settled?

Mr. WAGNER. Which do you mean?

Mr. ROGERS of Texas. The different items that you mentioned, the yard crews and the interdivisional runs and that sort of thing?

Mr. WAGNER. I would certainly and at least I hope we would be able to settle. I feel, based on what information we have received, that we should not have too much of a problem on them. But it is almost impossible, Mr. Congressman, to give an answer to that question until we see a proposal. We have not seen a proposal on many of those things and we don't know what the position of the carriers is going to be.

After all, there will be two sides. It has to be two sides in order to make an agreement. I can only speak for ours.

Mr. ROGERS of Texas. I notice in your statement on page 7 you say, "In conclusion, we have believed that the issues in this dispute could be settled by realistic bargaining by both parties." I think that every member of this committee, and perhaps every Member of Congress, would agree with you that we had hoped that they could be settled. We have been led to believe that the reason this issue is up here is because the parties have reached a stalemate, and that collective bargaining has reached an impasse and there is no other place to go, and that somebody has to act or we are going to have to accept a nationwide strike.

Under those circumstances, and assuming that is a correct analysis of it, you still think that this resolution should not be adopted?

Mr. WAGNER. Mr. Congressman, I am very, very sincere in the statement I made on that. I do believe and I think the recommendation was made in good faith. There is no question but what people outside of the industry or people who have not been through the overall collective bargaining or so-called collective bargaining and the handling of this dispute for the time that it has been before us would consider that a stalemate had arrived.

I don't believe the other organizations will agree that a stalemate should have arrived at that time because we were trying to negotiate. I believe the deadlines, the dates that were set as to how long you could negotiate, had a very strong bearing on reaching this so-called stalemate.

I don't believe that what is ordinarily considered a stalemate, after you have had good negotiations, good collective bargaining, and then you can't go further. By that I mean each side has reached a certain level and they feel they can't go any further.

I don't believe that has taken place in these negotiations, Mr. Congressman. I believe that some way it should take place. If that is done then I believe a settlement can be reached.

Mr. ROGERS of Texas. Do you think that will take place before the 29th of August?

Mr. WAGNER. I sincerely hope so, Mr. Congressman.

Mr. ROGERS of Texas. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

I, too, want to congratulate you. All this testimony seems to get briefer as we go from engineers on down. Today the presentation has been more direct and more brief and we appreciate that.

Will you turn to page 7 of your testimony? You state:

> We have felt, however, that the carriers were more interested in achieving some form of compulsory arbitration than in achieving settlement.

What do you mean by that?

Mr. WAGNER. I tried to explain that to the Congressman just a few minutes ago.

Mr. YOUNGER. No; you did not cover that in your explanation.

Mr. WAGNER. If you want a direct answer I certainly will be glad to give it to you, Mr. Congressman.

Mr. YOUNGER. Yes.

Mr. WAGNER. We feel that we are the only ones that have bargained.

Mr. YOUNGER. No; that has nothing to do with my question. This question infers that the carriers had something to do with the presentation of this resolution which is compulsory arbitration without any question. Do you believe that they did?

Mr. WAGNER. No, sir; I do not, Mr. Congressman.

Mr. YOUNGER. Why do you say they were more interested in compulsory arbitration? At any time during the 4 years was there any proposal by the carriers or by any of the Boards or by the Secretary of Labor that could be interpreted as compulsory arbitration other than the resolution that is before us now?

Mr. WAGNER. I think very definitely there were some statements made. Unfortunately they were made shortly after the PRC Report. And that was to the effect that the country could not and would not stand a work stoppage in the railroad industry.

Mr. Congressman, if you and I were bargaining and I had the assurance that nothing could hurt me, there would not be any work stoppage or the party I was bargaining with could not resort to the only weapon he has which is self-help I would not be inclined to bargain with you. I would be inclined to run the strike out, Mr. Congressman.

Mr. YOUNGER. That is true, and we agree with that. But that is different than your inference here. We have had testimony from carriers, from the various brotherhoods and from the Secretary of Labor, all of them testified that this resolution as it came out on Sunday the day before it was introduced to the House came as a complete surprise to the carriers and to every one of the parties interested.

Is that true, or did you know about it, or did you hear about compulsory arbitration prior to that Sunday?

Mr. WAGNER. Not in this particular bill, Mr. Congressman. I didn't see this bill until it was handed to me after it was introduced. But there has been compulsory arbitration in the picture for the last 3 or 4 months. Every offer that was made contained compulsory arbitration.

That is the reason we referred to that. Before this there was an offer of compulsory arbitration.

Mr. YOUNGER. By whom?

Mr. WAGNER. By the President wherein he named Justice Goldberg as the arbitrator. That was in the picture. Before that we had a proposition from the Secretary of Labor which named the Assistant Secretary of Labor as the arbitrator. Everything hinged on a final disposition of the issues which would be binding, which we consider arbitration.

Mr. YOUNGER. We are glad to get that in the record because I do not think it has been in before. I still go back; did you have any intimation or do you believe that the carriers had anything to do with this proposal?

Mr. WAGNER. I have no reason to believe that at all, Mr. Congressman.

Mr. YOUNGER. Now one other question. You say you do not believe in any other form of dictation. Is that a correct statement?

Mr. WAGNER. I didn't quite get that.

Mr. YOUNGER. In your last statement beyond your written statement you said, "We do not believe in any other form of dictation." Is that a correct statement?

Mr. WAGNER. That is a correct statement, Mr. Congressman.

Mr. YOUNGER. Do you advocate or approve the so-called Meany resolution that was introduced?

Mr. WAGNER. I believe that the resolution that you refer to has the answer to our problem outlined in the resolution.

Mr. YOUNGER. Eventually if there is no agreement does it not provide also for compulsory arbitration as the ultimate end?

Mr. WAGNER. Mr. Congressman, I am not even going to assume in this particular case that if that became law that there wouldn't be an agreement.

Mr. YOUNGER. If there were no agreement, eventually it would come to that, would it not?

Mr. WAGNER. I think we would have to look at the situation and the conditions at the particular time. Perhaps this committee would take an altogether different approach once they were able to get the facts in the overall situation and find out who is actually dragging their feet in this. The compulsory arbitration may not even be an issue at that time, Mr. Congressman.

Mr. YOUNGER. I agree with you. I do not think it is going to be an issue either.

Thank you.

The CHAIRMAN. Mr. Wagner—if you will permit me, Mr. Friedel, to follow up on what Mr. Younger asked—you seem to express some feeling—and I can appreciate the reason for it—for this business of arbitration.

I gathered from what you said there was some reflection on the proposal of the President and the Secretary of Labor for a voluntary agreement for arbitration. Now is it not a fact that the Railway Labor Act, which is the basic legislation on problems of this kind, provides for arbitration?

Mr. WAGNER. Voluntary arbitration it provides for, Mr. Chairman, that is 100 percent correct.

The CHAIRMAN. Is that not what the President suggested?

Mr. WAGNER. That is correct. I didn't mean to insinuate anything different than that.

The CHAIRMAN. I know. Is that not what the Secretary of Labor suggested?

Mr. WAGNER. That is correct.

The CHAIRMAN. I just did not want any misunderstanding about what you said a moment ago.

Mr. WAGNER. I appreciate your clarification.

The CHAIRMAN. I gathered the implication was that both the President and Secretary of Labor were trying to force you to arbitration. I think they were following not only the letter but the spirit of the Railway Labor Act in making those suggestions.

Mr. WAGNER. Mr. Congressman, it was not my intent at any time to leave that kind of thought. I was merely trying to express to the Congressman the fact that arbitration in some form or other had been in this picture for quite sometime and that was the reason why we talk about arbitration.

The CHAIRMAN. I wanted to get the record clear on that.

Mr. Friedel?

Mr. FRIEDEL. Mr. Wagner, I also want to congratulate you for your very brief and factual statement.

Mr. WAGNER. I appreciate that, Mr. Congressman.

Mr. Chairman, maybe I made it a little too brief.

Mr. FRIEDEL. I have a few questions. I would like to know if collective bargaining is going on now?

Mr. WAGNER. At the present time, of course, the operating organizations and for the past 2 days the organizations have been tied up in preparation and waiting to get before these committees.

I think it would be impossible for any of them to have had any meetings the last 2 days. I do, however, feel that just as soon as the Secretary of Labor has an opportunity to get us together he most certainly will resume negotiations.

Mr. FRIEDEL. The reason I ask the question, there has been statement after statement made that the Presidential Railroad Commission and the Emergency Board No. 154 had made recommendations and over and over again it was stated that the railroads accepted them.

Now I understand from your statement and yesterday's statement that nothing has been put in writing. Is that the one objection?

Mr. WAGNER. That is, of course, one of the objections, Mr. Congressman, in the overall picture.

I could go into that much deeper but I don't think it would add anything to what has been said before.

Mr. FRIEDEL. You have heard the statement we accept, made by the railroads?

Mr. WAGNER. Let me say this: It is easy to accept a recommendation. There is nothing binding in it. I could perhaps say this: that if we had wanted to have been—I don't know what the good word is—we certainly would not have been honest if we had taken that approach.

We perhaps could have accepted, and I emphasize "perhaps" because of certain things in there—I merely use this to point out—the organizations could perhaps have accepted Emergency Board 154's recommenation and tied it right up in the first negotiations they had.

So in reality we would not have accepted anything. They are merely recommendations, which sound good to the public, to say we accept and the others turn down.

In reality it means nothing, Mr. Congressman.

Mr. FRIEDEL. In other words, you want it in writing?

Mr. WAGNER. That is correct. That is the only way we know what they are talking about and the only way they know what we are talking about, if we put it in writing.

Mr. FRIEDEL. Now I want to refer to page 3 of your statement.

You say, "suggested a campaign to repeal State full crew laws." I do not know if you heard Mr. Walrath speak the other day or heard his testimony when he said there was a doubt that he could supersede the State laws. He suggested that we amend the bill and put in section 5(11), I think, which would definitely bar the ICC from superseding the State laws.

Mr. WAGNER. I was not here, Mr. Congressman, and I didn't hear his testimony, although information was conveyed to me that he had left the impression that perhaps the Interstate Commerce Commission could in some way supersede the State full crew laws that were now in effect.

Mr. FRIEDEL. If this Congress worded the bill as mentioned by the Chairman of the ICC, then he could not?

Mr. WAGNER. I wouldn't want to comment on that without having an opportunity to study that particular part.

Mr. FRIEDEL. I think that is something important to know because I do not think the Congress would want to take that right away. I have a few other questions here.

The CHAIRMAN. Before the gentleman leaves, and for my own information, I would like to raise the question: Why is it considered in one jurisdiction necessary to have a different consist of crews from another jurisdiction?

Mr. WAGNER. Mr. Chairman, that is one of the complications that we run into in our work.

As I said in my testimony and in my statement, you have different conditions on different divisions on the same railroad. The men work under different conditions. You have mountainous territory. You have the deserts. You have railroads where there is a lot of curves, especially in switching operations in industrial plants. There are not two that are the same.

For that reason you have the difference in the crew consist. If you were referring to State laws, Mr. Chairman, I believe that could be answered in this manner: that the lawmakers in the various States evidently were convinced, and feel, that a law of that kind is necessary in order to protect the public that we are talking about here today. There are crossings.

The CHAIRMAN. I am compelled to make the statement now, Mr. Wagner, I wish it was the general policy throughout the Government to give greater recognition to the application of the State laws based on what they think is necessary in those areas.

Mr. FRIEDEL. I have one more brief statement.

On page 5 you referred to branch lines and secondary main lines. Could you briefly explain that? That seems to be one of the differences involved.

Mr. WAGNER. Mr. Congressman, we questioned that with the Secretary of Labor. We asked him to get a definition for us in writing to define what the carriers meant. You know what has ordinarily been referred to as branch lines. Secondary main lines is something new. That is a word that someone has just recently come up with.

We feel whether it is a main line or a secondary main line the same operating rules are involved in the operation of the trains. But to put it briefly, we asked for a clarification of that and so far it has not been forthcoming, although we did get a meeting with three members of the carriers' conference committee and tried to explore this issue, what they would talk about at that meeting and it was on a Sunday morning. It was very restricted. About all we learned was that that part of the report of the subcommittee as it referred to main lines equipped with newly developed automatic control equipment, meant that every foot of main line or practically every foot of main line in the country today would be covered by those few words.

Mr. FRIEDEL. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. I have no questions.

The CHAIRMAN. Mr. Jarman?

Mr. JARMAN. I have no questions.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Wagner, are you a conductor or a brakeman?

Mr. WAGNER. At the present time I am working at neither one. I am on leave of absence. I have worked as both a conductor and brakeman. If I was back on my railroad now I would be working as a conductor.

Mr. DEVINE. As freight or passenger?

Mr. WAGNER. We have no passenger service left on my railroad. Unfortunately, that is true on lots of other railroads. I would be in freight service.

Mr. DEVINE. What is your railroad?

Mr. WAGNER. Duluth, Mesabi & Iron Range.

Mr. DEVINE. Mr. Wagner, we have been reading a lot of editorials and a lot of news speculation since the President sent this bill up to the Congress with respect to a lot of attitudes with respect to this bill.

Would your attitude or the attitude of your brotherhood be different if the National Labor Relations Board was selected rather than the Interstate Commerce Commission?

Mr. WAGNER. Absolutely not. The same principle would be involved, Congressman. We are not quarreling about who is going to handle this. We are quarreling with the finality as it is described.

We don't want anything to do with arbitration when it comes to writing rules.

Mr. DEVINE. It is still compulsory arbitration in your opinion; is that correct?

Mr. WAGNER. That is correct. Call it compulsory arbitration. When you get to rules that these men work under that is something we believe must be negotiated.

Mr. DEVINE. Your job as president of the Order of Railway Conductors and Brakemen is primarily job security for your members, is it not?

Mr. WAGNER. No. That, of course, is very, very important. But I would safely say that about at least 75 or 80 percent of the time we spent or the national organizations spend is keeping and maintaining and protecting the work rules we have already negotiated, Mr. Congressman.

Mr. DEVINE. Is that not in the end for job security for your members?

Mr. WAGNER. Not necessarily. It is certainly job security in a way but I don't believe that job security should be put in the foremost. That is certainly very interesting and of very much interest to us.

Mr. DEVINE. Are you saying you devote 75 percent of your time protecting the work rules that you already have in effect; is that correct?

Mr. WAGNER. That is true.

Mr. DEVINE. For whose benefit are these work rules?

Mr. WAGNER. They are for the men.

Mr. DEVINE. It adds up to the same thing, job security.

Mr. WAGNER. It doesn't always mean job security. It means their paycheck. That is also quite important to the men, Mr. Congressman.

Mr. DEVINE. I would agree with you. If you did not take that position I do not suppose you would be president of your brotherhood very long.

Mr. WAGNER. You are 100 percent right on that.

Mr. DEVINE. Do you feel that the railroads have an obligation to keep all persons that they hire notwithstanding whether or not they feel they are no longer needed?

Mr. WAGNER. Congressman, I think you are putting the question to me in a manner that is hard for me to answer.

Mr. DEVINE. I did not intend to. I thought it would be very simple.

Mr. WAGNER. I feel this way: that when men are hired and have devoted 5 to 20 years of their life in an industry, I don't care whether it is the railroad industry or what industry it is, the human element comes into the picture that must be taken into consideration regardless of what comes up.

Mr. DEVINE. I would agree with you on that. Do you honestly feel, Mr. Wagner, that the carriers would jeopardize the lives of their personnel and their equipment just for economic reasons?

Mr. WAGNER. I wouldn't want to make as broad a statement as that. You have a different attitude of different carriers.

I think that is very evident and has been evident over the years. Some people are only human beings. Some people are more inclined to take chances than others. Let us put it that way.

Mr. DEVINE. I might say this: As you know, and the general public knows, the carriers have literally millions of dollars invested in equipment and you cannot put a dollar and cent valuation on human lives. But it is inconceivable to me that the carriers would either jeopardize the individuals involved or the equipment involved if they really felt that there was jeopardy involved in removing some of these persons they feel are excess at this time.

Mr. WAGNER. I read you or I included in my statement a quote of a president of one of the railroads, who has had many years of experience, Mr. White, which should be quite evident that there is one railroad that has gone ahead without a crew consist and has been able to live with it.

I am going to get back to the issue of crew consist which in my opinion is part of the manning issue and I am going to say this: That I don't believe in view of the testimony that was given before the PRC that it is near as big a problem—I don't believe the record will bear that out—as what the public has been made to believe through newspaper advertisements.

Mr. DEVINE. Are you talking about the crew consist?

Mr. WAGNER. That is correct. Our attorney just points out that the PRC said the variation in managerial judgment reflected in these estimates demonstrates differences of opinion concerning the minimum crew consist required for safe and efficient operation even under similar operating conditions.

Mr. HEMPHILL. What page is that?

Mr. WAGNER. That is on page 57 at the bottom of the second paragraph.

Mr. WILMARTH. May I just say a word? I don't mean to argue. It could be substantiated, I think.

First, the crew consist issue is an issue involving safety considerations. Repeatedly during the PRC hearings it was admitted by the carriers that there was a difference in managerial judgment among themselves on that issue.

At page 57 the Commission refers to two instances. Actually it was repeated instances of admissions of differences among management on that very issue.

Mr. DEVINE. I can agree that there are differences of opinion. There is no question about that. The point I was trying to make is that I can't actually believe that the carriers would knowingly jeopardize the lives of their personnel or equipment in order to win a point here.

Being a lawyer I am mindful of the judgments that are often rendered in railroad injury cases running in six figures. If they were putting themselves in the position of reducing their crews in the cabs and taking a chance on more of these risks they would be out of business just as quickly as they are under the present circumstances.

Mr. WILMARTH. The point I was making, Mr. Congressman, was that it is a safety issue and you can have differences even among expert operating men in management on the degree of safety that you might

If they can differ among themselves on an operating rule with operating managerial experts differing, you can understand why there might be differences between us and them on the same issue of safety.

Mr. DEVINE. I have just one more thing before my time expires. I am reading now a quote from the Secretary of Labor, Mr. Wirtz.

He says the following:

> We used to think of a job as something that a man hangs onto all his life. Right now Labor Department figures show that 30 days from today around 800,000 people will be doing something different from what they are doing today.

That would, of course, indicate that although you are interested in job security, and most of us are, that people do move on from time to time possibly as the result of automation.

Would you comment on that, Mr. Wagner?

Mr. WAGNER. Mr. Congressman, I am very much concerned, and I think you are, too, over the number of people that are unemployed in this country today. I cannot justify the thinking that we can keep on laying these people off, cutting forces, with no place for them to go. It is easy to say—and I am not being critical of anyone when I say this—that men can be sent to school and be trained for something else. But first there has to be an opportunity, a job opportunity, as to what he is being trained for.

It doesn't do any good for a man to be trained for a certain job unless there is a job for him to go to. If we keep on the way we have been going, I am fearful, I am very fearful, of the consequences. Our population is increasing and the job opportunities are decreasing.

We have, Mr. Congressman, in the railroad industry already paid a terrific price for automation. The working men have, almost half of them, lost jobs. They are walking the streets today, a lot of them.

Mr. DEVINE. Are you suggesting that we recede, then, and go back to the steam engine?

Mr. WAGNER. No, I didn't say that. I don't think that enters into the picture. I am only asking you to take into consideration what is happening when you lay off 55,000 or 60,000 men in one bunch who have already paid a terrific price for automation.

Mr. DEVINE. I think my time has expired, Mr. Chairman.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. Mr. Chairman, I have just one question.

Mr. Wagner, you made very clear your belief that during the last 4 years there has been a lack of realistic bargaining on the part of the railroads; is that correct?

Mr. WAGNER. That is correct, Mr. Congressman.

Mr. O'BRIEN. May I ask you this question, and it is not intended to be a trick question but a desire for information. Which side has the most to lose economically by the prolongation of these discussions over a long period of time?

Mr. WAGNER. Mr. Congressman, I can't answer that. I do think that perhaps both sides are losing something. I feel this: That this is the first time that a demand was made on the operating brotherhoods that was as sweeping and inclusive as this demand is.

Mr. O'BRIEN. Then, is it not a fact that the railroads would have little to gain economically by going on and on and on endlessly refraining along the way from realistic bargaining?

Mr. WAGNER. I couldn't answer that. I am of the firm belief, Mr. Congressman—it is hard for me to understand that the railroads are in financial trouble. I say that because of my many years of experience. I go back many, many years when 5 men on a crew handled trains of from 20 to 50 or 60 cars in a train.

Today the same 5 men, perhaps not the same 5, but the crew consists of 5 men, are handling trains of from 100 to 200 and 250 cars and I am told in some cases, 300 cars to a train. Their production as such as to what they are producing in hauling tonnage over the road has tripled. It is hard for me to understand that the railroads are in financial difficulty when you take all of those things into consideration.

Mr. O'BRIEN. I might say this: I am not attempting to go into the right or wrong of this thing, but the thing that bothers me is that the railroads have made certain proposals which obviously would reduce their costs a great deal and the impact of those proposals would be largely on the employees affected.

Some would lose their jobs, some you claim would receive less money. But what I am trying to get into my mind is why the railroads proposing something that they say or believe will save them a great deal of money would refrain from accepting somewhere along the line a half a loaf which would save them half that amount of money.

You believe they have refused to do that?

Mr. WAGNER. Mr. Congressman, from the experiences we have had up to now that has been hard for me to understand.

Mr. O'BRIEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen?

Mr. NELSEN. Mr. Wagner, I noticed in your statement on page 6, you refer to the Emergency Board proposition of some modifications in the Commission's report in which they suggest that 2-percent of the current payroll be used for adjustments in pay structure. You then refer to the fact that the brotherhoods have indicated a willingness to discuss these issues.

Did you put that in writing?

Mr. WAGNER. I understand that some of the organizations have presented in writing a wage structure proposition. Our organization has not put that in writing because of the fact that we have really never sat down and discussed that wage structure issue.

It has been made clear to us that the carriers felt—and to a degree I have to agree with them on that—that the manning issue should be settled before we got into the wage structure.

I think we will both know more about what we are talking about if that could be possible when we get into wage structure. We have not made a written proposal, although we have indicated that we would be willing to talk about this overall suggestion.

Mr. NELSEN. The purpose of my question is related to the statements thta have been made in this hearing to the effect that the carriers had not put something in writing, and therefore if the carriers should be expected to do it, it would seem to me the brotherhoods should likewise do the same thing if we are going to bring it to a conclusion.

I notice further in the next paragraph you indicated the carriers have accepted the recommendations—the carriers having accepted the recommendations—take the view that further discussion on compensation issues cannot be undertaken until the firemen and other manning questions are resolved.

Did you not understand Mr. Gilbert yesterday to say something to the effect that before any one of these things could be resolved, you needed a whole package? Is there not justice in that approach?

Mr. WAGNER. That, of course, is true as far as all of us are concerned, Mr. Congressman. This is an overall situation. If we get over the highest hurdles to begin with, the others will, we hope, kind of fall into place.

Mr. NELSEN. I notice on page 7 you refer to the fact that the carriers lost interest in this Emergency Board Report No. 154 after the wage thing had been tampered with by the recommendation of the Commission.

On what do you base that contention?

Mr. WAGNER. I don't agree that it had been tampered with.

Mr. NELSEN. Perhaps I should use a better word. "Changed."

Mr. WAGNER. That is very much in evidence because they did talk about the wage structure after the PRC had made its report and after the Commission—not the Commission—the Emergency Board made its report, the discussions we had were lacking any reference to the wage structure except to point out that they felt that the manning issues should be settled first.

Mr. NELSEN. The Commission report, do you feel, fairly presents the situation as it stands?

Mr. WAGNER. Are you talking about the Commission report or the emergency report?

Mr. NELSEN. Yes, the one signed by Mr. Meany and Mr. Wirtz. The report to the President.

Mr. WAGNER. That is the subcommittee. I can't quarrel with that at all. I think it sets up the situation pretty much as they saw it and as it was presented to them; yes, sir.

Mr. NELSEN. The Commission report states on page 3——

Mr. WILMARTH. Mr. Congressman, just to keep it clear to us, could you refer to that as the subcommittee report? There are three reports, the Commission report and Emergency Board report and subcommittee report.

Mr. NELSEN. This is the subcommittee report. It says here on page 3, the carriers accepted the Commission's recommendations, the brotherhoods rejected most of them as unsatisfactory, and following unsuccessful negotiation and mediation the carriers announced on July 17, 1962, their intention to put into effect on August 16 new rules based on the recommendation of the Commission.

The Commission recommendation included this wage dispute and you say they lost interest. This report said they were willing to proceed with negotiations based on the recommendations of the Commission.

Mr. WAGNER. I believe perhaps I overlooked that which you read to me. My understanding is that the promulgation the carriers intend to put in if no settlement is reached is based on their November 2, 1959, notices, not the PRC Report.

Mr. NELSEN. It does not exactly say that in this report. It is confusing to us. I merely want to get at the facts.

Mr. WILMARTH. I don't want to engage in any argument or even try to state the position of the organization. I don't believe there is any dispute between us and the carriers at this moment that the promulgation they presently have pending to put into effect on the deadline is totally based on their 1959 notices and is not in any part based on the Commission report.

Mr. NELSEN. This paragraph states: "We are willing to proceed with the work rules based on the Commission recommendation." That is a very broad term.

Mr. WILMARTH. I would assume, Mr. Congressman, that is also a correct statement. I was stating the facts to be that there are presently pending promulgations based on their 1959 notices.

I assume the subcommittee is perhaps expressing some information conveyed to them that the carriers would be willing to promulgate the Commission report.

Mr. NELSEN. I would be very hopeful that this could be worked out. We are trying to get all the information we can to try to come up with some kind of logical answer.

I am a little disturbed about the Meany recommendation also, which may finally put it back in our laps once more. We may then start all over again and then what do we do? Actually, it points out in this joint resolution that a committee of the House and Senate be appointed to sort of ride herd on negotiations if nothing is developed and finally it comes back in the laps of the Congress.

Then where do wo go from there?

Mr. WAGNER. Mr. Congressman, as far as the legislation you refer to is concerned, I think Mr. Meany will be here to report and answer any questions on that. He is the one that introduced it. The overall part of that recommendation I believe deserves a great deal of consideration by your committee.

Mr. NELSEN. I can assure you it will be given consideration.

Mr. WAGNER. I don't feel as though I want to comment on it because he will have an opportunity to discuss it and explain it to you.

Mr. NELSEN. I thank you very much.

I have no more questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Wagner, I want to also commend you for the brevity and the clarity of your statement. I assure you it was not too brief. I think it was carefully cut to fit the facts that you wanted to acquaint the committee with. I thank you for it.

Mr. WAGNER. I thank you, Mr. Congressman.

Mr. Moss. On yesterday there was confusion in testimony over the question of acceptance and rejection of proposals. Would you briefly explain to us what you regard as a proposal? For the purpose of consideration in the negotiation.

Mr. WAGNER. Mr. Congressman, a proposal in my experience means a written proposal. Once a proposal is handed across the table by either party, much discussion is held on that proposal in order to clarify it. A good deal along the lines of what we are having here right now in order to clarify what is in this joint resolution. Many things are discussed and many things are said. But the proposal as a

rule is considered a proposal, a bona fide proposal, only if it is handed by one to the other in writing.

Mr. Moss. Now we will do this from a hypothetical standpoint. Considering this Presidential Railroad Commission Report of February 1962, and assuming in this hypothesis that both sides said, "All right, we accept." You indicated that might have been possible. I was looking at the recommendations in this report.

Mr. WAGNER. I want to make one thing very clear, Mr. Congressman. I didn't indicate that the PRC report might have been acceptable. I confined that strictly to the Emergency Board.

Mr. Moss. You said it might have been possible. But in looking at the recommendation on page 32——

Mr. WILMARTH. Which report, Mr. Congressman?

Mr. Moss. The Presidential railroad report. I find at the bottom of that page, in light of the preceding review of the manpower characteristics of the railroad operating employees and the future of railroad operating employment it is recommended that, (1) carriers and labor organizations should establish joint procedures on each carrier for periodic review of the manpower needs of the carrier in the light of the relevant manpower resources and characteristics.

In this hypothetical case if you had both agreed to accept that, each of you then would have had to exchange a definitive statement of an offer to implement that recommendation; is that correct?

Mr. WAGNER. That is correct.

Mr. Moss. It is this type of proposal basic to mediation of differences or to negotiation of differences that in your judgment has not been made or not made in sufficient instances to contribute to progress in negotiation?

Mr. WAGNER. That is correct, Mr. Congressman. I believe this, and I should say this: That had the Presidential Commission had the authority to write rules, the wording that you just mentioned would have been an entirely different situation. They would have written their recommendation in the form of a rule to avoid as much discussion back and forth as possible, if they had that.

But they were only authorized to investigate and make recommendations. So at the very most all these recommendations are, are suggestions from which you start negotiations and collective bargaining.

Mr. Moss. Now I note if there had been a mutual acceptance of the Emergency Board 154 report that here we are dealing with even more generalized recommendations.

Mr. WAGNER. That is correct, Mr. Congressman.

Mr. Moss. Again this would require very definitive statements of position from each side.

Mr. WAGNER. It couldn't be anything different, Mr. Congressman.

Mr. Moss. How many actual exchanges of definitive proposals in writing have taken place between the parties to this dispute since the issuance of the Emergency Board 154 report on May 13, 1963?

Mr. WAGNER. As I understand it—I am going to qualify my answer to our organization because my fear is, Mr. Congressman, that some exchanges were made by some of the other organizations—but as far as our organization is concerned, the exchanges have been limited to crew consist, self-propelled machines, and I understand that the carriers did in 1962—and I say I understand that because at that par-

ticular time we were at a convention and I was represented there by one man during the negotiations in Chicago—I understand at that time the carriers did present a written proposal on expenses-away-from-home and the road-and-yard-combination issues.

We have presented them with a counterproposal on road-and-yard combination. That is the way that stands.

On expenses away from home, of course, that again comes into the wage structure and would have to be discussed at the same time as the wage structure is discussed.

Mr. Moss. Now, on the crew consist and self-propelled vehicles, you have submitted your written proposals?

Mr. WAGNER. There are written proposals in the hands of the carriers now on those two issues.

Mr. Moss. Were they submitted how long ago?

Mr. WAGNER. They have not as yet. I should say I believe perhaps there is a reason for that.

Mr. Moss. When were your proposals submitted?

Mr. WAGNER. Our last crew consist proposal was given to them on July 2. I could stand to be corrected: July 2, 1963.

Mr. Moss. Was that a response to the counterproposal offered by them?

Mr. WAGNER. That is correct. They sent us a proposal of one conductor and one brakeman and it was in response to a counterproposal.

Mr. Moss. So here there has been an exchange?

Mr. WAGNER. Yes, sir.

Mr. Moss. On self-propelled vehicles have there been exchanges?

Mr. WAGNER. On self-propelled vehicles there is also an exchange. The last one we gave them was last Friday or Saturday. I am not too sure. A week ago.

Mr. Moss. I think it would be helpful, Mr. Chairman, for the committee to have available to it some record of proposals made, formal written definitive proposals, by each side on the issues involved in this controversy, so that we can have some means of actually evaluating the extent to which negotiation has been carried on in earnest.

The CHAIRMAN. The Chair would be glad to entertain the suggestion and give it consideration.

Mr. WAGNER. We will be glad to give you copies of the suggestion we made, Mr. Chairman.

The CHAIRMAN. I would not want to indicate that they should go in the record at this time because I do not believe that we should, as a committee of the Congress, get involved to the point that we are passing on the accuracies.

Mr. Moss. Mr. Chairman, it might be helpful if I restate, because I said a list of exchanges. I am not interested at the moment in the content. I recognize that this committee is not interested at the moment in the substantive issues involved in this dispute. That is not what we are asking be considered here.

But the question whether or not collective bargaining has, in fact, been carried on with both sides, and apparently all parties of both sides charging that it has not been, I think it would be helpful to us in evaluating the extent to which it has actually existed to have from both sides a list of the proposals and the dates of the proposals made, and the issues treated in those proposals.

The CHAIRMAN. I would say to the gentleman that it has been the Chair's intention of trying to keep these hearings in line with what we are endeavoring to do, and that it is a consideration of this problem which has been presented to us, and they are outlined very specifically as to what the factual background is and what the issues are, given to us in Document 142. They are set out. They have been referred to. Those are the issues. Any additional information Mr. Wagner would like to submit to the members of the committee, of course, would be acceptable as far as the Chair is concerned.

Mr. Moss. Mr. Chairman, I have reviewed this rather carefully, each of these reports, and I certainly have tried diligently in the course of these hearings to keep in perspective the issues before this committee, but basic to the requests pending before this committee is whether or not collective bargaining has been exhausted—bona fide collective bargaining—and I think basic to the determination of that fact is the need for us to know the extent to which proposals have been exchanged on the issues involved in this controversy.

I think it would be most helpful to this committee if that information is available to the members.

The CHAIRMAN. You may submit any additional information that the members want. The Chair will undertake to decide whether it should go into the record after received. At this point I am not willing to indicate that proposals and counterproposals that have been made here should be made a part of the record because they would be out of date before they hit the record.

Mr. Moss. Mr. Chairman, not in any sense of a spirit of argumentation, I have not asked for the content of the proposals, only for a summary of the submissions by both sides.

The CHAIRMAN. If you understood the request, Mr. Wagner, you may comply with it.

Mr. WAGNER. Mr. Chairman, I can only comment on that that Mr. O'Neill, Chairman of the National Mediation Board, has copies of all of these propositions or proposals, and the dates they were turned over to them. He could perhaps give you that, but we would be glad to give you the dates and refer to just the specific proposals without giving you the proposals, if that would be helpful to you, Mr. Chairman.

Mr. Moss. It would be very helpful to me. I am hopeful that it would be helpful to the rest of the committee.

I would modify my request that we ask the National Mediation Board, Mr. O'Neill, to supply that information to the committee for its consideration.

The CHAIRMAN. Very well, we will undertake to get the information.

Mr. Moss. That is all the questions I have.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Mr. Chairman, I want to join the other members in commending Mr. Wagner for his statement and his viewpoint. It was helpful to me. I don't believe I have any questions. I think anything I would ask would be repetitious.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman. I will try to be as brief and concise in my questions, sir, as you have been in your presentation to the committee.

I note you are in support of the joint resolution submitted to this committee by the president of the AFL–CIO. Am I correct?

Mr. WAGNER. That is correct.

Mr. DINGELL. Now, sir, let me ask you this: That piece of legislation suggests the establishment of a Joint Railroad Committee of the Congress to consist of five Members of the House of Representatives and five from the Senate.

Do you regard the establishment of this committee as being essential to the effectiveness of this piece of legislation?

Mr. WAGNER. I believe, Congressman, that it is essential. Again, I say I would prefer to have Mr. Meany explain the legislation, but I could add this: It should be very evident, and it is evident to me, that there is surely a dispute of facts as to what has been taking place or what has taken place as far as the negotiations that have gone on are concerned.

Mr. DINGELL. Let me go further in my question. I am fair in inferring that you feel that this committee is competent to consider the legislation before it and make a fair determination of the facts which are presently before us, and also to report out fair and good legislation?

Mr. WAGNER. I have no reason to believe otherwise.

Mr. DINGELL. There would be no reason, then, to infer that this committee would not be competent to do everything that a special committee composed of members without the expertise that this committee has gained during this hearing could accomplish as much or more than any special committee could accomplish. Isn't that correct?

Mr. WAGNER. I think that is correct. I believe I heard Mr. Meany last night, and I believe he agreed when a question similar to that was asked him, that he had no objection if the whole committee wanted to take charge of that. He had no objections to that. Again, I say I think he should give the answers to those things in his own way.

Mr. DINGELL. But since you are appearing in support of this legislation, we do seek your views. With specific regard to the need for a special joint committee, you feel that the end of that special joint committee could be as well accomplished by the Commerce Committees of the two Houses as by a special joint committee; am I correct?

Mr. WAGNER. I think that is analyzing what I said; yes.

Mr. DINGELL. Is the function of the proposal drafted by President Meany to assure that negotiations and collective bargaining will be carried out?

Mr. WAGNER. I think that is the intent of it; yes, sir.

Mr. DINGELL. In the event that is not carried out by the parties, the brotherhoods and the carriers, the only thing which can be done is for there to be a report to the Congress, first by the Secretary of Labor, and then by the joint committee that is established hereunder; am I correct?

Mr. WAGNER. Substantially, I think you are correct.

Mr. DINGELL. The function of this is essentially to establish a program of guided negotiation and collective bargaining; am I correct?

Mr. WAGNER. I believe that is correct. It may go a little further than that, but I think that is correct.

Mr. DINGELL. This committee for several days has been hearing charges by both parties that there has not been negotiation and that there has not been collective bargaining. What device is inherent in this legislation that would require that there be collective bargaining in the public interest?

Mr. WAGNER. Will you repeat that, please?

Mr. DINGELL. This committee for several days has been hearing statements by both parties that there has not been collective bargaining, there has not been effective negotiation by both parties. My question, then, is what is inherent in the joint resolution submitted by President Meany of the AFL–CIO which would require that there be collective bargaining and there be negotiation by the parties?

Mr. WAGNER. I could only answer that for myself. I believe I would be very careful in actually being a part of collective bargaining if I knew there was a committee of that kind watching and being advised as to what my attitude was. I think it would encourage anyone involved in the dispute.

Mr. DINGELL. It would be in inferring, though, that this dispute has been going on for 4 years, with governmental agencies, the Secretary of Labor, the Presidential Railroad Commission, the National Mediation Board, and finally Emergency Board 154 looking over the shoulders of the parties. Yet both parties to the negotiations, the railroads and the brotherhoods, claim that during this interim period there has been no effective negotiation or collective bargaining.

Mr. WAGNER. I think that is what has been told the committees.

Mr. DINGELL. This then leaves us with the point of how can this resolution, and with the Congress looking over the shoulders of the parties, require collective bargaining when during this long, 4-year period with governmental agencies and, in effect, the Congress, too, because the Congress has maintained some measure of interest in the resolution of this, as can be discerned by the presence of controversy in this committee looking over their shoulders—how can we infer that the situation will be any different and that there will be collective bargaining merely because of the enactment of this joint resolution?

Mr. WAGNER. Mr. Congressman, let me make this observation: You can lead a horse to water, but you can't make him drink. Under the circumstances, and under this bill, I believe that the problem that I think is disturbing most of you members of these committees is that one side tells you one thing and one side tells you another.

Mr. DINGELL. That is correct.

Mr. WAGNER. Under this proposition of Mr. Meany's, you are going to be able to be in a position to decide from your own experience and from what you see and hear yourself as to what side is right and what side is wrong.

Mr. DINGELL. Is that a congressional function? I think most of the members in this committee are concerned with that fact. Is that a function of Congress as to who is right and who is wrong in a labor dispute?

Mr. WAGNER. I am not going to argue that point with you, Mr. Congressman. But in view of the seriousness of this overall situation, and in view of the consequences, in view of the effect it might have on the public, I believe that everything has got to be looked

at and everything done that possibly can be done to secure a negotiated settlement.

Mr. DINGELL. You feel, then, that all steps should be taken both by the Congress and by the Secretary.

The CHAIRMAN. I would like to say to the gentleman that we are still trying to operate something similar to the 5-minute rule.

Mr. DINGELL. I want to conclude as briefly as possible.

The CHAIRMAN. We want to conclude with this witness this morning.

Mr. DINGELL. Let me ask this question: Under these circumstances, do you discern in the bill any power in the Secretary to require that the parties sit down to discuss this or that they discuss those things which he requires as being essential to a resolution of the matter?

Mr. WAGNER. I would prefer to let Mr. Meany, who will be appearing here, answer that question.

Mr. DINGELL. It would be fair to say that such a proposal is not present in the legislation that Mr. Meany has sent to this committee; am I correct?

Mr. WAGNER. I don't think it is intended, but I would prefer to have him answer that question.

Mr. DINGELL. Wouldn't it be fair to infer that such a requirement must be in the bill sent by President Meany to this committee in order to make it effective?

Mr. WAGNER. I don't think that is a correct statement, Mr. Congressman; no.

Mr. DINGELL. Would you challenge that statement, then?

Mr. WAGNER. Would I what?

Mr. DINGELL. Would you challenge the truth and validity of that statement?

Mr. WAGNER. No, sir; I would not challenge you. I just don't agree with it.

Mr. DINGELL. Thank you.

The CHAIRMAN. Mr. Broyhill.

Mr. BROYHILL. Mr. Wagner, I, too, want to compliment you on the brevity of your statement. You indicated that one side of this dispute says one thing and the other says another. However, at the same time, you have indicated in response to recent questions that both sides have made concessions from their original positions in the dispute; is this correct?

Mr. WAGNER. If I left that impression, that both sides have made concessions, I am going to be very reserved in that statement as far as the carriers are concerned. The carriers, to begin with, took a position that any settlement that was made would have to be based on the recommendations of the PRC report. Actually, from the propositions that have been handed back and forth, as far as our organization and the carriers are concerned, I don't know what has happened as far as the firemen issue is concerned, because we are not in on those negotiations actually. There has been no receding as far as the carriers are concerned, and we are hoping that when we get answers to our proposals now, there will be some sign of receding and a willingness to negotiate.

Mr. BROYHILL. Then you do not agree that accepting the recommendations of the Presidential Commission, and also Emergency Board No. 154, were not concessions from their original position?

Mr. WAGNER. It is not a concession, Mr. Congressman, until we have something in writing as to what they actually mean by "accepting." What are they accepting? That Emergency Board report was very wide. There was nothing definite in it. It was written in such a manner that it could create another year of trying to understand what the other fellow means.

Mr. BROYHILL. It appeared to me that these were considerable concessions from their original position. I don't understand why you would say it is not a concession.

Mr. WAGNER. I didn't say it was not a concession. It will not be a concession until we see it in writing. That is the point I am making. I could have said, too, that I accepted it, but when we got down to negotiating an agreement, I could have accepted my interpretation of what they meant by these suggestions, and we would not have been any closer together, Mr. Congressman, than we are now.

Mr. BROYHILL. They indicated to this committee that they would be willing to accept all of these recommendations. I can't see how this could be made any clearer than this.

Mr. WAGNER. The only way I can answer that, Mr. Congressman, if they made that statement to the committee, they evidently were sincere; let us wait now and see if they come along with propositions to back up what they told you. We will be glad to have them. We will give consideration to them if we get them.

Mr. BROYHILL. You say you have made concessions from your original positions as well.

Mr. WAGNER. That is correct.

Mr. BROYHILL. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Hemphill?

Mr. WAGNER. And ours have been made in writing.

Mr. HEMPHILL. Thank you, Mr. Chairman.

When you were discussing the question of crew consist in your initial presentation, and your attorney, the gentleman on your left, had you read into the record a part of a paragraph on page 58 of the report of the Presidential Railroad Commission dated February 28, 1962. You did not read in at that time the other part of it which says that you should have a collective bargaining process, but it says also, and I quote:

> On the other hand, we believe that in this area, as in certain others which were before the Commission, the parties should evolve a procedure which would assure an expedited collective bargaining process and an expedited method of final determination through arbitration of unresolved disputes where collective bargaining fails to produce agreement. Such procedures would in our judgment serve to safeguard the parties' respective interests and at the same time promote the public interest by introducing into railroad operations a somewhat greater degree of flexibility and efficiency.

Has any effort been made to evolve any procedures which would expedite the collective bargaining?

Mr. WAGNER. Our last proposal, Mr. Congressman, contained a procedure——

Mr. HEMPHILL. The last proposal to whom?

Mr. WAGNER. Our last proposal to the carriers on the crew consist contained a procedure which would expedite the handling of all issues that were involved in crew consist of over two or under two brakemen. We asked for a rule for a conductor and two brakemen. Anything

that deviated from that we wrote into the proposal that we handed them, a proposition for final and binding determination.

Mr. HEMPHILL. Was that the first time that such a proposal of procedure had been made?

Mr. WAGNER. It is the first time that such a procedure or proposal had been made in this particular issue; yes, sir.

Mr. HEMPHILL. When was that?

Mr. WAGNER. That was on July 2, this year.

Mr. HEMPHILL. But between February 28, 1962, and July 2, 1963, no one had proposed procedures, I gather.

Mr. WAGNER. We had no bargaining, Mr. Congressman. We had no bargaining. How can you bargain when one side takes the position "This is it, or nothing."

Mr. HEMPHILL. I am not here to argue, sir. I am trying to get some information.

Mr. WAGNER. I understand that. I am trying to express myself that there was no bargaining.

Mr. HEMPHILL. When the President proposed that the matter be submitted to Justice Goldberg, what was the attitude of your brotherhood?

Mr. WAGNER. We were, of course, opposed to it.

Mr. HEMPHILL. Were the carriers in favor of it?

Mr. WAGNER. I think they were. I don't think there is any question but what they were.

Mr. HEMPHILL. In the event that this committee, or let us say this Congress, should pass House Joint Resolution 565, and there was application made to the Interstate Commerce Commission and the Interstate Commerce Commission granted the changes in rules, say the whole package which was presented to us, do you think there would be any possibility of a strike in that event?

Mr. WAGNER. I don't think you could under that joint resolution. I think that joint resolution forbids a strike.

Mr. HEMPHILL. I recognize that section 5 purports to forbid a strike. I would assume that a lot of people could get sick at the same time if they wanted to.

Mr. WAGNER. Mr. Congressman, I don't believe that the men we represent have a reputation of doing things of that kind. I certainly would not suggest to you that they would resort to illegal strikes.

I will say this, and I say this in all sincerity: that the men we represent, and I think that is true of all five organizations, are filled up to just about here with some of the propaganda and some of the things that have been said about them. They will be hard to hold, but I don't think they will indulge in that kind of a performance.

Mr. HEMPHILL. I was not suggesting it to you, sir. I was asking because I wanted you to say what you are saying.

Mr. WAGNER. Thank you.

Mr. HEMPHILL. That they would not.

Mr. WAGNER. They would not as far as I am concerned.

Mr. HEMPHILL. I want this record to show you are saying it.

Mr. WAGNER. Yes, sir.

Mr. HEMPHILL. I think it is very important here that you get on record if the propaganda has been so against you, as you say. I have a great deal of sympathy with your objection to Interstate Com-

merce Commission as the administrative agency, but aren't we in this position here in the Congress? The buck has been passed down to us now. If we don't act on this particular legislation in some manner satisfactory to the public of this country and in the public interest, aren't people going to accuse the Congress of the United States of whose reputation I am very jealous, of not fulfilling its obligation?

Mr. WAGNER. That question, Mr. Congressman, is hard to answer. I know you are responsible, you have a responsibility to the people, the citizens of the United States. That includes all of them, Mr. Congressman. I think when you make your deliberations you will have to make that decision. We can't make it for you.

Mr. HEMPHILL. I didn't ask you to make it for me.

Mr. WAGNER. I know that. I think the point is that what we are trying to do is to try to point out to you that the people we represent and the effect that this legislation may have on all workingmen in the United States who are also a large part of the public, should be given an awful lot of consideration before legislation of that kind is passed.

Mr. HEMPHILL. I can assure you that you are before the now greatest deliberative body of the world. It used to be the other side of the Capitol, here you will be given every consideration.

I thank you.

The CHAIRMAN. Mr. Brotzman.

Mr. BROTZMAN. Thank you, Mr. Chairman. I have just one question, I believe.

Mr. Wagner, characterizing the testimony I have heard in the last few days, it strikes me that one of the problems that has been presented here by you and by the carriers is a failure of communication. Would that be correct?

Mr. WAGNER. I don't believe I would consider that the main reason for the failure of having reached an agreement or for the failure of what we consider——

Mr. BROTZMAN. I didn't say it was one of the main reasons. Let me tell you why I think it is a problem. You correct me if I am wrong.

I have heard time and time again the statement that this proposition or that proposition was not put in writing. I have not had extensive experience in the field of labor negotiations, but from my prior experience in practicing law I have many times had the responsibility to negotiate a contract on behalf of my client. Implicit in a contract is the fact that it represents the mutual understanding and intention of the parties. But even the simplest contract, if everything were put down on a piece of paper, trying to articulate the positions of the parties, would be a never-ending job. You would never arrive at any kind of a conclusion. You would never arrive at a contract.

I am just trying to find out what has happened.

Do you think that you can negotiate an agreement, a satisfactory agreement, between you and the carriers, as it were, strictly at this arm's length relationship where you are sending propositions in writing, because the English language itself is limited in its scope—you have to be able to articulate what you mean to arrive at a thought—can you do that by writing everything down, A, B, C, D, E, and then having that proposition rejected or accepted?

Do you understand what I am getting at?

Mr. WAGNER. I think I understand completely, Mr. Congressman. I agree with you to a certain extent, that a lot of discussion must be oral and a lot of the clarification, perhaps, will be, but you have to have something to start out with. You can't take a document like the PRC Report, and I think you will agree with me on that, and say, "This is what I stand on." Somewhere along the line you are going to have to give something defining what your position is.

Mr. BROTZMAN. It sounds by your last statement that you may be agreeing with what I said at the outset, that maybe you have not been communicating with each other very well, and this has been one of the major failures.

Mr. WAGNER. I perhaps misunderstood you, and the reason I answered the way I did was that I didn't want to leave any impression here that I thought that in the last several months there had not been an honest and sincere effort on the part of certain people to try to communicate. I think there was.

Mr. BROTZMAN. When you say that, do you mean on both sides? Do you think both sides have been attempting to communicate?

Mr. WAGNER. I am talking about the people who usually do the communicating in our business, the mediators.

Mr. BROTZMAN. When you communicate there are two people involved, the person who is saying something and the recipient of the communication, and vice versa.

Mr. WAGNER. And the man that takes it back and forth. That is who I was referring to. Specifically, I must say, and I say in all sincerity, that the Secretary of Labor, the Assistant Secretary of Labor, and the Mediation Board, I believe, tried hard to get us together.

Mr. BROTZMAN. I am at some loss at this point to know precisely the extent of the communication when you say "We want it in writing." I have listened rather carefully to the testimony and I think this perhaps prompted Mr. Moss' questions here.

Mr. WAGNER. I don't doubt that.

Mr. BROTZMAN. I have the same perplexing question in my mind. I don't know what has been communicated and what has been put in writing and what has not. It strikes me that this is one of the major difficulties and a rather fundamental and principal one in the whole problem.

Mr. WAGNER. I would answer this way, Congressman: Practically the only thing that has been put in writing so far is what pertains to or what is referred to as the manning issue. Those that we have received, we have written a counterproposal on. I should again point out, although I didn't want to involve in that, that there are hundreds of other issues involved in this that are going to be settled. We hope that can be done locally on the individual railroads, but those things have not had any propositions handed back and forth.

Mr. BROTZMAN. Let me interrupt right here for one quick question, because the hour is late. Mr. Van Deerlin has some questions he advises me.

What has the history been of negotiations in this particular industry down through the years? Have you been able to resolve these differences with the carriers?

Mr. WAGNER. We have never had a proposition like this. We have never been faced with a proposition of this kind. I think the boat was overloaded right from the start, and this is all encompassing. Outside of that, I think the record shows very clearly that we have been able to settle, except on one or two occasions, everything through collective bargaining.

Mr. BROTZMAN. This was my general understanding. Normally, in this particular industry that you people—and it requires good faith, and I think this is the key word on the side of both the parties—have been able to work these problems out. I thought heretofore you had been able to bring this about generally. This is just an understanding that I have.

You think that this issue now is of greater magnitude is more divisive than any issues that have before been negotiated between the carriers and the brotherhoods.

Mr. WAGNER. That is very definite. I want to make it clear that every working rule we have in our contract is on the block, Mr. Congressman. Every one. It is not only these eight or nine. That reads good in the newspapers, but we are defending and are in a position to where we are going to have to defend every rule that we have negotiated over the years. That is the reason that it is so interwoven and hard to get a start. Once we get a start, I think perhaps we will go places, but we have not been able to get that start yet.

Mr. BROTZMAN. Your testimony is that you have not even started in 4 years.

Mr. WAGNER. There again you are putting it different than I would. I again say that as far as actual negotiations that have been conducted, I think that would have to be restricted to the last couple of months. The rest of it was more or less talk. We spent several months just reading and giving each other ideas of what was in the PRC Report.

Mr. BROTZMAN. Not to belabor the point, but I personally think from my prior experience, there has to be some talk before you can put anything in writing.

Mr. WAGNER. There has been a certain amount of talk.

Mr. BROTZMAN. Exchange ideas and some communication. You can't write this down on a piece of paper.

Mr. WAGNER. By the same token, there has to be some writing before we have a settlement; isn't that right, Congressman?

Mr. BROTZMAN. Yes; but I am trying to find out if there has been enough talk as a prelude to putting something in writing which will result in an agreement.

Mr. WAGNER. On some issues there has been some talk. On others there has been no talk. Again I say the indications are that some of the issues will not be too much of a problem.

Mr. BROTZMAN. Thank you.

Mr. VAN DEERLIN. Mr. Chairman, I note my colleague's praise without emulating Mr. Wagner's brevity and since the quorum call has sounded, we better go. I have no questions.

The CHAIRMAN. Mr. Wagner, thank you very much again for your testimony here this morning, and both Mr. Wilmarth's and Mr. Christiansen's, with you.

The committee will adjourn until 2 o'clock, at which time we will hear Mr. Luna, president of the Brotherhood of Railroad Trainmen.

Mr. WAGNER. I thank you very kindly, Mr. Chairman.

The CHAIRMAN. It has been a pleasure having you with us, and thank you very much for your presentation.

(Whereupon, at 12:18 p.m. the committee recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2 p.m., Hon. Oren Harris, chairman of the committee, presiding.)

The CHAIRMAN. The committee will come to order.

Mr. Charles Luna, president of the Brotherhood of Railroad Trainmen.

Mr. Luna, I understand that you desire the assistance of some of your associates in this matter, which is all right with the committee.

STATEMENT OF CHARLES LUNA, PRESIDENT, BROTHERHOOD OF RAILROAD TRAINMEN; ACCOMPANIED BY LESTER P. SCHOENE; AND W. T. MEREDITH, MANAGER, SCHEDULE STATISTICAL RESEARCH DEPARTMENT

Mr. LUNA. Thank you, Mr. Chairman. I will open it and I will turn it over to Mr. Meredith.

My name is Charles Luna. I am president of the Brotherhood of Railroad Trainmen, AFL–CIO.

May I first express my thanks to the members of this committee for the opportunity to appear in behalf of the employees I represent on the American railroads.

Mr. MEREDITH. For the ready information of the committee, the Brotherhood of Railroad Trainmen is a fraternal organization which had its beginning at Oneonta, N.Y., September 23, 1883. Since that time, the organization has grown and developed with the growth and development of the rail transportation system of this Nation. For the almost 80 years of our existence, this organization has devoted its efforts toward the promotion of the general welfare of its members. Its express purpose is to advance their interests, social, moral, political, economic, and intellectual, and to protect their families by the exercise of benevolence.

The need for union to organize our collective strength, in order to deal in some measure of equality with the railroads, has been all too urgent in our history. We have met that need, as the record will show, and have kept faith both with the employees we represented and with the employers we dealt with in their behalf.

The work of this organization in the fields of safety, not only for the benefit of our members, but also for the benefit of the traveling public, is a matter of record in the archieves of this Congress.

I appear today in opposition to House Joint Resolution 565, which I sincerely believe would act to create the most drastic decline in morale ever experienced by the American railroad workers. I cannot find the words to emphasize to this committee strongly enough the havoc which could result from the action of this Congress if it were to pass this proposed legislation which is, in reality, nothing more or less than compulsory arbitration.

I want to try, to the best of my ability, to make clear to this honorable committee the feelings of these men whom I am privileged to represent, and I first want this committee to know and understand that the Brotherhood of Railroad Trainmen represents more than 50 percent of the employees involved in the dispute which the proposed legislation would affect.

It is indeed most unfortunate that the vital work of the operating railroad workers has been used in this dispute, not as a factor entitling them to greater consideration, but as a factor to be applied as a lever to pry them loose from the framework of democracy.

It is sad that these workers have been required to stand by, helplessly, while their employer first lambasted them from coast to coast with misleading advertising, purchased by the railroads from a public relations firm, deliberately planned to create a false public image of the railroad worker for the purposes underlying the program to be instituted weeks later under the procedures of the Railway Labor Act, a Federal law, mind you, passed by Congress itself, which was designed and intended not to foster planned strife, but to encourage the parties to reach a prompt and orderly disposition of all disputes concerning rates of pay, rules, or working conditions through the processes of collective bargaining.

This "featherbedding" charge so expertly publicized by the public relations experts employed by the Association of American Railroads has so prejudiced the minds of the public and so antagonized the railroad employees that it has been a serious detriment to constructive negotiations. It has, in my opinion, been a contributing factor to the subsequent failure of the negotiations which were to follow. I think it was a poor way to approach the barganing table at best, that is, if the moving party, the railroads, really intended to try to bargain.

While this dispute has remained unsettled, it has been impossible for these employees to deal with the railroads on any other subject. Wages have remained stationary—no wage increase has been granted these operating employees since March 1, 1961, while other railroad employees have forged ahead in both wages and fringe benefits.

When the railroads served their requests upon the operating unions on November 2, 1959, the requests were a part of a definite plan to accomplish certain aims of the Association of American Railroads as announced in advance by their spokesman, and as announced to the public through an extensive advertising campaign. It was a program having as its intention the elimination, modification, or amendment of virtually every work rule in the collective bargaining agreements favorable to the employees.

I am speaking of such basic rules as the wage-structure rules, including rules which represent the fruits to the employees of nearly 80 years of collective bargaining. I am not referring to the fireman issue. That subject is covered by a witness from the enginemen's organizations.

I am speaking about pay rules, assignment rules, seniority rules, crew consist rules, and even rules governing the regulation of minimum and maximum earnings of road and yard employees. Some of these proposals of the carriers were so old, having been proposed and withdrawn by the railroads so many times in previous negotiations, that they were like an old shoe, always turning up.

To continue, these proposals were drastic in nature, seeking to obtain for the carriers the exclusive right to make changes affecting working conditions by managerial prerogative and without any obligation to negotiate with their employees concerning the working conditions disturbed by such changes as the railroad management might institute in the way of extending the length of runs, relocating terminals running beyond the limits of seniority districts, and a host of other concessions which would leave the employees, if they agreed to such changes, with nothing of their agreements but the covers.

Now, at this point I want to make it clear to all that it is these drastic proposals which the railroads, in their promulgation of rules changes, intended to place into effect—not the rules recommended by the Presidential Railroad Commission or the ones recommended by Emergency Board 154.

In this respect, the statement by the President on page 2 thereof, is in error. I mention this to correct any misunderstanding which might exist as to the rules which the carriers are seeking to place into effect. Perhaps I should quote the President's statement for clarification, which I will do as follows:

The President stated:

> We face this prospect: In the absence either of an agreement, postponement, or reversal of position on the part of the parties, or of enactment of some contrary measure on the part of the Congress, July 29 will almost certainly witness the start of a general rail strike. The carriers on that date can be expected to initiate work rules changes along the lines of those approved by the various panels.

If it pleases this committee, I would respectfully point out that the carriers' promulgation of rules changes is not those which were approved by the various panels, but those which the carriers proposed in their original requests before modification by the various panels. The report of the Presidential Railroad Commission has those notices included as appendix B. The report of the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy has those same notices included as appendix B–1. Both of those reports are a part of the record before this committee if any member cares to see for himself the rules changes which these railroad workers feel must not be made effective.

On September 7, 1960, almost a year after the railroads had served their requests, the five unions presented certain requests for changes in rules, and those requests are a part of the record before this committee as appendix B of the PRC report and appendix B–2 of the report of the Labor-Management Subcommittee.

The employees understood that the railroads were seeking to modernize the work rules, and we knew that there were a good many modern improvements now enjoyed in the American labor contracts which are sadly lacking in ours. Therefore, we proposed such rules as:

Shorter workday, workweek, and work month, with maintenance of basic take-home pay.

Improved overtime pay to discourage use of employees for excessively long hours.

Guarantees to stabilize the employment and earnings potential of the employees.

Split-trip compensation, to allow reasonable compensation to employees required to separate their workday into more than one part.

Differential for night work, to compensate employees at special rates when required to work night shifts.

Adjust arbitraries and special allowances so that their equivalent will be expressed in hours or minutes, and thus be adjusted in future changes in basic rates.

Holidays with pay for nine recognized holidays.

Away-from-home terminal expense reimbursement for those required to lay over at an away-from-home point in the company's business.

Minimum safe crew consist, based upon the minimum standard crew consist regulations in the industry.

Qualification and training for engine service employees, to enable these employees to better serve the company on the job.

Prohibition from further combining of road and yard service, to preserve craft lines and seniority rights.

Financial and other protection against reduction of force resulting from technological improvements.

Stabilzation of employment to protect those employees who are given only part-time employment.

The Railway Labor Act, which regulates the labor-management relations of these parties, provides under section 2(1), "General Purposes," as follows:

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

The act also places the duty on the parties to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions. The exact language of "General Duties," first and second, is as follows:

First. It shall be the duty of all carriers, their officers, agents, and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

The intent of Congress in passing this Railway Labor Act is clearly stated in these passages from the act. However, there is a further portion of the Railway Labor Act which is important to us as free American citizens, laboring for American industry under the free enterprise system. I refer to section 9, eighth of the Railway Labor Act, which reads:

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this

Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

The right to strike to enforce demands or to protect the working conditions of the employees is one of our basic rights and freedoms. This right should never be stripped from the workers of America in private industry by an American Congress.

Under the above basic provisions of the Railway Labor Act, the parties continued with the handling of the dispute which I have described to you. The railroads had served notice of their demands. The employees had countered with theirs. Always in the past, such disputes had been negotiated eventually to a settlement, and the employees were hopeful that this would be the case.

It is my duty to report the fact that no such desired result was obtained in this dispute. Conferences were held on the individual railroads between the management representatives and the general chairmen representing the employees. These meetings were hardly worthy of the name "conference" because it was no such thing.

In reality, the meetings were held by the railroads only to insure compliance with the procedural provisions of section 6 of the amended Railway Labor Act. When the meeting was concluded, some carriers promptly wrote to the chairmen and told them that no useful purpose would be served by further discussion, and the entire subject was being referred immediately to the carriers' conference committee which had been created and was named in the railroads' initial notice to the representatives of the employees.

I feel that I am making a true and correct statement when I tell this committee that no actual negotiations were held between the parties to these collective bargaining agreements which the railroads were seeking to change so drastically. All negotiations were held at a later stage between the conference committees of the railroads and representatives of the chief executives of the unions at the national level.

Evidence of the lack of negotiations on the individual railroads between the parties has been furnished to the President's six-man Labor-Management Subcommittee on July 15, 1963, when, at the subcommittee's request, we furnished a statement to them regarding the facts, issues, and position of this organization.

A copy of that statement has been furnished to every Congressman for his information, and the railroad representatives also were furnished with a copy. I request concurrence of the committee to make this statement a part of the record, and I hand a copy to the chairman for that purpose.

That is the green document which has been distributed.

Mr. FRIEDEL (presiding). Is this a duplication of any other report we have?

Mr. MEREDITH. No, sir. It is an exhibit placed before the President's six-man Committee.

Mr. FRIEDEL. It will be ordered to be included as part of the record.

Mr. MEREDITH. Thank you, sir.

(The document referred to follows:)

BEFORE THE SIX-MAN LABOR-MANAGEMENT SUBCOMMITTEE CREATED BY THE PRESIDENT OF THE UNITED STATES, JULY 10, 1963

FACTS AND ISSUES

Filed on Behalf of Brotherhood of Railroad Trainmen

I. "FEATHERBED" CHARGES

1. Evidence in our files discloses that the railroads were beginning to plan a movement against the operating organizations' work rules as early as 1955.

2. Emergency Board No. 109 recommended a commission to "review and modernize" the wage rate structures (NMB case A–4374), but not for the purpose of emasculating the work rules. The express reason for the proposed study was that it was "essential to the correction of wage inequities, to mutually constructive industrial relations and to the efficient operation of the railroads."

3. Carriers, however, did not want to "modernize" wage structure alone. They wanted to include rules, working conditions, arbitraries, and special allowances, and so stated in a letter dated August 17, 1955, addressed to the National Mediation Board, signed by Mr. D. P. Loomis, then chairman, Association of Western Railways.

4. On February 11, 1959, Mr. D. P. Loomis, then president of the Association of American Railroads, addressed the annual meeting of the National Association of Shippers Advisory Boards, St. Louis, Mo. His speech later developed to be the first evidence the employees received of the vicious attack soon to be launched against them. He stated, in part:

"* * * There is another area of festering and cancerous growth which must be cleaned out before our full potential can be reached * * * I refer now to the wasteful and burdensome work rules—commonly known as featherbedding—which hang like an economic albatross around the neck of American progress * * *"

5. The day before the above-described speech, on February 10, 1959, Mr. Loomis had addressed a letter to the chief executives of the five operating organizations, inviting them to join with him seeking the appointment of a Presidential commission "to study the impact of our present rules on the public welfare." The chiefs replied, February 19, 1959, stating:

"We think it ill advised for you to attempt to negotiate with us through the media of general public relations agencies. In our opinion, it was bad faith in not first giving the representatives of the employees, to whom you addressed your communication, an opportunity to discuss this matter with you. Your approach is bound to have a further depressing effect upon the already low morale of employees, because of the manner in which it was handled.

"In your letter, you make reference to the report of Emergency Board No. 109, dated March 25, 1955. A review of that report makes it clear that the commission proposed by the Board was not limited to a mere study of rules, but encompassed the whole area of factors which have a bearing on the internal wage rate structure affecting the railroad industry.

"Furthermore, we believe a complete study of the financial structure of the industry must be included, as well as management practices which adversely affect the economic soundness of this important public service, as neither can be ignored."

6. The chief executives and Mr. Loomis entered into a further exchange of correspondence, but no agreement resulted.

7. An attempt by Mr. Loomis to have President Eisenhower appoint a Commission, but the President declined the request.

8. A moratorium on requests for changes in rates of pay, rules, and working conditions was due to and did expire as of November 1, 1959. But between February 11 and November 1, 1959, the Association of American Railroads entered into a vast newspaper campaign.

9. According to the AAR's own boast, this campaign included advertisements published in every daily and weekly newspaper of general circulation in the United States—nearly 10,000 of them, simultaneously.

10. Copies of some of these ads are attached to this statement as exhibit 1.

EXHIBIT No. 1

Cervi's Journal
Denver, Colorado, October 28,1959

GREATEST SNOW JOB YET

Labor Negotiation by Bulk Advertising

Association of American Railroads
Public Relations Department
Transportation Building
Washington 6, D. C.
NAtional 8-9020

J. HANDLY WRIGHT
Vice President
ALBERT R. BEATTY
Assistant Vice President

October 21, 1959

Dear Mr. Publisher:

With the enclosed advertisement which appeared recently the Association of American Railroads broke advertising precedent to include every daily and weekly newspaper of general circulation in the United States in a single, massive-coverage ad schedule.

Nearly 10,000 newspapers, ranging from the largest metropolitan dailies to the smallest home-town weeklies and blanketing every section of the nation, received this railroad advertisement simultaneously. In railroad advertising, this was an historic first. Consequently, we feel sure you will be interested in **the story behind the ad.**

In lineage, this was a relatively modest ad (we wish it could have been larger), but it had a king-size job to do. It carried a message of vital importance to all America—and we believe it deserves to be read by all the American people. That's the down-to-earth reason it was scheduled to run in all American newspapers.

There's another reason we believe this ad merits nation-wide, massive circulation. It was designed to present the basic principle on which American railroads will stand when labor-management negotiations open next month on the elimination of costly featherbedding and make-work practices among the operating crafts of the railroad industry.

The simple principle which the railroads are determined to re-establish in the operation of their industry is the traditional code of honorable employment in America—A Fair Day's Work for a Fair Day's Pay.

That principle, we believe, is so fundamental to our American way of life we are fully confident the vast majority of the people in this country will insist that it be respected and restored in the railroad industry—once they know that archaic make-work and featherbedding practices are rampant in railroading.

That's the story behind this ad, which we hope will reach every reader of every American newspaper.

Today, every citizen shares in paying a monumental featherbedding bill of $500,000,000 a year for work not needed or not performed in railroad operations. That staggering loss to the industry and to the nation's economy can be—and we believe must be—eliminated by common understanding between management and labor that a Fair Day's Work for A Fair Day's Pay will be the basis of every new work agreement.

We think you will approve of this principle. If you have any questions on the subject, I would welcome an opportunity to provide the answers.

Sincerely,
J. Handly Wright
Vice President

• **Editor's note:** Yes, we have some questions and a comment.

First of all, we don't "approve of this principle" of yelling and screaming at the top of your bankroll before the fact of negotiations.

Isn't your catch phrase "a fair day's work for a fair day's pay" rooted in a false premise?

How much is this snow job on the American press costing—and isn't the public paying the bill in the form of higher freight rates?

Are you the same outfit that got caught a few years back lying about the truck industry?

How many useless vice presidents do the railroads propose to fire?

[Copy of night letter]

UPI-139.

The Association of American Railroads said today it canceled advertisements placed with a West Virginia newspaper after the paper criticized them editorially as "statistical skulduggery."

The association said it withdrew the ads, part of a series on alleged "featherbedding" on the railroads, to avoid further "offense" to the newspaper, the Charleston, W. Va., Gazette.

The Gazette has charged that the cancellation bore "all the earmarks of an attempt by the American railroads, or their advertising agency, to make editorial support a requirement for advertising dollars—or at least to buy a guarantee against editorial criticism."

Labor, weekly publication of 17 railway unions, accused the AAR of trying to force newspapers to echo claims that featherbedding, or pay for work not done, costs the railroads $500 million a year.

The AAR has run a series of six ads in about 130 major daily newspapers to spell out its arguments.

The Charleston Gazette, one of the papers selected to run the series, criticized one of the advertisements after it was published as an example of "how to lie with statistics."

J. Handly Wright, AAR vice president for public relations, ordered the cancellation of the rest of the series in the Gazette.

"* * * I do not think we should be expected to buy advertising on one page only to have it demeaned and discredited on the editorial page. It seems to me the editor would welcome rather than denounce the cancellation of our advertising if he found it so objectionable."

In another letter to Gazette Editor Harry G. Hoffmann, also made available today, Wright said the AAR was not trying to influence the paper's editorial policy. He called the incident a misunderstanding.

"We never disagreed with your right to these opinions (in the editorial) or doubted your sincerity," Wright wrote Hoffmann, "but we certainly did not agree with your conclusions or we could not have sponsored the ad in question.

"Since we were scheduling further ads in the series, we thought it best simply to avoid giving you further offense," he added.

The railroad union's publication congratulated the Gazette for its stand. But it said the disclosure "raises the question of whether other newspapers have been less scrupulous in maintaining their independence from railroad pressure."

It said hundreds of papers have carried editorial rubber-stamping the industry's objection to work rules and asked:

"How many of these did so merely to assure themselves a share of these lavish advertising dollars?"

11/12—N414P

[From the Editor & Publisher, Nov. 7, 1959]

Ads Canceled

RAILROADS ARE TOLD EDITORIALS "ARE NOT FOR SALE"

Newspaper editorials are "not for sale," the Charleston (W. Va.) Mail-Gazette declared November 1 in an explanation to readers why a schedule of advertising being placed by the Association of American Railroads had been canceled.

Confirming the cancellation, Cecil Carmichael, account executive of Benton & Bowles, Inc., the AAR agency, said the ads were continued in the Charleston Daily Mail and other newspapers. The $1 million ad campaign against "featherbedding" ended October 30. It included every daily newspaper and thousands of weeklies in the United States.

SKEPTICAL OF STATISTICS

The Gazette had commented skeptically on statistics used in one of the ads, but did not condone "featherbedding." The Mail had approached the subject in a different editorial vein, tending to be sympathetic to the railroads. Advertising for both newspapers is handled by Newspaper Agency Corp., but the newspapers maintain editorial independence.

The fact that orders for advertising in the Gazette were stopped before all in the series had run "bears all the earmarks of an attempt by the American railroads, or their advertising agency, to make editorial support a requirement for advertising dollars—or at least to buy a guarantee against editorial criticism," the editor's column in the Sunday Mail-Gazette charged.

"No newspaper worth the newsprint on which it is printed can be editorially subservient to any of its advertisers," the editor stated.

"And to make ourselves perfectly clear, the editorial columns of the Gazette, the Daily Mail and the Sunday Gazette-Mail are not for sale—not to the American railroads or the railroad brotherhood, not to any industry or union, not to any organization, group, or individual, not to any advertiser."

"MADISON AVENUE GAMBIT"

The editorial to which offense was taken appeared in the Gazette October 1. It was headed "Railroads Overlook Facts in Their Factual Report," and referred to "How To Lie With Statistics" and the "Madison Avenue Gambit" of "slanting data to prove a point."

"We don't believe * * * it is necessary to point out to persons of normal intelligence that advertisements such as that cited above do their sponsors more harm than benefit," the editorial concluded.

Mr. Carmichael of Benton & Bowles quoted the last words of this sentence when he confirmed cancellation of the ads.

NEVER ASKED FOR EDITORIAL

J. Handley Wright, vice president, public relations, of AAR, told Editor & Publisher: "Nobody in our office ever asked Mr. Hoffmann (Harry G. Hoffmann, editor of the Charleston Gazette) for any editorial support or comment. I have never even met or talked to the gentleman.

"But I do not think we should be expected to buy advertising on one page only to have it denounced and discredited on the editorial page. It seems to me the editor would welcome rather than denounce the cancellation of our advertising if he found it so objectionable."

Copy for the public relations advertisements was prepared by executives of the railroad association working with General Public Relations, Inc., the public relations firm owned by the advertising agency. The campaign has been underway since last February. The program was undertaken to "inform the public of issues" in advance of negotiations that started in Chicago this week between the Joint Carriers Conference Committee and the operating unions.

FAVORABLE EDITORIALS

Included was a series of six 1,000-line ads, one running every 2 weeks, in 169 newspapers of 100,000 circulation and over. Cost of this alone was calculated at $578,820. One 500-line ad specifically hitting "featherbedding" was placed in every single daily newspaper in the country (1,751) and in enough weeklies to bring the total up to about 10,000. Cost of the ad in the dailies alone was about $133,155, and the weeklies added at least $250,000 more to the bill.

Press relations for the Chicago negotiations is in the hands of Gardner, Jones & Cowell, a Chicago firm.

EXHIBIT No. 1

ARKANSAS DEMOCRAT—3
Monday, June 29, 1959

Our pledge to the public

Among the costs you pay for travel and transportation on the Nation's railroads is a hidden charge of *$500,000,000* for which you get nothing.

This is the cost of work paid for but not performed or not needed. This is what is known as Featherbedding.

Featherbedding arises from old and useless work rules which restrict the advancement of employees, increase the cost of service to the public and impair the efficiency of railroads. It is confined to a *minority* of employees, many of whom were not born when these rules were made.

"Make Work" does not make jobs —it destroys them

Everyone loses by Featherbedding, most of all railroad employees. These "make work" rules do not make jobs.

Approximately *1000 railroad* jobs a week have disappeared in the past decade, and an even greater loss is inevitable if the rules are not modernized to provide the public with better service.

For a generation, railroad management has sought the cooperation of the rail operating unions to end these wasteful and costly practices—but without meaningful results. Four months ago, management suggested that the matter be submitted to an impartial commission for an objective study in the public interest.

The operating unions not only refused to join in this step but warned that they would oppose any move by management to establish such a commission.

Refusal to cooperate— does not solve the problem

This callous disregard of the public's interest and this continued refusal to admit that there is anything wrong in charging the public *$500,000,000* for work not performed or not needed leave the railroads no alternative but to seek a solution by some other means.

Accordingly, the management of America's railroad industry pledge that they will continue to strive, by whatever means are proper and hopeful of success, to obtain some correction in these inflation-producing, job-destroying, outmoded work rules, so that the country may have the modern and efficient railroad service to which the public is entitled.

$200,000,000 to stoke non-existent fires

Unlike steam locomotives, Diesels require no fires of any kind. Yet the public still must pay more than *$200,000,000 a year* for the obsolete job of fireman.

—this is Featherbedding!

9 days' pay for a 16-hour run

Fast New York-Chicago trains make the run in 16 hours, yet the railroads pay *9 basic days' pay* for each engine crew position on the trip.

—this is Featherbedding!

A day's pay for one switch operation

A "road" engineer pulled a freight train into a yard but had to back it up the length of 40 cars. For this he was able to claim *an extra day's pay* as a "yard" engineer.

—this is Featherbedding!

AMERICAN RAILROADS

EXHIBIT No. 1

San Francisco Chronicle
September 16, 1959

RAILROAD FEATHERBEDDING

$500,000,000 LOSS

TO THE NATION—INCLUDING YOU—EVERY YEAR

One of the greatest disasters of all time was the San Francisco earthquake and fire of 1906. Property damage of $350,000,000 shocked the world.

Yet America's railroads suffer a needless loss equal to that disaster **every nine months!**

It's the loss from railroad featherbedding – pay for work not performed or not needed – that costs the shipping and traveling public in this country **$500,000,000 every year.**

Earthquakes cannot be prevented but featherbedding can.

Everybody pays the hidden toll of featherbedding. That's why the forthcoming negotiations between the railroads and the unions are so urgently important to the whole nation. The railroads will seek the agreement of the unions in lifting this featherbedding burden from the American people so that our country may have the unexcelled rail service a dynamic economy demands.

OBSOLETE WORK RULES,
unchanged since 1919, are responsible for featherbedding – not the employees who must obey them. Only the operating employees are involved. For example:

Diesel freight locomotives, unlike steam locomotives, have no fires to tend but featherbed rules still demand a fireman – the third man on the diesel cab, since the head-end brakeman also rides there.
Total cost for unneeded firemen – $200,000,000 each year.

– this is featherbedding!

AMERICAN RAILROADS

EXHIBIT No. 1

Chicago Tribune - October 13, 1959

RAILROAD FEATHERBEDDING

$500,000,000 LOSS

TO THE NATION—INCLUDING YOU—EVERY YEAR

The great Chicago Fire of 1871 rates as the most costly disaster of its kind this country has ever known. Property damage reached the staggering total of $196,000,000.

Yet America's railroads pay out this much **every five months** for work **not** performed or **not** needed.

This is known as featherbedding and it costs the American shipping and traveling public the shocking total of $500,000,000 **every year.**

Featherbedding is a drain on all of us. It produces inflation by contributing to higher prices and higher living costs. It produces unemployment by padding payrolls. Featherbedding doesn't make jobs — it destroys them.

No nation is rich enough to afford such senseless waste — year after year.

That's why the forthcoming negotiations between the railroads and the unions are so urgently important to **you.**

And that's why the railroads will seek the agreement of the unions in lifting this featherbedding burden from the American public.

OBSOLETE WORK RULES

are responsible for featherbedding — not the employers who must obey them. Only the railroad operating employees are involved. For example:

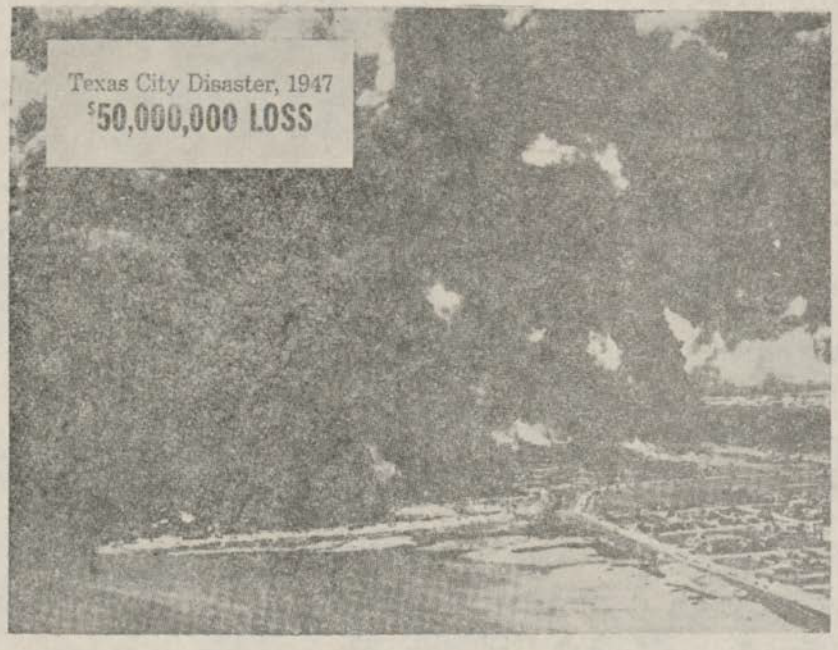
The run from Minneapolis to Willmar is just 91 miles — 90 minutes on a streamliner. Yet, under the rules, each member of the engine crew receives a full basic day's pay for each trip.

— this is featherbedding!

AMERICAN RAILROADS

EXHIBIT No. 1

Wall Street Journal, October 27, 1959



RAILROAD FEATHERBEDDING

$500,000,000 LOSS

EVERY YEAR—AND IT'S YOUR LOSS, TOO

The explosions and resulting fires that devastated Texas City, Texas, on April 16, 1947, stunned the nation and caused property damage in excess of $50,000,000.

Yet the railroads of America are forced to pay out this much almost every month – ten times this much every year – for work paid for but **not** performed or **not** needed.

That's the **annual** loss to the American public for featherbedding on the railroads – more than $500,000,000 – all waste and a drain on everybody.

Everybody pays for this loss. The railroads. The workers. You. Because featherbedding is forced payment for work not done or not needed. When so much money is **wasted** on nonproductive or unnecessary work, costs are needlessly increased, prices are needlessly inflated and jobs are needlessly destroyed.

No nation, however rich, can afford the backbreaking burden of featherbedding year after year.

That's why the soon-to-begin negotiations between the railroads and the unions are so urgently important to you and to the whole nation. The railroads will seek the agreement of the unions in lifting this featherbedding burden from the American public so that our country may have the unexcelled rail service a dynamic economy demands.

OBSOLETE WORK RULES

are responsible for featherbedding – not the employees who must obey them. Only the railroad operating employees are involved. For example:

It takes an engineer and fireman on a western streamliner 4 hours to cover the 215 miles from St. Paul to Breckenridge, Minnesota. After less than 1½ hours off duty there, they return to St. Paul on the eastbound sister train. Each receives 4½ basic days' pay – $88.84 for the engineer and $77.45 for the fireman – for 9 hours and 10 minutes of actual work, including the time it takes them to report on and off duty.

– this is featherbedding!

AMERICAN RAILROADS

EXHIBIT No. 1

Cleveland News - September 28, 1959
Cleveland Press- September 28, 1959
Cleveland Plain Dealer - September 29, 1959

A THREAT TO SAFETY

...another result of railroad featherbedding

Far from being necessary for safety, railroad featherbedding can actually increase accidents. In 23 states with "excess crew" featherbed laws, the accident rate is higher than the national average.

Does "make-work" make for greater safety on the railroads? Not so you'd notice it. Available evidence suggests that just the opposite is true.

Fact is, despite the excellent safety record of the railroads, featherbedding can be a hazard to safety.

For example, 23 states have "featherbed" laws which force railroads to hire unneeded train crew members. These 23 states have 57.4% of railroad employees, 51% of railroad mileage – *and 66% of railroad accident casualties!*

Railroad featherbedding – work paid for, but not performed or not needed – claims a shocking toll of $500,000,000 from the American public **every year.** In every way, railroad featherbedding is a drag on the nation's economy – and a drain on *your* income. It forces you to pay higher prices.

But it hurts railroad employees worst of all. "Make-work" doesn't make jobs – it destroys them. It is one of the reasons for the disappearance of 1,000 railroad jobs per week for the last ten years – half a million jobs in less than a decade.

That's why the forthcoming negotiations between the railroads and the unions are so urgently important to the whole nation. The railroads will seek the agreement of the unions in lifting this featherbedding burden from the American public – so that our country may have the unexcelled rail service a dynamic economy demands.

OBSOLETE WORK RULES

are responsible for featherbedding – not the employees who must obey them. Only the operating employees are involved. For example:

On the New York to Washington run – 4 hours – engineers receive 2¼ basic days' pay. For the complete round trip made the same day – 450 miles – they receive 4½ days' pay – because outmoded featherbed rules require railroads to pay all engine crew members a basic *day's* pay for each 100 miles.

– this is *featherbedding!*

AMERICAN RAILROADS

EXHIBIT No. 1

The Cleveland Press, October 19, 1959

A fair day's work for a fair day's pay?

On the railroads, output has increased per man-hour—but has decreased per dollar of wages. One of the reasons is featherbedding—$500,000,000 worth of waste for work not done or not needed.

We hear a lot of talk nowadays about productivity. Let's get it straight.

There is only one true measure of what productivity really is: **How much work for a given amount of pay!**

On this basis, productivity on America's railroads has been sagging steadily. While work output per man-hour has gone up among the rail operating craft, thanks in large part to better tools and more powerful equipment, wages have gone up, too—**four times as much!**

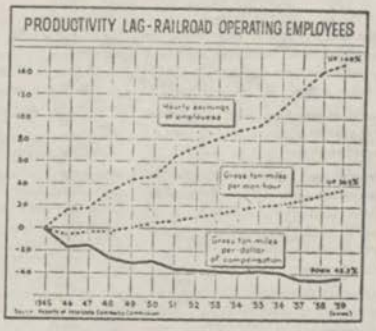
Here are the facts: Between 1945 and 1959 the ton-miles of transportation carried by the nation's railroads for each hour operating employees worked rose by 36.5%. But average compensation per hour rose 149%. As a result, work performed per dollar of compensation has declined 45.3% below the 1945 level!

The reason is not hard to find. On the railroads, featherbedding—work paid for, but not performed or not needed—is a big cause. Lowered productivity is the effect.

And the annual cost to the shipping and traveling public is $500,000,000.

No nation, however rich, can afford such a crushing burden of totally unnecessary waste year after year.

That is why the forthcoming negotiations between the railroads and the unions are so urgently important to the whole nation—and to you personally. The railroads will seek the agreement of the unions in lifting this featherbedding burden from the American public so that our country may have the unexcelled rail service a dynamic economy demands.



AMERICAN RAILROADS

EXHIBIT No. 1

The Fitzgerald Leader, October 29, 1959
Fitzgerald, Georgia

RAILROAD FEATHERBEDDING:

$500,000,000 LOSS

TO THE NATION—INCLUDING YOU—EVERY YEAR

Featherbedding on the railroads — pay for work not done or not needed — is costing the American people the shocking total of more than $500,000,000 a year.

You pay for it every time you shop, because featherbedding costs are hidden in the price of everything you buy.

Obsolete union work rules, involving the railroad operating employees, are responsible for this gigantic burden. Right now, for instance, these rules require every diesel locomotive to carry a fireman — even though diesels have no fires to stoke, no boilers to tend.

The forthcoming negotiations between the railroads and the unions are urgently important to the whole nation.

In asking the unions to drop these featherbedding rules, all the railroads ask for is **a fair day's work for a fair day's pay.**

AMERICAN RAILROADS

11. One editor, however, made this reply to the AAR's letter of transmittal of an enclosed copy of one of the ads (sent to him to encourage editorial comment?):

"EDITOR'S NOTE.—Yes, we have some questions and a comment.

"First of all, we don't 'approve of this principle' of yelling and screaming at the top of your bankroll before the fact of negotiations.

"Isn't your catch phrase 'a fair day's work for a fair day's pay' rooted in a false premise?

"How much is this snow job on the American press costing—and isn't the public paying the bill in the form of higher freight rates?

"Are you the same outfit that got caught a few years back lying about the truck industry?

"How many useless vice presidents do the railroads propose to fire?"

12. This, then, was the preliminary to the negotiations on the railroads' notices of November 2, 1959. The intent was crystal clear—to brainwash the American public. As one editor said, it was the "greatest snow job yet."

II. CARRIER REQUESTS

1. November 2, 1959, carriers served notices separately on the general chairmen of virtually every railroad in the United States, of all five operating brotherhoods. These notices requested extensive changes throughout the wage structure of the operating employees, proposing modification or elimination of virtually every rule affecting compensation and working conditions.

2. A companion notice served simultaneously the same date went to the chairmen of the BLE and B.L.F. & E., proposing to eliminate rules requiring the employment or use of firemen (helpers) on other than steampower in any class of freight or yard service.

3. The Railway Labor Act requires such notices to be served and handled in accordance with section 6, which is quoted here for ready reference:

"SEC. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

4. Section 2(1), first, of the Railway Labor Act places the duty upon "the carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

5. Section 2 (1), second, of the Railway Labor Act admonishes that "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between the representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

6. Following receipt of the carriers' notices, the respective chairmen on each railroad arranged to meet with the carrier representative designated and authorized so to confer, for a discussion of the notices.

7. On some railroads, the chairman of each separate carrier met the management representative separately; on others, a joint conference was held.

8. These initial meetings were reduced to the merest formality. The railroads were already prepared for referral of the dispute to a national conference committee—in fact, the identity of the carriers conference committee members was stated in the initial notice, and we quote from a representative notice served by a wesern carrier:

"In the event that we are unable to reach an agreement upon the foregoing proposals at such conferences, we further propose that the matter be handled on a joint national basis. In accordance with established procedure which

has been followed in the railroad industry on numerous occasions during the last 50 years, and on the assumption that an agreement may not be reached in our conferences, this carrier has joined with other western railroads serving a like notice upon their employees represented by the Brotherhood of Locomotive Engineers, the Order of Railway Conductors & Brakemen, the Brotherhood of Locomotive Firemen & Enginemen, the Brotherhood of Railroad Trainmen and the Switchmen's Union of North America, in designating Messrs T. Short, L. D. Comer, E. H. Hallmann, E. B. Herdman, G. E. Mallery, K. K. Schomp, A. J. VanDercreek and J. E. Wolfe as members of a Western Carriers' Conference Committee wtih authority to handle these proposals to a final settlement or other conclusion. Carriers in the eastern and southeastern territories are serving like notices and have authorized carriers' conference committees for similar purposes.

"If an agreement is not reached in our conferences, we request that you join with representatives of the employees of other carriers who are receiving like proposals in the creation of an Employees' National Conference Committee which will have authority, like the carriers' conference committees, to negotiate to a conclusion, in accordance with the provisions of the Railway Labor Act, the subject matter of these proposals."

9. To exemplify what occurred, we quote the correspondence passing on a typical carrier, which is self-explanatory, as follows:

Cir. 918.

NOVEMBER 30, 1959.

Mr. K. C. SALLEE,
General Chairman, BLE,
Aurora, Ill.
Mr. H. G. KENYON,
General Chairman, B.L.F. & E.,
Aurora, Ill.
Mr. G. R FIELD,
General Chairman, O.R.C. & B.,
Galesburg, Ill.
Mr. V. R. ROBERTS,
General Chairman, BRT,
Creston, Iowa.

GENTLEMEN: Referring to discussion at conference held on this date per verbal agreement on the carrier's notice served on you pursuant to the provisions of the Railwal Labor Act under date of November 2, 1959, of our desire to revise and supplement agreements between us as set forth in proposals in attachment A entitled "Basis of Pay and Assignment of Employees."

The conference was held to insure compliance with the procedural provisions of section 6 of the amended Railway Labor Act.

At said conference we explained that our proposal would specifically eliminate or modify the preschedule rule provisions shown on page 22 of BLE and page 19 of B.L.F. & E. booklets, BLE and B.L.F. & E. rules 1, 2, 3, 4, 7, 8, 9, 16, 19, 21, 22, 23, 26, 27, 28, 30, 31, 32, 36, 37, 41, 44, 46, 47, 48, 50, 57, 58, 62, 68; O.R.C. & B. and BRT rules 2 through 14, 16, 17, 18, 19, 23, 24, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 39, 40, 47, 49, 52, 53, 54, 56, 57, 58, 60, 65, 66, 67, 68, 75, 77, 90, 91; BRT-yardmen rules 1, 2, 4, 18, 35, rule 46, articles I, II, III, VI, XXIII; switching district agreement; road-yard switching agreements; and all other agreements, rules, regulations, interpretations and practices, however established, as referred to in paragraphs A (i), (ii), and (iii) under "Basis of Pay," A (i), (ii), (iii), and (iv) under "Road Train and Engine Service Assignments," and A (i), (ii), (iii), (iv), under "Road Train and Engine Service Assignments," and A (i), (ii), (iii), (iv), and (v) under "Combination of Road and Yard Service" in attachment A referred to above. Our proposed rules are set forth in paragraph B of the same attachment A.

As the notice this carrier served on November 2, 1959, appears clear as to its intention and purpose, and in further consideration of the fact that the questions you propounded at the initial conference on November 30 were answered in considerable detail and these answers are confirmed in the preceding paragraph it is obvious no useful purpose will be served by further discussions, in view of which the entire subject is being referred immediately to the Carriers Conference Committee which has been created for the purpose of handling the controversy. We will give consideration to handling any counterproposal that may be seasonably served concurrently with our proposal of November 2, 1959, with the thought that perhaps the two proposals will thereafter be considered one common dispute to be handled as such to a conclusion.

Yours truly,

J. E. WOLFE.

DECEMBER 3, 1959.

Mr. J. E. WOLFE,
Vice President—Personnel,
C.B. & Q. Railroad Co.,
Chicago, Ill.

DEAR SIR: This will refer to your letter of November 30, 1959, file circular 918, addressed to the undersigned confirming initial conference on your desire for rule changes as contemplated by notice of your letter of November 2, 1959, and attachment A thereto entitled "Basis of Pay and Assignment of Employees."

We are surprised at receiving your advice that you consider the brief discussions we had at the conference referred to as meeting the procedural provisions and spirit of the Railway Labor Act, or your brief remarks on the rules that could be affected by your proposals, as complying with our request for a listing of those rules and the extent of the proposed modifications.

We should also like to advise of our disappointment upon receiving your statement that you are immediately and unilaterally referring the entire issue to the carriers' conference committee, which the carriers have created for the purpose of handling the controversy.

We understand from advice received from a member of your staff, Mr. A. E. Egbers, that your letter was not intended to terminate conferences or break off negotiations, within the meaning of the act, on the C.B. & Q. Railroad. Accordingly, we request your concurrence in resuming our recessed conference for the further discussion of the issues at an early mutually convenient date.

Will you please advise?

Yours very truly,

K. C. SALLEE,
General Chairman, BLE.
H. G. KENYON,
General Chairman, B.L.F. & E.
G. R. FIELDS,
General Chairman, O.R.C. & B.
V. R. ROBERTS,
General Chairman, BRT.

EXHIBIT No. 2

BROTHERHOOD OF RAILROAD TRAINMEN, CHICAGO, BURLINGTON & QUINCY RAILROAD

Effect carrier notices of Nov. 2, 1959, could have on schedule rules

Rule No.	Description	Effect carrier proposals could have
T-2	Basic day and rates	Modify to reflect increased daily mileages and lowered rates.
T-3	Tabulation of mileages	Modify to conform with increased daily mileages.
T-4	Pay for operating dynamos	Eliminate.
T-5	Additional pay for passenger brakemen riding in baggage or cream cars.	Do.
T-6	Passenger short turnaround and overtime provision.	Modify to reflect carrier proposal.
T-7(a)	Pay for handling freight cars, freight, or company material in passenger trains.	Eliminate.
T-8	Extra and special passenger service	Modify to reflect proposed changes.
T-9	Service on layover days	Eliminate.
T-10	When use freight trainmen in passenger service	Do.
T-11	Passenger trainmen not used in freight service	Do.
T-12	Passenger guarantees	Modify to reflect carrier proposals.
T-13	Reduction in crews below Jan. 1, 1919	Eliminate.
T-14	Passenger trainmen switching, coupling hose, etc.	Do.
T-15	Passenger crew consist	Do.
T-16	Extra passenger work	Modify to reflect carrier proposals.
T-17	Suburban or commuter service	Do.
T-18	Through freight basic day and rates	Modify to reflect increased mileages and lowered rates.
T-19	Short turnaround in freight service	Do.
T-23	Basic day and local freight rate	Do.
T-24	Hourly paid crews by agreement	Modify to reflect carrier proposals.
T-27	Tabulation of freight runs	Modify to reflect increased daily mileages.
T-28	Constructive pay for Black Hills run	Eliminate constructive allowances.
T-29	Beginning and ending of day, basic day, and overtime.	Modify to reflect increased daily mileages.
T-30	Arbitraries and special allowances	Modify to reflect proposed changes.
T-31	Pool crew mileage—Regulation	Modify to reflect increased mileages.
T-33	Terminal delay rule	Eliminate.
T-34	Freight crew switching at terminals	Do.
T-35	Stockyear trip	Modify to reflect carrier proposal.
T-36	Additional trip after 100 miles or 8 hours—Emergency lapbacks.	Modify to eliminate automatic release.
T-37	Company tieup—definition of terminals	Modify to reflect carrier proposal and change of present terminals.
T-39	Not run off assigned home division	Eliminate.
T-40	160 miles for handling circus trains	Do.
T-47	Pay for equipping cabooses	Do.
T-49	Short cars in station order on head end of train	Do.
T-52	Regular work train	Do.
T-53	Work train day and rates	Modify to reflect increased mileages.
T-54	Pay to work train trainmen for acting as foreman or operator.	Eliminate.
T-56	Work train assignment guarantee	Modify to reflect increased mileages and lowered rates.
T-57	Temporary work train basic day and rates	Do.
T-58	Snowplow basic day and rates	Do.
T-60	Overtime and special allowances	Eliminate.
T-65	Delayed between terminals on account of trackage obstructions.	Modify to reflect increased mileages.
T-66	Coaling engines	Eliminate.
T-67	Deadheading compensation	Modify to reflect increased mileages and lowered rates.
T-68	Pilots	Do.
T-75	Freight assignment guarantees	Do.
T-77	Interdivisional rule	Eliminate.
T-81	Manning officer inspection train	Do.
T-90	Combination of road service	Modify to reflect carrier proposals.
T-91	Roadmen manning work train partly within and partly adjacent to yards.	Eliminate to permit intermingling of service.
	Self-propelled machine agreement (road)	Eliminate.
	Switching limits agreement	Do.
	Road-yard agreement	Do.
Y-1	Rates of pay—supplements 22 and 23 to GO-27	Modify to reflect carrier proposals.
Y-2	Basic day and overtime	Do.
Y-4	Starting time	Eliminate.
Y-18	Use of yard crews in road territory in emergency (art. XXB).	Do.
Y-20	Yard crew consist	Do.
Y-35	Extra pay—work train operators	Do.
Y-46	(Chicago) same as other rules, but at Chicago	
	Self-propelled machine agreement (yard)	Do.

10. The above discloses that (1) The carriers wanted their notices rushed to national handling. (2) The naming of the carriers' conference committees at the time of serving of the notices proves no negotiation on the individual railroad was contemplated.

11. One brief conference, consisting of no actual negotiations on the issues, completed the handling on the properties.

III. EMPLOYEE NOTICES

1. It was not until September 7, 1960, that counternotices were served by the employees, requesting the following:

"1. Improvements in the existing wage structure including but not limited to provision for adequate compensation for nightwork and shift differentials, daily, weekly, and monthly guarantees, payment for time held away from home and improved overtime rules.

"2. Consist of crews including engineers (motormen), firemen (helpers), conductors, brakemen, hostlers, hostler helpers, yard conductors (foremen) and yard brakemen (helpers), the adequacy of the number of men in the crew and their qualifications and training.

"3. Financial and other protection of employees affected by mergers, consolidations, abandonments, technological changes in operations, or by changes in working conditions.

"4. Stabilization of employment."

2. Under date of October 17, 1960, the parties agreed to the creation of the Presidential Railroad Commission, which was to make a nonbinding study and report.

3. The parties stipulated the employees' notices of September 7, 1960, would be included in the dispute to be investigated; thus the employees' requests received no consideration or negotiation on the individual railroad properties whatever.

IV. PRESIDENTIAL RAILROAD COMMISSION

1. This subject is being covered in a separate brief, and will not be discussed here. We will, however, direct your attention to the following agreement relative to the findings and recommendations of the Presidential Railroad Commission:

WASHINGTON, D.C., *October 17, 1960.*

Mr. G. W. KNIGHT,
Chairman, Eastern Carriers' Conference Committee.
Mr. T. SHORT,
Chairman, Western Carriers' Conference Committee.
Mr. B. B. BRYANT,
Chairman, Southeastern Carriers' Conference Committee.

GENTLEMEN: It is our understanding that neither the findings nor the recommendations of the Commission provided for by the agreement of October 17, 1960, shall be binding upon the parties or either of them.

If you concur, please so indicate by signing below.

Very truly yours,

H. E. GILBERT,
International President, Brotherhood of Locomotive Firemen & Enginemen.
W. P. KENNEDY,
President, Brotherhood of Railroad Trainmen.
R. E. DAVIDSON,
Grand Chief Engineer, Brotherhood of Locomotive Engineers.
J. A. PADDOCK,
President, Order of Railway Conductors & Brakemen.
N. P. SPEIRS,
President, Switchmen's Union of North America.

Accepted:

GUY W. KNIGHT,
Chairman, E.C.C.C.
T. SHORT,
Chairman, W.C.C.C.
B. B. BRYANT,
Chairman, SE.C.C.C.

Approved:

JAMES P. MITCHELL,
Secretary of Labor.

V. HISTORY OF THE DISPUTE

1. This section will deal with the general history of the dispute relating to the conduct and attitude of the parties in their negotiations.

Before PRC

2. Prior to the agreement establishing the PRC, almost no negotiation occurred between the parties, either on the properties or between the national negotiating committees. See sections II and III. The employee requests were included in the scope of the PRC without negotiation of any description.

After PRC

3. After the PRC Report, the parties started conferences on April 2, 1962, in Chicago. In the initial meeting, the railroad spokesman, Mr. J. E. Wolfe, flatly stated: "We do not intend to reargue matters that were argued for 14 months before the PRC."

Mr. Wolfe went on to say the carriers intended to discuss the PRC recommendations and the organizations could discuss anything they wished. The chronology of the negotiations follows:

Chronology of negotiations between carriers and organizations including mediation

Date	Time		Comments
	Hr.	*Min.*	
Apr. 2		45	Procedure discussion.
3			Canceled at the request of the carriers.
4	1	00	Discussed SUNA situation re authority of negotiating committee. Recessed to Apr. 17 at request of organizations. The carriers agreed without argument.
17	1	30	SUNA situation discussed further.
18	2	30	Carriers started explanation of their modified proposals (interpretation of PRC recommendations).
19	1	20	Carriers continued explanation of their modified proposals (interpretation of PRC recommendations). Recessed to Apr. 24.
24	2	00	Carriers' proposal discussed. Carriers requested an early quitting hour.
25	2	30	Carriers' proposal discussed.
26	2	00	Do.
27	1	30	Do.
May 1	2	30	Do.
2	2	30	Do.
3	2	30	Do.
4			Carriers requested cancellation and recess to May 8.
8	3	30	Carriers' proposal discussed.
9	2	30	Do.
10	2	00	Carriers' proposal discussed. Carriers requested an early quitting hour.
11	1	45	Discussion concluded re carriers' proposal 11:45 a.m.

SUMMARY

Days	Time		Subject
	Hr.	*Min.*	
3	3	15	Procedure.
13	29	30	Carriers' proposals.

Date	Time		Comments
	Hr.	*Min.*	
May 11		45	Organizations started explanation of their proposals.
15	3	00	Discussion of organizations' proposals.
16	3	00	Do.

SUMMARY

Days	Time		Subject
	Hr.	*Min.*	
3	6	45	Organizations' proposals.

Chronology of negotiations between carriers and organizations including mediation—Continued

Date	Time	Comments
	Hr. Min.	
May 17	10	Carriers walked out on organizations before completion of discussion on organizations' proposals.
18	----------	Department of Labor requests representatives of the carriers and the organizations to meet in Washington, D.C., May 23, 1962.
21	----------	The organizations made application for services of the National Mediation Board in accordance with the Railway Labor Act.
22	----------	National Mediation Board acknowledged receipt of application for mediation.
23	----------	Representatives of the carriers and the organizations met with Messrs. Goldberg and Edwards in Washington, D.C. Mr. Goldberg announced he is "requesting Mr. Edwards to conduct the type of mediation contemplated by agreement and under the Railway Labor Act," and requested both parties to work hard to make an agreement. The Secretary directed attention to the obligations "under the law and to the country" and asserted the Mediation Board would be "vigorously supported" by the Labor Department.
25	40	National Mediation Board Chairman Edwards conducted meeting of all organization committees, Union Station, Chicago—"It is my purpose to reach a fair agreement" dealing with "every one of the items in the respective notices."
29	2 05	The organizations and the carriers met with Mr. Edwards and understood that any proposals would be tentative. The carriers stated the PRC report is their present position. National Mediation Board suggested subcommittees to meet and attempt solutions for separate issues. Interdivisional runs were briefly discussed.
30	55	The organizations and the carriers met with Mr. Edwards. Organizations announced establishment of their subcommittees on the matter of wage structure. Brief discussion was had on interdivisional service. The organizations announced their intention to submit proposal covering interdivisional service.
	----------	Recessed account of the holiday until June 4.
June 4	----------	Scheduled 2:30 p.m. meeting with the carriers and Mr. Edwards canceled as per call from Mr. Edwards and set for 2 p.m. June 5.
5	1 25	The carriers advised they will appoint subcommittee for wage structure. The organizations advised on the progress of their subcommittee on interdivisional service. Combination road and yard service issue was discussed briefly. Interdivisional service was discussed and the carriers asserted they will give consideration to our proposal when subcommittee presents it. There was a short discussion concerning arbitration.
8	1 45	Discussion of holidays with pay. The organizations presented proposal concerning suburban and commuter service. The organizations reported substantial progress on their interdivisional service proposal—draft to be presented June 11. The carriers advised they will present their written version of arranging an arbitration tribunal—will be ready June 11. Organizations report additional progress of their wage structure subcommittee. Expenses away from home were discussed.
11	1 35	Organizations presented proposal for interdivisional service. Asked for a meeting with carriers' subcommittee on this subject. The carriers advised they were preparing proposed language for establishment of special tribunals and combination road and yard service as well as expenses away from home.
12	1 40	Organizations announced their self-propelled machine proposal will be presented June 13. The organizations asked that carriers assign combination road and yard service to a subcommittee to meet with the organizations' subcommittee on the subject. The organizations suggest negotiations concerning arbitration tribunal await development of negotiations on the subject where arbitration has been demanded by the carriers. Parties agree to subcommittee meeting on expenses away from home, June 13, 2 p.m.—first subcommittee meeting on any subject. The training program discussed briefly.
13	2 00	Organizations presented proposal on self-propelled machines. Requested the carriers to appoint subcommittee to negotiate this subject. B.L.F. & E. announces willingness to assert their position with respect to fireman issue. Carriers suggest setting aside training program until 1999. Discussion was had on employees protection.
13	1 45	Subcommittee meeting concerning expenses away from home.
14	1 25	Discussion relative to away-from-home expense. Organizations announce wage structure subcommittee anticipates they will be prepared to meet with the carriers' subcommittee the week of June 18. (The carriers avoided discussion of the fireman issue.) NMB recessed negotiations until June 19 at 10 a.m.
19	16	The organizations advised their subcommittee on wage structure was prepared to meet with the carriers' subcommittee June 20, 10 a.m. The organizations requested the carriers to appoint subcommittee for holiday pay. The carriers advised they were not ready to discuss this subject.
20	1 45	Discussion concerning wage structure between respective subcommittees (2d actual negotiating session on any subject). Afternoon session was agreed to but the carriers failed to appear 1:30 p.m. as scheduled. NMB scheduled next session for wage structure subcommittee June 22, 10 a.m.
22	14	Organizations presented specific written principles covering local and other freight service, including passenger and yard service. The carriers ignored and walked out on National Mediation Board and the organizations.

Chronology of negotiation between carriers and organizations including mediation—Continued

SUMMARY BEGINNING WITH MAY 25, 1962

Days	Time	Subject
	Hr. *Min.*	
13	14 30	Mediation sessions.

GRAND SUMMARY, APR. 2-JUNE 22, 1962

	Days	Time
		Hr. *Min.*
Procedure	3	3 15
Carriers' proposals	13	29 30
Organizations' proposals	3	6 45
Mediation	13	14 30
Total	32	54 00

4. June 26, 1962, the National Mediation Board profferred arbitration to the parties, under the following provisions of section 5 first (b) of the RLA:

"If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this act."

5. June 28, 1962, the carrier representatives replied to the Mediation Board as follows in pertinent part:

"As to your proffer of arbitration, this will advise you on behalf of the carriers * * * that said carriers are agreeable to submitting the dispute, *in its present posture*, to arbitration *provided the parties are able to agree on the provisions of an arbitration agreement, which, among other things, shall state specifically the issues to be arbitrated.*" (Emphasis supplied.)

6. July 6, 1962, the chief executives of the five organizations advised the Mediation Board as follows:

"We are extremely disappointed that there were efforts in evidence on the part of the carrier representatives which indicated that they did not have any desire to fulfill their responsibilities in mediation. We were also disappointed that the carriers were the parties that brought a halt to the mediation proceedings when they walked out of the meeting on June 22, 1962. It is our conclusion that all of the areas of the dispute were not fully explored in mediation and, for that reason, we believe the proffer of arbitration is premature.

"Notwithstanding the foregoing, the proffer of arbitration is respectfully declined."

7. July 16, 1962, the Mediation Board terminated its services under the RLA.

8. July 17, 1962, the carriers served their first promulgation, consisting of what they stated were their section 6 notices. "* * * as those respective notices were modified by the recommendation of the Presidential Railroad Commission * * *."

9. July 26, 1962, the five organizations filed a complaint for injunction against the carriers in U.S. district court, Chicago.

10. August 6, 1962, carriers withdrew their first promulgation of July 17, 1962, and substituted a second based on their original section 6 notices.

11. February 5, 1963, organizations invite carriers to resume negotiations.

12. February 11, 1963, carriers rejected the invitation.

13. February 15, 1963, organizations renewed the invitation. Carriers accepted for March 13, 1963.

14. March 4, 1963, Supreme Court ruled against organizations' request for injunction, said both sides were free to use self-help.

15. March 13, 1963, conference lasted only 80 minutes, although B.L.F. & E. made offer to negotiate reduction by attrition of certain helper jobs.

16. April 2, 1963, district court in Chicago dissolved order restraining carriers' move to place second promulgation into effect.

17. April 3, 1963, President Kennedy issued order establishing Emergency Board No. 154.

18. April 11, 1963, through May 7, 1963, Emergency Board held hearings, first in Washington, D.C.; then beginning April 17, the hearings moved to Chicago; then beginning April 30, hearings moved to New York.

19. May 13, 1963, Board 154 issued its report.

20. May 20, 1963, negotiations resumed in Washington, D.C.

21. June 4, 1963, following a few meetings, as the June 10 deadline approached, Secretary of Labor W. Willard Wirtz called the parties together in his office for a progress report. The Department of Labor and Mediation Board entered the negotiations.

22. June 10, 1963, Mr. Wirtz wired the parties, asking them to agree to an extension of status quo at least until June 18, and they agreed.

23. June 14, 1963, the Secretary of Labor called a meeting in his office, announcing that he must report to the President that no agreement was reached.

24. June 15, 1963, President John F. Kennedy met with the parties in the White House and issued a statement urging them to extend the status quo until July 10, 1963, and to enter into the "hardest kind of collective bargaining," with the assistance of the Secretary of Labor, Assistant Secretary of Labor, and the National Mediation Board. He said if, by July 10 there has been no accord reached, he would ask for a report, and make "such recommendations to Congress as these circumstances appear to dictate." The parties agreed.

25. Between June 16 and July 2, 1963, the meetings continued, concentrating on the two principal issues—Fireman and crew consist.

26. July 2, 1963, the three train service organizations handed in a crew consist proposal which was in line with previous discussions on July 1. Carriers rejected the proposal forthwith—made none of their own.

27. Afternoon of July 2, 1963, Secretary Wirtz called the parties together for a meeting to say no progress had been made. July 3, he met separately with the parties, to explore possible further efforts.

28. July 3, 1963, carriers issued notice of intention to make their proposals effective at 12:01 a.m., July 11, 1963.

29. July 5, 1963, Wirtz called the parties to a meeting and proposed settlement of all issues by final arbitration if not otherwise disposed of. This offer was refused by the organizations, but offered to continue to negotiate.

30. July 9, 1963, President Kennedy called the parties to the White House, where he proposed in a statement that all issues in dispute be arbitrated by Supreme Court Justice Arthur J. Goldberg, and to report the decision by 10 a.m. the following day.

31. July 10, 1963, the organizations declined the proposal to arbitrate the dispute, but expressed the hope an alternative could be found. At a second meeting at the White House that afternoon, President Kennedy issued a statement proposing that the status quo be extended to July 29, with a six-man board to be appointed to review and report the facts and issues to Congress and to him, with no further extension to be requested. The parties agreed and carriers withdrew their notice of July 3, 1963, to make effective their promulgation.

VI. THE ISSUES IN DISPUTE

The following outlines the issues in dispute as contained in the requests of the parties (see PRC Report, app. B, "Proposals of the Parties"):

A. Manning issues

1. Consist of road and yard crews.
2. The manning of motorcars and self-propelled vehicles.

B. Basis of pay and assignment

1. Basis of pay—
   - (*a*) Basic pay structure.
   - (*b*) Basic workday, workweek, and work month.
   - (*c*) Overtime proposals.
   - (*d*) Guarantee proposals.
   - (*e*) Arbitraries, special or constructive allowances.
   - (*f*) Higher than standard rates.
   - (*g*) Mileage limitation.
   - (*h*) Split trip compensation.

2. Fringe benefits—
   (*a*) Nightwork differentials.
   (*b*) Holidays with pay.
   (*c*) Away-from-home terminal expense.
3. Scope of runs and assignments.
4. Combination of road and yard service.

C. Employment security

1. Financial protection.
2. Stabilization of employment.

VII. CONCLUSION

The scope of carrier proposals is so broad that virtually every rule of the collective bargaining agreement on each railroad involved is either eliminated or drastically affected. To illustrate this, we have inserted our exhibit No. 2 between pages 8 and 9, which clearly shows the impact of the proposals upon a typical western railroad, the Chicago, Burlington & Quincy.

In the entire history of the railroads, there has never been such a large-scale demand for revision of the working agreements in effect on the Nation's railroads placed before the parties.

The issues are so many and the proposed changes so drastic that the actual time used by the parties to date in negotiations has hardly scratched the surface. The dispute has been characterized by a singular lack of time spent in actual down-to-earth negotiations which could be truly characterized as collective bargaining. To further illustrate this feature of the dispute we are attaching our exhibit No. 3 which is a time study of presentation of trainservice organizations' case before Emergency Board No. 154.

Respectfully submitted.

C. LUNA, *President.*

BEFORE THE SIX-MAN LABOR-MANAGEMENT SUBCOMMITTEE, CREATED BY THE PRESIDENT OF THE UNITED STATES, JULY 10, 1963

POSITION OF THE EMPLOYEES

Filed on Behalf of Brotherhood of Railroad Trainmen

POSITION OF THE EMPLOYEES

The Board is respectfully referred to the PRC Report, appendix B, for the text of the proposals of the parties which are involved in this dispute.

The negotiations between the parties were confined in major part to the manning issues.

Of the negotiations on the manning issue, the greater part has been devoted to the fireman issue. As the fireman issue was not a part of the requests served on the Brotherhood of Railroad Trainmen, we will not attempt to cover that issue in this statement.

MANNING ISSUES (NOT INCLUDING THE FIREMAN ISSUE)

A. Consist of crews

1. This is a major issue. The national public safety as well as the rights to service of our represented employees is seriously involved.

2. The identical subject has been an item in several previous disputes leading to emergency boards under the RLA, but the carriers never were able to make a case which would justify meeting their request.

3. The PRC Report, in discussing the subject of crew consist, stated (p. 56):
"Considerable evidence appears in the record on this question although much of it is 'opinion' and very little of it is of direct probative value."

4. Again on page 57, the PRC Report stated:
"It appears that, under present operating conditions, the most typical and generally accepted crew consist, outside of passenger service, is a conductor (foreman) and two brakemen (helpers)."

5. Emergency Board 154 stated on page 14, as follows:

"As a general rule, road and yard train service crews consist of three men, one of whom is a conductor or foreman. The consist is not now the subject of a national rule, but is governed by numerous local agreements, rules, regulations, and practices, and in several States by statute.

* * * * * * *

"We believe that this is, essentially, a local problem which can be best handled by local negotiations. It should be possible for the parties in direct bargaining to establish guidelines nationally to provide overall direction for these local negotiations. These guidelines ought to be based on considerations of safety and efficiency and of undue burden on other members of the crew. Alleged violation of these guidelines would then be discussed locally. Should such negotiations fail to resolve the matter within 5 days, a grievance may be filed in accordance with the special procedures hereinafter discussed in section 6.

"We believe that no force reductions in this area should be made except by natural attrition. Educational scholarships, retraining allowances, and severance options should be available, not only in justice to the workers involved, but also to accelerate attrition."

6. In line with the above, the organizations submitted a proposal on July 2, 1963, which was not accepted or discussed.

7. Railroad negotiators refused to consider any proposal which did not include their position regarding terminal arbitration in writing the rule as well as future application of the rule.

8. Our position is that a reasonable proposal was made on July 2, 1963, in line with the findings of Emergency Board 154.

B. The manning of self-propelled vehicles

1. Briefly stated, carriers proposed, in their notices, to eliminate the use of train or yardmen to man these machines, at their option, and when train or yardmen are used, to pay them only from time required to report until time relieved.

2. The employees had made no specific request on this item, since existing crew consist rules and related agreements affect the use of roadmen and yardmen on the type of assignment involved.

3. During the meetings in Chicago, the employees tendered tentative terms for settlement on this item.

4. The work in question is not work which is no longer present. It is work of the type which is recognized as belonging to the operating employees, because it involves the operation of propelled machines under circumstances which, in most cases, requires either flagmen to protect the movement and other traffic (the recognized work of brakemen), a conductor to handle the train operation, and likewise a brakeman to handle the switches and other related work.

5. The operating employees who have been performing this work would, under carriers' proposal, be replaced with employees of another craft.

6. Our position is that a reasonable proposal has been made. We are prepared to negotiate further on the subject.

BASIS OF PAY AND ASSIGNMENT

A. Basis of pay

1. To any person not familiar with railroad rules and practices, the wage structure of the operating employees, particularly in road service, appears highly complicated.

2. The PRC Report, while making a recommendation, fell short of suggesting a more workable system—in fact, the report recommended an unrealistic method which was unacceptable to the employees.

3. The PRC Report, page 142, stated:

"The review and revision of the pay rules for operating employees in the railroad industry is a large task which cannot be accomplished in a brief period. The work of the Commission will have been fruitful if it has helped to furnish the parties with comprehensive data for the first time on the wage structure and if it has provided a detached critique of the present compensation system. The wage data and this critical appraisal, apart from any recommendations, should alone stimulate the parties in concert to review the fundamentals of the pay rules which have not been examined previously in this generation."

4. Emergency Board 154, on wage structure and compensation, including fringe benefits, recommended:

(*a*) A 2-percent wage increase to accompany a "thorough" wage structure revision.

(*b*) The new wage structure provisions would be optional with older employees. Guarantees to be developed to insure other employees approximately their current earnings.

(*c*) Relaxing of assignment rules so guarantees may be met through actual work performed within a normal number of hours.

5. Obviously, neither tribunal seriously proposed a specific and complete settlement of the wage structure issue, but recognized the need for further study and extensive negotiations.

6. Very little attention has yet been given this subject in direct negotiations. Emergency Board 154 spent a total of slightly over 4 hours with the train service organizations in this "compensation system * * * of extreme complexity," and was completely silent on any specific recommendations for a substitute system.

7. It is our position that the issue of any necessary changes in wage structure of road service employees has not been adequately reviewed, but the employees are entitled to receive benefits from the fruits of their labor, which has greatly increased in productivity, much more than industry generally. See Emergency Board 154 report, page 21.

8. Such benefits as proposed by the employees include work day, week, and month of shorter duration than the ones now provided—7-day week and 30-day month.

9. Yard service employees are overdue an adjustment in wages, which was recognized and recommended by the PRC report (PRC, p. 137).

B. Basic workday, workweek, and workmonth

1. Any revision of wage structure must be pointed toward present-day levels of compensation and practices.

2. These proposals of the employees have yet to receive proper consideration or to be the subject of negotiations.

3. It is our position that these proposals require the parties to include them in any revision of general wage structure as a step toward modern standards.

C. Overtime

1. This is another modern employee proposal, seeking long overdue payment of overtime on a level consistent with industry, generally.

2. Our proposal has not yet received consideration except in connection with the overall subject of wage structure.

3. Our position is that negotiations should include this item in setting up a revised wage structure.

D. Guarantees

1. PRC Report (p. 139) recommended that the parties seek a more consistent system of guarantees. For employees in regularly assigned yard, local freight and miscellaneous service on a daily basis of pay, a weekly guarantee of 5 days was recommended.

2. Emergency Board 154 failed to make specific recommendations on this subject, except in connection with "monthly or other periodic guarantee * * * assuring an opportunity for the appropriately covered employees to approximate their current earnings * * *."

3. This, again, is a subject not adequately touched in the negotiations. In fact, it has barely been covered in general discussions.

4. It is our position that a modern wage structure will include adequate guarantee protection to the employee against undue losses of earning opportunity consistent with his work—day, week, or month.

E. Arbitraries, special or constructive allowances

1. This item was virtually untouched by both the PRC and Emergency Board 154. It is our position that the carriers failed to make any case in support of their request.

2. This item has received very little attention in the negotiations to date. Similar requests to this one were presented by the carriers in the 1937, 1941, 1945, and 1949 movements and subsequently, and were withdrawn in the final settlement. The request in this instance should be withdrawn.

F. Higher than standard rates

1. These special rates are paid due to special local conditions amounting to extraordinary circumstances, requiring the application of greater than normal skill, entailing greater than normal hazard and discomfort. They are fully justified and should not be disturbed.

G. Mileage limitation

1. While carriers proposed to eliminate mileage limitations, the PRC Report recommended an extension of such limitations.

2. Emergency Board No. 154 did not make a specific recommendation on this issue.

3. It is our position that mileage limitation agreements serve a useful purpose, and a necessary regulation of the distribution of available work to the maximum number of employees which the employment opportunities will justify. This is consistent with our national policy in Federal Government and with our modern way of life.

H. Split-trip compensation

1. This proposal is intended to provide relief for an individual who may be released at some point for 3 or 4 hours in the middle of his assignment, but who cannot return to his home by reason of an obligation to be available for further service. The proposal is important in context with carrier proposals.

FRINGE BENEFITS

A. Night work differentials

1. The night work differential is an almost universal characteristic of wage structures in other industries. Also, there are already such differentials in effect on some railroads.

2. During the period of World War II, the National War Labor Board formulated a national policy allowing night shift pay generally in all industries.

3. Ample justification exists for the adoption of the proposed rule.

B. Holidays with pay

1. The reluctance of the carriers to adopt modern rules is amply exemplified in this issue. Requests in 1943, 1945, 1947, 1949, 1950, 1954, and 1955 were made, without success. In the 1956 movement, a part of the operating employees, in yard service only, were granted some form of holiday pay, and this was at the cost of a portion of the wage structure amounting to 4 cents per hour.

2. Paid holidays have been enjoyed in most of industry for many years, except railroads. BLS studies indicate agreements providing for paid holidays in agreements covering 1,000 or more workers have grown from 87 percent in 1952–53 to 96 percent in 1958. By 1958, over 70 percent of these provided for seven or more paid holidays.

3. This request is fully justified and should be included in any settlement reached.

C. Away-from-home-terminal expense

1. This issue is one of the very few which was the subject of constructive negotiations.

2. Our position is that these men who are required to be away from home in the service of the company are entitled to be reimbursed for expense away from home. Other employees of the railroads, such as officials, supervisors, and nonoperating employees, are already so reimbursed.

3. No good reason exists for denying these employees this request.

SCOPE OF RUNS AND ASSIGNMENTS

1. This proposal would permit the carrier to have the unrestricted right to establish, move, consolidate, or abolish crew terminals, merge seniority districts, or establish interdivisional and interseniority district runs.

2. This is a drastic proposal and is unnecessary. An agreement covering the establishment of interdivisional or interseniority district runs already exists. It is a bargainable subject, requiring negotiation to provide for the protection of the seniority, loss of homes, moving expenses, loss of employment rights, etc., which would be involved.

3. Our position is that the existing rule provides a vehicle for the negotiation of the changes in runs sought by the carrier. Carriers can and do negotiate on

the individual property for such changes under the particular circumstances prevailing. See page 16, Report of Emergency Board No. 154.

COMBINATION OF ROAD AND YARD SERVICE

MACH 4 — 22-330 — 1489, 1490

1. Carriers propose to wipe out the rules which separate rights to service of road and yard service employees.

2. Our position is that a continued separation of these primary classifications is necessary because the separation of the craft lines is based upon fundamental differences. These craft lines are perhaps the most basic in the industry, created by the dictates of efficient specialized handling of the different services.

EMPLOYMENT SECURITY

During the negotiations under the auspices of Emergency Board 154, the employee representatives advised that in the interests of reaching an accord, if satisfactory settlement could be reached on all other matters in dispute, this proposal would be withdrawn.

SUMMARY AND CONCLUSION

1. We have previously called attention to the broad scope of the carriers' requests, which touch on virtually every rule of the collective bargaining agreements in effect on these railroads.

2. The history of the dispute makes it evident from the carriers' approach that there was no intention to settle this dispute through the process of collective bargaining. Instead, from the beginning, the carriers sought to negotiate first by advertisement to obtain public sympathy, and then to achieve their goal through Government intervention to avoid a national emergency.

3. From the very beginning of the dispute, the carriers were adamant in their refusal to bargain. This attitude extended beyond the PRC, beyond Emergency Board No. 154, and is their position now.

4. Page 7 of our brief before you on the facts and issues reproduces a letter addressed to a general chairman following the initial conference on the property. Your attention is invited to the last paragraph of that letter, shutting off any possible negotiations on the property, although most rules of the agreements between the parties were affected thereby. See also exhibit No. 2, attached to that brief.

5. Since the filing of the PRC report, the carriers have insisted that any negotiations must be confined within the framework of that report. This position has been adamantly adhered to, despite the fact that the report was not binding on the parties. The carriers are attempting to make it so. This is one of the reasons for deadlock.

6. The carriers refused, during negotiations in mediation in Chicago, to set up subcommittees (other than their negotiating committee) to expedite the handling of the many aspects of the dispute.

7. The carriers have been very reluctant to come up with any proposals on any issue, and have failed to make counterproposals. On the other hand, the employees have presented realistic proposals on such issues as (1) fireman; (2) crew consist; (3) manning self-propelled machines; (4) interdivisional runs; and (5) away-from-home-terminal expense.

8. The employees involved in this dispute have not received a pay increase since March 1, 1961. Adjustments upward in their rates of pay are mandatory without delay. Instead, carriers are here attempting to reduce their wages in some instances by from 33 to 37.5 percent.

9. A simple example of the wage rates now in effect in road and yard service follows:

	Daily	Weekly (5 days)	Monthly (22 days)
Yard brakeman	[1] $22.18	$110.90	$487.96
Takehome pay (man and wife, based on deductions of $29 railroad retirement tax and $71.80 Federal withholding tax per month)		88.03	387.16

[1] Rates effective Mar. 1, 1961, paid holidays in effect.

	Daily	Weekly (7 days)	Monthly (30 days)
Road freight brakeman	[1] $18.45	$129.15	$553.50
Takehome pay (man and wife) based on deductions of $29 railroad retirement tax and $79 Federal withholding tax per month		103.98	445.50

[1] Rates effective Mar. 1, 1961.

NOTE.—Out of the above takehome pay, the brakeman is required to take care of all his expenses, such as food, lodging, etc., while away from home.

10. The take-home pay represents the balance after deduction of railroad retirement tax and Federal withholding tax. Approximately 25 States have State income withholding tax.

11. Special attention is directed to the exchange of correspondence which occured between the parties on February 5 and 11, 1963, wherein the employees were attempting to resume conferences on this dispute. For ready reference, the last paragraph of the carriers' letter of February 11, 1963, is quoted as follows:

"As an alternative, however, we are willing to resume negotiations immediately, if you will bind yourselves to an agreement which will make effective the recommendations of the Presidential Railroad Commission. This will, we are certain, alleviate any suspicions that may exist, that the suggestions contained in your letter of February 5, 1963, are in fact intended to do nothing more than stall and delay."

Respectfully submitted.

C. LUNA, *President.*

EXHIBIT NO. 3

Time study of presentation of train service organizations' case before Emergency Board No. 154

Date		Time (minutes)
Apr. 11	At Interstate Commerce Building, Washington, D.C. Opening statements—Wolfe, Neitzert & Schoene	205
11	At Statler Hotel (full Board)—general discussion, all organizations	90
18	Blackstone Hotel (Rosenman & Feinsinger)—BRT only, Chicago, Ill. (Switchmen's Union of North America and Order of Railway Conductors & Brakemen like time)	60
27	Drake Hotel (Rosenman & Kerr)—all organizations Chicago, Ill. (Broad issues and confidential memo—actual ultimatum). (Moved to New York City for purpose of devoting more time to case)	60
May 1	Gotham Hotel (Rosenman & Feinsinger)—discussed following:	
	Crew consist issue (only discussion)	102
	Interdivisional runs	130
	Combination road and yard	95
2	Gotham Hotel (Rosenman):	
	Technological change (advised to withdraw)	37
	Interdivisional runs	34
	Self-propelled equipment	62
	General discussion of entire situation	97
3	Gotham Hotel (Rosenman, Feinsinger—remained less than 15 minutes):	
	Presentation by Mr. Keyserling (economist)	60
	Presentation by Mr. Oliver (economist)	60
6	Gotham Hotel (Dr. Kerr): Wage structure (roadmen) (yardmen)	248
7	Gotham Hotel (all Board members present):	
	Wage structure:	
	Board suggestions in afternoon	38
	Board suggestions in evening	29

NOTE.—Total time, 1,407 minutes, or 23 hours 27 minutes. Less than 17 hours was actually spent on subject matters relating to train-service employees. Any discussion of employees' notices of September 1960 was limited to less than 10 minutes of the entire time. (This does not represent the time spent by the Board in discussion of the firemen's issue.)

Source: Prepared from notes kept by the Brotherhood of Railroad Trainmen.

Mr. MEREDITH. On pages 7 and 8 of that statement on facts and issues will be found a reproduction of the correspondence passing between a railroad representative and the general chairmen concerning

the railroads' requests dated November 2, 1959, and I would like to recommend to the committee that these two letters be read. The second paragraph of the letter to the general chairman of the BLE, B.L.F. & E., O.R.C & B., and BRT by Vice President for Personnel J. E. Wolfe specifically states, and I quote for ready reference:

> The conference was held to insure compliance with the procedural provisions of section 6 of the amended Railway Labor Act.

And a bit further, in the concluding paragraph, Mr. Wolfe told these chairmen, who then protested against the brief discussion which had been held as being in compliance with the provisions of the act, that:

> * * * it is obvious no useful purpose will be served by further discussions, in view of which the entire subject is being referred immediately to the Carriers Conference Committee which has been created for the purpose of handling the controversy * * *.

It was almost as if, gentlemen, Mr. Wolfe was fearful that some proposal would be made which might lead to a settlement on his property.

Now, this description of the handling on the railroad property, where the parties live who negotiated most of the rules which the railroads are trying to change in one big deal, is typical of what occurred on every other railroad party to this dispute in the United States.

The biggest part of these work rules are not national rules—they are essentially local rules, bargained by the parties and placed into the separate and individual schedules of agreement through local negotiations under the act.

Most of the rules which would be affected by settlement of this dispute are rules which have never been before the parties in local handling before, or they are rules which are best subject to change to fit local conditions by the parties to the individual agreement. This has been one of the biggest reasons for failure to reach an agreement, in my opinion.

It is virtually impossible for a national committee of railroads, meeting with national officers of the unions, to comprehend the true implications of a national settlement, for example, on the crew consist issue. No national rule is in existence. Rules which are in effect are not uniform, nor are the conditions under which the crews operate uniform. So that is just one issue.

Another issue involves interdivisional runs. A national rule was written to regulate this same issue in 1952, which provides for negotiation by the parties of the terms and conditions incident to the operation of such runs. The agreement rule was successful, although not all carriers exercised their option to adopt the rule. Those who did placed the rule into the contract on the individual railroad property, where it now rests.

Evidence was presented before the members of Emergency Board No. 154 disclosing that in a tabulation of interdivisional, interseniority, or intradivisional, intraseniority runs in operation on 18 U.S. railroads located in the East, Southeast, and West, over a 2-week period, a total of 3,894 train operations of this type were run. The actual statistics are included in our brief entitled "Summary, Proposals of the Parties," placed in evidence before Emergency Board No. 154, pages 50 and 51.

Issues which I feed to be requests involving rules of a local nature, not readily subject to national negotiations under the circumstances prevailing in this dispute are:

Crew consist.
Manning of motorcars and self-propelled vehicles.
Interdivisional runs.
Combination of road and yard work.
Guarantees.
Arbitraries, special or constructive allowances.
Higher than standard rates.
Mileage limitations.
Split-trip compensation.
Nightwork differentials.

Now, to make this record complete, I am stating the issues which I feel are of such a nature as to justify handling on a national basis, and again I will state that I am not commenting in any way upon the fireman issues.

The national issues are:

Basic pay structure.
Basic workday, workweek, and workmonth.
Overtime.
Holidays with pay.

I have already said to a good many persons that my belief is that rules of local origin, which are best known and which were negotiated between the parties on an individual railroad property, are not fit subjects for national or industrywide bargaining.

I have not changed my position. This committee will readily see that, with the elimination of the local issues from the overall dispute, very few issues are left to view.

I will go further and say that in this dispute, the issues I have described as national issues would be a substantial workload for the parties to resolve in their negotiations.

Add the local issues, and you have an overloaded dispute. The unions learned to their regret in the 1949, 1950, 1951 rules dispute, involving principally union requests, the danger of overloading the bargaining table with issues. The carriers have made the same error in this current dispute.

On October 17, 1960, an agreement was reached between the parties to this dispute to establish a Presidential Railroad Commission, the purpose being for this Commission to render a public service by providing an impartial study of the work rules involved in this dispute.

It was intended that this study be patterned after the recommendations of Emergency Board No. 109, a Presidential Board which investigated a dispute between the Order of Railway Conductors & Brakemen and the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees originating with a proposal submitted by the organization under date of March 15, 1949.

This request of the employees involved only two items, both in the category of wage structure proposals, namely, request for establishment of graduated rate of pay based upon weight on drivers—similar to that in effect for enginemen—and a request for establishment of daily rates of pay on a graduated basis so as to maintain the money differential between train and yard service employees and engine service employees.

The Board's recommendations were simply that there should be established a commission to review and to modernize the wage structure as a whole of the operating classifications in the railroad industry.

It is my understanding that the function of the Presidential Railroad Commission is being covered by another witness who is better qualified than I to review that phase of this dispute, therefore, I will pass on from the PRC and its report with this one statement:

There is in evidence before you on page 12 of our statement presented here today as a part of this record, identified as facts and issues statement presented to the President's six-man Labor-Management Subcommittee, a true and correct copy of an agreement entered into by the parties to this dispute as to the effect of the recommendations of the Presidential Railroad Commission, and I quote to you the text of that brief and clear understanding:

> It is our understanding that neither the findings nor the recommendations of the Commission provided for by the agreement of October 17, 1960, shall be binding upon the parties or either of them.

I believe, with this understanding clear to the committee, that any attempt to enlarge upon the terms of that agreement would be unnecessary.

Following the issuance of the report of the Presidential Railroad Commission, which was presented to the President February 26, 1962, and which was released to the public on February 28, conferences on the work rules dispute were resumed in Chicago on April 2, 1962.

Immediately, the railroads took the adamant position that the negotiations must be confined to making effective the recommendations of the PRC Report.

They stated that the carriers intended to discuss the PRC recommendations and the organizations could discuss anything they wished, and it was this unyielding attitude which led to the breakup of the conferences on May 17, 1962, when the railroad representatives walked out of the meetings when the organizations attempted to discuss their own proposals.

Our statement on facts and issues which has been distributed to all Congressmen and has been offered as a part of this record summarizes the time spent in these negotiations between April 2 and May 17 as follows:

Time spent on procedure: 3 days 3 hours 15 minutes.

Time spent on carriers proposals: 13 days 29 hours 30 minutes.

Time spent on employees proposals: 3 days 6 hours 45 minutes.

To prevent the railroads from unilaterally placing their changes in work rules into effect, the five unions invoked the services of the National Mediation Board on May 21, and on May 23, 1962, the parties met with Secretary of Labor Goldberg and representatives of the National Mediation Board in Washington, D.C.

Secretary Goldberg addressed the parties, urged them to make every effort to reach a settlement, and then admonished them that a nationwide railroad strike would be "unthinkable."

This was perhaps the first official indication that the administration intended to prohibit a strike. I believe this very feature of this dispute is a strong factor in the failure of the parties to agree, or even to reach the state of actual collective bargaining.

Collective bargaining can succeed only when each side of the table has an equal incentive to settle. Behind the scenes in this dispute has ever been the tipping of the scales to management's side by the strong indication that the public interest will not permit the unions to exercise their right to strike.

These railroad unions do no relish the thought of a nationwide railroad strike. They have taken every possible avenue open to them to avoid that alternative, even to the point of appealing to the courts, and I might add that the Supreme Court has affirmed the right of the employer to make effective his requests after exhausting the procedures of the Railway Labor Act, and has likewise affirmed the right of the employees to strike when this occurs.

To return to my story of this dispute, the Mediation Board conducted the negotiations in Chicago from May 25 to June 22, 1962, during which time these unions did seek to bargain with the carriers.

At the suggestion of the mediator, Chairman, National Mediation Board, Mr. Leverett Edwards, the five unions set up subcommittees in order to expedite the handling of the issues before the parties.

The railroads, however, would not respond, and the four carrier officers met with the unions' subcommittees one at a time.

The record will show that time after time, the organizations presented proposals on the issues in dispute, but the railroads made little or no response except to say that the PRC Report was their proposal, and to insist that they were agreeable only to making the PRC recommendations effective.

Proposals made by the organizations during the period of mediation were for settlement of the issues on interdivisional service, suburban and commuter service, manning of self-propelled vehicles, and features of the wage structure.

On June 22, 1962, the organizations were presenting specific written proposals to the carriers covering local and other freight service when the carriers suddenly walked out on the mediation proceedings, leaving Chairman, National Mediation Board, Mr. Leverett Edwards, without any alternative but to recess the case. This was the second time the representatives of the railroads had stormed out of the conference room rather than face the processes of collective bargaining.

Our time study of the negotiations between the period April 2 through June 22, 1962, discloses the following time spent in consideration of the indicated matters:

	Days	Time	
		Hours	Minutes
Procedure	3	3	15
Carriers' proposals	13	29	30
Organizations' proposals	3	6	45
Mediation	13	14	30
Total	32	54	00

I might add for the information of the committee my own views which I have already expressed on several occasions, which are that we have yet to have serious, down-to-earth, honest-to-goodness collec-

tive bargaining in this dispute, such as I have personally seen conducted in other disputes involving a possible national rail strike.

On page 20 of our statement before the six-man Labor-Management Subcommittee, which has been offered as a part of this record, is found the pertinent text of the position of the parties to the proffer of arbitration by the National Mediation Board.

Briefly, the carriers stated they would be agreeable to submitting the dispute, in its present posture, to arbitration, provided the parties could agree on the provisions of an arbitration agreement stating specifically the issues to be arbitrated.

This was not, therefore, an unconditional acceptance by the carriers of the proffer of arbitration.

The five organizations replied to the Mediation Board's proffer of arbitration by pointing out the failure of the carrier representatives to fulfill their responsibilities in mediation by walking out of the proceedings while they were in session, and they stated that the proffer of arbitration was premature for that reason.

However, they declined to accept arbitration, which the Railway Labor Act permits them to do. The Mediation Board then terminated its services under the Railway Labor Act on July 16, 1962.

July 17, 1962, the carriers served their first promulgation, consisting of what they stated were their section 6 notices as those notices were modified by the recommendations of the Presidential Railroad Commission. The five unions were faced with the necessity to call a strike if no other alternative could be found.

Since the terms of the Presidential Railroad Commission were not binding on the parties, the unions went to U.S. district court in Chicago for an injunction against the carrier's promulgation.

On August 6, 1962, before the court, the railroads withdrew their first promulgation dated July 17, 1962, and substituted a second promulgation which was based upon their original section 6 notices of November 2, 1959.

It was this second promulgation which the carriers are seeking to place into effect now.

From the start of this litigation on July 26, 1962, until the Supreme Court decision and the response to it by the district court on April 2, 1963, in dissolving the restraining order which prevented the carriers from placing their rules into effect, little or no progress was made in the handling of the dispute.

As a matter of fact, no conferences were held until March 13, 1963.

On February 5, 1963, the organizations wrote to the carriers inviting them to resume negotiations. The response from the carriers dated February 11, 1963, was negative, except for the last paragraph, wherein the railroads offered to resume negotiations if the organizations would bind themselves to an agreement to make effective the recommendations of the Presidential Railroad Commission.

This the organizations could not do, but they urged the carrier representatives in a second letter dated February 15, 1963, to "end the boycott of collective bargaining which railway management has maintained since June of last year."

Finally, in a letter dated February 28, 1963, the carrier representatives agreed to resume conferences on March 13 in Chicago.

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In the meantime, the Supreme Court handed down its decision, ruling against our request for injunction and stating that both sides to the dispute were now free to engage in "self-help."

On March 13, 1963, the parties did meet again, but the conference lasted only a total of 80 minutes, although President H. E. Gilbert of the Firemen made an offer to negotiate on the reduction of certain helper jobs, with the carriers making no counterproposal whatever before again walking out of the negotiations for the third time.

With the dissolving of the restraining order against the carriers by the U.S. district court in Chicago, in line with the Supreme Court's decision, the parties were again in a position to follow the terms of the Railway Labor Act, and the action of the carriers was to set April 8, 1963, as the date on which they would make their promulgation of rules changes effective.

On April 3, President John F. Kennedy issued the executive order establishing Emergency Board No. 154.

This Emergency Board, established in accordance with section 10 of the Railway Labor Act, proceeded to hold its first public hearing on April 11, 1963, in Washington, D.C.

Then on April 12, announcement was made that the sessions would resume on April 17 in Chicago. Sessions were held in Chicago beginning April 17, then on April 30, the Board moved to New York City. On May 7, the Board suspended meetings to prepare its report, which was then released May 13.

Emergency Board No. 154 undertook to mediate the dispute rather than function as an investigative body. An actual time study of the presentation of train service organizations' case before the Board reveals that out of the available time of the Board, less than 17 hours was actually spent on subject matters relating to them.

This time study is appended to the statement of this organization of facts, issues, and position of the employees which has been offered in evidence to this committee, and is identified as exhibit No. 3, the last page of the document.

The organizations, upon a study of the report of Emergency Board No. 154, expressed a willingness to resume talks in light of Emergency Board No. 154's report.

These meetings commenced in Washington, D.C., May 20, 1963; however, there was no progress made and Secretary of Labor W. Willard Wirtz called the parties to this office for a report on June 4, offering his assistance and that of the National Mediation Board, which was accepted.

As the deadline approached for end of the status quo period following the report of Emergency Board No. 154—a period of 30 days provided by the Railway Labor Act under section 10—Secretary Wirtz wired the parties, asking them to agree to extend the status quo voluntarily until at least 12:01 a.m., June 18, with other extensions possible. Both parties agreed to this extension.

Meetings continued until June 14, when Secretary Wirtz told the parties he was obliged to report to the President of the United States that no progress had been made. Then June 15, President John F. Kennedy called the parties to the White House where he asked the parties to agree to a further extension of the status quo until July 10, and that they engage in a "major effort" to reach a settlement and end this dispute.

Copy of his statement is appended to the report to the President by the Special Subcommittee of the President's Advisory Committee on Labor-Management Policy, which Secretary of Labor Wirtz made a part of this record, as appendix A–3. The statement speaks for itself.

Please note also the additional statements of President Kennedy dated July 9 and 10, appendix A–2 and A–1, bringing you to the present situation and, of course, the President's special message on the railroad rules dispute to the Congress of July 22, 1963, passing the problem to Congress.

I regret most sincerely that this dispute has been laid at the door of Congress. I also regret the circumstances which have acted to prevent a settlement. Above all, I regret that Congress is being asked to take punitive action of the kind proposed.

Call the proposed law by any name you wish and it still adds up to compulsory arbitration.

You have heard this issue kicked around a good deal in connection with this dispute, but I don't think anyone is really fooled about what the proposal really is.

In its simplest terms, "arbitration" is a means of settling a dispute between two parties through the appointment of a third party by agreement of the parties who agree that the decision of this third party will be binding.

On the other hand, "compulsory" arbitration in its simplest terms is abitration imposed involuntarily upon the parties by some authority. As compulsory arbitration is generally understood, it involves a situation where the parties are forced by a Government agency or by law to submit their dispute to a third party for a binding decision.

Compulsory arbitration has never been accepted in the United States. Only in time of war has anything approaching compulsory arbitration been used, and this was not by statute, but was a result of agreement by labor-management and Government after Pearl Harbor that strikes or lockouts could not be tolerated during the war period.

We are not now in a period of war. We are in a period of peace during which the employees of private industry have every right to expect to be permitted to bargain with their employers with the use of their only strength—the collective strength of their right to strike.

What concerned me, as one of the five chief executives involved in this dispute, was the possibility that these carriers, by creating a possible national emergency, could thus persuade Congress to act in their behalf in this single dispute, knowing full well that a precedent would then be established for settlement of all other labor disputes on the American railroads which threaten a national strike.

Before Congress decides to take this most serious step backward, let us take another look at what is happening to our economy.

Automation is the problem here in this dispute and automation is the most serious problem in the future of American economics.

Congress will be called upon to decide—is the public or the industry going to pay for automation? We think this industry can afford to pay the cost without burdening the public by allowing automation to take effect the only fair way—by complete attrition.

A complete financial investigation of the railroads, we sincerely believe, will fail to disclose the poverty they claim. It will disclose that it is just as Emergency Board No. 154 interpreted the evidence we placed before them—an industry which in recent years has made much progress and innovation, resulting in 40 percent fewer employees than were employed at the beginning of this decade, now handling substantially the same volume of traffic.

We feel it will reveal inadequate or antiquated methods of accounting which have incorrectly pictured the financial status of the railroads. Such an investigation could easily be the beginning of a new trend in railroad accounting. We think Congress should know the facts.

In conclusion, I want to impress this committee with the aversion of all of labor to compulsory arbitration, in any form, shape, or fashion. Our free collective bargaining system, and our free enterprise system, combined, could not survive the blow of the imposition of the compulsory system and retain its distinction as a part of the free world.

If these railroads are so vital to our economy that the employees in this giant industry must not be permitted to use their economic strength in bargaining with their employer, let us go just one step further.

If Government, through act of Congress, is going to step into this industry and regulate the employees so that they cannot effectively bargain with their employers, why not go the whole way and nationalize the railroads, because it is unfair to allow half the industry to operate under the capitalistic system and to place the other half under what is tantamount to socialistic control.

There is attached a supplementary statement, which with your permission, I would like to continue with.

Mr. WILLIAMS (presiding). All right, sir; you may proceed.

Mr. MEREDITH. Since preparing my statement which I have just presented, I have heard the testimony of Mr. J. E. Wolfe before this committee, and have noted his references to the financial plight of the railroads.

Mr. Wolfe, among other things, told you that the railroads accepted the recommendations of Emergency Board No. 154. I want to read to you these excerpts from that Board's report:

From page 5:

> We are mindful also of the necessity for progress in the railroad industry, for efficiency in order to meet the challenge of competing industries. We were impressed with the evidence submitted to us that the vitality and earning capacity of the railroads, as a whole, are improving, that the productivity of its workers is rising at a rapid rate, and that the industry can face the future with confidence and even optimism.

From page 21:

> Recent years have been years of progress and innovation for the carriers. Technological and organization changes have been many and far reaching. Forty percent fewer employees than were employed at the beginning of this decade now handle substantially the same volume of traffic. Productivity gains have outstripped those in industry generally by a wide margin.

In a nationwide television program sponsored by CBS which was broadcast on June 12, 1963, Judge Samuel I. Rosenman, Chairman of Emergency Board No. 154, made this statement:

> There's a general feeling about, Mr. Sevareid, that all the railroads are in dire financial distress. Whether this is a result of active propaganda by the railroads, or just the normal processes of information, I don't know, but we were very impressed by the testimony which the brotherhoods brought before us in the forms of charts—economic charts based upon official statistics, and in the form of testimony of economists, showing that with few exceptions, the railroads are doing much better financially, that this distress was not as acute or as general as a great many people think.

We have been urging a financial investigation of the railroads for some time. As a matter of fact, you will recall that Mr. J. E. Wolfe, testifying for the railroads, mentioned that the railroads had proposed the Presidential Railroad Commission to the employees in early 1959, and they rejected it, and they then appealed to President Eisenhower, who also declined to go along with it.

What Mr. Wolfe neglected to state was that the chief executives of the five operating organizations were asking that a complete study of the financial structure of the industry must be included in the work of the Commission as well as management practices which adversely affect the economic soundness of the railroads.

The railroads' appendix to Mr. Wolfe's statement before the committee, pages 31 through 44.

Again when the possibility of a Presidential Commission to study the dispute was being considered in 1960, the chief executives requested of the railroads that this Commission be authorized to include in its study the financial structure of the industry, and this the railroad representatives flatly rejected.

There is now a resolution before the Congress to investigate railroad finances, and I hope that resolution can be included with any legislation which may be passed in connection with this dispute in order that the full story can be told and not just part of it.

Another omission in Mr. Wolfe's statement when speaking of the Presidential Railroad Commission is the fact that both parties agreed that neither the findings nor the recommendations of the Commission provided for by the agreement of October 17, 1960, shall be binding upon the parties or either of them.

Mr. Wolfe's statement contains repeated references to the findings and recommendations of the Commission, stating in each instance that the carriers accepted them and the employees rejected them.

Likewise, he makes reference to proposals made by the railroad negotiators, each of which was an oral proposal based upon the management understanding of the PRC recommendations.

These proposals, all based upon the nonbinding recommendations of the PRC, as the railroads unilaterally interpreted them, constituted the so-called collective bargaining which Mr. Wolfe asserted the railroads were doing.

It was another unyielding position which blocked the real collective bargaining process in this dispute. The employees made it clear from the beginning of the meetings following the PRC Report that while they would not accept the recommendations as a whole, they were perfectly willing to give such recommendations due consideration in the negotiations.

We have never changed that position, but the railroads have never changed from their position that there will be no bargaining except to place into effect the PRC recommendations.

Each oral proposal made by the railroad has been to that effect, and on the major issues in dispute, which the railroads insisted must be settled first before going to another issue, the carriers have been unwilling to consider any proposal whatsoever which did not include a provision for final and binding arbitration.

Our analysis of the PRC Report indicates to us that the result would be not only a loss of jobs, but more important, a substantial cut in pay to those men left working.

Wages of some classes of road service employees would be reduced by from 33 to 37.5 percent. We simply could not accept such a reduction in wages so contrary to all trends of the present economy.

We were ready and willing to bargain; however, the railroads were not willing, for they were under no stress to do so.

Since the release of the PRC Report, these negotations between the railroads and the operating employees have been conducted under circumstances where the fact was made completely clear that no strike would be permitted.

Throughout the dispute, there was statement after statement to the press and to the parties that the public interest would no tolerate a nationwide strike.

The railroads set back, without any real incentive to bargain, and demainded that any settlement made would be the full terms of the PRC Report, which they had agreed in advance would not be binding on either party.

There was no incentive on the railroads to bargain—why should they? They had assurance from every side that there could be no strike. They had nothing to fear from an adversary without a weapon either for defense or for offense.

Feeling secure, the railroad spokemen, Mr. Loomis and Mr. Wolfe, have both made public statements that what is needed in the railroad industry is compulsory arbitration. This resolution gives it to them.

Our views on arbitration, I believe, are very clear, and I will not dwell upon that subject since it has been covered in the statement, but I want to impress upon this committee that the disposition of this dispute in such a manner that these railroad employees will be fairly dealt with in the future is of extreme importance to us. We are weary with this delay. The employees involved are being deprived of benefits they need for their very subsistence.

I told you in my statement (see p. 3 of the prepared text) that these employees have had no wage increases since March 1, 1961. That statement is correct. They are entitled to and deserve an immediate adjustment in wages to keep pace with the adjustments already given the nonoperating railroad employees as well as industry generally.

The point I want to make is this: We are representing a group of men whose services are important to the Nation—so important, it seems, that they cannot bargain with their employer equally on the economic level. Yet they are being made to suffer the most agonizing delays in the disposition of every request they place before these railroad managements.

Their grievances wait up to 7 years before being adjusted by the National Railroad Adjustment Board. Their requests for consideration, involved in this proceeding, are still unsettled after 3½ years of fruitless bickering with the railroad managements.

These men are entitled to more consideration in this dispute than they have received, and I most sincerely hope that this Congress will keep in mind in dealing with this problem.

Mr. LUNA. Mr. Chairman, and members of the committee, thank you for having allowed me the opportunity to voice the views of the employees' representative.

Mr. WILLIAMS. Thank you, Mr. Luna. This has been a most comprehensive and enlightening statement. I am not going to take much time but permit me to say that I am one member of this committee who quite frankly has a great deal of sympathy for the position of the carriers and sympathy for the position of the organizations in this controversy.

I am one member of the committee who has not yet made up his mind with respect to what the right thing to do might be about this problem. I do not want to vote to impose compulsory arbitration in this dispute unless that appears to be the only way that the public interest can be protected. I am not yet convinced of that.

Let me ask you this question. If the President's proposal to refer this matter to the Interstate Commerce Commission for arbitration is good in this instance, why would it not be good as a matter of general law in all instances where one of our basic industries is concerned?

Mr. LUNA. It would be the same thing. I am not saying it is good. But it would be the same thing.

Mr. WILLIAMS. If it has merit in this instance would it not also have merit in any other instance where a basic industry is concerned?

Mr. LUNA. It sure would.

Mr. WILLIAMS. There is no question but that a prolonged rail strike could bring on economic disaster in this country.

Mr. LUNA. The statistics show——

Mr. WILLIAMS. Let me put it this way: It would be disastrous.

Mr. LUNA. A prolonged one, yes. In my lifetime and I have been in railroading since 1925, we have never seen but a 2-day strike. The records show now that the railroads only handle 44 percent of the traffic.

Mr. WILLIAMS. By the same token, a prolonged strike of teamsters would also be disastrous, would it not?

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. In the same sense?

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. A prolonged strike of airline employees would be disastrous.

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. A prolonged strike of steel employees would be disastrous.

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. Communications employees?

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. Maritime employees?

Mr. LUNA. Yes, sir.

Mr. WILLIAMS. Electric utility employees?

Mr. LUNA. The same thing.

Mr. WILLIAMS. If it is right and advisable and proper to impose compulsory arbitration through the Interstate Commerce Commission on the railroads, why would it not be equally provident and proper to pass a general law that would refer or that would impose compulsory arbitration through the ICC on a strike of the teamsters?

Mr. LUNA. It would be the same thing.

Mr. WILLIAMS. On the Civil Aeronautics Board in the case of a pending strike by the airline employees. On the Federal Communications Commission in the event of a pending strike by the communication workers, or the Maritime Commission or the Federal Power Commission when the electric employees reached a point where they can't agree with management.

Mr. LUNA. It would be the same thing, sir.

Mr. WILLIAMS. I am just wondering why that has not been proposed if it is good in this sense.

Mr. LUNA. They have had strikes in those other industries and it was not proposed.

Mr. WILLIAMS. To be perfectly honest with you, this has posed quite a problem with me. The public interest has to be protected as in the case of these other groups I mentioned.

Mr. LUNA. I agree.

Mr. WILLIAMS. I am sure that every member of this committee is searching for an alternative. Do you have an alternative other than the one that has been suggested by Mr. Meany, which has been discussed already in the committee?

Mr. LUNA. Mr. Chairman, we took cognizance of what you are talking about. In other strikes they tie up the entire industry. The five chiefs got together and we decided that public interest should be protected.

We wrote the carriers on August 6 a letter and told them in case of a nationwide strike we would operate the commuter trains, we would operate the passenger trains, we would operate the military trains, and we would operate any other train that the President of the United States said need be operated to keep from creating a crisis during this time, and we would take the money that these crews were paid and put it in a fund and turn it over to a national charitable organization.

To this day the railroads have not taken the courtesy to answer that letter.

Mr. WILLIAMS. Was that in writing?

Mr. LUNA. Yes, sir. And every Congressman, every Senator, the Mediation Board, the President of the United States, and the railroads were all furnished that. They have not even taken the courtesy to answer it.

Mr. WILLIAMS. Mr. Staggers?

Mr. STAGGERS. I will be very brief because I think we have been over these issues pretty well and covered most of them.

It is your firm belief that this resolution would not be collective bargaining in any sense?

Mr. LUNA. It would be definitely compulsory arbitration.

Mr. STAGGERS. It is in your opinion compulsory arbitration?

Mr. LUNA. Yes, sir.

Mr. STAGGERS. Something alien to American workers and American industry alike?

Mr. LUNA. We have never been saddled in America with compulsory arbitration. I hope I never live to see the day we will be.

Mr. STAGGERS. As I said yesterday, I think if this does pass it will be the beginning of a new era, a new type of thing that we have not seen, although perhaps some other nations have. The only thing I can say is that I hope before the deadline or before the Congress acts that the two parties in dispute will have a chance to get together and work out their differences.

Mr. LUNA. Congressman Staggers, we could do that if they would take, in my opinion, that golden apple out from in front of the railroads where they think they might someday get compulsory arbitration. I don't blame them. If I were in their shoes, if I thought I could throw this in the laps of Congress and they would give me compulsory arbitration, I would play it to the hilt, too.

It is not Congress' job, it never has been Congress', to settle wage disputes.

Mr. STAGGERS. Mr. Luna, speaking in the same area that Mr. Williams, my colleague from Mississippi, spoke, we all want to try to be helpful.

I believe I am certain that we will try to come up with something that will be helpful. I know every member is hoping that the industry and workers will get together and work it out.

I do believe when reasonable men get together they can resolve differences by give and take. That is all I have to say.

Mr. LUNA. Mr. Staggers, our organization will soon be 80 years old on the 23d day of December. We have done that for 80 years. Now there is somethink wrong if we can't do it this time.

Mr. STAGGERS. That is true. I daresay that nearly every member of this committee has a railroad in his district and probably a member of the firemen organization or traincrew lives in the same block. We find them to be good citizens.

I am not saying that the railroads are not either, because I believe they are good citizens. It is just a difference of opinion. I mean management. I have no dispute with that. I think they are sincere. On their side it is a matter of trying to get together. We will, I am sure, try to resolve what will be in the best interests of all.

Mr. LUNA. Thank you. May I address myself to you, Mr. Chairman, before we move to the next one?

Mr. WILLIAMS. Surely.

Mr. LUNA. You asked what could be done other than the Meany resolution.

Mr. WILLIAMS. Yes, that has already been presented.

Mr. LUNA. If you will check into my brief you will find that only four of these items are national or national rules applied to them. The rest are local rules, rules that have been handled year in and year out by each individual committee on each individual railroad.

My opinion is if all we had left was the national issue that that would be a big enough load. But I think we could settle it. They are so embodied in their notice that it takes every rule in every individual contract which makes it a matter of impossibility.

We have never been able to have the carrier tell us exactly how many men we would have affected. We tried to get them to tell us what jobs they want relief on and to this day they have not told us.

Mr. WILLIAMS. Since you brought that up, Mr. Luna, let me give you an example by way of illustration. I got on a train in New Orleans going to Jackson, Miss., the Panama Limited, as I recall. It was one of the fast trains. We made a stop in McComb, Miss., about a hundred miles out of New Orleans. There was a complete crew change in McComb.

We went on to Jackson and I said to a crewmember, "How far will you ride?" He said, "I go to Canton, which is a hundred miles north of McComb." I said, "Will you spend the night and come back tomorrow?" He said, "No, I will catch one of the other trains and go back to McComb this afternoon." I said, "You make the run to Canton in the morning and back in the afternoon?"

He says, "No, when I do that I have made 2 days and I don't have to work tomorrow." I don't know whether that is an issue here or not. But here is a man who had actually worked for 90 minutes going north and made a day and he worked 90 minutes more going south and made another day. That means he worked 3 hours and made 2 days.

I do not know if that is in issue or not but how could that be defended?

Mr. LUNA. Who did you talk to, the conductor?

Mr. WILLIAMS. I am not going to say.

Mr. LUNA. I happen to know those runs. The engineers and the conductor operate that way.

Mr. WILLIAMS. The man I talked to was an officer in the brotherhood of railroads.

Mr. LUNA. The traincrews operate from New Orleans to Jackson. I rode the Panama not too long ago. Let us go a little further on that. That man operates by the way those trains were set up to run. The man, I imagine, if you looked at the sleeve of his coat, had at least a star and three bars and maybe two stars.

Mr. WILLIAMS. He is retired now.

Mr. LUNA. I know, Jimmy Pierce. He had been with that IC Railroad 50-some-odd years to get that job, and that was the "red apple" job on the IC Railroad. He had seniority over 50 years. I think if I remember, right before he retired they gave him a party in Chicago for being an employee for 60 years.

Mr. WILLIAMS. He was entitled to it.

Mr. LUNA. That was one job where Jimmy Pierce didn't tell you about the nights that he worked on the local and waded grass up to his neck and it was wet most of the time for the 30 or 40 years to get where he could hold that one "red apple" job.

Mr. WILLIAMS. I did not want to get Mr. Pierce involved in this. Also, Mr. Pierce was earning considerably more money for this hour and a half run from McComb and Canton than he had earned for the 16 hours he worked earlier.

Mr. LUNA. No. Those minimum jobs don't pay like you think they do. They are pretty easy. They are out of the rain. You wear a nice uniform.

Mr. WILLIAMS. He was paid a day's pay for 3 hours.

Mr. LUNA. A passenger pay is less than freight pay.

Mr. WILLIAMS. How can you explain that to the public? I am not arguing. I just want to explain that to the public.

Mr. LUNA. I am not arguing. I just told you that man worked 55 years to get that job where he could do that.

Mr. WILLIAMS. I know men who followed mules for 16 hours a day for 40 years and they are still doing it.

Mr. LUNA. I did, too, but that sun gets pretty hot.

Mr. WILLIAMS. I just do not see how that kind of thing can be defended.

Mr. LUNA. We can correct that. We have offered to correct that.

Mr. WILLIAMS. I do not know whether that is an issue or not but if that type of thing is in issue, then it should be resolved.

Mr. LUNA. We are willing to do that. That will come under the wage structure. Years ago when that wage structure was set up, Mr. Chairman, on the hundred miles you are talking about, it took 5, 6, or 7 hours to make it. No use kidding ourselves, if they were lucky they could make it in 6 or 7 hours. But there is one thing you have overlooked.

You know when they took 7 or 8 hours to make that 100 miles, they charged them just as much for a ticket as they did when it took 6 or 7 hours.

Mr. WILLIAMS. That is true.

Mr. LUNA. They don't reduce the fare any by going faster.

Mr. WILLIAMS. I do not think that gives me anything to explain to my people, why Congress does not do something about these hour and a half days.

Mr. LUNA. There are very few of them, my friend. Very few of them; we can and will correct that.

The CHAIRMAN. What is the difference between a trainman and a brakeman?

Mr. LUNA. They are the same.

The CHAIRMAN. Thank you.

Mr. WILLIAMS. Since he asked that question, I want to find out. We have the Brotherhood of Locomotive Engineers. That is made of engineers?

Mr. LUNA. Yes.

Mr. WILLIAMS. We have the Brotherhood of Firemen?

Mr. LUNA. That is made up of firemen and some engineers belonging to it.

Mr. WILLIAMS. Then you have a Switchmen's Union?

Mr. LUNA. Yes, that is made of switchmen.

Mr. WILLIAMS. You have conductors?

Mr. LUNA. That is made up of conductors.

Mr. WILLIAMS. Then you have the Brotherhood of Railroad Trainmen. Doss that take them all in?

Mr. LUNA. We represent conductors, switchmen, trainmen, and we have over 10,000 bus drivers. We also represent dining car stewards in both the United States and Canada.

Mr. WILLIAMS. Can these people belong to all the brotherhoods?

Mr. LUNA. They can. It is pretty expensive if they do.

Mr. WILLIAMS. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

On page 8, you have a statement. First, do you agree with the other brotherhoods in their statement of favoring the so-called Meany proposal?

Mr. LUNA. Yes, sir; I do for this reason: It will get the pressure off both parties. What I mean by that, it will give us a chance to negotiate without facing a deadline or compulsory arbitration looking us in the face.

It will take that red apple away from the railroads that they have been trying to bite ever since we started, and that is compulsory arbitration or getting Congress to pass a compulsory arbitration act.

Mr. YOUNGER. I cannot see the difference between the ultimate objective of that legislation than the statement which you have here which says that the right to strike will never be stripped from the workers in the private industry.

This bill and its ultimate goal, if they do not negotiate, will prevent a strike. It can't help it.

Mr. LUNA. You say will prevent one?

Mr. YOUNGER. Sure.

Mr. LUNA. Either one will not strike as long as that bill is in there. Mr. Congressman, you have offered this one feature. The railroads stand to gain in this. They stand to gain by having less employees. If they see that they have to negotiate to get this gain I think they will sit down and negotiate with us. But if they see they can sit still and get Congress to pass some law that will give them compulsory arbitration, they stand to gain more by compulsory arbitration than they do by negotiation.

Mr. YOUNGER. In setting up that provision you have a watchdog committee of the Senate and the House under the Meany proposal and they are to watch the negotiations. Of course, if either side drags their feet and are not negotiating in good faith, they can so inform the public and they can so inform Congress and the Congress then would be in a position to act, which would be arbitration.

Mr. LUNA. It doesn't have to be arbitration, does it?

Mr. YOUNGER. That is what the bill provides. I do not see that it provides anything else.

Mr. LUNA. It could be seizure. In other words, as long as that bill is in there, neither party can use their economic strength, you might say. But it will give us a chance to prove to Congress and the public who has been dragging their feet. I don't think Congress or the public would see the same light of this case as they are now if 30 days after this Congress comes in and says the organizations have made counterproposals, they have tried to get them off center and the railroads stood against the fence and wouldn't move, they wouldn't have the same light on the picture.

Mr. YOUNGER. That is the only hope that you have. But if it does not work out that way, the only other outlet that Congress would have would be to make some kind of arbitration proposal or some kind of act of that kind.

Mr. LUNA. Or a seizure act.

Mr. YOUNGER. One or the other.

Mr. LUNA. This is nothing unusual in this industry for these long negotiations. It took us 4 years of negotiation to get a 5-day week for our yardmen that we represent. Of course, we were asking

for something and no one got excited about it. They just kept putting us off and off. I have been on three or four of these national rule committees when I was general chairman and when I was vice president, and it is nothing unusual.

The only difference in this one and the rest is the carriers would come this time. I can take you back through history and they go this way time after time. But the main hope we want, Mr. Congressman, is for a settlement. We are big enough to say, "I will negotiate a settlement and take it out of Congress' lap." But one side can't do it by themselves?

Mr. YOUNGER. On page 24 you speak of the inadequate methods of accounting. I understood, and I may be entirely wrong on this, that the method of accounting on the railroads and their reports was specified by the ICC.

Mr. LUNA. You are just as right as can be, Mr. Congressman, but that accounting system, so I am advised, has not been brought up to date since 1800-some-odd.

Mr. YOUNGER. That is the fault of the ICC, then, because they can prescribe the accounting method, if I understand it correctly.

Mr. LUNA. I will let somebody else testify about the ICC. I would rather not talk about them. I was told a long time ago that if I couldn't say something good about anybody, don't talk about them.

Mr. YOUNGER. It is true they have that right?

Mr. LUNA. I wouldn't be qualified to answer that, Mr. Congressman.

Mr. YOUNGER. You just admitted that the ICC prescribes the rules.

Mr. LUNA. Yes, sir.

Mr. YOUNGER. If you want them to prescribe different rules, it would have to be up to the ICC.

Mr. LUNA. I would have to say you are right, Mr. Congressman.

Mr. YOUNGER. You can't put the whole blame at the door of the carriers because they are also under the ICC.

Mr. LUNA. I would say, this, Mr. Congressman: I wouldn't fight a financial investigation as they are fighting the ones that they have been trying to have on them if their bookkeeping system is up to date where people can understand it.

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

The CHAIRMAN (presiding). Mr. Rogers?

Mr. ROGERS of Texas. Mr. Luna, there are so many questions that can be asked and so many have and these hearings have been very rewarding. There is one thing that has been interesting to me and that is the continued reference to the term "compulsory arbitration."

In America the word "compulsory" is abhorrent to most anyone. The thing that impressed me was that there was quite a bit of complaint about the use of the term "featherbedding" as being a misnomer and a derogatory term and was used for the purpose of casting reflection on one group.

I am hoping that this word "compulsory arbitration" or this term, has not been used for that same purpose. It seems that everyone grabs onto the term. Yet the President of the United States in his message to the Congress used the term or used the paragraph in his reasons for sending this up here, "compulsory arbitration of this dispute by a special or congressional panel has been rejected as inconsistent with the principle that solution is reached through free collective bargaining should always be permitted and preferred."

Why do you think this resolution is compulsory arbitration if you are going to use those terms?

Mr. LUNA. Mr. Rogers, we read in our brief that when someone imposes on two parties that someone else will decide the issue, that is compulsion.

You will agree to that?

Mr. ROGERS of Texas. Yes.

You go ahead.

Mr. LUNA. This bill that was sent by the President is definitely a bill where Interstate Commerce would decide the issues.

Mr. ROGERS of Texas. That is where you differ with the President.

Mr. LUNA. I didn't say I differed with the President. I told you what the bill said.

Mr. ROGERS of Texas. He says one thing and you say another. But the point is this: You stop short when you say that it settles the issues in dispute. As I understand it, the resolution is only for the purpose of permitting the ICC to lay down the ground rules while collective bargaining is being carried on to settle the dispute.

Mr. LUNA. Mr. Rogers, we are neither one naive enough to think that if they laid down the ground rules as you talked about, in 2 years time that would be here right back with the same subject.

You know and I know we would be back here with it. But what would we do? Let us go a little further. We are both grown men.

If the ICC said that you have one man on a crew, that is enough. Two years later, we ask for three. Do you think we would get these three men back? They would say "No."

Mr. ROGERS of Texas. You mean at the end of the 2-year period?

Mr. LUNA. That is right.

Mr. ROGERS of Texas. What you are saying in effect is that whatever ground rules the ICC laid down that you feel that you would be forced to settle for those ground rules?

Mr. LUNA. We would be stuck with them unless we did settle for them.

Mr. ROGERS of Texas. Now suppose the ICC said, "We think this thing is going along all right like it is and we want to leave these firemen where they are and we want you, Mr. Railroad, to comply with these other requests of the unions."

Do you think then by the same token that the railroads would be stuck with that?

Mr. LUNA. I think they would. But we have dealt with ICC for years. We can't get them to apply what the law calls for, let alone something else.

Mr. ROGERS of Texas. My conclusion then would be that really you are not talking about compulsory arbitration here but lack of faith in the ICC.

Mr. LUNA. We are talking about both, Mr. Congressman.

Mr. ROGERS of Texas. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Luna, you referred to the President's statement on page 5 of your statement, I believe, and called attention to the fact that you would not agree with a part of it in which he says the carriers on that date can be expected to initiate work rule changes along the lines of those approved by various panels. In other words, you felt that was not exactly accurate.

Mr. LUNA. That is not accurate. We know what they served on us and they are the rules of 1959. We have had people send them in from all over the United States. They are not the PRC, they are not the Emergency Board Report. The rules they propose to put in effect are the rules that they served on us in 1959. I would like to read to you what the last part of it is, but we don't have it here in our files.

Mr. NELSEN. The point I wish to bring up next is this: This special subcommittee of the President's Advisory Committee in the report to the President on the rail dispute, this report is signed by Mr. Wirtz, by Mr. Meany, and the remainder of the committee, and I am sure you are acquainted with them.

On page 3 of this report which Mr. Meany has signed, and others, it states that the carriers announced on July 17 of 1962 their intention to put into effect on August 16 new rules based on the recommendations of the Commission.

Mr. LUNA. That is right.

Mr. NELSEN. Then the Brotherhood, as I understand it, of Locomotive Engineers, brought action, did they not, restraining them from proceeding with these rules. Then the carriers then instituted the rules of 1959.

Mr. LUNA. They withdrew them in the court after they argued a half day before the judge.

Mr. NELSEN. Under the circumstances, it is true that the brotherhoods brought action against the application of those rules based on the recommendation of the Commission; is that not true?

Mr. LUNA. We brought action for this reason: The rules they were putting in was their interpretation of the PRC Report, and those rules, some of them, never had been handled on a local property in accordance with the Railway Labor Act. That was our whole suit. In other words, the PRC went beyond the 1959 notices.

Would you mind if I tell you just one of them?

Mr. NELSEN. Surely.

Mr. LUNA. One of them was the compulsory retirement for 70, 68, 67, 66. That was not in either of the organizations' proposals or in the carriers' proposals, and the PRC came in with a report on it. Neither one had asked for it. But they were going to put it in. What they were trying to put in, and we took them to court on, was their interpretation of the PRC Report, and some of the things were not in either the notices and was a violation of the Railway Labor Act.

Mr. NELSEN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Of course, you keep referring to it and others, too.

Mr. LUNA. What is that, Mr. Harris?

The CHAIRMAN. You keep referring, and witnesses of the brotherhoods before you keep referring to the fact that what they propose to put into effect is the work rules of 1959.

Mr. LUNA. That is right.

The CHAIRMAN. The railroads cannot propose anything else at this stage, can they?

Mr. LUNA. I will say this, Mr. Harris——

The CHAIRMAN. I am talking about insofar——

Mr. LUNA. As far as the Supreme Court, no. The same Supreme Court said we had a right to use self-help and strike. One part of the

Supreme Court decision is being lived up to and the other part they are saying we can't use it.

The CHAIRMAN. You have continued to refer to the fact, critically as I understand, that the railroads are not putting or attempting to put into effect the recommendations of the emergency board.

Mr. LUNA. That is a fact.

The CHAIRMAN. You are quite critical, and maybe properly so, that they tried to put in the proposed rules of 1959.

Mr. LUNA. That is right.

The CHAIRMAN. They at this stage cannot legally put in any other kind of rules other than those proposed in 1959 because it would not be in accordance with the Railway Labor Act.

Mr. LUNA. They had not been handled under the Railway Labor Act.

The CHAIRMAN. That is right. They cannot at this time legally interpose different rules unless you have an agreement between yourself as to what would be the situation.

Mr. LUNA. You entered into something that should have been brought out a long time ago.

The CHAIRMAN. There has been continued reference to it, yesterday and the day before and today, and I think it should be brought out. Both of you are represented by very able counsel. You have good lawyers on both sides. Neither of you are going to have your counsel to tell you to try to do something you can't do under the law.

Mr. LUNA. Something that I think shoul be brought out here is that we have been to emergency boards before. At no time have we ever received a decision from an emergency board that could be put just as it came out of the emergency board. You have to make implementing agreements on what they say to conform with the agreements you have. That is the reason their 1959 notices are not notices that can be put in or not notices that we know what they will do to us, because heretofore we have always sat down across the table and negotiated these implementing agreements. We haven't done it in this case.

The CHAIRMAN. Mr. Luna, I appreciate that as one man to another, and I can very well understand, and we can talk about all of this as we have been doing all we want to and use up all the time, but we are not getting to the crux of the matter.

You leave the impression, and I hope, Mr. Moss, you don't mind the interruption at this point—or rather, Mr. Friedel—but what I have tried to stress since these hearings started, that we ought to stay with what are the actual issues and see if we can develop something during these hearings that reasonable men, considering the actual issues at stake, can talk about.

Mr. LUNA. I am for that.

The CHAIRMAN. I know, but you have been talking, as have others, and I don't think I misstate this at all—I think every member of this committee gets the impression—that you are telling us that the matter is just as far apart as the original proposals of 1959 and a strike of August 29, 1963, is——

Mr. LUNA. No, I am not trying to tell you that.

The CHAIRMAN. That is what you have been arguing about here. We are not talking about the issues as are set out, which I have tried

to insist that we talk about, which Mr. Meany and Mr. Hodges and Mr. Wirtz and the rest of them agreed and submitted to the President as to what was actually at stake here.

I want to see some of you people get down and talk about these things which everybody says is the problem, the things that need to be resolved. If we could get down to that, I believe we could maybe help you and the President and Mr. Wirtz and everybody else to try to get this together.

Mr. LUNA. Mr. Harris, may I say one thing? What Mr. Wirtz, what Mr. Meany, and what the rest of them said, until both sides have signed it, it is not an agreement. I am hopeful someday we will reach one.

The CHAIRMAN. You are trying to talk about agreements now. I am trying to get you to get to the point where you can talk about coming to an agreement.

Mr. LUNA. OK, sir.

The CHAIRMAN. That is what I am trying to do.

Mr. LUNA. I will buy that.

The CHAIRMAN. Do you disagree with the factual background statement in this report signed by Mr. Block, Mr. Leighty, Mr. Meany, Mr. Saunders, Mr. Wirtz, and Mr. Hodges? Do you disagree as to what the real problem is here?

Mr. LUNA. As far as they went, no.

The CHAIRMAN. Do you tell this committee that they did not go far enough to cover all the issues?

Mr. LUNA. I am telling this committee that what they told is information both sides gave them. But the question that came up is what rules they were going to promulgate and was their 1959 notices.

The CHAIRMAN. You are going back to that again.

Mr. LUNA. Isn't it a fact?

The CHAIRMAN. I guess there is no need for me trying to help in this matter. That is what I am trying to do. The President of the United States, the Secretary of Labor, and certain of both railroads and brotherhoods have said to this committee of record if these first two issues could be resolved, then all of the rest of them could be resolved.

Do you agree with that or not?

Mr. LUNA. I wish I did. I wish I could tell you I did, but there are 80 others besides those 2 and nobody has talked about them. That is what is worrying us.

The CHAIRMAN. Of course, you are not involved in the firemen's trouble.

Mr. LUNA. No, sir; thank goodness.

The CHAIRMAN. That is, your organization is not, except as one brotherhood to another. You are involved with the crew consist.

Mr. LUNA. Yes.

The CHAIRMAN. They have all told us that they come within a hairbreadth of reaching an agreement on that.

Mr. LUNA. I will agree with that.

The CHAIRMAN. The President has said himself that if it were only the economic questions involved, he would never submit any recommendations. I must say again if we could get everybody to center their minds on these questions here and try to get agreement

for them, we could do something for the country and I know that is what you want to do as well as we.

Mr. LUNA. I agree with you. Do you think it would be possible on whatever legislation has passed to just cover the fireman and the crew consist?

The CHAIRMAN. I think it probably would be not only possible, but likely, if it was impressed on the minds of everyone that had a responsibility here that those were the real two issues that had to be settled. As far as I am concerned, I am willing to limit it to them.

Mr. LUNA. I could sleep a lot better if I knew that.

The CHAIRMAN. All parties said so. I have no one to believe except those who are both familiar, and that includes your group and the rest of you, and the other side, and those who have tried to say so sincerely.

Mr. LUNA. Thank you, sir.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Luna, in the past we have been hearing a lot about the carriers have accepted the PRC and the Emergency Board recommendations and the brotherhoods rejected them. This was repeated time and time again. You make the same statement yourself.

This morning when I asked Mr. Wagner a question, he said accepting is one thing, but they have never put it in writing. I want to know, have you made any counterproposals in writing?

Mr. LUNA. Every subject we have here.

Mr. FRIEDEL. You have put it in writing?

Mr. LUNA. Yes, sir.

Mr. FRIEDEL. For whom?

Mr. LUNA. Mediation Board, Secretary of Labor. We did that a year or a year and a half ago in Chicago. We have also given them some new ones since we have been in Washington.

Mr. FRIEDEL. Are you referring on pages 6 and 7 of your statement?

Mr. LUNA. No, sir. On pages 6 and 7 are some of the things that we would like to have. We have also given them proposals on their section 6 notices, too, sir. We have not hardly discussed anything that we have in our section 6 notices. We have not gotten to those. They walk out before we can talk about them.

Mr. FRIEDEL. I specifically refer to your statement on page 4 where you say:

> I am speaking of such basic rules as the wage-structure rules.

Mr. LUNA. That is it.

Mr. FRIEDEL. You say:

> I am not referring to the firemen issue. I am speaking about pay rules, assignment rules, seniority rules, crew consist rules, and even rules covering the regulations of minimum and maximum earnings on road and yard employees.

Were these put in writing?

Mr. LUNA. What page are you on?

Mr. FRIEDEL. Page 4 of your statement.

Mr. LUNA. We gave them a proposal on the road-pay rules. On the assignment rules, that is one of the things that comes out of there. The seniority rules is one of the things that derives from that. We give them a proposal on crew consist. We give them a proposal on manning of motor cars and self-propelled vehicles.

Mr. FRIEDEL. You are referring to pages 6 and 7 of your statement now; is that correct?

Mr. LUNA. I am referring to page 12. Turn to page 12.

Mr. FRIEDEL. I notice on page 6 you say:

> Therefore, we propose such rules as a shorter workweek, improvement in overtime pay, split-trip compensation, differential for night work,"

and all the rest.

Mr. LUNA. On page 6 you are talking about?

Mr. FRIEDEL. Pages 6 and 7.

Mr. LUNA. Those are section 6 notices we served on them, sir.

Mr. FRIEDEL. Do you think this would cost the railroads more money?

Mr. LUNA. Yes, sir; it will cost them more money.

Mr. FRIEDEL. They would not be able to eliminate any jobs.

Mr. LUNA. This has nothing to do with elimination of the crew consist. It is not in here. This is things that other industries enjoy that we don't enjoy.

Mr. FRIEDEL. These are suggestions you have made.

Mr. LUNA. Yes, sir, section 6 notices.

Mr. FRIEDEL. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Luna's statement was clear and concise and forthright. I had not anticipated that I would need to ask any questions, but I have become concerned with this matter of compulsory arbitration. My dear colleague from Texas, Mr. Rogers, brought it up. He said that the President said that it is not compulsory arbitration, and the organizations have insisted it is.

I guess I am probably the worst storyteller of any Member of Congress. I remember somebody wrote me who was writing a book and asked me to furnish a favorite story, and I didn't have one. There is one story that does stick in my mind however. It seems to me that perhaps it was Abraham Lincoln who asked somebody if they called a dog's tail a leg, how many legs does he have, and the man replied "Five," and Lincoln said, "No, to call a tail a leg doesn't make it so."

So when the President says that this is not compulsory arbitration in my opinion it doesn't mean that it is not.

Mr. LUNA. I will buy that, Mr. Congressman.

Mr. CUNNINGHAM. Mr. Luna, this has been going on for 4 years and has finally reached the crisis stage. The matter has been thrown in our laps. Do you in all of your experience have any notion as to what the Chief Executive could have done knowing this was becoming and had become a very serious thing. What could he have done within the last 18 months or 1 year or 6 months?

Mr. LUNA. Mr. Cunningham, you state it has been going on for 4 years. That is a little farfetched. During the entire time up until the last 2 weeks that we were in litigation we tried to get conferences with them. They would not meet with us. The time consumed on this case, I have spent more time on a local property that had 100 men trying to negotiate a new contract than we have spent on this entire case.

Time and time again, as far as stretching out from one point to another; yes. As far as the time actually consumed, we have not consumed much time, actually.

Mr. CUNNINGHAM. Would you be hopeful that the Chief Executive, whoever he may be, recognizing your position, would you have any thought as to what he might have done other than throw this into the laps of Congress?

Mr. LUNA. Yes, sir. I think that when we had the first meeting with Secretary of Labor Goldberg and he told us that a strike was unthinkable, had he told us that the Government was not going to interfere, that it was our matter that had to be settled, I think we would have had a settlement.

Mr. CUNNINGHAM. I appreciate that observation, Mr. Luna, and I appreciate your testimony. I have no further questions.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Along the same line, looking back over this very trying problem which has evolved considerably from that which existed when the notices were first proposed, you certainly would not affix the primary responsibility for the failure of negotiations in this instance on the honest expression of conviction of the Secretary of Labor as to the attitude either of the Government or the public toward a strike; would you?

Mr. LUNA. No, sir. If you want to go back to the onus, if I had my say in it, we would never have had national handling. If it had never been in national handling we would never have been up here.

Mr. Moss. We are going to speculate on the impact of statements and ideas on the climate of negotiations, so I think we ought to speculate a little on the impact of a strike on the Congress itself, called upon to act upon this problem with a strike in process. You experienced it once back under President Truman.

Mr. LUNA. I was here.

Mr. Moss. It doesn't create the atmosphere most conducive to constructive and objective legislative action; does it?

Mr. LUNA. No, sir. We don't want a strike any more than anyone else. I witnessed the week before last down on the Florida east coast a strike that had been in progress for over 7 months. I walked the picket line. I wondered why someone had not taken an interest in that. Those boys were out of work. Some of them are losing their homes. Some of them their cars. It has been 7 long months and it was caused by the Florida East Coast Railroad not giving the men on that property the same rate as the men on the adjacent property and all the United States got.

Mr. Moss. I have tried in the course of inquiries to a number of witnesses to establish one fact. Both the proposal of Mr. Meany and the proposal of the President have the two same basic objectives.

Mr. LUNA. A settlement.

Mr. Moss. A settlement. The primary objective is a continuation of railroad service and a continuation of a maximum effort at bargaining.

Mr. LUNA. That is right.

Mr. Moss. Those are the two basic objectives.

Mr. LUNA. That is right.

Mr. Moss. We have a difference in method in achieving this, whatever they call it. I think for those who want to deal in semantics, if we wanted to really get into what is meant by "compulsory" in a degree of finality, then we could make a good case for the fact that it is or is not compulsory arbitration.

In the first place, it would not become arbitration. It would become a rulemaking procedure before a body established by law for the purpose of making rules, whatever the authority granted to it by the Congress, so that there could be a very serious question raised as to whether compulsion in the orthodox sense, of an arbitration procedure, would be imposed or proposed by the resolution before the committee.

But I think my sentiments are those expressed by my colleague from Mississippi, Mr. Williams, and I think the consensus of the majority of this committee, convinced sincerely that this can be solved by other appropriate methods. We would resort to compulsion in any degree only as a last resort.

Mr. LUNA. I hope so.

Mr. Moss. Reading your statement, I note that you bring very clearly in focus something which I regard as most important. It has been touched on but not with the degree of precision your statement treats it with, the fact of the national nature characteristics of some of these rules, and you say there are four. You exclude from that specifically the firemen issue.

Mr. LUNA. It is a national rule.

Mr. Moss. That you feel is a national rule?

Mr. LUNA. Yes, sir.

Mr. Moss. But these other matters, one of them very much in context with the overall discussion here, that of crew consist, you do not feel is a national rule?

Mr. LUNA. Mr. Congressman, we just have 30 percent of the railroads in the United States that even have a crew consist rule in their agreement. We have places along the coast where they have fog that they have to put on more men so they can see signals. We have cases out on the plains where you can see 10 miles that they don't have to have as many.

It is something in my opinion I don't think we can sit down and write a national rule for. Each part of the country has to be governed by the terrain and buildings and things that they see, and the conditions of the weather. It has been shown for 80 years that only 30 percent of the railroads have a national crew consist.

Mr. Moss. Those 30 percent of the railroads, do they have them systemwide?

Mr. LUNA. No, sir; they don't.

Mr. Moss. In other words, the crew consist rules have evolved as the result of localized needs.

Mr. LUNA. Yes, sir. A good example on the Santa Fe Railroad which I come off, on the gulf line we have a crew consist. Less than 3 years ago they got one on the coastline and the big part; the eastern-western line doesn't have a crew consist yet.

Mr. Moss. You list on page 12 a number of other items which you feel do not readily lend themselves to rational treatment on a national-rule basis.

Mr. LUNA. Yes, sir. There should not be any, in my opinion.

Mr. Moss. Of course, I think one of the basic errors in this whole thing was the attempt to make this a national issue.

Mr. LUNA. I agree with you 100 percent.

Mr. Moss. As you have indicated earlier, you feel that on the part of your organization, the acceptance of the original proposal of the Presidential Railroad Commission was in error?

Mr. LUNA. I was not president then.

Mr. Moss. Unfortunately, we cannot go back and wipe out the errors of the past.

Mr. LUNA. That is right. I promise you it won't happen again.

Mr. Moss. If an opportunity is afforded to further exhaust the process of collective bargaining with appropriate mediatory services, do you feel that in light of your conviction on this crew consist, for example, that a rule can be negotiated?

Mr. LUNA. We made them a proposal in writing on it, sir.

Mr. Moss. Perhaps not for any purpose except my own curiosity, if such a rule were promulgated, would it have national application?

Mr. LUNA. Yes, sir; it would. Limited to whatever is agreed to on the properties.

Mr. Moss. Or would it be up to each railroad system to determine?

Mr. LUNA. That is the way it is now. They want a national rule on it.

Mr. Moss. I want to thank you for your statement.

Mr. LUNA. Thank you, Congressman Moss.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. Do I understand that both parties to this dispute have made certain concessions?

Mr. LUNA. Well, sir, I would say this: I have been in every conference since April 2 a year ago. That is right after we came out of the PRC. Up until today we haven't received over two or three from the carriers in writing. They have told us all during our negotiations——

Mr. BROYHILL. That is not what I have said.

They have agreed to make concessions from their original position, have they not, sir?

Mr. LUNA. Yes, sir; I have stated that they have.

Mr. BROYHILL. And you agreed to make concessions from your original position?

Mr. LUNA. Yes, sir. But not as many as I have seen in other cases.

Mr. BROYHILL. I agree with statements that have been made by others here. I see no reason why the parties to this dispute should not stop lambasting each other and sit down and settle this dispute.

Mr. LUNA. I will buy that, sir.

Mr. BROYHILL. I have no other questions.

The CHAIRMAN. Mr. Dingell?

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. Luna, you made an excellent statement today. I would like to follow up several points that were started by Mr. Moss a little earlier.

First, you made a number of points in your statement that I would like to ask whether you agree are extremely important. The first is the fact that there has been in your opinion no good faith bargain-

ing by the railroads or very minimal good faith bargaining by the railroads.

Am I correct in this?

Mr. LUNA. You are correct.

Mr. DINGELL. You also indicated here in your statement that one of the problems in negotiations has been the fact that you are literally overburdened, both the brotherhoods and railroads which they are to bargain with; am I correct?

Mr. LUNA. It is overloaded; yes, sir.

Mr. DINGELL. This is bad, I assume, for fruitful negotiation as the first situation?

Mr. LUNA. Definitely, sir.

Mr. DINGELL. You are faced again with another problem which is equally bad and that is the fact that there has been indication made that the Nation will not tolerate a strike by people in very high places; am I correct?

Mr. LUNA. Yes, sir; that is correct.

Mr. DINGELL. Last of all, you indicated that you are faced with a number of problems which you are being forced by a series of circumstances to negotiate on a nationwide basis which more approriately and properly should be of a local nature.

You enumerated them on page 12 of your statement.

Mr. LUNA. That is correct.

Mr. DINGELL. Under these circumstances, the committee is faced with two alternatives. The one is the alternative that you denominated as compulsory arbitration which will prevent a strike and which will affect in a temporary or permanent resolution of the problem?

Mr. LUNA. That is correct.

Mr. DINGELL. Not necessarily to the satisfaction of either party and very probably not to the satisfaction of your organization.

Mr. LUNA. You can say that again, sir.

Mr. DINGELL. The alternative is the proposal which was sent here by President Meany which provides that the Congress directs the parties to negotiate and so forth.

In view of the difficulties that you have denominated, how are we to expect that the parties will negotiate in good faith merely by the enactment of the proposal sent here by President Meany?

Mr. LUNA. As I have explained by the proposal sent here by President Meany, it would take the pressure off both sides. The carriers have things that they would like to see put into effect, such as the reduction on some of the things that have been offered.

We need a raise for our people. They haven't had a raise since March 1, 1961.

Mr. DINGELL. It has been longer than Members of Congress have received a raise.

Mr. LUNA. How long?

Mr. DINGELL. It has been a good deal longer.

Mr. LUNA. Let me see what I can do for you. If neither side knew or if the railroads knew that they were not going to get compulsory arbitration and our side knew that we couldn't use our economic strength in this dispute at this time, then as I see it, we would both have an incentive to try to work out an agreement so that we could both derive some of the benefits from our section 6 notices.

Mr. DINGELL. Essentially, the Meany proposal provides in contrast to the administration proposal for a form of guided negotiations for the parties; am I correct?

Mr. LUNA. Another thing I think would be helpful. You gentlemen have heard both sides say we did things and they did things.

Mr. DINGELL. I am not concerned with that.

Mr. LUNA. I know that. This Meany proposal would put a watchdog committee in there and both sides would have to prove they were negotiating.

Mr. DINGELL. You feel that the principle of guided negotiations is a sound one; am I correct?

Mr. LUNA. Would you repeat that?

Mr. DINGELL. I say you feel that the principle of guided negotiations, in other words, the guiding by the Secretary and by the National Mediation Board, are useful?

Mr. LUNA. Yes, I do.

Mr. DINGELL. Along these lines do you feel that the Secretary and National Mediation Board should have the authority to determine which of these issues should appropriately be decided on to local level as opposed to the national level?

Mr. LUNA. I think the record will speak for itself. I think that the national rules should be handled on a national level and those that are not national should be on the local level.

Mr. DINGELL. You pointed out to the committee that there has not been good faith bargaining by management and the management said there was not good faith bargaining by labor.

Do you feel under these circumstances that the referee should have some measure of influence on the conduct of the negotiations apart from offering his good services as he has for a matter of 4 years without effect.

Mr. LUNA. I have seen him offer pretty strong suggestions in other mediation cases.

Mr. DINGELL. Do you feel that the Secretary ought to be permitted to suggest which of these issues should be for settlement on the local basis and which should be available for settlement on the national basis?

Mr. LUNA. Yes, sir.

Mr. DINGELL. That would be useful in the Meany substitute?

Mr. LUNA. That is correct.

Mr. DINGELL. Do you feel that it would be useful for the Secretary then to be able to fix the hours for negotiation if it is impossible to require or rather, if it is impossible to secure their presence because you have had walkouts?

Do you feel this would be useful?

Mr. LUNA. Definitely yes. I have been in negotiations and mediations where they put you in a room and say you are going to settle this and when you get this settled we will go home or somewhere else.

Mr. DINGELL. Do you feel it would be useful to vest in the Secretary the authority to do this?

Mr. LUNA. Yes.

Mr. DINGELL. Under the Meany proposal?

Mr. LUNA. Yes.

Mr. DINGELL. Do you feel it would be useful to vest in the Secretary the power to report to Congress which he does not have here in

the Meany proposal as I read it when negotiations and collective bargaining are not proceeding in good faith?

Mr. LUNA. I see in the Meany proposal that he does have that authority.

Mr. DINGELL. You have no objection to that being in there?

Mr. LUNA. No, I have no objection.

Mr. DINGELL. Do you have any objection in vesting in the Secretary the authority to present agendas for consideration to the parties?

Mr. LUNA. I think he should.

Mr. DINGELL. Last of all, you have had experience with this over a number of years. You have found this committee, I believe, to be generally fair in its consideration of matters involving railway labor, have you not?

Mr. LUNA. You mean——

Mr. DINGELL. The Interstate and Foreign Commerce Committee in the House and the Commerce Committee in the Senate.

Mr. LUNA. This is the first time I have been before them in my life.

Mr. DINGELL. Your organization has had experience.

Mr. LUNA. I am sure my organization has.

Mr. DINGELL. It would be fair to say that the experience of your organizations has indicated that these committees are generally fair and solicitous of your organizations?

Mr. LUNA. I am sure they are. It is a Government body.

Mr. DINGELL. In view of that circumstance, would it not be just as well to vest in the two Commerce Committees of the Congress the powers that are suggested in the Meany proposal for serving as watchdog committees as opposed to creating some special committee that lacks the expertise and experience in railway labor law which this committee has considerable?

Mr. LUNA. It was my hope that if this special committee was appointed that they would appoint Congressmen and Senators on it who had had some experience in negotiation either from management side or from the labor side.

It would be a smaller committee where they could get them together easier and the men appointed to them would have some experience and know when one side was dragging its feet and known when either side was trying to negotiate.

Mr. DINGELL. The point I am coming to is that this is the province of this committee. We have a proliferation of committees within the Congress as is some of which are not necessarily useful.

What I am seeking to avoid is the establishment of another committee which will just clog the legislative mills further. What I am coming around to is that it is my position that if the Meany proposal is adopted it should be done with the Commerce Committees of the House and Senate as opposed to some joint committee.

I wonder if you disagree with that position?

Mr. LUNA. I personally would rather have the special committee on account of what I just told you, Mr. Congressman. I think it would be helpful to the parties to have 10 men who have had experience in negotiation either on the management side or labor side.

Mr. DINGELL. Thank you, sir.

Thank you, Mr. Chairman.

Mr. CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

I want to thank you, Mr. Luna, for your statement here today and ask you this question: You have stated that if the deadlines were removed that you were confident that these issues could be settled between the parties; is that correct?

Mr. LUNA. That is correct.

Mr. KORNEGAY. How long, in your opinion, would it take for the parties to this dispute to get together and settle the issues?

Mr. LUNA. Mr. Congressman, that would have to be contingent on how many of the issues they had to settle. If you had the two big issues that Chairman Harris talked about, that should be done in 30 days. If you had to take the other 80 issues, it will take longer.

Mr. KORNEGAY. It has been expressed here, although I think you have disagreed with the expression, that the manning issues or the crew consist and the engine issues are the two main issues and once they were settled most of these other issues would fall in line.

I understand you disagree with that sentiment.

Mr. LUNA. You have not heard me say that.

Mr. KORNEGAY. No, I have not heard you say that. I have heard the Secretary of Labor say it. I have heard, I believe, the carriers' representatives state it as well as some of the brotherhood representatives.

Mr. LUNA. They have more information than I do.

Mr. KORNEGAY. Do you feel the two main issues, the manning issues, could be settled within 30 days?

Mr. LUNA. I think they could if that was all they had to settle. I will go further. I will say if the Secretary of Labor and the Mediation Board would put you in hard rock-bottom negotiation——

Mr. KORNEGAY. Knock some heads together.

Mr. LUNA. I agree with you 100 percent, Congressman.

Mr. KORNEGAY. I am happy to get your estimate of the situation. Thank you.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Luna, thank you very much for your appearance here today and your testimony. You have been very forthright in expressing your views and we are glad to have your presentation.

Mr. LUNA. Thank you, Mr. Chairman, and the rest of the committee, for listening to me.

The CHAIRMAN. We are glad to have had you.

Mr. N. P. Speirs?

Mr. Speirs, I believe you are president of the Switchmen's Union of North America.

STATEMENT OF NEIL P. SPEIRS, INTERNATIONAL PRESIDENT, SWITCHMEN'S UNION OF NORTH AMERICA; ACCOMPANIED BY J. J. KAUFMAN, ECONOMIC CONSULTANT, AND W. R. MEYERS, VICE PRESIDENT

Mr. SPEIRS. Yes, that is correct.

The CHAIRMAN. I believe you have associates with you.

Mr. SPEIRS. Yes.

The CHAIRMAN. Will you identify them for the record?

Mr. SPEIRS. The gentleman on my left is Mr. J. J. Kaufman, economic consultant for the Switchmen's Union. The gentleman on my right is Mr. William Meyers, vice president of the Switchmen's Union.

Mr. Chairman and members of the committee, I am pleased to have the opportunity to appear before you here today. I might add that since I am the fifth union witness to offer testimony I feel that you are familiar with the issues in dispute and to a large degree the merits of the case, so that my testimony will deal mainly with Resolution 565. I have a prepared statement which I will read.

I am Neil P. Speirs, international president of the Switchmen's Union of North America, affiliated with the AFL–CIO. I have been a switchman for over 25 years, and during the past 12 years have been an elected official of the union, serving as a local representative, and as a system representative on the Southern Pacific Railroad, as a vice president, and international president since 1959.

The Switchmen's Union was organized in 1894 and received its charter to organize the craft of switchmen from the American Federation of Labor in 1906.

We are one of the five organizations involved in the pending dispute and represent the craft of switchmen. The members of our union work exclusively in the yards and are part of the train service group.

I am here to testify on the resolution which the President of the United States has submitted to the Congress for the purpose of resolving the current so-called rules dispute between the five railroad operating unions and the Nation's railroads.

It seems to me that the basic issue before this committee is the procedure which is to be followed in the resolution of this dispute and not the merits of the proposals of either the railroads or the labor organizations. It is, therefore, my intention to concentrate primarily on the procedures suggested and to avoid discussion of the merits. This does not mean, of course, that I am not concerned with the merits of the dispute and I am perfectly willing to answer questions of the committee members in this area.

The impression created by the representatives of the railroads is that for a long period of time the railroads have been bargaining in good faith and that the unions have failed in this regard. It is important to distinguish between the formality of collective bargaining and the actual good faith in which collective bargaining is carried on. The fact that the carriers and the unions have met many times does not necessarily mean that the carriers were willing to bargain in good faith.

During the past year, and particularly in the period since the issuance of the report of the Presidential Railroad Commission, the railroad Commission, the railroads have basically refused to depart from the recommendations of the Commission and, in our opinion, were hoping that the dispute would eventually be resolved by compulsory arbitration. Since early 1962 people in high Government positions have been stating that the American economy could not stand a railroad strike and that the American people would not accept a railroad strike. We believe without any doubt that the railroads accepted these statements as the Government's position in this dispute. As I shall discuss in a few moments, these very statements destroyed the entire process of collective bargaining and prevented any collective bargaining in good faith on the part of the carriers.

In addition, the carriers were apparently confident that Congress would pass a law requiring the dispute to be settled by compulsory

arbitration. In fact, for years the carriers have been advocating compulsory arbitration of railroad labor disputes, going back as far as 1950 when they supported the so-called Donnell bill. This same position has remained unchanged. We have all seen the advertisement which appeared in various newspapers of the country on July 23 in which the railroads continued to urge compulsory arbitration.

Finally, as the result of a vicious propaganda drive the railroads have depended on strong public opinion to back up their demands for changes in the work rules and to support their position for compulsory arbitration.

When you combine these three elements; namely, an assumption that no strike would be tolerated, an assumption that compulsory arbitration would be imposed on the parties, and an assumption that the public opinion would support the demands of the railroads for such compulsory arbitration— it becomes quite evident that the railroads did not engage in collective bargaining with the full intention of reaching an agreement.

I have indicated previously that all the elimination of the right to strike is the very destruction of collective bargaining process. The role of the right to strike in the collective bargaining process has never been understood by the railroads who have always viewed it as a "one-edged sword" rather than a "two-edged sword."

Let me quote from a report of the Senate Subcommittee on Labor and Management Relations, titled "Factors in Successful Collective Bargaining," which was printed in 1951 (p. 7) :

> Looked at from the angle of the functioning of collective bargaining, the strike is the instrument which makes the parties give the greatest weight to their respective positions in order to avoid the costs involved in a work stoppage. The strike threat, and the occasional strike itself, is the force depended upon to facilitate arriving at satisfactory settlements. Agreement normally is reached without a work stoppage because neither side wants to incur the cost of such stoppage and makes reasonable adjustments to avoid it.
>
> Thus the strike threat and the actual strike itself are instruments of bargaining. * * *
>
> Still, reliance on collective bargaining means dependence on the possibility, if not the imminence, of a strike in every collective bargaining session. The calculation of the cost of a strike to the parties facilitates a meeting of minds without actual resort to the strike and thus performs a vital collective bargaining function.

In a study, prepared by the U.S. Department of Labor, dealing with the steel dispute, it was stated that the major deterrent to strikes is the right to strike itself. I support this statement.

An actual strike on a national scale is not to be taken lightly. No responsible union leader would take such action unless he carefully weighed all of the costs involved. In fact, the unions have offered to maintain essential services and to contribute their wages to an appropriate national charity. Unfortunately, in any strike situation, the costs have usually been calculated in terms of dollars and cents. In my judgment this is only one consideration. What we are concerned with here is whether or not the basic right to strike which—as the Advisory Committee on Labor-Management Relations has said—is an essential element of economic democracy. The fact is that if the right to strike is taken away not only will the railroads and the unions suffer but the public itself—in the long run—will also suffer. If one removes this basic right in our private free enterprise system no one knows

where this will end. It is the first step in the erosion of the principle of free collective bargaining.

From time to time in our history men have been willing to give up their lives and property for a basic democratic principle. This is an element of cost which has not been sufficiently considered.

Time and again Congress has refused to be stampeded into passing legislation which in essence might be destructive of our democratic principles. As Senator Taft stated with respect to amendments to the Taft-Hartley law (93 Congressional Record 3835):

> Basically, I feel that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining * * * that means that we recognize a freedom to strike when the question is the improvement of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract. * * * We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, hours, and working conditions. But if we impose compulsory arbitration, or if we give the Government power to fix wages at which men must work for another year or for 2 years to come, I do not see how in the end we can escape a collective economy. * * *
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> * * * * * * * *
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> If we begin with public utilities, it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.
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> * * * * * * * *
>
> We did not feel that we should put into the law, as a part of the collective-bargaining machinery, an ultimate resort to compulsory arbitration, or to seizure, or to any other action. We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and it will back out of collective bargaining.

I wish to reemphasize the fact that if the railroads had felt that the right to strike existed in this current dispute the issues might have been resolved much earlier and the matter would not be before Congress today. Let me illustrate:

On March 1, 1959, the Switchmen's Union submitted a proposal for wage adjustments. This issue was not resolved for approximately 3½ years, during which time other railroad labor organizations settled their wage demands. We went through all of the procedures of the Railway Labor Act and suffered through delays caused by the issuance of court injunctions. The fact remains that when the Supreme Court of the United States finally lifted the injunction, after 3½ years of fruitless collective bargaining, we were able to settle our wage dispute in less than a week. The major element in this settlement, I would insist, was the fact that after 3½ years of fruitless negotiations and after being encumbered by delays and court injunctions, the Switchmen's Union finally had the right to strike. With the right to strike available to us, the carriers were willing to resolve the issue across the table. The net result of this settlement was a give and take on the part of both parties as each calculated the costs to itself of a possible strike. This is the clearest illustration of the free collective-bargaining process in operation.

The National Mediation Board has recognized the role of the strike and the effect of Government intervention as a cause of the breakdown of collective bargaining when it stated (at p. 7, 16th annual report of the National Mediation Board):

> There are situations from time to time where the employees express a deep concern that the employer has operated under a feeling of assurance that they would be protected by the Government against any use of their economic power, and that such feeling has operated to make negotiations an empty gesture.

An attempt has been made in the presentations to this committee by the Secretary of Labor and the representatives of the railroads that the proposed legislation is not compulsory arbitration but rather still maintains the free collective-bargaining process. The key to this position is, as one listens to their testimony, that any rule promulgated by the Interstate Commerce Commission would not last more than 2 years. As in any other situation, once one opens the door to governmental determination of the wages, hours, and working conditions, one does not know when such intervention will end. One does not know whether it will end in 2 years for the railroad industry or whether it will be renewed at the end of 2 years. One does not know whether or not that law will be applied to other industries which may also be declared as being vital to the so-called public interest. For example, this type of procedure could easily be applied to such other industries as the maritime industry, the steel industry, the automobile industry, et cetera.

The fact that the resolution provides for a 2-year period in which the Interstate Commerce Commission will make rulings on wages, hours, and working conditions may have far-reaching effects in terms of the right of the railroad labor organizations to seek wage improvements in the future.

The fact is that railroad workers have not had a wage adjustment since March 1, 1961. The language of this resolution implies that the organizations will be unable to process any further wage adjustments for at least another 2 years, irrespective of the testimony of the Secretary of Labor.

We also assume that hidden in this legislation are possibilities of court intervention on the part of the carriers which could delay even further any wage adjustments. Thus, the railroad unions not only find that the fate of their current collective-bargaining agreements entered into freely between the parties will be subject to decisions of Government, but also fear that they will be prevented for a long period of time from making adjustments in their current wages and working conditions.

The basic fact is that once one allows a governmental or private agency to make a final determination of the contract rules, we have compulsory arbitration.

In a staff report to the Subcommittee on Labor and Labor-Management Relations of the U.S. Senate in 1952, titled "Emergency Disputes Settlement," the following statement appears (pp. 39–40):

> A primary consideration is whether or not a system of compulsory arbitration does effectively prevent work stoppages in a society of free institutions. The experience of Australia and New Zealand, where compulsory arbitration was not limited to the national emergency situations, is that despite the penalties imposed by the law, compulsory arbitration has not in fact eliminated strikes. These countries publish strike statistics which show that their arbitration laws

have had no appreciable effect in reducing work stoppages and also that their record of industrial disputes involving work stoppages is no better than the record of the United States.

The report goes on to state that there is a great fear among "a very large number of responsible and thoughtful analysts who have discussed the question of the compulsory arbitration of industrial disputes" that governmental intervention in a labor dispute will eventually lead to governmental intervention in all aspects of our economy.

In a report prepared by the Industrial Relations Counselors, Inc., in 1961, an organization which is essentially management oriented, they had the following to say with respect to compulsory arbitration:

It (i.e., compulsory arbitration) is therefore the very antithesis of free collective bargaining and it is the one solution to which both labor and management are united in opposition * * *.

Almost all spokesmen of management, the unions, and academic community, feel that compulsory arbitration impairs free collective bargaining and makes voluntary settlement of disputes more difficult. Both sides are afraid to make any concessions during negotiations lest they weaken the case that may eventually have to be presented before the arbitration panel.

The same report states that "Opponents of compulsory arbitration, moreover, point to the fact that strikes on public utilities have not presented greater problems to industrial States like New York, Illinois, Ohio, and California which have not banned them to States which have."

The report also indicates that "Observers of some compulsory arbitration systems, such as that of Australia, have concluded that they are ineffectual, often harmful. Experience in foreign countries has led to concern that compulsory arbitration is likely to be only a first step to further Government control."

In August 1951 the National Association of Manufacturers issued a report on compulsory arbitration. The report points out that compulsory arbitration will not work because (1) compulsory arbitration would kill collective bargaining; (2) compulsory arbitration would become political bargaining; (3) labor-management problems would be decided by someone who would not know the background; (4) labor courts or arbitrators would have no laws or criteria to go by; and (5) compulsory arbitration would be destructive of our personal and industrial freedom.

In this same report by the National Association of Manufacturers appears a series of quotations with respect to compulsory arbitration. Let me quote just a few:

William Green, president of the American Federation of Labor in the American Federationist of April 1947, said:

Organized labor is unalterably opposed to compulsuory arbitration as are the leading spokesmen of industries. Our reasons are many and clear. Compulsory arbitration is the very antithesis of collective bargaining and collective bargaining is the very cornerstone of economic and political democracy.

Supreme Court Justice Frank Murphy in a speech in 1937 stated:

My objection to compulsory arbitration is that it is neither feasible nor practical * * * When logically pursued, compulsory arbitration of labor disputes would seriously restrict many basic constitutional guarantees. Labor and capital having placed their faith in the hands of courts and judges would become active contestants for the control of government * * *

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In 1945 Senator Wayne L. Morse stated:

> I do not think we should ever lose sight of the fact that the freedom of economic action on the part of both employers and labor is a very precious right, high on the list of American liberties. In my judgment it is so basic in the psychology of our people that any attempt to destroy it by legislative compulsion will result in so many various types of resistance that any such legislation is doomed before it is even written on the statute books * * *. Don't forget that government can be an exploiter, too, but usually it takes a very long time to remedy the exploitation of government.

Although I have taken a strong position against compulsory arbitration. I might point our that over the years we have frequently found the parties agreeing voluntarily to arbitrate certain labor disputes. I think that the history of railroad labor relations demonstrates that under certain conditions the railroad unions have been willing voluntarily to submit certain types of disputes to arbitration. Reference has been made to the fact that currently we, in effect, have final and binding arbitration with respect to grievance disputes. However, the issue in this case is not the arbitration of these so-called minor disputes but the arbitration of basic contract rules. This is what we are basically opposed to. After decades of struggle to improve the economic position of railroad workers and to protect them against the arbitrary and capricous acts of management, we cannot allow a third party to determine the fate of the men we represent.

In summary, then, I want to assert that as long as the carriers know that a strike will not be tolerated in the railroad industry there will never be collective bargaining. I want to emphasize the fact that stripped of all its fancy language the resolution before you is nothing more than compulsory arbitration, a procedure which has been attacked by virtually every segment in our society, except the railroad industry. And finally, I want to assert that I, as international president of the Switchman's Union, will resist all efforts to turn over the economic destiny of these men to a third party who has no understanding of the issues, the problems, and the difficulties which we face.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Speirs, for your statement to the committee.

Mr. STAGGERS. Mr. Chairman, I have no questions. I just wish to commend Mr. Speirs for his statement. I think it is very explicit.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I, too, would like to join in commending you for a very good statement, Mr. Speirs.

Is there another Switchmen's Union?

Mr. SPEIRS. No; we represent switchmen. The Brotherhood of Railroad Train Men represents some switchmen.

Mr. YOUNGER. That is the difference. I know out in the Southern Pacific in their switchyards, they have two organizations representing them.

Mr. SPEIRS. On the Southern Pacific we have the contract to represent the switchmen.

Mr. YOUNGER. There were some older group that were under the other organization.

Mr. SPEIRS. Yes; that is true. There is an election under our particular union shop agreements switchmen could belong to one or the other of the organizations.

Mr. YOUNGER. Now, just one question on page 4. I am sure you do not mean what your statement says. That no responsible union leader would take such action unless he carefully weighed all the costs involved. Certainly your union cannot strike just because a responsible leader says they ought to strike, can they? You would have to have a vote of your membership.

Mr. SPEIRS. Certainly; any responsible union leader in negotiations which were in a critical situation like that would only be expressing the desires of his membership.

Mr. YOUNGER. This wouldn't indicate that a union leader would have the right to lead his men into a strike.

Mr. SPEIRS. No; that was not intended to be that.

Mr. YOUNGER. That is all I have.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I have no questions, but I do want to commend Mr. Speirs on a very fine statement.

Mr. SPEIRS. Thank you.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Yes, Mr. Chairman, I have a few.

Mr. Speirs, I find in your statement on page 2 a conclusion that I must candidly disagree with, placing solely on statements of people high in Government the responsibility for the failure of collective bargaining. I am going to ask how you reconcile that statement with the fact that the brotherhoods were finally forced, so we have been told by other witnesses, following the posting of their own notices in 1960, to agree to the appointment of a Presidential Railroad Commission, contending that collective bargaining in its true sense had from the first notices under rule 6 in 1959 never been really undertaken.

Mr. SPEIRS. First, let me say that when we talk about collective bargaining, as I refer to it here, I am talking about the climate which is necessary for collective bargaining to operate and to function and to consummate.

Mr. MOSS. I realize that, Mr. Speirs.

Mr. SPEIRS. Let me continue, please.

Mr. MOSS. Let me see what I asked you. I asked you how you reconciled that conclusion with what appears to be a consensus of the brotherhoods that it had in fact not been resorted to from the very beginning. Some witnesses have charged that there appeared to be a deliberate effort on the part of railroad management to bring this to a crisis stage. This antedates 1962. This goes back to 1959. What, then, was responsible for a climate which discouraged or made impossible the type of collective bargaining you seek?

Mr. SPEIRS. I think probably there can be to a degree a misunderstanding of the facts. Our organization—and I don't believe that the other organizations—actually contend or complain too severely about the type of collective bargaining that existed between the time the notices were served and the time we agreed to go to a Commission. I say that for this reason:

It is true that we did serve these notices on the individual properties. It is also true that the Railway Labor Act requires that conferences be held on the individual properties. Both the carriers in the serving of their notices had requested that this be handled on a national basis. It is a fact that when these notices were served on the individual properties, and when our representatives on those individual properties went in to discuss these matters in initial conference, that the carrier officers whom they were designated to deal with did not fully understand the notices, could not explain them, and did not really know what these notices meant.

We have a legitimate complaint there. But it was not the intention of our representatives to go in there and make a settlement on the individual properties. But we were entitled to a thorough, explicit explanation of what these notices meant.

Mr. Moss. You were in the room a moment ago when I was directing some questions to Mr. Luna, and he characterized the creation or the agreement on the part of the brotherhoods to the creation of the Presidential Railroad Commission as a major and fundamental error.

Mr. Speirs. Let me continue. I would like to clear. I happen to be a signator to this agreement which established the Commission.

Although I will publicly state that our organization was one of the last to agree to this procedure, nonetheless it was the consensus of opinion of the five organizations that due to the scope and you might say the voluminous matters which were brought into dispute by the carriers, that probably it would be more advantageous to take a course other than that which is set out in the Railway Labor Act.

So for that reason, and because these were voluminous matters, and because they would require considerable study, considerable research, the five organizations agreed with the carriers to establish the Presidential Railroad Commission. We agreed to establish a Commission with the intentions and with the feeling and with the thought that this would be a study commission, a commission which would cover the railroads, which would get into the intricate matters and not be of the adversary type.

Mr. Moss. I understand all that.

Mr. Speirs. I may misunderstand the general concept, but I do not conclude that up to this point of the Presidential Railroad Commission and the hearings which ended in February 1962 that there has been any general complaint about the lack of bargaining up to that point. We have complained about the adversary type of procedure which was engaged in by the Commission for some 14 months, and also the Commission's failure to act and to mediate.

They issued the report in February, and within 2 weeks this Commission was dissolved. There is no strong complaint, at least from our organization, as to negotiations existing up until such time as this report was issued.

Mr. Moss. Then you are not of the mind that failures of negotiating at the local level, failures which have been dealt with, and I believe I am correct when I say that they have been dealt in a manner which would indicate very critical attitude toward the attitude of the railroad management, you would not characterize the period between the posting of notices and the creation of the Presidential Railroad Commission as being one where the recalcitrance of the railroads resulted in failure to arrive at some meaningful agreement?

Mr. SPEIRS. No, I don't believe that we have, in my opinion, at least, spread on the record too much complaint over negotiations during that period of time.

Mr. MOSS. I think that I could make a very good case to the contrary. However, I will take your statement as being the views of your organization.

Mr. SPEIRS. That is right.

Mr. MOSS. Then if we accept as completely valid your charge that these statements by people high in Government led to the breakdown or the lack of determined effort in collective bargaining, how do we reconcile that with your telling of the account of the settlement of a wage dispute which must have occurred in a period concurrent with the period referred to as being 1962?

Mr. SPEIRS. For this reason——

Mr. MOSS. If no strike would be tolerated in the railroads in the one instance, how could you reasonably assume that it would have been tolerated in the other?

Mr. SPEIRS. Nobody was going around making any public statements, whether voluntary or however they were made—involuntary—that a strike could not be engaged in by the Switchmen's Union in the satisfaction of the wage dispute.

The carriers attempted to avoid a strike through court injunction. The court injunction lasted for some 2 years before it was finally resolved by the Supreme Court. But we had the free right to strike. Nobody attempted to direct us or stipulate that we could not strike in the settlement of this wage issue.

There were 17 western railroads involved. There was not the total railroad system of the United States involved in that dispute. The situation in relation to the rules dispute was quite the contrary, because from the very day that this Presidential Commission report was delivered, the statements were made that had to form a basis for collective bargaining and an eventual settlement, for there cannot be a national railroad strike in this country. The economy won't stand it.

Mr. MOSS. If all of those things were uttered by high officials of the Government, in the backs of the minds of any parties, do you think there was any conclusion on their part whether a strike would be tolerated?

Mr. SPEIRS. Which parties are you referring to?

Mr. MOSS. The parties to the negotiations. Apparently you want to convey to the committee a conviction that if there is voiced, directly or remotely in the background, the possibility that a strike cannot be resorted to, that it renders impossible true collective bargaining.

Mr. SPEIRS. I would say the quotations I have made in my statement agree with what I have said in this respect. I would say that statements of this type made by influential Government people will serve to destroy the climate that is necessary for effective collective bargaining. I would say further that in order to reach a settlement in a dispute of this type, there must be the pressures of free collective bargaining applied—the right to lock out and the right to strike. In the absence of those, in a dispute of this magnitude, I believe it is impossible to reach a settlement.

Mr. MOSS. All right, then, let us take a look at the climate we have at the moment. Whether we go the route of the resolution recom-

mended by the President, or the route of the resolution recommended by Mr. Meany, and see if we have removed from this the question of whether or not a strike would be tolerable, because if you go to the resolution recommended by Mr. Meany on page 3, line 21, if at any time the Special Joint Emergency Railroad Committee finds that the procedures herein provided afford no prospect of resolution of disputes within a reasonable time, it shall so report to the Congress.

What is it going to report to the Congress? It is going to make recommendations for further action by the Congress. In context with the point this dispute has reached, do you mean to say that the language of that resolution removes from it the threat of any congressional action which would make it impossible to have a strike?

Mr. SPEIRS. I will answer your question this way: Mr. Meany's resolution creates the exact type of climate that is necessary for the parties to reach a settlement in this dispute. It creates it for this reason:

If the labor unions are guilty of not bargaining collectively and earnestly to reach a settlement, then they must suffer the possibilities of some punitive legislation. If the carriers refuse to negotiate in earnestness, then they, too, will suffer the possibilities of punitive legislation. This atmosphere of uncertainty is the atmosphere we need to bring about a settlement in this dispute.

Mr. MOSS. Of course, you characterize punitive legislation. I would hope that this Congress, in dealing with a problem of this magnitude, would not seek to punish. I think it would be a most unwise act by the Congress, should it seek to punish.

I would not want to sit on this committee and this committee is where it would finally end up, whatever the nature of the joint committee, and attempt to assess the guilt or innocence of parties to a bargaining procedure. I think that it would be casting the Congress in a role not appropriate to it, a type of procedure alien to us. We are not here to find guilt or innocence. We are here to legislate in the public interest and for no other purpose.

I don't think that we would under any circumstances be prodded, I hope we wouldn't, into the enactment of punitive legislation.

Mr. SPEIRS. If I may, I would like to clear this up. What I might term "punitive" you might not, or what the railroads might term "punitive" you may not, and I may not. I am talking in the context that if the labor unions were guilty of failure to negotiate, if the Meany resolution, as we term it, was adopted, and if the unions were guilty of failure to negotiate in earnest to reach a settlement, then I am sure that we would be facing a crisis and I think that the Congress of the United States would possibly take an action. The action that you would take I wouldn't care to judge, but I would assume that I would call this resolution before us, if it were passed, a punitive action against a labor organization. I would so describe it.

I presume if legislation was passed for the carriers' failure to negotiate and it was seizure or Government ownership, I presume they, too, would term it "punitive action." That is the context in which I speak.

Mr. MOSS. Then let us take a look at what you would mean by "failure to negotiate" because I think this is most important. You mean failure to exchange proposals or to comment upon proposals received? Is that failure to negotiate? Or is failure to negotiate characterized by an unyielding position at a given point?

Mr. SPEIRS. My description of "failure to negotiate" is failure to come to grips with the issues for the purpose of attempting to arrive at a settlement. My accusation against the railroads for failure to negotiate is based on the fact that they have not come to grips with the issues with the intention of reaching a settlement.

Mr. MOSS. We have heard the charges from both sides.

Mr. SPEIRS. These are not charges; this is my description of what I am saying.

Mr. MOSS. I have requested a summary of exchanges of proposals in order that I might be in a better position to evaluate the charges which have been made here by both sides, that neither has undertaken in good faith to negotiate. I reiterate what I said at the beginning. I think you place a responsibility for failure to have meaningful collective bargaining on the wrong parties when you assign it to remarks which, as related here, are not too extensive.

I point out to you that neither the President, the Secretary of Labor, or no one else can commit this Congress to any action. In your experience over many years as a citizen of this country, it gives you ample opportunity to see the many illustrations of the fact that the Congress finally makes up its own mind.

Mr. SPEIRS. I agree to that.

Mr. MOSS. And I know no one in the Congress who participated in these discussions at any point who stated that the Congress would or would not do anything. I can't believe that these are so sensitive matters that the mere raising of a point of the probability of public attitude should cause a complete breakdown.

That is all the questions I have.

The CHAIRMAN. Mr. Moss, I think, has covered pretty well what I had in mind to develop. I want to go one step further in an effort to try to analyze in my own mind just what you have in mind.

I am inclined to agree with Mr. Moss; I think these have been charges. On page 3 you say, "In addition, carriers were apparently"—I notice that word, too—"apparently confident that Congress would pass a law requiring the dispute to be settled by compulsory arbitration."

Is that your own feeling about it and those with whom you are associated, Mr. Speirs, or do you actually have concrete facts to substantiate the statement?

Mr. SPEIRS. I have the existence of the present legislation which has moved to a point where I feel it is compulsory arbitration. I believe the carriers were hopeful that this would be the termination of this dispute with compulsory arbitration. I think that is the position.

The CHAIRMAN. Of course, that is brought up to the point where the strike was imminent. The President had been so advised by his Secretary of Labor, who had been so advised by the management of the railroads and the brotherhoods. That was brought up to that point.

Do you have any information leading up to that point that the carriers were confident, apparently, that the Congress would pass a law requiring the dispute to be settled by what you interpret as compulsory arbitration?

Mr. SPEIRS. I have this type of evidence, whether it will suffice or not. I have been in negotiations many times. I know how people

negotiate who are moving in the direction of wanting to make a settlement or eager to make a settlement. That attitude did not exist in this instance.

I attribute certainly the lack of a proper negotiating climate to the statements which were made to the parties jointly. Whether right or wrong, that is my expression, my analysis of the collective bargaining climate, and I feel that had the statements—and it is my own opinion—I feel if the statements had been "You fellows get together on this dispute and bail yourselves out because nobody else is going to do it," that the bargaining climate would have been much different.

I don't have a certified statement from the railroads that that was their position. This is a summation of my opinion based on experience and observation in negotiations and experience in these negotiations.

The CHAIRMAN. Then in answer to the question, it is your personal feeling out of the experience you have had.

Mr. SPEIRS. That is correct.

Mr. FRIEDEL. Mr. Chairman, may I ask a question there?

The CHAIRMAN. Surely.

Mr. FRIEDEL. Wasn't there a great effort made by the Secretary of Labor, Mr. Wirtz, to try to get both sides together? I understand that management did offer, or said they would agree, on certain things and the attitude of labor was not to accept any of them.

Mr. SPEIRS. I would say that the Secretary of Labor did an admirable job in the later days of this dispute when it was finally referred to him about July 9. A lot of effort was devoted by the Secretary of Labor to try to bring around a settlement. I believe during that period of time many of the issues were narrowed. Today it is my opinion that the total conflict has been narrowed into more precise issues.

Mr. FRIEDEL. Didn't Mr. Wirtz try to bang heads together to try to get them to come to an agreement?

Mr. SPEIRS. I said he did attempt to do it.

Mr. FRIEDEL. Even so, the Government, or someone in our administration, tried to give the impression that there would be a strike if they didn't agree, and that they would be for compulsory arbitration.

Mr. SPEIRS. From the time of February 1962 up to last July 9 that was the general attitude that existed in the collective bargaining. Since then, I might even tell you very frankly since July 9, we have been told many times that there will be no strike in the railroad industry by the Secretary of Labor. Since July 9 of this year.

The CHAIRMAN. Do you think that the President of the United States and the responsible position that he has could sit by idly without trying to do something to avoid a national chaotic condition that a national railroad strike would bring on?

Mr. SPEIRS. Absolutely not. I think he has that responsibility. I think he assumed that responsibility.

The CHAIRMAN. On behalf of the committee, Mr. Speirs, I want to thank you for your testimony here and your presentation for the consideration of the committee on this very knotty problem.

Mr. SPEIRS. Thank you.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning, at which time Mr. George Meany will be the witness.

(Whereupon, at 5:35 p.m. the committee recessed, to reconvene at 10 a.m. Thursday, August 1, 1963.)

RAILROAD WORK RULES DISPUTE

THURSDAY, AUGUST 1, 1963

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

The witness this morning is the Honorable George Meany, president of the AFL–CIO. Mr. Meany, we welcome you to the committee. We appreciate the contribution you have made to this problem involving the work rules dispute in the railroad industry.

The record is already replete with the activity of you and your associates and particularly the report that you gave to the President narrowing the issues down to what the factual background is and what the eight issues that are involved in connection with this problem are. We know you have also a proposal.

I would assume that it is an interim proposal, as has been referred to. We would, of course, welcome your comments on both of these documents or memorandums during the course of your testimony. I believe you do not have a prepared statement.

STATEMENT OF GEORGE MEANY, PRESIDENT, AFL–CIO

Mr. MEANY. No.

The CHAIRMAN. You may proceed as you desire.

Mr. MEANY. Thank you, Mr. Chairman. I would like to make a short statement and then will, of course, be willing to answer any questions that I am able to answer from members of the committee.

I would like to say at the very outset that the fact that I am supporting the resolution that was introduced by Representative Staggers should not be taken as an indication that I am in any way critical of anybody in the executive branch of the Government in the handling of this dispute. I think the President; the Secretary of Labor, Mr. Wirtz; his Assistant Secretary, Mr. Reynolds; Mr. O'Neill of the Mediation Service, have worked just about as hard as it is possible for important men in their positions to work to settle this particular problem and, of course, settle it without a nationwide strike.

I am in complete agreement with the President that this country cannot afford a nationwide railroad strike. It would be an economic catastrophe and I don't think anyone can argue about its ultimate effects if it continues for any length of time.

As I say, I have no criticism of the executive branch or anybody in it with regard to this. They have done their very best to solve this problem and they, of course, finally had to send it over here to the Congress.

I do disagree with the approach that they use in their proposal and I will discuss that a little later.

Mr. Chairman and members of the committee, this is a labor dispute. This is strictly an employer-employee dispute. Of course, it is complicated, it is a little different than any dispute you possibly get in another industry, but basically it is an employer-employee dispute that started back in 1959 when the carriers filed notices under the Railway Labor Act, notifying the brotherhoods that they were going to make certain rule changes which they felt they were free to make at the expiration of the contracts or the termination date of the labor agreements with the brotherhoods.

After that, somewhere in September, I think it was, of 1960, the brotherhoods filed a notice saying that they wanted to change the rules.

When the carriers filed notices in November of 1959, they immediately embarked on a nationwide advertising campaign in which they have spent tremendous sums of money inserting ads in the daily newspapers and in some of the other media of publicity in trying to establish two definite points.

No. 1, that there were a large group of railroad employees who were not needed, but who were forced on the carrier by the terms of their contract with the unions, and that these men didn't do any work, had no responsibility, and they were a financial drag upon the industry.

The second thing that they tried to convince the American public of during this 4-year period was that the industry was going downhill very rapidly, that its financial position was very, very bad, due to this situation where they were wasting their money by paying workers who were not needed.

These were the two points in this campaign which went on ever since. As I say, it was an expensive campaign. I think they had some success in convincing the American people on these two points.

In fact, the Chairman of the Presidential Railroad Commission, Mr. Rifkind, commented publicly when they submitted their report that this was a moribund industry. That it was in financial trouble and that something had to be done. I would like to point out that the financial position of the railroad industry is part of his employer-employee dispute. It is part of it because the railroad carriers have made it part of it.

In other words, they are saying we have to get rid of these jobs, brushing aside whether or not the jobs are necessary. They say we have to get rid of them because of this financial burden on the railroads.

I think this is a part of this dispute and I would like to make some comments on that. As I said, they evidently convinced Judge Rifkind of the Presidential Railroad Commission that their financial condition was very bad. In fact, as I say, he referred to this as a dying industry.

Now I want to point out that the people who buy stocks—and I am not an expert and don't pretend to be an expert, but I assume that

the people who buy stocks and put them aside for their family or for institutions and so on and so forth—have some idea of the value of the stock they are buying and that this is in some way an indication of the financial condition of an industry or of a corporation.

So I would like to point out that last Friday the Dow-Jones industrials average, which is the key figure in the averages, showed that these 30-odd stocks of the big corporations of America, blue chip stocks, that make up this Dow-Jones industrial picture, were at 95 percent of their 1962 high level.

In other words, they had not gotten back to the high price level that was maintained last May before the stock market—I mean not last May, May of 1962—before the stock market suffered this reverse that affected the whole list. So they are back but they are not back to 100 percent. This is the industrials average.

The utilities, the key utilities in the utility Dow-Jones list, stand at 106 percent. In other words, they have gotten back to their May 1962, level and have gone 6 percent beyond.

The railroads stand at 112 percent of their 1962 level. So that means they have gotten back to where they were in May of 1962 and have gone 12 percentage points beyond. This indicates that the people who buy these stocks, and these are brought by some big institutions and corporations, indicates at least that they feel that the railroads are not a dying or a moribund industry.

The findings of a study made by the American Railway Labor Executives Association indicates that the industry is not in a bad situation, although there are some roads that are less profitable than others.

From 1945 through 1962 reported net after tax profits of class 1 railroads have totaled $11 billion. While they were only $382 million in 1961, which was considered a recession year, they have rebounded to $571 million in 1962. According to reports for the first 6 months of this year, profits will be substantially higher in 1963. Dividends paid out by railroads have exceeded $7 billion since 1945.

In 1961, an off year, the common stock dividends of class 1 railroads alone exceeded one-third of a billion dollars. They rose in 1962 and are expected to rise again this year. The net profits of the class 1 railroads, plus depreciation—in other words, what is known as cash flow—exceeded $1.2 billion in 1962 and it will definitely be higher this year.

The carriers have improved their physical plant during these postwar years. New capital investment will total $1 billion in this year according to a survey made by the McGraw-Hill people. The long-term debt of the railroads has gone down considerably and so on and so forth.

These facts hardly indicate that the industry is facing bankruptcy. I could also point to an ad—I am not going to try to bore you with this—in last Friday's newspapers of the Union Pacific Railroad in which they were addressing an open letter to the stockholders of the Rock Island Railroad, trying to tell them that they should merge with Union Pacific rather than with some other railroad that wants to bring about a merger.

This showed that Union Pacific earned $24 million last year from their oil, gas, and minerals operation. Not from the railroad. On

their railroad operation, according to their advertisement, they earned $46 million last year. So this indicates at least that railroad is in good shape.

I would say I have a good many more figures. I don't want to bore you with them. I think it is important, however, to understand that this problem of the unneeded jobs is not causing the railroads to go bankrupt.

Without question it may cost them something, but it is not fair to say they are going bankrupt. What about these jobs, what about these men? You get the impression, perhaps you read the ads which they refer to featherbedding and all this, you get the impression that here is a group of men that just want to get paid for doing nothing.

I don't think this is true. I don't think that the average American railroad worker is any different than any other American. I think the average American would like a job, a well-paying job; they would like a job that meant something, that they could perform and make some contribution to the industry.

The fact that these men are hanging onto their jobs through their adherence or their attempt to maintain the rules which were worked out over the years by collective bargaining indicates that they want a job. That they want a job and this is the only job they have, and they would like to hang on to it.

This does not indicate by any means that they would like to hang on to it because there is not much to do. There is no proof at all. They would like to hang on to it because it is the only job they have.

They have their problems of taking care of their families. I think anyone in the same spot would feel pretty much the same way, they want to hang on to the same job. This automation that has come to the industry has changed the work pattern. There is no question that there should be a change in the method of operating America's railroads.

I think this is a responsibility of the carriers and I think the unions have a responsibility. I think some of the rules are out of date and archaic and I think they should be changed. However, I feel that this is the responsibility of both sides, and I think the carrier, as the employer has a responsibility for the people who are working for the railroads that he hired and that have been in there 10, 15, and 20 years.

In other words, I think the carrier has a share of the responsibility for the economic effects of automation which in this case refers to the elimination or the possibility of eliminating these jobs.

I don't think, for instance, that these men hold these jobs because they want to hold a job where there is very little to do. I think it is merely because it is the only job they have, and they certainly would like to hold it and certainly, if possible, to get another job.

So this is the problem. We have 38,000 people, in round numbers, that are firemen and they man 32,000 jobs. In other words, there are more people than jobs because some of these people have casual employment. This matter, as I said, started in 1959 and 1960.

I want to submit that in my opinion there was very little collective bargaining in 1960, 1961, or 1962. I think there has been some collective bargaining since May of this year. I think that the people have been talking about there was more collective bargaining. I think

there has been a change of proposals and so forth which perhaps should have taken place some years ago.

Maybe this situation is inherent in the Railway Labor Act. In other words, in the Railway Labor Act there are certain procedures you must go through. You file a notice and then it goes to a certain point and then there is a strike notice and after that there can be no action taken, the President appoints an Emergency Board and so on and so forth.

It would seem to me that from the summer of 1960 that all that happened in this dispute was that the disputants were preparing their papers and the lawyers and researchers were working to get the material ready for preparation to the Presidential Railroad Commission or any other commission which would be used by the Government to try to resolve this dispute.

In that period I don't feel there was any collective bargaining worthy of the name. So now here we come down to the point where the President and the Secretary of Labor have been trying very desperately since the middle of May to find a solution for this problem. The President appointed a fact-finding committee. I think he appointed that on the 10th or 11th of July which made a report to him on the 19th of July, presenting the facts.

On the basis of that presentation of facts, the President has sent this proposed legislation which is contained in the resolution that you have before you. I disagree for the trade union movement, the railroad brotherhoods and everybody on our side of the table disagree with the approach in this resolution presented by the administration.

We do not think the Interstate Commerce Commission—and I have every respect for these gentlemen and their integrity, and I have no reason to try to impugn their integrity—I feel that their experience, the type of work that they do, the responsibilities placed upon them as an agency of the Government, and so on and so forth, does not fit them for this type of work. This is a labor dispute. They don't have experience in this sort of thing and I feel it would be a mistake to turn it over to them. Of course, another thing that disturbs us very greatly about this legislation is because it is compulsory.

I know that the sponsors have taken the position that it is not compulsory arbitration and there is no compulsion. Of course, this is not so. This is just sort of dancing around the actual facts. I don't know whether it is compulsory arbitration, but I do know it is compulsory. I do know that if the Interstate Commerce Commission makes a decision on a rule that the unions cannot go on strike in objecting to that rule for a period of 2 years.

So there is no question that this is compulsory arbitration introduced for the first time—compulsory work legislation introduced for the first time—in the railroad industry.

As I say, I do not agree with the proposal on the two counts. One, I don't think the Interstate Commerce Commission is the proper body. I don't think their experience would qualify them to get into a dispute of this nature.

I think the Chairman of the Interstate Commerce Commission indicated to some extent when he came before a committee of Congress, added evidence, if there was any additional evidence needed, that this is not the type of problem the ICC should handle because he

said he would not go along with that section of the resolution which called for the Interstate Commerce Commission to consult with the Secretary of Labor and the National Mediation Board.

He said that these were from the executive branch and he didn't feel the Interstate Commerce Commission should take any advice from them.

In addition to that, he indicated he did not want the Interstate Commerce Commission in handling this to be limited by the Presidential message and by the resolution to making decisions that would recognize the right of these workers for security of some type under section 5(2)(f) of the ICC law.

This, as I say, indicates in my judgment, at least, that this was not the proper place to send this legislation. There is a proposal, and the chairman referred to it, that is like the other proposal, that it is an interim proposal. Of course, that is true. All of these proposals are interim.

The administration proposal is for 2 years. Then, of course, things are supposed to go back to the normal dealings between the railroads. However, the proposal that we have endorsed and that I forwarded to Senator Pastore and to the chairman of this committee, Congressman Harris, last Friday, is a proposal to try to give collective bargaining one last shot at this before there is congressional action.

I would like to point out that this proposal has been endorsed by the railroad brotherhoods. It recognizes that the transportation services of the railroads are essential. It takes the position that the possibilities of resolving this dispute without congressional action have not been exhausted; that there is still a possibility in the field of collective bargaining.

It sets up a resolution which says that there shall be no strike or no lockout or no changes in conditions while this resolution is operative; that the parties to the dispute shall immediately resume collective bargaining, and that the Secretary of Labor and the National Mediation Board give them all reasonable assistance which, of course, as I say, they have been doing.

Then it sets up a Special Joint Emergency Railroad Committee of the Congress, five men from each side, five men from the House and five men from the Senate. It asks that this committee act as sort of a watchdog committee over the collective-bargaining process, and that the Secretary of Labor and the National Mediation Board shall report to the special joint committee at intervals of every 10 days, not more than 10 days.

If this joint emergency committee of the Congress finds out at any period, at the end of the first 10 days or the second or the third 10 days, or comes to the conclusion during that period that collective bargaining is not going to work, that there is not going to be a solution of this problem, then that committee of Congress notifies the parties, "Well, we are taking this matter back to Congress and Congress will have to handle it through the enactment of a law of some kind."

That is the proposal that we support. It is a proposal that the railroad brotherhoods support. It is not a delaying action any more than the other proposal before you. It could terminate at any time. However, there is not a termination date in the proposal because it was felt that Congress could handle this. If you had a termination

date, it might be set up as a target and the people would know how long they had to stall.

There would be a possibility to cut it off after a very short period of time. There would also be a possibility of allowing the negotiations to continue if the situation indicated that this was the thing to do. For instance, if after 2 or 3 weeks under the supervision of the Department of Labor and the National Mediation Board, and under the general supervision of a congressional committee, they had settled the major issues, of which there are two or three in this dispute, it would not make much sense to say, "We are going to take the rest of it back to Congress," because if they settle the major issues by collective bargaining, then it is quite plausible to believe that they could settle the rest if given a little more time.

This would all be up to the judgment of a congressional committee. We think this is a reasonable approach. It is not a delaying tactic. It doesn't have to delay the legislation or any legislation Congress might pass. It does not have to delay it any longer than the congressional committee would want it delayed.

I just want to make one further point, Mr. Chairman, in closing.

This legislation that you have before you is compulsory. I am not taking the position that the Congress should not do anything about this, but I would hate to see compulsion enter the railroad industry or I would hate to see compulsion by Congress enter the American industrial or labor scene. It is not the sort of thing that we associate with the type of society we have here, where we have a free society and free government.

The workers are free to work or not to work. Employers are free to operate their business or not to operate. I feel that we would like to hold onto this type of society. However, if it comes down to a final showdown and Congress has to be faced with the passage of legislation that is going to compel workers to work, take away a certain amount of their freedom, as compared to other workers on the basis of a paramount public interest in the industry in which they are working, I think if we get to that point, then we have to also consider that if we can't run the American railroads in private hands without legislation compelling workers to work, then I think we have got to come to the point where we have to examine whether or not a business in which men are compelled to work against their will should be the medium for private profit.

I think if we get to that, I think it will be a sad day for America. If it comes, I feel a very natural solution if you have to compel people to work is to just say, "Well, the public interest is paramount and we do the same as we do in other places where the public interest is paramount—the public takes over and runs it as a public operation and we eliminate the question of private profit.

As I say, I hope we don't come to that, but I would like to leave that thought with you, that this would be a natural followup to any legislation that denied to American workers the right to stop working.

Thank you, Mr. Chairman. That is all I have to say at this time.

The CHAIRMAN. Mr. Meany, thank you very much for your presentation and your discussion of these problems, the views which you have given regarding these problems, and your ideas for a solution to the problem.

Mr. Williams?

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. Meany, you have made a very excellent statement. I feel just as you do about the subject of compulsion, not only in the field of labor, but in related fields of human activity. Of course, that is in issue at the present time in other legislation before this body which I won't go into at this time, but the principle of compulsion is repugnant to me in any field, whether it is in the labor field or any other field.

At the same time, there is always the need of the Congress and the obligation of the Congress to protect the public interest. Numerous organization spokesmen speaking for the brotherhoods contended that the proposal made by the President would free the railroads of a sense of responsibility or obligation to negotiate further because they know if they should sit on their hands the matter will be arbitrated by the ICC.

Your proposal, as I understand it, would provide for further negotiations. At the same time, in the event of a breakdown in these negotiations, there would be two alternatives left to the Congress. One would be to pass some type of legislation as presently before us which would provide for compulsory arbitration, which in a sense would be holding the threat of compulsion over the brotherhoods.

On the other hand, there would be the threat of Government seizure, which would be a threat of compulsion over the railroads.

To what extent is that the same kind of coercion that you feel is now presented in the legislation before us?

Mr. MEANY. I don't think, Mr. Williams, there is any great difference. I am opposed to compulsion. Frankly, what I am saying in support of this resolution, 579, is that we should have another last shot at collective bargaining under the watchful eye of a congressional committee.

Mr. WILLIAMS. In other words, in the event collective bargaining completely breaks down, the Congress would be put in the position of acting as arbiter.

Mr. MEANY. That is right. Congress would be put in the position that they are at the present time of doing something to keep the railroads running.

Mr. WILLIAMS. Which in the final analysis would be the same thing as compulsory arbitration.

Mr. MEANY. That is right.

Mr. WILLIAMS. So what you are suggesting, in effect, is that the parties be instructed by the Congress to do everything they possibly can to get together before this dispute reaches the point of some kind of arbitrary settlement.

Mr. MEANY. Yes, that is right, and they do it under the watchful eye of Congress.

Mr. WILLIAMS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. Mr. Meany, I think you have made an excellent statement, and one for the most part that I can subscribe to. I certainly agree with you that every effort should be made to continue collective bargaining in this dispute by voluntary means at least until it becomes a completely hopeless situation and before any more drastic measures are considered.

Would not the effect of compulsory arbitration, if you applied it across the board to all industries, if there was a long work stoppage, have disastrous effect and do substantial damage to the economy? If I understand you correctly, in your judgment you would be taking a step which would eventually lead toward Government ownership, or another way of saying it, to the socialization of the industries affected and the destruction of free, collective bargaining as we have known it since the establishment of our democracy.

Mr. MEANY. Yes, I think it would be a step in that direction. I think there is a natural followup if you say to workers, "You have to lose certain rights that all other workers have because you happen to be working for an industry in which the public has an overwhelming, paramount interest," then I think the next logical step is to say to the people who own these properties, "We don't think under these circumstances these properties should be the medium for private profit."

Mr. BENNETT. If you have compulsory arbitration in this case—and I agree with you it is clear no matter what other fancy names you wish to refer to it by, it is still a form of compulsory arbitration or compulsory settlement of a dispute and I can see no essential difference in the terms—if you apply it in this instance, do you believe that similar action could be successfully averted in other areas?

Mr. MEANY. I don't think that this dispute can be compared in many of its aspects with other industries. I think the problems are different. But the basic, essential fact of being compelled to work could be used as a precedent for any other industry.

Mr. BENNETT. I realize that the railroad situation is different than many others. It is probably different than any other. But we have other industries in the country, if they were shut down for a prolonged period, that would have as much if not a greater effect in damaging the economy than a long shutdown of the railroads.

Mr. MEANY. Over the long pull, that is true. The thing about a nationwide railroad strike is that its effects would be immediate and that it would adversely affect almost every industry in the country. It would not only mean that the railroad workers would be out of work; it would mean that millions of other people would be out of work within a matter of a week because the railroads are not running. There is no question about it.

Mr. BENNETT. I am sure that is true. For example, there are other forms of transportation. They probably won't be able to take care of the transportation that is now handled by the railroads. I recognize that.

If you take an industry like steel, where there is no competing industry, if you had a prolonged shutdown of that, that would have the effect of closing everything up, would it not?

Mr. MEANY. Yes, that would have a tremendous effect. It would take much more time to have this so-called final, overall effect than a railroad strike, but it would have an adverse effect.

Mr. BENNETT. It could be more serious than the railroad strike.

Mr. MEANY. I don't think so, no. Anyway, that is a question of opinion. That is covered, of course, by the National Labor Relations Act, the original Wagner Act, as amended by Taft-Hartley in 1947 and Landrum-Griffin in 1959. The Government has methods of at least delaying that sort of thing through the so-called 80-day injunction.

Mr. BENNETT. Those procedures could fall apart the same as is contended that the procedures under the Railway Labor Act have fallen down and ultimately you come to the same point.

Mr. MEANY. Yes, that is possible.

Mr. BENNETT. Anyway, I agree with you that before taking this kind of drastic action, we certainly ought to give the processes of free, collective bargaining a further chance to settle this dispute.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Staggers.

Mr. STAGGERS. Thank you, Mr. Chairman.

Mr. Meany, I certainly congratulate you on your very moderate statement in support of your views and in support of the men and women whom you represent. I congratulate also the working men and women of America for selecting a man of your caliber to head the labor movement.

I think the record bears out that you have not only very vigorously prosecuted the interests of those whom you represent, but that you have been eminently fair to the opposition at all times. I think that is the American way.

I believe it was Chancellor Bismarck that said "A truly great man is known by three aims: generosity in design, humanity in the execution, and moderation in success." I believe you have done all three of those in your life in your representation of the laboring men and women.

We have men in responsibility, and women, too, who do not show these traits. I agree with you and with my colleague, Mr. Williams, in saying that compulsion in any form is repugnant to the American way of life. It is a matter of interpretation as to the original resolution as to whether it is compulsion. I believe it is. I am hoping that the resolution as sent up and introduced will be considered by the committee and that this problem will be resolved peacefully without either side getting hurt, and especially without the American people getting hurt.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Schenck.

Mr. SCHENCK. Mr. Chairman, I will pass the opportunity to question at this time.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Meany, let me say I appreciate your straightforward approach to this problem and the concise and brief manner in which you have made your points. I think we are all in agreement, everyone I know, that an American is willing to do almost any job if he is not forced to do it. I think we can all subscribe to that.

The problem we are confronted with, which you know better than any man because of your long experience in this field, is a very difficult one and as you pointed out, the railroad situation must be settled in some way.

As I understand it, your objection to the President's resolution is on two bases: One is that you do not feel that the ICC is qualified to handle a situation of this kind; is that correct?

Mr. MEANY. Yes.

Mr. ROGERS of Texas. Mr. Meany, with regard to that particular matter, could you support the President's resolution if we will say a special emergency group made up of the Congressmen to which you referred in your resolution should be substituted for the ICC?

Mr. MEANY. No.

Mr. ROGERS of Texas. Is that because of the alleged compulsion?

Mr. MEANY. It is because of the compulsion.

Mr. ROGERS of Texas. I am sure you are familiar with the President's statement on this, and I called this to the attention of the witness yesterday, in which the President said in his message to the Congress, on page 5:

"Compulsory arbitration of this dispute by a special or congressional panel has been rejected as inconsistent with the principle that solutions reached through free, collective bargaining should always be permitted and preferred."

As I read the resolution of the President—and I may be wrong about it—it simply sets up the ICC to work out ground rules pending the collective bargaining to take place between the parties on two primary issues, that is, the manning issues, the crew consist, and the fireman issue.

As I understand your resolution, there would be an interim created which I believe you fix at a reasonable time in which bargaining would be had on these matters, and then we would come, as Mr. Williams pointed out, to compulsory arbitration by the congressional committee.

Have I analyzed that correctly?

Mr. MEANY. No, you have not.

Mr. ROGERS of Texas. In what respect is it wrong?

Mr. MEANY. You say you will have congressional action in settling the dispute. That is not so. What this resolution calls for, and what it says to the parties, it says the Congress would like you to bargain collectively and see if you can settle this dispute. We would like you to do it with the assistance of the Secretary of Labor and the National Mediation Board and we are appointing a congressional committee to take a close look at this operation and requesting a report every 10 days.

If at the end of any 10-day period when that committee receives its report, it can go back to Congress and say "There is no further use in pursuing collective bargaining. These people cannot agree." Then this puts the matter before the Congress in exactly the same position as it is now. In other words, Congress has got to do something about it.

Mr. ROGERS of Texas. Mr. Meany, that is what I am coming to. What do you suggest, assuming that those facts take place, that Congress do?

Mr. MEANY. I have no suggestion at this time what it would do. I would certainly hope we don't reach that stage.

Mr. ROGERS of Texas. I think we are all agreed on that.

Mr. MEANY. If we do, I certainly would have some opinions on what Congress should do or what Congress should not do. I would like to get away from that. All during the meetings of the special Presidential committee there was one thing cropped up that to me was very annoying. The representative of the carrier kept saying,

time and time again, "There is no use talking about this. Congress has got to decide this."

I resented that very much because I don't think this is a proper job, I don't think this is the kind of a job we want Congress to decide. I am not saying you don't have to decide it, because if you are faced with a railroad strike it is quite obvious you have to do something.

I think this is the kind of problem that men should be big enough on both sides to solve for themselves and not give it to Congress.

Mr. ROGERS of Texas. Mr. Meany, you used the term "reasonable time" in your resolution. Could you give the committee any estimate as to what you feel a reasonable time would be because you are experienced in this field?

Mr. MEANY. A reasonable time, Mr. Rogers, would be at the end of the first 10 days, if the committee of Congress felt there was no use going any further. It could be at the end of 10 days. It could be at the end of 20 days.

Mr. ROGERS of Texas. Thank you.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Meany, you made a statement about the carriers saying that there was no use of bargaining or going beyond. Was that while you were serving on the advisory committee?

Mr. MEANY. Yes.

Mr. YOUNGER. I don't find any reference to that in the report of the advisory committee.

Mr. MEANY. There was no need for us to make any reference to it. We were called upon to state the issues and the facts and not to make any recommendation.

Mr. YOUNGER. That was not a recommendation. If you found that there was no good, honest bargaining going on, isn't that a fact that might well have been reported?

Mr. MEANY. I think that you will find that is at least inferred in the report.

Mr. YOUNGER. It may be inferred, but I can't read it into the report as I read it. You made the statement this morning, whether you were quoting somebody or whether it is your conclusion, that the Nation cannot stand a railroad strike. Is that your conviction?

Mr. MEANY. That is my conviction. I am not quoting anyone. I believe that.

Mr. YOUNGER. The testimony of the brotherhoods says that statement was one of the reasons why the carriers would not negotiate because that statement was issued and they concluded from that statement that there would be something done to prevent a strike. Practically everyone appearing for the brotherhoods said that statement was the one thing that caused the retardation of the negotiations?

Mr. MEANY. You mean my statement?

Mr. YOUNGER. No, a similar statement was issued by other people.

Mr. MEANY. I think this is a very normal conclusion for anyone who studies the problem, to say that we just can't afford a nationwide railroad strike.

Mr. YOUNGER. That would then deprive the brotherhoods of their economic right to enforce their economic rights.

Mr. MEANY. No. They are determined to enforce their economic rights. As of this minute, if the notices go up at the end of this month at the expiration of the grace period which the brotherhoods and the carriers have agreed to, if the notices go up on the 30th day of this month, on the 31st there will be a railroad strike. They are determined to strike.

Mr. YOUNGER. While you were serving on the President's Advisory Committee, was there any suspicion on your part whatsoever that the result of your recommendations would be the resolution that the President sent up?

Mr. MEANY. None whatsoever. It was never discussed, never intimated, or even hinted. We knew nothing about it at all.

Mr. YOUNGER. Do you have any idea where it came from?

Mr. MEANY. I could make a guess, but I don't think that would be fair. It came from somebody advising the President.

Mr. YOUNGER. It was never mentioned at all while you were conducing your factfinding?

Mr. MEANY. Never. The question of the ICC coming into this picture was never mentioned or hinted at all.

Mr. YOUNGER. If it had been mentioned or hinted at, would you have signed the statement by the factfinding committee with that kind of recommendation in it?

Mr. MEANY. That was not possible because in the terms of reference to that committee, the committee was not allowed to recommend anything. They were not expected or try to mediate the dispute. Of course, they did not, except as individuals there were several people on the committee that tried to do something to bring the parties together outside of the official meetings. That committee was appointed to report on three situations: No. 1, the facts and issues in the case and the present position of the parties.

The CHAIRMAN. The committee will come back at 11:30, Mr. Meany, if you will stand by until that time until we anwser this roll call.

(A short recess was taken.)

The CHAIRMAN. The committee will come to order.

I am sorry for the interruption. Mr. O'Brien.

Mr. O'BRIEN. Mr. Chairman, may I make the observation that I hope if we create a watchdog congressional committee that it will get a general dispensation from quorum calls while it is operating.

I might say, with your indulgence, Mr. Chairman, that the presence of Mr. Meany here this morning gives me a little feeling of nostalgia, because it was just about 30 years ago that I used to sit in the press row in the New York State Legislature and listened to Mr. Meany as spokesman for the New York State Federation of Labor.

I was impressed then by his skill and his moderation, and I am delighted to discover, 30 years later, in this much larger arena, that he has not lost either.

Mr. MEANY. Thank you.

Mr. O'BRIEN. I was impressed, Mr. Meany, with your emphasis on the 10 days. You repeatedly stated that, if at the end of the 10 days, which would be unlikely, of course, the congressional observation committee felt it was hopeless, that they could so report to the Congress, is that correct?

Mr. MEANY. Yes, sir.

Mr. O'BRIEN. Isn't it a fact that if at some time this committee reported back to Congress, that it would have certain information that we now lack? We have had a controversy before us on the question of whether or not there has been any real collective bargaining up to date.

Mr. MEANY. That is right.

Mr. O'BRIEN. You said, I believe, that it has occurred mostly since May of this year.

Mr. MEANY. Yes.

Mr. O'BRIEN. But it is a matter of dispute. Our own observers would be in a position whether they were right or whether they were wrong in reporting to the Congress at some later date whether or not there had been collective bargaining.

We would also have the benefit, as I understand it, of their opinion as to whether the unions or the railroads were dragging their feet. That, to me, has a certain value. I am impressed with it, because, frankly, I don't think we have that certain knowledge now, because we have heard it disputed by both sides.

When you mentioned a reasonable length of time, did you have in mind that that might even be 6 months? If the committee felt after 6 months there was real, earnest, hard bargaining that might accomplish something, that would get Congress off the spot as far as passing legislation is concerned; is that correct?

Mr. MEANY. I was not thinking in terms of 6 months. Actually, how this would operate, if the congressional committee was satisfied that there was substantial progress—and I would assume this would mean that there was an agreement on certain major issues—if you had an agreement on major issues, and remember, there are 80 or 85 or 90 rule changes involved, and some of them, of course, are important and others are of less importance, if the congressional committee felt that there was real progress being made, because there was an agreement on some of the major issues, then it would not make any sense to cut the thing off and send it back to Congress, because it would be quite obvious that after a few weeks that you settled some of the major items, that they would eventually settle them all.

It would make no sense to come back to Congress. This is the reason I don't like to see a deadline—a definite deadline—in this resolution, because it would mean that either of the parties could say, "Well, we will just sit tight for that deadline to be reached and that is it." However, the way the resolution is now presented, the congressional committee has a deadline or they can put the ax on this operation at any 10-day period.

The principals in the bargaining would have no way of knowing that a conference with the Secretary of Labor and the representatives of the Mediation Board would not be the last conference before this went back to Congress. They would have no way of knowing. In other words, there would be constant pressure on both sides to try to bargain if they wanted to.

On the other hand, if it became quite obvious that they were not bargaining, there was no intent to bargain, the congressional committee would know that the time had come to stop it and bring it back to Congress. But they would also know whether party No. 1 was responsible for throwing the monkey wrench in, or whether it was party No. 2, or whether both parties were responsible.

Then Congress would have that information for themselves. This could take 10 or 20 days, it could go longer. In the final analysis, the decision as to when it stops and comes back to Congress is in the hands of the joint congressional committee.

Mr. O'BRIEN. Rather than being an open end, 6 Members of Congress, a majority of the 10, could at any time close that open end and bring the whole matter back to Congress.

Mr. MEANY. That is right.

Mr. O'BRIEN. At this point you are not in a position to say what your attitude would be toward any legislation that might be considered at that time?

Mr. MEANY. No. That is right.

Mr. O'BRIEN. You would not know what the recommendations of the committee might be for one thing. I get the picture and I am very grateful to you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Meany, I was interested in your statement earlier that you thought there might be the possibility of a 10-day period being adequate to make a decision on at least some parts of this controversy; is that not true?

Mr. MEANY. I didn't say that. I said it could be. I didn't say that I had any information that indicated that it would be. That was in response to a question how short a time, I said it could be as short as 10 days. It could be 20 days; it could be longer.

Mr. NELSEN. I asked the question for the reason that I am thinking of the time that it is going to take to get all these things going. As to the appointment of this committee, some criticism has been expressed to me, maybe this committee will be prolabor or prorailroad. Have you any suggestions as to the selection of a committee of the Congress and the mechanics of selection? I think we could go through the regular process of the selection of the committee.

Mr. MEANY. It calls for the President of the Senate and the Speaker of the House.

Mr. NELSEN. Yes, I understand.

Mr. MEANY. The only advice I would give, and I have no question of who would be more friendly or who would be less friendly, I think there are men in the Congress, in the House and in the Senate on both sides of the aisle, who are knowledgeable on labor-management questions, who have had some experience in them, not particularly railroad problems, but who are knowledgeable in this general field. Whether they came from one party or the other would not interest me in the slightest.

Mr. NELSEN. Mr. Chairman, I have no further questions. I would like, however, to say to Mr. Meany that I think his proposal deserves very careful attention by this committee and the Congress.

Thank you.

Mr. STAGGERS (presiding). Mr. Hemphill?

Mr. HEMPHILL. Thank you, Mr. Chairman.

I am sorry I missed your testimony, but I was in the dentist's chair.

I was questioning one of the presidents of the brotherhood yesterday and I made the observation that I now felt that now the matter

had been handed to the Congress that the Congress had responsibility to act in some way.

Would you agree with that generally, sir?

Mr. MEANY. Yes, there is no question about that.

Mr. HEMPHILL. And in such a way that at the end of the 30-day moratorium, shall we say, that we have some legislation which people can look to as a source of some sort of solution.

Mr. MEANY. I don't know whether that is a responsibility of Congress, to do something in 30 days that would wrap this thing up. I think the resolution introduced by Mr. Staggers would, for the time being, discharge the congressional obligation to do something. In others words, what we are saying, we are going to try to see if collective bargaining will do this and we are going to watch it. You are not throwing it away. You are going to bring it back as soon as you feel it doesn't work and then you are right where you are now.

Mr. HEMPHILL. Thank you very much.

Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Curtin?

Mr. CURTIN. No questions.

Mr. STAGGERS. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Meany, I would like to join with my colleagues in expressing my appreciation to you for coming here and giving us the benefit of your information on this matter. You stated during your presentation that there still is a possibility in the field of collective bargaining for the settlement of this dispute.

Mr. MEANY. I feel that way.

Mr. KORNEGAY. Yesterday that same thought was expressed by Mr. Luna who is president of the Brotherhood of Railroad Trainmen. I asked him how long he thought it would take to settle the major issues, the manning issues, in this dispute. He indicated he thought they could be settled in a period of 30 days.

Do you have any thoughts on the time element?

Mr. MEANY. No. I think if there was real bargaining on the manning issue, and I know they are closer now than they were a few weeks ago, I don't see why it should take anything like 30 days. I think they can do it quicker.

Mr. KORNEGAY. You don't think it should take that long?

Mr. MEANY. No, I don't think so.

Mr. KORNEGAY. Based on some other statements you made in connection with the proposal which you are supporting, you feel that it possibly could be settled in 10 days; is that correct?

Mr. MEANY. Possibly.

Mr. KORNEGAY. That is all. Thank you.

Mr. STAGGERS. Mr. Sibal?

Mr. SIBAL. Thank you, Mr. Chairman.

Mr. Meany, I too, would like to commend you for a very forthright and direct statement.

To your knowledge, is effective bargaining going on right now?

Mr. MEANY. I would say that there has been some exchange back and forth within the last few days. I would say "yes," that there is bargaining going on. But how effective and to what extent is it in

effect because of the belief that Congress is going to settle this definitely, I don't know. This is one of the things that bothers me about it.

Mr. SIBAL. I just wondered if you had any opinion as to whether or not the very fact that this committee and the comparable committee in the Senate are considering legislation is making a contribution to the atmosphere and climate for effective bargaining or whether it is complicating it.

Mr. MEANY. I don't think it is making a contribution at this time.

Mr. SIBAL. If the Congress were to adopt your suggestion or something similar to it, and it did fail, and you indicated we might know that in 10 days, do you have any idea what we would then do? Would we have to go back to what we originally started to consider in those hearings?

Mr. MEANY. I don't know. That would be something, as I say, I would undoubtedly have an opinion on when it came before you. I certainly would not know what direction the legislation might take.

I think that the experience of this committee in this interim period would to some extent determine what sort of legislation would be recommended.

Mr. SIBAL. The thing I am wondering is that I know how you and the other members of the labor movement feel about compulsory arbitration. I happen to think this bill is a form of compulsory arbitration, as you do. Yet we can make all the statements we want about being opposed to it, if negotiations do break down and we have the problem of a nationwide rail strike on our hands, I am just trying to think of what else we could do.

Mr. MEANY. The Government can seize the railroads. You know, it is very simple. You can settle this in two simple ways. In other words, give the union every thing they ask or give the employer everything that he puts in.

Mr. SIBAL. They may ask for something else.

Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman. Like Mr. O'Brien, I too, have questioned Mr. Meany on at least one previous occasion as a newsman. I would like the record to show that it was not 30 years ago, however. [Laughter.]

Mr. Meany, it would be most unsatisfactory, would it not, to have Congress itself write the work rules for the railroad industry?

Mr. MEANY. I don't want to take anything away from Congress, but I would suspect that it would not be the type of thing that it would be too good at. In the final analysis, I think the work rules have to be determined by people in the railroad industry on one side or the other.

Mr. VAN DEERLIN. So that if this dispute should come back to the Congress at the end of 10, 20, or 30 days, the choice would be wide open and you would not want to put Congress in the position of deciding this dispute through legislation?

Mr. MEANY. This is what I would like to avoid and I am sure most members of Congress would like to avoid. On the other hand, I have no thoughts except that this is where it will wind up unless it is settled.

I would like to give the principals, or at least try to see if we can get the principals to really bargain this thing out. Actually, I would like to see one more shot under the eye of a congressional committee before Congress faces up to what may be the ultimate problem of deciding this themselves.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. STAGGERS. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Meany, on July 23 you directed a letter to the majority and minority leaders of the House and the Senate urging this 30-day moratorium?

Mr. MEANY. Yes.

Mr. CUNNINGHAM. Was it your view at that time that that 30-day period of postponement might bring a solution of this problem, and did you contemplate the type of legislation that Mr. Staggers has now introduced?

Mr. MEANY. No, I did not. I sent that message to the leaders of both Houses at a time when I was completely convinced that Congress nor the committees of Congress nor the leaders of Congress nor anyone else could legislate in this short period of 6 or 7 days.

That was to get over that period so that there would be an opportunity for people to appear before this committee, as I am appearing here today, which would not have been possible. That was the only purpose of that.

Mr. CUNNINGHAM. I certainly agree with you on that. I was wondering if you felt then that within 30 days of intensive mediation you had reason to hope that this might be resolved?

Mr. MEANY. No. I was not thinking in terms of that at all. I was thinking in terms of giving us time to legislate in an orderly way.

Mr. CUNNINGHAM. In other words, not to hurry a piece of legislation through?

Mr. MEANY. That is right.

Mr. CUNNINGHAM. Mr. Meany, getting now to the bill that Mr. Staggers introduced I would like to have you comment, if you would care to express yourself.

I am not at all friendly to compulsory arbitration, but it appears to me that House Joint Resolution 579 might be itself a form of compulsory arbitration, in that this provides for no lockout or no strike during an indefinite period.

This seems to me to be compulsion just as the President's proposal is compulsion.

Do you not disagree that your recommended resolution would not in any way, shape, or form be compulsion?

Mr. MEANY. I think when people volunteer to do something it is not compulsory.

Mr. CUNNINGHAM. They are not volunteering to do it. This bill is up to force them to do it.

Mr. MEANY. I stated when I presented this matter in a letter to Mr. Harris and to Senator Pastore that the unions in this field had agreed that this was a proper procedure. So this would indicate that they would not feel that the passage of this resolution setting up this congressional committee would be in any way compulsory as far as they were concerned.

Mr. CUNNINGHAM. Mr. Meany, you have referred repeatedly to the hope that maybe within 10, 20, or 30 days under the resolution of Mr. Staggers there might be a settlement of this dispute.

Did I understand you to have that hope?

Mr. MEANY. Yes.

Mr. CUNNINGHAM. Now we have approximately 30 days left under the moratorium. Would not your view be the same without this additional legislation?

Mr. MEANY. No.

Mr. CUNNINGHAM. Why would you not think so?

Mr. MEANY. Because of the fact that under the resolution the disputants would be bargaining under the eye of a congressional committee. That is the difference.

Mr. CUNNINGHAM. In this resolution, on the first page, line 3, it says, "resolved that until the expiration." I am wondering if there would ever be an expiration because on page 4, section 5, it concludes by saying, "this joint resolution shall expire when all disputes covered thereby are disposed of by agreement of the parties."

In all of the history of collective bargaining there are continual issues and disputes. I am wondering if such a resolution would ever be terminated.

Mr. MEANY. I don't think you can read section 5 in a vacuum. I think that section 5 is related to the entire resolution. I think it goes without saying that this joint resolution will expire when all disputes covered thereto are disposed of by agreement of the parties, provided that Congress has not acted under section 3 prior to that. Then it is automatic that is the end of whatever force this joint resolution has when Congress under the terms of the resolution or the committee goes back to Congress and says "collective bargaining has reached the end of the road and we have to do something."

Mr. CUNNINGHAM. Under this resolution that we are speaking of, Mr. Staggers' resolution, if a lot of the differences are settled, couldn't one party or another raise a new issue and never reach an agreement?

Mr. MEANY. New issues?

Mr. CUNNINGHAM. Bring in new issues.

Mr. MEANY. No, I think this is confined to the present dispute.

Mr. CUNNINGHAM. I studied this carefully because I am sympathetic to it. I am only asking for information. I do not see nor am I convinced that it is confined to the present dispute. I could be wrong.

Mr. MEANY. It is limited to the notices of the carriers of November 1959, and the notices of the labor unions of September 1960.

Mr. CUNNINGHAM. Then you think it would be limited to those issues?

Mr. MEANY. Yes, definitely.

Mr. CUNNINGHAM. Mr. Meany, section 3, where you recommend the establishment of this joint committee of Congress, it would seem to me that if this committee were to consider this resolution that it ought to be more definite. I do not know of any other Member of Congress as familiar with this problem as the members of this committee.

I should think that language would be needed to specify this committee because we should not let it up in the air for the Speaker or the President of the Senate to appoint the members.

Mr. MEANY. I have no quarrel on that at all. Actually, I would like to see a congressional committee and if it was decided that the Senate Commerce Committee and the House committee should take this, I would have no quarrel with that at all.

I imagine the only reason that the five is here is to keep it manageable. I imagine if the committees of both sides did take this they would most likely give it to a subcommittee anyway.

I certainly have no quarrel with that.

Mr. CUNNINGHAM. I was not suggesting that the whole committee be involved but that the five members be from this committee.

Mr. MEANY. I certainly have no quarrel with that at all.

Mr. CUNNINGHAM. Would you have any objection to the five members being appointed on a partisan basis so that all five would not be Democrats or all five would not be Republicans?

Mr. MEANY. I would hope that would come about. I certainly don't think this should be made a political issue at all.

Mr. CUNNINGHAM. I certainly agree with you.

Mr. MEANY. It would be unfortunate if they all came from one party. It would then indicate that it was political.

Mr. CUNNINGHAM. I have been around here for a few years and I see that when we do not pinpoint these things that somebody misinterprets the intent. I just think it would be a safeguard if the committee considers some of these things or that section particularly be rewritten.

Mr. MEANY. I would certainly have no objection of inserting that in there.

Mr. CUNNINGHAM. Thank you, sir.

The CHAIRMAN (presiding). Mr. Jarman?

Mr. JARMAN. Mr. Meany, a great deal has been said in our hearings so far in opposition to compulsory arbitration. Let me make sure I am clear in my own mind as to your thinking on that particular issue.

Let us assume, irrespective of resolutions now before Congress, the impasse between the carriers and the brotherhoods continues for, say, another year or 5 years or 10 years. In the interest of the cariers, the brotherhoods and the public, do you think there would come a time when some form of compulsory arbitration would be justified?

Mr. MEANY. No. Not as long as you kept the railroads under private operation for private profit. In other words, I am saying if you are going to take the right of a person, the right that he has not to work for somebody else, if you are going to take that right away from him because of the interest of the general public and the welfare of the public, then I say you have to take the railroads away and pay them and put them under public ownership.

I think this naturally follows as night follows day.

Mr. JARMAN. Then you take the position that the solution has to be reached through collective bargaining in some form or another?

Mr. MEANY. Yes. I an not for public ownership of the railroads. So this is the reason I would like to see this settled by collective bargaining.

Mr. JARMAN. A lot of us, I know, are troubled by the amount of time that has already gone by and the effort on both sides to reach a settlement. Many of us are debating in our own minds just how long the American public can stand by waiting for parties to get to-

gether on a dispute that is of such vital importance to this country.

I was particularly interested in your own analysis of any possibility of compulsory arbitration in the future.

I think that is all, Mr. Chairman.

The CHAIRMAN. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Meany, yesterday Mr. Luna, the president of the Brotherhood of Railroad Trainmen, AFL–CIO, testified that the final result of your resoluiton would bring about two possibilities.

One would be compulsory arbitration, the other seizure. Do you have any other alternate ultimate suggestion which might possibly occur?

Mr. MEANY. I don't agree that is the only two methods of approach but I would not want to comment on any alternate now. I think if we go to that point this matter will be very well discussed by Congress, and I would not want to comment on legislation that is not really before us.

I don't think that those are only two alternates.

Mr. YOUNGER. Are you familiar with the hearings that have been held before the Merchant Marine and Fisheries Committee recently on compulsory arbitration bill?

Mr. MEANY. I have had reports on them but I myself have not been there.

Mr. YOUNGER. Secretary Wirtz has presented a rather peculiar situation.

Mr. MEANY. Yes, he testified yesterday.

Mr. YOUNGER. He was advocating this resolution before our committee but opposing the other one on the ground it was compulsory arbitration but contended this one was not.

That committee has agreed this morning on a final conclusion. They have removed the compulsory arbitration but put in compulsory mediation.

In other words, forcing mediation before a strike and then the Mediation Board would report to the President if a deadlock occurred which could not be settled and then the President would report to the Congress.

Would that solution fit the railroad problem?

Mr. MEANY. I don't really know. I would have to study it. I would not want to answer that question.

Mr. YOUNGER. That is all.

The CHAIRMAN. Are there any further questions?

Mr. NELSON. Mr. Chairman, on that point, this congressional committee would in effect be supervising mediation and bringing them together and trying to expedite the problem to some degree?

Mr. MEANY. That is right. With the definite understanding that when this congressional committee felt that no good purpose was served, they were getting nowhere, they would stop it at any time.

Mr. NELSEN. Thank you very much, Mr. Meany.

The CHAIRMAN. Mr. Meany, I want to join other members in complimenting you for your contribution to this problem. I noted with interest your very fair and frank analysis of the situation, that you feel that we have to face up to the facts of life in connection with new methods and what is referred to as automation.

You stated earlier that you recognized that change in method of operating the railroads is needed. That it was the primary responsibility of the carriers. Indeed, you stated that there are some of the rules changes that are needed.

Mr. MEANY. That is right.

The CHAIRMAN. This gives a very frank recognition that something needs to be done.

Now I think all of us share the concern that you have expressed with the problems of automation and what happens to men when their jobs are affected. We have seen experiences in this field in the last few years. Certainly there is a serious problem where men have worked 15, 20 years and longer in industry, as you have appropriately put it, and that is what they know what to do, as you so well stated.

Now in looking over this report of your special subcommittee, it is my understanding that you found that the railroads accepted the principle of attrition, that none of the firemen with over 10 years experience would lose their jobs, but no new persons would be hired to fill the jobs when their present firemen, retired, died, or otherwise left the industry.

Is my understanding correct. Is that what you found in this report?

Mr. MEANY. You mean the report of the Six-Man Committee?

The CHAIRMAN. Yes.

Mr. MEANY. Yes, we feel that the acceptance of the special Presidential Commission and of Emergency Board 154 indicated that the carrier had receded at least to that extent from his original position.

That is an interpretation of what that means.

The CHAIRMAN. If that is true I see no reason why, recognizing the facts of life as they are, that the parties to this dispute could not bring themselves to the full realization that it is important to the American public to get some solution to this problem.

I just think reasonable men that I know they are on both sides, would put their minds to it and it could be done. I am hopeful that further efforts will be made that that will be done.

As long as the attitude prevails as some have indicated here that the climate is not right or the attitude is not right, then we are not going to get a solution to the problem. I think there has got to be on the part of both sides a real determination to reach a solution to this problem on what is appropriate under the circumstances and what is fair and what is just and what the situation of today demands.

I have tried all during this hearing to stay within your subcommittee's report because that is the real crux of this thing. If the parties would take this report and use that as a basis and try to come to some decision, it seems to me that some progress could be made.

Then we have been told by a number of people on both sides, and by the Secretary of Labor, and by the President himself, that if that one issue could be settled, very likely the rest would follow in the usual way of reaching settlement.

Mr. MEANY. That is right.

The CHAIRMAN. I hope that can be done. On behalf of the committee I want to thank you for your presentation here and taking the time out of your very busy schedule to come to the committee and give

to us the benefit of your experience in this field and your suggestions and recommendations.

Mr. MEANY. Thank you, Mr. Chairman.

The CHAIRMAN. The House is in session on the authorization for NASA. It is a rather important business. It has been suggested that it would be best to have meetings even during general debate in order that members may given consideration to it.

Therefore, the committee will not be able to sit this afternoon. We will meet in the morning at 10 o'clock at which time we will first hear the Department of Commerce and following which we will hear Mr. Choene, representing the Railway Labor Executives Association.

We hope to conclude with both of those gentlemen tomorrow at which time I will make further announcement of this committee's schedule.

(Whereupon, at 12:20 p.m., the committee recessed, to reconvene at 10 a.m., Friday, August 2, 1963.)

RAILROAD WORK RULES DISPUTE

FRIDAY, AUGUST 2, 1963

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington D.C.

The committee met at 10 a.m., pursuant to recess, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

This morning we are pleased to welcome the Acting Secretary of Commerce, our former esteemed colleague in the House, the Honorable Franklin D. Roosevelt, Jr. I should like to say that I personally am glad to welcome you here, Mr. Secretary, and we have been looking forward to your appearance for some time not only in connection with this matter but other matters in which you have an interest and responsibility in the field of commerce.

I understand you have other engagements this afternoon which will require your time and attention and we will try to expedite your presentation here this morning.

You have a statement, I believe, which you wish to present and the committee would be glad to hear it.

STATEMENT OF HON. FRANKLIN D. ROOSEVELT, JR., ACTING SECRETARY OF COMMERCE; ACCOMPANIED BY DR. E. G. PLOWMAN, DEPUTY UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION (POLICY); AND ROBERT KENDRICK, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. ROOSEVELT. Thank you very much, Mr. Chairman.

I might say I am very honored to have this first opportunity to appear before you and your colleagues on this great committee, and I look forward to many other occasions in which we can work together.

I appear as Acting Secretary because of the absence from Washington of Secretary Hodges, but with his full approval. I speak on behalf of him and of the Department of Commerce.

Mr. Chairman, I appreciate this opportunity to appear before your committee in support of the legislative proposal made by President Kennedy in his message on railroad work rules sent to Congress Monday, July 22.

My purpose is to describe the impact of a nationwide shutdown of railroad operations on all segments of the economy of the United States.

We were all relieved to learn of railroad managements' decision to defer imposition of the work rule changes for 30 days. However, public statements and testimony developed before this committee as well as the Senate Committee on Commerce certainly give no grounds for assurance that the country may not face a nationwide shutdown of our railroads at the end of the 30 days. Accordingly, prior to the expiration of this period there remains great urgency for the Congress to act favorably on the President's recommendations.

My testimony today supplies factual information that supports this conviction that early approval by the Congress of the President's legislative proposal is of the most vital importance.

I might add here, Mr. Chairman, that I have the particular assistance of Dr. Grover Plowman who is with me here on my left, the Deputy Under Secretary for Transportation; and Mr. Robert Kendrick, Assistant General Counsel of the Department for Transportation, in the presentation of this testimony.

I appear here today to underscore before this committee the grave concern of the administration, expressed in the President's message to the Congress on July 22, and as to the serious and lasting harm that will be done to the American economy by a nationwide railroad shutdown.

The injury to the economy would begin on the very first day, with the forced unemployment of 700,000 railroad employees, most of whom will be immediately put out of work or will have shortly to be laid off.

Some factories will have to shut down at once for lack of inbound materials such as hazardous chemicals that are difficult or impossible to ship by truck.

The commuter train tieup will force other plants and commercial establishments to operate short handed. Retail establishments will rapidly lose their trade. There will be a traffic catastrophe in cities like New York.

Estimates have been made by the Commerce Department staff of the economic impact of a nationwide railroad shutdown. Our survey has been made on an industry by industry basis, and within the Federal Government by obtaining information from each agency.

The industry survey has been summarized and is submitted for the record as appendix I. In addition, supplemental material from which appendix I was derived and which was prepared by our Business and Defense Services Administration is submitted as appendix IV.

The first industry most immediately shut down is coal mining. Coal has three major markets: domestic public utility plants, steel production, and export.

The effort on each market will be immediate, because most of the coal mined in the United States is hauled by railroad from the mine to the point of use, or to a dock where it is transferred to a river barge, a Great Lakes vessel or an oceangoing bulk carrier.

Midsummer is a period of accumulation of coal reserves for a coming winter. If this accumulation of coal reserves is interrupted long enough, there will be a shortage resulting in added cost. Coal that normally is exported in summertime illustrates this. Failure to export coal now means less coal in the winter stockpiles at the foreign destination. This deficit may have to be overcome by shipping additional coal after the shutdown is over—paying higher ocean transportation charges because of the increased demand for vessel space.

The result may be a substantial adverse balance-of-payments factor, depending on the duration of the shutdown. With regard to the balance-of-payments question, it should be pointed out that the foreign customers for our export coal will immediately turn to other sources.

We will therefore lose not only the immediate sales during the shutdown period but may quite possibly lose many of these customers either permanently or for a prolonged period.

Generally speaking, most of our export of chemicals, automobiles, and heavy machinery reach dockside by rail. On the other hand, imports of foreign automobiles, light machinery, nails, wire fence, and reinforcing bars can and normally do move from the port to destinations in the interior of the United States by barge or truck. It follows that our exports will fall relative to our imports, again worsening our balance-of-payments problem.

At this time of year, both refrigerator freight cars and refrigerator trucks are using their full capacity to carry fresh foods such as lettuce, melons, oranges, and meat. If the refrigerator freight cars, or "reefers" in railroad slang, are immobilized, the result in a very few days will be shutdown of meatpacking plants and the loss of fruit and vegetable crops on the farm by inability to ship.

Another example is the recent shortage of boxcars for moving this year's grain crops from farms to mills or elevators. The complete disappearance of railroad transportation for vital grain crops, and the consequent loss from inability to store will result in great economic hardships.

The Food and Drug Administration of the Department of Health, Education, and Welfare anticipates serious problems due to the deterioration of perishable foods in transit, and in obtaining suitable transportation of volatile liquids required for testing purposes which normally move by parcel post.

Only a 30- to 60-day supply of medical inventories is on hand in most cities and emergency arrangements would have to be made to maintain needed medical supplies.

There will be numerous vital public health problems caused by the rail shutdown. For example, one metropolitan sewage disposal agency has reported that it can only receive shipments of liquid chlorine by tank car. This is needed to disinfect 150 million gallons of sewage discharged daily into the Ohio River, which is the drinking water source for downstream communities. Tank truck capacity is limited for chlorine movements such as this because of the hazard. Nearly every community in our Nation requires chlorine for drinking water purification and sewage treatment.

Carbon bisulfide is carried only in rail tank cars, and not by truck, because of its hazards. This chemical is essential for the manufacture of rayons, and although all other materials could be delivered to the plants by truck, the absence of this one material would force shutdowns starting at or shortly after a suspension of railroad service.

In construction, by the end of 1 month, 15 to 30 percent of all projects would be shut down, depending on the degree of dependence on rail for long hauls and on materials of great weight and dimensions such as steel girders.

For example, several missile-site access road projects now underway are on the list of highway projects that would drastically be curtailed due to lack of rail-hauled materials.

Periodicals, moving mainly by rail, would be hit heavily by a shutdown because there is nothing staler than yesterday's newspaper. Air cargo could not be used extensively for magazines because of military, postal, health and welfare, and passenger travel needs.

The cumulative effect of a nationwide railroad shutdown is evident from the examples I have cited. By the end of the first month the total injury to our economy will be very serious.

The table appendix II, which is submitted for the record, compares the estimated effort on the first day with the cumulated impact at the end of 30 days. Note that after a month, and assuming vigorous efforts by truck and barge carriers, the table shows that seven-eighths of the present-day normal rail traffic would still be immobilized. Only one-eighth would have been diverted to barges and trucks. This comes about in part because rail hauls are generally longer than truck journeys.

Another reason is that there just are not a sufficient number of trucks and barges to move larger volumes of the present-day railroad freight traffic.

The Department of Defense estimates that 30 percent of the traffic they normally route via railroad is not divertible to barge or truck or air, either because of location of origin or destination, or because of the dimensions or nature of the commodity.

This defense transportation problem, it seems to me, of itself justifies swift and favorable response by the Congress, by enacting the legislation requested by the President in his special message on July 22.

At this point, Mr. Chairman, I would like to also put in for the record a letter dated July 26, 1963, from the Secretary of Defense to the Secretary of Commerce, Mr. Hodges. It reads:

> DEAR LUTHER: The possible nationwide rail stoppage is of major concern to the Department of Defense, its potential effect on the ability of the military departments to carry out logistic operations within the United States and to oversea areas dictates the necessity of deriving the optimum utilization from remaining transportation resources.
>
> We think this can be accomplished by the promulgation to industry, the public and throughout the Government of a workable procedure whereby relative priorities will be recognized and honored by the available transportation resources.
>
> May I request your assurance that the appropriate standby procedure will be prepared at the earliest possible date in advance of any transportation stoppage to permit the continued movement of essential military supplies and equipment.
>
> Sincerely, BOB.

I should say in answer to the Secretary of Defense's letter, we have assured him that essential military cargoes will be given high priorities in accordance with the priority system and lists that we have submitted for final approval to the Office of Emergency Planning. But I should also add that this request from the Secretary of Defense of course competes with the very serious needs of our hospitals, the necessary food for people in the big cities of our country, and of course a list of priorities will be essential to maintain the health, the welfare, and the security of the United States in case of a railroad shutdown.

Likewise the military applications program of the Atomic Energy Commission must not be interrupted because it is vital to national defense. Much of its materials requirements can only be shipped by rail.

The Post Office Department has had to send out advance instructions to 35,000 post offices, so they will be able to take immediate action if there is a railroad shutdown. These instructions emphatically highlight the seriousness of this entire situation.

All second-, third-, and fourth-class mail, including parcel post and magazines, will be refused if the destination is more than 150 miles from the point of origin. As much first-class mail as possible will be moved by air, giving precedence to the longer distances and to international origin or destination.

In brief, the Post Office plan is to move mail of all classes by truck up to 150 miles and to provide air service for as much of the longer haul first-class mail as possible.

The General Services Administration is prepared to authorize all agencies for whom they provide traffic management assistance, to defer nonvital railroad shipments.

The Department of Agriculture has made preparations to reroute grain shipments, and they are prepared to stop grain export sales from the east coast.

The problems that will be faced during and after a railroad shutdown by large metropolitan areas will be very serious. Already minor scare buying has begun to effect food supplies in grocery stores and meat markets. Only prompt action by the Congress can allay such consumer fears.

I have already mentioned the commuter and long-distance rail passenger problem. It will have serious disrupting effects, including the well-known phenomenon of permanent loss of some of the pre-shutdown patronage.

Both the Interstate Commerce Commission and the Civil Aeronautics Board will help all they can by giving prompt approval of emergency operating authority for additional bus and air service. State regulatory agencies may be expected to take similar actions.

A résumé of actions taken by the Under Secretary of Commerce for Transportation and his Office of Emergency Transportation to provide emergency measures for the preferential handling of essential cargoes in case of a suspension of rail service is submitted for the record as appendix III.

We are informed by the Department of the Interior that no problem is anticipated generally as to transportation of petroleum products, although problems are anticipated with respect to chemicals and liquefied petroleum gas. Most coal mines have recently been idle because of the miners' vacations thus depleting shipments. There is a 57-day supply on hand nationally, and an 81-day supply in powerplants.

However, a few plants may not have such large stocks. Serious regional shortages would rapidly occur. Movements of copper, lead, and zinc between mine and smelter would be seriously curtailed.

Steel mills could receive some raw materials and fuel but could not move production. Significant effects would be felt in the transportation of cement, crushed stone, and other bulk commodities.

To sum up, a rail shutdown of even a few days will be serious. The commuters—notably in New York, Chicago, and Philadelphia—would be deprived of service immediately. Some food and medical shortages might quickly turn up in major cities.

And some industries that ship by rail—particularly coal and other mining, and some steel and heavy chemicals—would close down very quickly. But, generally, rail-dependent inventories would last through the first week, although speculative price increases might be triggered if there were widespread doubt about the early termination of the shutdown.

It is computed by our transportation specialists that only 10–15 percent of present-day normal rail freight traffic could be diverted to other carriers, and that only after the lapse of 30 days.

This includes a number of major commodities for which truck transport just isn't physically feasible—for example, minerals where there is no highway into the mine, a number of major liquid chemicals that are loaded directly into tank cars, certain defense materials and products, and a substantial part of the fruit and vegetable crop, for which there would not be refrigerated truck capacity.

Beyond the 1-week mark, the economic costs of the strike would surge upward at a rapidly accelerating rate as more and more industries exhausted their stocks of materials and components and thereby became bottlenecks for their customer industries.

The effects would spread like an epidemic. At the end of 1 month the number of unemployed would rise by approximately 6.5 million persons, and total unemployment would approximate 15 percent of the Nation's labor force, the highest percent since 1939.

What will be the impact on the gross national product? We concur with the estimates of the Council of Economic Advisers, which are conservative, but still shocking enough. It is estimated that on the 30th day of a general rail shutdown the annual rate of GNP would be down by about 13 percent.

As a sheer decline, this would be (percentagewise) nearly four times the peak quarter to trough quarter drop in GNP in our biggest postwar recess of 1957–58.

If the shutdown were settled on the 30th day, it probably would take at least another month to fill up the supply lines again and get the economy back on its present growth expansion track. The net unrecoverable loss in GNP could well run to $25 billion or more.

In closing, let me urge again prompt enactment of the legislation proposed by President Kennedy in his special message to Congress on railroad work rules.

In my considered judgment this is the best remaining course of action that can and will lead to a fair and equitable collective bargaining settlement. This settlement will prevent the irreparable injury to the economy of the United States that would result from even a short railroad strike and the resulting actions of the public brought about by the lack of confidence.

Thank you very much, Mr. Chairman.

Of course, I will be glad to answer any questions that either you or the members of the committee would like to ask at this time.

The CHAIRMAN. Thank you, Mr. Secretary. I presume you would like to include the appendixes along with your statement and other

information which you have referred to in the record as part of your statement?

Mr. ROOSEVELT. Yes, sir; I would, because this material is the back-up material, so to speak, for the rather brief summary that I made of it in my formal presentation.

The CHAIRMAN. Let it be included in the record.

Mr. ROOSEVELT. Thank you, sir.

(The material referred to follows:)

APPENDIX I

IMPACT OF RAIL SHUTDOWN BY INDUSTRIES HEAVILY AFFECTED

	Segments of the economy affected
At the beginning of shutdown	Coal. Coal exports. Rayon manufacture. Several chemical industries. Refrigerator car traffic. Large part of animals for slaughter. Movement of grains and sugarbeets being harvested. Commuter and long distance rail passenger service.
Beginning 1 week after shutdown and cumulating quickly	Auto manufacture. Construction. Chemicals.
2 weeks after shutdown	Periodicals (especially weeklies)
3 weeks after shutdown	Noncellulose fibers. Boiler products. Large transformers. Motors, generators.
1 month after shutdown	Machinery products. Mattresses and bedding.

NOTE.—At end of 1 month, additional unemployment is estimated at over 6,500,000 persons. Total unemployment is estimated at 15 percent or more.

APPENDIX II

Alternate transportation capacity available to handle rail freight traffic

[Billions of ton-miles per year]

Item	1st day of strike			30th day of strike		
	Alternate available	No alternate available	Percent	Alternate available	No alternate available	Percent
Requires rail		160	26.7		150	25.0
Bulk		260	43.3		250	41.6
Motor carrier excess capacity	18		3.0	34		5.7
Inland water excess capacity	17		2.8	17		2.8
Miscellaneous [1]	0			22		3.7
Other		145	24.2		127	21.2
Total	35	565	100.0	73	527	100.0
Percent	5.8	94.2		12.2	87.8	

[1] Increase obtained from approval of emergency air and surface operating rights (ICC and CAB) also increased utilization of private air and surface equipment.

Appendix III

The Under Secretary of Commerce for Transportation

Office of Emergency Transportation

Preparatory actions for the controlled utilization of remaining transportation services should a rail shutdown occur

The Under Secretary of Commerce for Transportation through the Office of Emergency Transportation has taken a number of preparatory actions in view of the possibility of a suspension of railroad service as a consequence of the work rules dispute. These preparedness actions have been taken on the premise that the Secretary of Commerce and his Under Secretary for Transportation would be delegated responsibility to exercise centralized coordination and control of the transportation capacity that remains in such manner as to assure its priority use to meet essential needs.

The Office of Emergency Transportation (created pursuant to Executive Order 10999 issued in February of last year to coordinate emergency transportation planning by all governmental agencies and to prepare to exercise centralized control of all civil transportation capacity and to effect apportionments and allocations to meet essential civil and military needs in an emergency) has already established a sound base from which to act in such an emergency as would face the Nation were a shutdown to be effected.

(1) Through the Transportation Allocations, Priorities, and Controls Committee the Office of the Under Secretary for Transportation has a permanent, functioning interagency policy level body to consider problems of apportioning and allocating transportation capacity in critical supply among claimants for essential services.

(2) The Office of Emergency Transportation has organized a smaller ad hoc group to exchange views on ways and means by which the respective agencies can best manage their own essential operations in a rail shutdown situation.

(3) The Office of Emergency Transportation has drawn up a listing of the types of items that should be given preferential handling (to the extent that these cargoes are transportable by modes other than rail) in any condition of shortage of transportation. A copy of this list is attached. It has had consideration by representatives of the major governmental agencies that would be affected and has generally been agreed to. It is pointed out that this list proposes no priority among the items included. To do so could well result in the exclusive handling of the first few items to the detriment of the rest of the items on the list which are also essential. This list, subject to the approval of the Office of Emergency Planning and to modification as the emergency develops, is considered to be practicable.

(4) Recommendations have been forwarded to the Office of Emergency Planning as to certain required additional actions. A directive must be issued to the Secretary of Commerce by the Office of Emergency Planning to assume a coordinating role in the management of transportation resources in the event of a shutdown, for the duration thereof and until transportation services have been restored to normal. The Under Secretary of Commerce for Transportation would thus be specifically charged to take such measures as necessary to assure the priority handling by such transportation as is available and operational for mail, small shipments, and freight essential to the military and civil need.

(5) Emergency control orders have been drafted, which would be issued to the appropriate transportation regulatory agencies and to shipper agencies, establishing policies and procedures for maximum utilization of operating transportation resources to meet essential requirements.

(6) A review has been made of precautionary measures that have been taken by major shipper agencies. Most have already, on their own initiative, drawn plans or issued instructions which would withhold or defer all cargo movements which (1) are subject to movement only by rail, or (2) are not essential to military and defense programs, the national security or the public health, welfare and safety. They are prepared to take such further measures as the situation may necessitate or the Under Secretary of Commerce for Transportation, as emergency transportation controller and coordinator, may direct.

(7) Standby instructions to provide for passenger priorities have also been prepared, if needed. It is felt that this step may not be necessary based upon voluntary reduction of nonessential travel and a very considerable unused passenger capacity by air and bus carriers.

(8) A state of readiness has been attained to implement such of the foregoing measures as may be appropriate and to deal with any special situations as they may arise.

APPENDIX III-A

THE UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION

OFFICE OF EMERGENCY TRANSPORTATION

Pursuant to authority delegated to the Secretary of Commerce by Executive Orders 10480 and 10999 it is directed that preferential handling be accorded the transportation movement of the following categories of cargoes:

NOTE.—This listing is illustrative rather than all-inclusive. The intention is that to the extent practicable preferential handling be accorded that cargo which is critical or essential to the national defense, to defense production and other essential national programs, and to public health, welfare, and safety. The order of listing does not establish any precedence or priority among the items. This order accords no preferential handling with respect to cargo versus passengers.

A. Military traffic and other traffic essential to defense programs.

B. Traffic essential to atomic energy and aeronautics and space programs.[1]

C. Materials, metals, and minerals essential to defense production.[1]

D. Shipments essential to other urgent national programs. (Subject to determination by the Director, Office of Emergency Planning.)

E. Essential foods for human consumption.

F. Essential U.S. mail.

G. Shipments of materials essential to public health, welfare, or safety. (Medicines, drugs, surgical instruments and surgical dressings, hospital and sickroom supplies.) (Liquid chlorine, alum, line, sulfate of iron, soda ash, and similar chemicals to be used for purification of municipal water supply or sewage disposal, also return of empty cylinders.) (Chemicals used for sanitation and public health, milk processing, and food processing.) (Insecticides and fungicides.)

H. Supplies and materials for natural disaster relief.

I. Feed for animals and poultry (not including hay or straw).

J. Seeds and fertilizers for food products and for livestock feed.

K. Livestock and poultry.

L. Fuel (including coal, coke, charcoal, crude petroleum, and coke oven by-products. Petroleum coke, gasoline, fuel oil, kerosene, lubricating oils, lubricating grease, and liquefied petroleum gas).

M. Repair and replacement parts and supplies necessary to maintain essential transportation operations during the existence of the emergency.

N. Equipment, supplies, and repair parts for public utilities and for communications services.

O. Printing paper, including newsprint, printing ink.

P. Newspapers and news magazines.

Q. Containers and necessary packaging materials for food and drugs.

APPENDIX IV

U.S. DEPARTMENT OF COMMERCE BUSINESS AND DEFENSE SERVICES ADMINISTRATION

IMPACT OF RAILROAD STRIKE ON U.S. INDUSTRIES

NOTE.—The industry-by-industry analyses are presented here as reasonable guidelines in an area where only informed approximations are possible.

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[1] Shipments under these programs will normally already have been identified by a DO or DX rating and certified "for national defense use under DMS Regulation 1 (or BDSA Regulation 2).

POWER AND ELECTRICAL EQUIPMENT

Boiler shop products

Over half of the raw material is received by railroad and over half of the products are shipped the same way. Production would stop in 3–6 weeks.

Prime mover generator sets

This includes all turbines, steam, gas, hydraulic and the accompanying generators. Also large diesel engine sets.

Production on some items could continue for a long time but on the average operations would cease in about 8 weeks.

Transformers and switchgear

There is a large range of size in this equipment. The smaller sizes would stop production in 2–4 weeks. The larger sizes might stay in production somewhat longer but shipment of the finished items would stop at once.

Electrical motors

Production of small (fractional to 50 horsepower) motors would stop in 2–4 weeks. Production of large motors 50–5,000 horsepower and larger would probably continue from 4 to 12 weeks depending upon the size and the shop.

Wiring devices

Current carrying and noncurrent carrying devices, all of which use one or more kinds of metal, could continue until the metal supply chain was broken which we estimate would happen in most cases within 2–4 weeks.

Storage batteries

The vulnerable materials are lead and sulfuric acid. Probably lead would be controlling in most instances. It is estimated that production might continue for about 4 weeks.

Summary—Power and electrical equipment

The majority of the products assigned to this division go into construction or capital equipment. Therefore, secondary effects will be largely felt as stoppage of construction projects.

The exceptions are storage batteries and small (under 50 horsepower) electrical motors with their controls.

A shortage of storage batteries would be felt by every citizen and every type of operation. Our entire economy has incorporated into it the use of internal combustion engines which require storage batteries to operate.

A lack of small electrical motors with their controls would halt production of almost all electrical appliances, most machine tools and similar equipment. Exports will also be affected.

It is not believed that there would be substantial diversion to other forms of transportation.

METALS AND MINERALS INDUSTRIES

Iron and steel

Iron ore stocks at end of May equaled 122 days' supply at the May 1 level of consumption; coal stocks at coke ovens, about 30 days' supply; scrap stocks at the end of May, 32 days' supply. Thus, raw material supplies are not an immediate problem, although interplant movement might be affected if captive railroads are struck.

The impact of rail strike would be softened by decline in steel output resulting from labor settlement in steel, through inventory absorption, and seasonal drop due to vacation closings of steel-consuming plants. Stocks at metalworking plants at the end of June are estimated at about 60 days' supply. Outgoing shipments of heavy steel mill products would be limited by availability of trucks for diverting from rails or inability to handle by trucks. Lighter steels are already being shipped in large part by truck. However, for some companies as much as half of steel shipments are by rail.

Aluminum

Primary aluminum.—Alumina stocks at reduction plants average somewhat over 1 month's supply. Most of alumina moves by rail. Most of power supply is from hydro or gas sources. With large coal stocks at powerplants, plants dependent on coal should not be affected soon.

Mills.—Primary and intermediate stocks at mills average somewhat over 1 month's supply, but stocks in smaller plants probably less, about 3 weeks. Most of primary and intermediate products move by rail. Mills are more dependent on power from coal sources than primary plants.

Copper

Refineries.—Inventories of raw materials and of refined copper constitute about 5 weeks' supply. Deliveries to consumers are about 95 percent by rail, 5 percent by truck. While refineries can continue normal production for 4 to 5 weeks, only insignificant shipments can be made to consumer brass and wire mills, unless there is diversion to trucks.

Brass mills and wire mills

Materials at brass mills are available for about 25 days' production (20 days in primary and intermediate shapes, 5 days' work in process) ; finished goods inventories, including warehouses and depots, 10 days.

Materials at wire mills are available for about 37 days' production (32 days in primary and intermediate shapes, 5 days' work in process) ; finished goods inventories, including warehouses and depots, 20 days.

Deliveries of brass mill and wire mill products to consumers could continue at present rates for about 35 to 45 days, provided warehouse stocks not frozen and trucks continue to be available.

Lead and zinc

Average stocks of lead in hands of producers, 3 months' supply ; for zinc, 1 to 3 months, depending on grade. Any difficulty would occur in distribution of metal to consumers. Large consumers such as battery and tetraethyl lead producers probably have large stocks.

Cadmium

Present shortage of cadmium would be aggravated immediately unless recourse could be had to trucks. Most orders relatively small.

Tin

Nearly all tin is imported ; therefore, no mine or refinery transportation problems exist. Consumers have 3 months' stocks of pig tin.

Titanium

Almost all ingot, sponge, and mill production moves by truck ; stocks of rutile ranged from 9 to 24 months' supply at end of April.

Coal

Virtually all bituminous mines would close immediately because of lack of mine mouth storage. Some anthracite mines could continue to operate for a time.

Consumers' stocks range from a few days to 3 months (for public utilities) ; national average, 2 months. Individual company and local supply stringency would probably be felt within 1 week. Export position would suffer by even short interruption, since it would reinforce European doubts about dependability of U.S. supply.

Oil and gas

No significant effect on movement of crude oil, petroleum products, (except possibly in isolated areas) or natural gas. However, prolonged strike would have impact on supply and price as result of shifts from coal to oil and gas as energy sources.

TEXTILE AND APPAREL

A railroad strike would have a very early effect on the production of manmade fibers. A distinction should be made between cellulosic and noncellulosic fibers. In the case of rayon and acetate, raw materials are received by rail. Chemicals such as carbon bisulfide move by rail tank car. Inventories of these chemicals are not large. Assuming that plans have been made by producers' plants receiving chemicals by tank car in anticipation of the strike, it would be necessary for them to start the slow process of shutting down by the second week and the effect would then be serious. By the third and fourth weeks the effect on these plants would be very costly.

Somewhat similar conditions exist for noncellulosic producers, although in this case a much higher proportion of the total industry's capacity is served by barge-lines. As an example, Chemstrand would not be nearly as badly hurt as Du Pont.

It is believed that in this sector of the industry, serious damage from shutdown would begin in the third week of the strike, and continue with increasing intensity through the fourth and fifth weeks. By the sixth week, the damage would be very great to the entire industry.

In the textile mill products and apparel sectors, rail transportation is of secondary importance, insofar as semimanufactures and manufactures are concerned. The effect on the movement caused by a rail strike would therefore be minimal, perhaps negligible. The picture is different, however, for raw materials. Cotton and wool move largely by rail, the manmade fibers largely by truck. Because of the season of the year, there are considerable inventories of both cotton and wool either at mills or within easy transport distance. It is estimated that there would be no marked shortage of either of these for 2 months, except as a reflection of the shortage of manmade fibers which would manifest itself at the end of 1 month. Damage to the textile mill products industry, therefore, would be small for the first month of a strike. During the second month, the industry would suffer some damage. The situation would probably not become severe until the third month. In the case of the apparel and other finished fabrics products industry, damage would be small until after the end of 3 months.

SCIENTIFIC AND TECHNICAL EQUIPMENT

The effects of a railroad strike upon the manufacturers of communications equipment, electronic components and equipment, scientific equipment, and business machines would not be too serious during the first few weeks.

A very high proportion of the products of these industries now moves by motor freight and air. It is assumed that these carriers would continue to service their present customers. These industries, with the exception of the heavy electrical equipment industries, are not large materials consumers. Plants generally maintain 1 to 3 months' working inventories of basic raw materials (steel products, copper and brass mill products, etc.). Shortages of critical components, due to causes which cannot be foreseen at this time, will probably be the major factor in plant shutdown and production slowdown in these industries. For example, lack of a single component part costing a few cents can stop production of complex electronic assemblies. The impact of shortages of critical components or materials will be progressive from the first week of the strike.

If the strike continues beyond a month, the cumulative effects of shortages of critical components, exhaustion of inventories of heavy materials which move by railroad freight, and the increasing paralysis of the economy will result in a rapid increase in plant shutdowns. As unemployment and the threat of unemployment increases throughout the economy, decline in demand for consumer products will result in production cutbacks in the photographic equipment and supplies, radio and television receivers, and phonograph records industries. These secondary effects may be the determining factor in plants with favorable inventory positions. Plant shutdowns for vacations are now very common in these industries and will be a mitigating factor, since these closings can be adjusted to minimize the effects of the strike on individual plants.

PRINTING AND PUBLISHING INDUSTRIES

A railroad strike would affect the individual industries making up the printing and publishing group differently. None would be really hurt by a strike lasting 1 week. A strike lasting more than 1 month would seriously affect most of them.

Most seriously affected by a strike lasting more than 1 month would be periodical publishers, whose product is dated, perishable, and moved from producer to consumer almost entirely by rail. While some shipments could be made by air or motor (and publishers would make every effort to continue shipments), periodicals would undoubtedly be given a low transportation priority. Their operations could be very seriously affected, and there would be drastic cuts in employment and heavy financial losses.

Book publishers would be least affected. Stocks of books are adequate to meet consumer demand for several months. Elementary and high school texts (some move by truck) are shipped through the summer, and most shipments will have been made by the end of July. Wholesalers and retailers of trade books, while inconvenienced, can obtain at least part of their requirements from regional stocks, except in areas from Colorado westward.

Newspapers have approximately 40 days' supply of newsprint on hand (more in areas at some distance from mills). Their customers are mostly in the city of publication and can be reached without difficulty. Advertising would decline in the event of a strike of several weeks, the size of the paper would be reduced, with savings in newsprint and there would be a serious loss of revenue and some reduction in employment.

Commercial printers, who depend on paper merchants' inventories, serve local customers for the most part and could supply their requirements for at least 1 month. Advertising printing would decline, and the loss would be serious to a number of plants. Employment would decline if the strike lasted 1 month.

There would be a drop in printing and publishing employment in the event of a strike of 1 month.

Books and periodicals are the principal products moving in foreign trade. Exports ($160 million in 1962) run 2½ times imports in value. Any export losses resulting from a strike could be made up. There would be no significant gain in imports.

Only a minor permanent diversion of railroad traffic would result.

A rail shutdown would raise some costs. The loss of revenue resulting from reduced expenditures for advertising would be serious for many newspapers and commercial printers. Both are low-profit industries.

CONTAINER INDUSTRIES

Packaging per se is not a consumer or production item but merely a service item and is entirely dependent upon the output of consumer or producer goods for markets. For example, if industrial production slows down or ceases there is direct reduction of the need for containers and packaging materials. Because of the high degree of substitutability, containers would be available for most essential needs during a 2-month rail strike.

Impact of a 1-week and 1-month strike on production would have little or no effect on container output because of adequate inventories of both raw material and finished goods inventories. Similarly, most container industries ship finished containers via both rail and road, with the latter being predominant of limited marketing area of finished containers.

A 2-month strike would curtail the output of metal containers primarily because most of the raw material is delivered by rail, as is a fairly large part of the finished containers. Because of food pack, metal inventories for cans are heavy and should be adequate to carry through August. Paper containers output would be curtailed but not seriously affected because of 6 weeks' raw material inventories normally available plus deliveries of raw materials by motortruck. Similarly, finished container deliveries go primarily by truck to local consumers. Availability of glass sand by rail may prove to be harmful with a continuing strike although 6 to 8 weeks' finished glass container inventories would continue to provide supplies to users via truck service.

Prolonged rail strike would reduce employment in packaging field in general but would not shut down operations of all industries. This is assuming that products using containers would be manufactured. If output of consumer and producers goods were reduced, need for packaging would be proportionately reduced with a curtailment of employment to whatever level deemed advisable by management.

Reduced output of containers and packaging materials would have practically no effect on the balance-of-payment problem because exports constitute less than 0.5 percent of total output and shipments.

It is doubtful that a rail strike would permanently change the methods of shipping finished containers to customers. Freight rates would still continue to be the major consideration with all other things being equal.

Reduced output of containers and packaging materials which are manufactured by high-speed machinery for mass markets would increase the unit cost. Similarly, skilled employees and supervisory personnel who were idled by reduced output and who would be maintained on the payroll would likewise increase cost on a per unit output basis. These and fixed costs would quite likely be reflected in increased finished container prices.

A 2-month rail strike could affect the mobilization program because of heavy requirements of military-space programs for containers and packaging materials. These heavy requirements are mostly indirect with producers of defense-space items purchasing packaging material in accordance with military specifications.

Both direct and indirect purchases of containers and packaging material by the military could run as high as 10 to 15 percent of total dollar output. Because of the use of both rail-truck deliveries for raw materials and finished goods, container industries could probably provide military requirements during a 2-month rail strike, only at the expense of other uses.

FOOD PRODUCTS INDUSTRIES

Meat and poultry

While only about 35 percent of dressed and processed meats, with an estimated annual sales of $16 billion, are moved by rail, over 65 percent of the animals for slaughter are dependent on railroads for transport.

Only a small part of dressed meat and poultry now being shipped by rail could be diverted to other means of transportation because of the perishability of the produce.

Because of the dependence of slaughterhouses on railroads to deliver animals for slaughter, and the limited stockyard space available, it is probable that most large packinghouses would be forced to shut down within the first week of a railroad strike.

If the strike were to last 2 weeks an estimated 50 percent of packinghouse workers would be laid off.

Dairy products

Less than 5 percent of the estimated $7 billion annual sales of the dairy industry is shipped by rail. It is not likely that the small portion of dairy products moved by rail could be diverted to other means of transportation. There would be very little impact on the dairy industry as a whole unless the strike were extended for a long period. The effect on dairy employment would be negligible.

Fruits and vegetables

Total estimated annual shipment of fruits and vegetables is $15 billion. Movement by rail of fruits and vegetables is estimated at 70 percent; with up to 85 percent of fresh fruits and vegetables hauled long distance (750 miles) and 50 percent of canned fruits and vegetables moved by rail. It may be noted here that as of July 1, 1963, there were approximately 100,000 serviceable refrigerated rail cars. The majority of these are used in movements of fresh fruits and vegetable products.

We believe there would be little diversion of shipments of fresh fruits and vegetables to other means of transportation. In respect to canned foods, it would seem that for shortrun, movement by truck could keep consumer outlets supplied with canned food products.

After about 2 weeks, the residual effects of the rail strike in the cutting off supplies (cans and fuel), canning facilities would begin to shut down.

During third week as much as a fifth of the canners would shut down laying off 50,000 employees. In the fourth week there may be an additional two-fifths or 100,000 employees laid off.

Grain mill products

Approximately 75 percent of grain and grain mill products move by rail. Value of shipments for the industry are estimated at $7 billion. Diversion to trucking facilities could move adequate supplies to consumer outlets during first month of rail strike. Mills would feel strike quickly in reduced movement of harvested wheat to milling facility. Significant here is that United States is in midst of wheat harvest. If movement of rail cars are interrupted at this time it will greatly aggravate the shortage of rail cars which always occurs during time of harvest. The cumulative effect would become more acute with each passing day and could delay and cut down harvesting of semiperishable grain commodities. Shutdown of mills may occur by the fourth week with as many as 25,000 becoming unemployed.

Sugar

Of the estimated $1.7 billion shipments of sugar 50 percent is moved into consumer channels by rail. Diversion into trucks may be able to adequately supply consumers for the first month. Beet sugar mills, now receiving harvest of sugarbeets would probably be hardest hit. Fourth week would find many of these mills shut down with approximately 10,000 unemployed.

Other foods

Other food products with shipments of estimated $20 billion are shipped by rail to move 35 percent to market. Diversion to trucking if facilities are available, may keep consumer outlets adequately supplied for the first month. Facilities would begin to shut down during third week of strike. Unemployment may in third week account for as many as 200,000 workers, or one-third of the total.

INDUSTRIAL EQUIPMENT AND AUTOMOBILES

A short strike of the railroads, lasting up to a week, would have only negligible impact on the industrial equipment and automobile industries. These industries carry enough inventories of raw materials, fuel, and fabricated parts to continue to produce; most labor commuting to work by railroads could probably find other means of transportation; deliveries of final products could easily be postponed.

However, a strike in excess of 1 week would start disrupting the productive process in the second week and most certainly bring it to a complete stop by the end of the fourth week.

Role of rails for the industries manufacturing machinery and related products

The manufacture of automobiles, machinery, and other types of equipment requires hundreds of distinct technological operations and processes in which thousands of various types of raw materials are processed into a final product. Because of magnitude of production and economic advantages of specialization there is no single metalworking establishment in the United States that could produce a final product at its own premises. The number of specialized cooperating plants varies from product to product but in each case it is sizable. Probably an extreme, GM reportedly relies on about 25,000 suppliers of materials and fabricated parts.

Both the inputs and the final products of these industries are usually bulky and costly for storage. Therefore the role of railroads in their productive processes is substantially greater than for the economy as a whole.

It is estimated that the current net production of all machinery and related products industries (SIC 19, 35–39, and part of SIC 33 and 34) is about $110 billion a year. The cost of materials needed in the production of all these products is about 30 percent, or $33 billion. The total employment is about 5.3 million. About two-thirds of final product, or over $70 billion worth, is shipped to users by rail. It is also quite likely that at least 70 percent of raw materials are also dependent on rail.

Substitutes for railroad transportation

In case of prolonged railroad strike, some diversion of in-and-out shipments could be arranged, but it is doubted that it would be more than 5 percent.

Effects

The effects of a prolonged railroad strike would vary from industry and by stages of production. Generally the more specialized the production and the greater the variety of processes is used in an industry, the faster and the more profound the impact would be.

The automotive industry presently has inventory of steel for about 1½ months. This, however, could assure that long operation in stamping and forging plants only. The engine block foundries, however, would have to shut down in the second week and the assembly plants probably by the end of the first week.

Aircraft industry would be affected by the strike in very much the same way as automotive industries.

The agricultural and construction equipment industries would probably be in a position to operate for about 1 week longer than automotive industry because of lesser degree of reliance on specialized suppliers; that is, they probably would close down by the end of the third week.

Most of the machine tool industry would probably be able to operate for about a month after the beginning of the strike. The reason for this is that it relies relatively little on the outside suppliers of fabricated parts, normally buys needed castings and forgings well in advance of actual production, and the deliveries of final products could be delayed with no drastic repercussions.

Within 4 weeks practically all of about 3.7 million production workers and substantial number of "nonproduction employees" would be laid off.

The strike would place substantial cost burden on the industries in addition to the losses incurred from unrealized sales. This is because many plants would scale down to lower levels of capacity immediately after the beginning of the strike; some would have to shut down continuous-operation facilities (such as open-hearth furnaces in steel foundries), the reinstatement of which is very expensive.

In short, the prolonged railroad strike would bring a real calamity to the industries and its employees. It is likely that if such strike should last for a month, the economy would lose all the growth gains made in 1962 and 1963.

RUBBER AND RUBBER PRODUCTS INDUSTRIES

It is estimated that approximately 50 percent of rubber and rubber products shipments are by rail. Total sales of rubber manufacturers are approximately $7 billion annually.

Most rubber materials and products could be shipped by truck, but the available trucking would probably not be able to absorb a large part of the shipments which ordinarily would go by rail.

Water and air transportation would not be significant factors.

The rubber products industry could probably operate 40 to 60 days before serious shortage or pileup of products would halt production.

If there is a shutdown of the plants, it is probable that 80 percent of the 393,000 employees of the rubber companies would be laid off.

CHEMICAL AND ALLIED PRODUCTS

It is estimated that between 50 and 60 percent of chemicals and allied products are shipped by rail. Total sales of the chemical companies are approximately $34 billion annually.

Only a small part of shipments of most chemicals ordinarily going by rail could be diverted to other means of transportation except for pharmaceuticals and similar types of products which could be shipped by truck or air freight more readily than most chemicals.

It is probable that about half of the chemical plants would have to shut down in about 15 days and practically all plants would have to shut down within 30 days were there a rail strike. Lack of storage space for finished products and depletion of raw materials would force shutdowns. If shutdowns occur, considerable damage could result because many chemical operations, which operate continuously, require costly and time-consuming preparation for shutdown and equal time and effort for resuming operations.

If there is a shutdown, it is probable that over 70 percent of the 870,000 employees would be laid off.

FOREST PRODUCTS INDUSTRIES

The forest products industries have a value of shipments of $17.8 billion, with exports amounting to $590 million, imports totaling $1.6 billion, apparent consumption of approximately $18.8 billion, representing 3.6 percent of the GNP Employment in these industries totaled more than 900,000 with establishments approximating 55,000.

The forest products industry, generally speaking, is regionalized and depends to a large degree on rail shipments of its products to the consuming market. However, all manufactures of these industries lend themselves to transportation by all types of carriers (rail, truck, and water) with the exception of some by-products such as tall oil and turpentine which must be moved in special tank equipment. Monthly production of lumber alone totaled approximately 4½ million tons (3 billion board-feet) and the pulp and paper industry shipped approximately 4 million tons of products per month.

It is believed that forest products industries could maintain reasonably normal production for a period of 1 month, in face of a rail strike. After that, shortages of supplies and equipment and lack of transportation to move products away from the plant would seriously curtail production and would adversely affect employment.

The national defense program, as far as forest products is concerned, would not be adversely affected by a rail strike.

Balance of payments will not be significantly affected by the rail strike.

Cost of production would not be affected seriously during the first 2 months of a strike.

There will be no permanent diversion from rail to nonrail transportion.

A serious impact on distribution and consumption will precede that on production.

CONSTRUCTION INDUSTRIES

This statement on the effect of the railroad strike on building materials and construction industries is made without reference to the use of lumber and wood products in construction.

The value of construction in the United States is currently about $65 billion per year. Approximately half of this value is estimated to be cost of building materials, while the remainder reflects labor costs, entrepreneurial gains, and the like. While the total value would be affected by a rail strike, no attempt is made here to assess the effects of the strike on production of materials for the reason that all of the materials will be covered by analyses of industrial segments such as stone, clay, and glass; metals and minerals, etc., and treatment here would involve duplication of value.

In its impact on construction a rail strike would have a different effect depending on the stage of completion of any construction project. It is our assumption that projects 75 percent completed can be finished with little or no hindrance from interruption of rail service. This is based on the fact that finishing materials would be available at convenient distribution points and could reach the construction site without excessive cost. At the other end of the spectrum, jobs which are about to get started would require such basic materials as cement and fabricated structural steel. The lead time for delivery of fabricated structural steel is such that inability to move large sections from the steel mill to a distribution point for a period of 30 days would have no effect. After 30 days the situation would become progressively tighter and lack of fabricated structural steel would slow down construction not only of buildings but of bridges and roads. It is estimated that the effect of this would be a diminution of 20 percent in project starts after 30 days and 40 percent in 60 days. The 20-percent level of interference represents approximately $1 billion per month of value put in place.

Contract employment is approximately 2,800,000 persons. This does not represent total direct construction employment which may be estimated at from 3½ to 4 million persons. A 20-percent decrease in employment after 30 days would seem likely and would involve additional indirect job losses in associated service industries.

Imports and exports of building materials are too small in terms of total GNP to receive special consideration (at this time) in connection with the effects of a possible rail strike.

It is believed that present users of railroad transportation are what might be termed hard-core customers of the railroads. If traffic should be diverted to other carriers the effect would be temporary only and traffic would revert to the railroads as soon as their services were again available.

The effort to complete buildings and to move along on construction projects despite the stringency in availability of railroad services would impose heavy costs on producers of building material and on building contractors.

National defense involves many major building projects. Inability to ship by rail would inevitably cause delays in schedules.

LEATHER AND ALLIED PRODUCTS INDUSTRIES

The principal subindustries, industries of leather and allied products, that would be affected by the railroad strike are raw materials, such as hides and skins; semifinished products, such as leather; shoes, and leather manufactures. They will be affected to some extent in various ways. All of these industries will be affected by the strike. Since hides and skins, if not properly cured, would be subject to deterioration of quality and spoilage, this would probably be the most affected. Each one of the industries will be covered separately.

Hides and skins.—In recent years there has been a tendency to ship more hides and skins by truck than by rail. When business in general was poor, the truckers would not mind this additional business, but otherwise they were concerned because the trucks had to be washed out and cleaned after each shipment. At the present time, it is estimated that about 30 percent of total shipments are by truck.

Leather.—Leather is shipped primarily by freight cars, although there is also the tendency to use the trucks. A matter of time is involved since deliveries must be prompt to meet reigning styles, and that has been the reason for the increased use of trucks. About 40 percent of the total shipments of leather are now made by truck, the percentage being larger for upper leather and lower for sole leather.

Shoes.—The shoe trade has always used the trucks to a large extent in their deliveries and will no doubt try to continue to do so in the event of a railroad strike. Several factors are involved in the reason for this, one being style, the other being prompter deliveries of shipments direct to distribution points or warehouses, etc.

Leather manufactures.—There has always been a large volume of truck deliveries in other leather manufactures such as small leather goods and luggage. The facts for these are to a large degree the same as those concerning shoes. No doubt the producers of these goods will endeavor to obtain at least the same space that formerly was supplied by the truckers who will want to keep this as a permanent account. According to one industry source, trucks and ships could take over virtually all of the shipments now made by railroads. They feel that while they will be somewhat interrupted in deliveries, this will only be a matter of time and delays and not permanent injury. Therefore they expect their business to go along pretty well during a railroad strike.

They do not believe that they will have to close down except for short periods of time when deliveries of raw materials have not been made. Inventories of raw materials and finished products should be sufficient to supply the demand for the next 2 or 3 months, and there will be a minimum effect on employment.

Industry	1961 value of shipments	Effect of strike on industry
	Thousands	
Hides and skins	[1] $210,000	May spoil unless meatpackers can properly store until shipped. Tanners usually covered for 2 to 3 months' supply.
Leather	766,688	Will depend on production trend in shoes.
Footwear	2,232,488	Changing styles may have as much pressure on situation as transportation.
Other leather manufactures	725,853	Depends on which type of leather manufacture is involved. It would vary with wallets and key cases to briefcases.

[1] Estimated.

CONSUMER DURABLES INDUSTRIES

Mattress and bedding industry

Virtually no shipments of finished products are made by rail; however, probably over 50 percent of the raw materials so move.

Probably a substantial part of such rail shipments could be diverted to motor carrier, if available.

It is believed that plant shutdowns would start shortly after the start of a strike. If the strike is of duration up to 30 days, it is believed that unemployment in the industry ultimately might reach approximately 18,000 people, close down 96 percent of the producing plants, and curtail approximately 60 percent of the annual production valued at $650 million annually.

Household furniture

Short hauls—up to 500 miles—are generally made by motor carrier. Therefore, area west of Mississippi River probably most likely to be adversely affected. Southern Railroad will not be strikebound. Raw materials for case goods bought green on long-term supply and held in manufacturers yards for later kiln drying. Short strike would not affect supply.

Finished goods can be shipped by other carriers, if available.

Effect of short strike probably not important to this industry and would be delayed. Manufacturers have been rushing shipments in contemplation of strike and eating up their backlog. No significant plant shutdowns or unemployment are expected from short strike.

Toys, games, dolls, and children's vehicles

It is estimated that about 20 percent of the shipments of the industry move by rail. All of this could be diverted to motor carrier, if available.

In the event of complete stoppage of rail shipments and lack of alternate transport, the industry could probably warehouse unshipped production for 3 months. At that time, probably 4,000 employees would have to be laid off, chiefly those in the children's vehicles segment of the industry. Total value of shipments in 1961 was $949 million.

Musical instruments

A very small part of industry shipments are by rail. Handling costs and intransit damage are factors which preclude rail shipment. Raw materials shipped by rail consist almost exclusively of wood, ample stocks of which, for seasoning purposes, are in the hands of the manufacturers. There would probably be no effect of a strike for 3 or 4 months. The total value of shipments in 1961 was $297 million.

Household and commercial chinaware and earthenware table and kitchen articles

Approximately 50 percent of the shipments of these products are by rail. All shipments could be made by truck, provided trucking facilities are available. If these facilities are not available, full plant operations could continue only about 45 days, resulting in approximately 7,000 unemployed. Total value of shipments in 1961 was approximately $106 million.

Machine-made glassware

Approximately 50 percent of the shipments of products are by rail. All shipments could be made by truck, provided trucking facilities are available. If these facilities are not available, full plant operations could continue only for about 30 days, resulting in approximately 4,000 unemployed. Total value of shipments in 1961 was approximately $160 million.

Flat glass

Approximately 50 percent of the shipments of products are by rail. All shipments could be made by truck or barge, provided these facilities are available. If these facilities are not available, full plant operations could continue only for a period of from 2 to 3 weeks, resulting in approximately 10,000 unemployed. Total value of shipments in 1961 was approximately $500 million.

Household appliances

Probably 50 percent of this industry's shipments are by rail. Only about 25 percent of this amount could be diverted to motor carrier. In view of the fact that the industry as a whole by August will have passed its peak production, and in view of accumulation of steel inventories in anticipation of the steel strike, it is believed that the industry could operate 3 months in the event of rail stoppage. At that time, probably 75,000 workers would lose their jobs. Total value of shipments aggregates $2.5 billion.

Jewelry and miscellaneous personal durables

A rail strike would have little effect on these industries. Almost all shipments are by means other than rail, due to the small size of the products shipped and their high value-to-size ratio. Shipments of steel consumed by stainless steel flatware manufacturers would suffer slightly from a prolonged rail strike, but the small amount of steel consumed could be diverted to alternate means of transport. The 1961 shipments were $1.5 billion.

Summary table of effects of possible rail strike

Industry	Annual shipments	Effects of rail strike—General	Estimated unemployment (number)
Mattress and bedding	$650,000,000	Strike of 30 days would close 96 percent of the producing plants and curtail 60 percent of the production.	18,000
Household furniture	2,900,000,000	Adverse effects limited to producers west of the Mississippi River.	Insignificant
Toys, games, dolls, and children's vehicles.	949,000,000	Full effects would not be felt for 3 months.	4,000
Musical instruments	297,000,000	Limited effect in 3 or 4 months	Insignificant
Household and commercial chinaware and earthenware.	196,000,000	Half of facilities down in 45 days if alternate transportation not available.	7,000
Machine-made glassware	160,000,000	Half of facilities down in 30 days if alternate transportation not available.	4,000
Flat glass	500,000,000	Half of facilities down in 2 to 3 weeks if alternate transportation not available.	10,000
Household appliances	2,500,000,000	Full effects would not be felt for 3 months.	75,000
Jewelry and miscellaneous, personal durables.	1,500,000,000	Little or no effect	Insignificant

The CHAIRMAN. I think you have made a very impressive statement as to what a railroad stoppage would do to the health and welfare of the economy and of the people of the United States. I think we all agree that it would be a very serious problem.

The many problems that you have emphasized which would result present to us, and certainly to me, a rather gruesome picture about this situation which should be, I think, taken into consideration by all of those who have responsibility in this matter.

I just hope the Government would not have to do all the things that you say you are preparing to do. It is going to bring about headaches on top of headaches.

Mr. Rogers, do you have any questions?

Mr. ROGERS of Texas. First, let me welcome our former colleagues back to the Halls of Congress. It is good to see you again and have your statement, Mr. Secretary.

Has the Department given any thought to a procedure in the event of strike to have defense materials and perishable crops taken care of?

Let me say this, Mr. Roosevelt. One of the witnesses for one of the brotherhoods indicated that they had told the administration that in the event of strike they would carry defense matter and also perishable crops.

Mr. ROOSEVELT. Mr. Congresman, thank you for your welcome.

We do believe that defense materials, and possibly perishable crops, would be carried in the event of a shutdown. I should add that we prefer the word "shutdown" to "strike" because of the total implications of the actions that might be taken.

The Department of Commerce cannot assume this in its preparations and, for this reason, we have prepared in appendix 3 a statement of the priorities and the preparations that would be taken by the Office of Emergency Transportation.

I think you will see in appendix 3(A) military traffic and other traffic essential to the defense programs, and (B) is traffic essential to atomic energy and aeronautics and space programs, and (C) is materials, metals, and minerals essential to defense production, and

(D) is shipments essential to other urgent national programs subject to the determination by the Director of the Office of Emergency Transportation.

(E) is essential foods for human consumption.

(F) is essential U.S. mail.

(G) is shipments of materials essential to the public health, welfare, and safety.

On the next page, we have the continuing list of priorities which is already in the record.

Mr. ROGERS of Texas. Have the brotherhoods accepted this priority schedule or have you discussed that with them?

Mr. ROOSEVELT. No, sir. We have not discussed with either party on a formal basis any acceptance of this. Of course, it would not really matter whether they accepted it or not. This would be the priority list established by the Government.

Mr. ROGERS of Texas. But there has been no official commitment by either the carriers or the brotherhoods that they would.

Mr. ROOSEVELT. No, sir. There has been no official commitment by either side of any maintenance of rail transportation.

Mr. ROGERS. Let me ask one further question.

In the event of strike, Mr. Roosevelt, say that it only lasted for 2 days, how long would the aftermath of the initial impact affect the economy of this country?

Mr. ROOSEVELT. If it lasted for only 2 days, probably the impact would be limited. It would be more of a nuisance. It might or it would affect the commuters. It would affect the retail sales in large cities.

We did discuss in the early part of my testimony the effect of a 1-day strike. And a 2-day strike, especially if it occurred over a weekend, might not have any significance at all.

The important thing really is the effect of a shutdown on the other methods of transportation, and their inability to pick up the slack and at the end of 30 days only one-eighth of what is now carried by rail could be diverted or transferred to the other methods of transportation, air and truck and bus.

Mr. ROGERS of Texas. Thank you very much.

Mr. ROOSEVELT. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Secretary, you are familiar with the letter that was sent by the brotherhoods in regard to their willingness to move all passenger trains, all commuter trains, all trains, as a matter of fact, that would be designated by the President as necessary?

Mr. ROOSEVELT. I read that in the press, Mr. Congressman. I have not actually seen a copy of the letter itself.

Mr. YOUNGER. The testimony here by the brotherhoods was that that letter was delivered.

Mr. ROOSEVELT. Yes, sir.

Mr. YOUNGER. From that standpoint, it would not be quite as gruesome. If what you say is true, do you believe that the brotherhoods are now deprived of their economic right to enforce their own rights by striking?

Mr. ROOSEVELT. I am not sure I understand the question. Do I think that now they are deprived of their right?

Mr. YOUNGER. If a shutdown of railroads is unthinkable, as you point out, naturally the brotherhoods would be deprived of their only economic right, which is the right to strike, which all labor has.

Mr. ROOSEVELT. Mr. Congressman, I would answer that by pointing out that the President was very careful in his recommendation and in his suggestion to the Congress in his joint resolution to provide only an interim action by the Interstate Commerce Commission, and to preserve the collective bargaining between the parties during the following 2 years, and the right of that collective bargaining or the results of that collective bargaining to supersede any interim rule put into effect by the ICC.

So, I believe that the President's recommendation, taking into consideration the national defense and the public health welfare of the United States, has sought to minimize the impact by this role, has sought to minimize the impact on the Nation's economy and to maximize the right of both parties to achieve a resolution of their differences through collective bargaining.

Mr. YOUNGER. By compulsory bargaining?

Mr. ROOSEVELT. I don't consider this compulsory bargaining, Mr. Congressman, because I believe that it is perhaps an obligation to the Nation on both parties to actively bargain collectively for their own welfare as well as for the Nation's welfare.

Mr. YOUNGER. Are you familiar with the Delano Estate?

Mr. ROOSEVELT. I believe there are several Delano Estates. I am not sure what you refer to on that.

Mr. YOUNGER. The one which used to own, and I wonder if they still own control of the Mercantile Trust Co. of Baltimore.

Mr. ROOSEVELT. I am not familiar with that; no, sir.

Mr. YOUNGER. You are not an heir at all in that particular estate?

Mr. ROOSEVELT. No. I am not.

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Friedel.

Mr. FRIEDEL. Mr. Chairman, I want to congratulate my former colleague for his very wonderful statement. It shows there was an exhaustive study made to make the public realize what could happen if there is a strike.

I have no questions to ask you, but I want to congratulate you for a wonderful statement. I think when people read this they will know the importance of this situation and what effect it could have on our country.

Mr. ROOSEVELT. Thank you very much, Mr. Congressman.

The CHAIRMAN. Mr. Glenn.

Mr. GLENN. Mr. Secretary, I am in complete sympathy with your statement.

I would like to point out that all these things which you have said can be avoided if the carriers and the brotherhoods settle their differences, in view of the fact that your Department has done so much preparation for what may be this complete shutoff. Are you also in touch with the collective bargaining which has gone on between the brotherhoods and the carriers from day to day?

Mr. ROOSEVELT. Mr. Congressman, the Secretary of Labor is primarily responsible for continuing to bring the parties together and encouraging the processes of collective bargaining during this period as he has been for some months.

The Department of Commerce, of course, is kept informed constantly by the Secretary of Labor of the situation from day to day.

I have been Acting Secretary for the last 2 weeks and, of course, I have been receiving these reports. So, we are informed, although we are not directly involved since the Secretary of Labor has that responsibility.

Mr. GLENN. Would you care to express any opinion as to whether they are making any progress or not?

Mr. ROOSEVELT. No, sir. I would prefer not to make a statement at this time. I believe that quite often the less said the better, and I hope that the parties will continue to bargain with each other.

Of course, we all hope that they will be able to resolve their differences before the end of the 30-day period.

Mr. GLENN. Thank you very much.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Secretary, I also want to add my welcome to those of our colleagues for your appearance here. I think it is the first time before this committee since you assumed your office as Under Secretary of Commerce.

I do have a few questions. One is in line with the question asked by Mr. Rogers.

Have there been meetings of any type, formal or informal, held with representatives of rail labor and rail management to determine the extent to which essential rail services would be continued if a strike should occur or a lockout or walkout or whatever you might call it?

Mr. ROOSEVELT. There have been statements made by both sides, but there has been no opinion gone down in black and white, except through the statement of the brotherhoods that they would maintain, under certain circumstances, the commuter and military rail services. But these offers, of course, usually contain certain conditions. I remember one statement that the brotherhoods offered to maintain these particular services and to donate the salaries of the train crews to a national charity if the railroads in turn would donate the revenues from the operation to a national charity. These are the kind of conditions that have been suggested.

We must, in the Department of Commerce, assume the worst in our planning. We hope for the best, and the best would vary from a resolution through collective barganing prior to the end of the 30 days and the best might be modified in many forms such as an agreement to maintain commuter service, national defense service, transportation of perishable food products and medical supplies.

So the best can be modified. We realize that. But we must plan for the worst.

Mr. MOSS. Then the figures supplied here in the appendix to the statement represent the extreme situation occurring under a complete shutdown of rail transportation?

Mr. ROOSEVELT. That is correct.

Mr. Moss. The extent to which the shutdown was modified by providing certain essential services would, of course, have to be taken into consideration in assessing the overall impact.

Mr. ROOSEVELT. That is correct.

Mr. Moss. Then it seems to me that the import of the statement represents a pretty firm finding by Government that rail strikes on a national basis cannot be tolerated.

Mr. ROOSEVELT. That is correct.

Mr. Moss. So that we are faced——

Mr. ROOSEVELT. Certainly not tolerated for more than a very, very brief period unless the Nation is prepared to accept the consequences.

Mr. Moss. And that would be difficult to determine, whether or not the Nation is prepared to accept the consequences until we had the experience and could gage the public reaction.

Mr. ROOSEVELT. Mr. Moss, I would guess that if the public had a thorough understanding of the consequences, the public would not be prepared to accept those consequences.

Mr. Moss. I ask the question because it seems to me that is the findings, with which we are faced here—two problems: One, an immediate, an urgent problem, dealing with a current situation, an imminent shutdown unless the processes of collective bargaining prove more fruitful in the roughly 4 weeks than they have in the past 4 weeks.

We have a long-term problem as to adjusting in some manner the handling of disputes between rail labor and rail management, recognizing clearly the finding of our Government that it becomes a different category of relationships than those existing in other industries in our Nation.

Mr. ROOSEVELT. Yes, sir.

Mr. Moss. So that the immediate solution is just that, it is a temporary resolution, but we leave before the Congress, the Government and both rail labor and rail management the need to give careful study to a more permanent resolution of the defects which appear to have emerged in the current rather lengthy negotiations. They have stalemated prior to the July 29 date. We hope that stalemate does not continue.

Mr. ROOSEVELT. I wouldn't say that I would concur that the present problem need necessarily to force the Congress to face up to a permanent resolution of the problems of collective bargaining in the railroad industry.

I think the present situation really highlights the fact that the existing statutes have carried the dispute up so far and that there still is room in both our legal and constitutional processes for the President and the Congress to take one-time, one-shot action to deal with a particular situation.

I would not like to say that the Congress should try to set up a new procedure which would be a permanent procedure eliminating, for example, the right to strike. I don't believe that is necessary, and I think that the President's recommendation shows that there is room for collective action between the Congress and the executive branch to handle a particular immediate situation.

So, I would not like to say that this is a precedent or that the Congress should try to resolve any permanent solution or achieve any permanent solution.

Mr. Moss. I find myself troubled, and I can certainly rationalize the definition that makes this not compulsory arbitration or settlement. But, nevertheless, I am troubled by the fact that there is for an interim period the element of compulsion which removes a historic economic weapon.

I have not at this moment come to a firm resolution in my own mind as to which course. I think the obvious purposes of both the proposals before this committee are the same. Methods differ substantially. It is this element of compulsion that I find still troubles me as I view this problem, recognizing fully the impact of the stoppage on the economy of this country.

Mr. ROOSEVELT. Mr. Congressman, if I may say at this point, I think that the general use of the President's proposal is that it is not compulsory arbitration, that it seeks only an interim resolution through the decisions of the ICC and it preserves the right of both management and labor to continue to bargain collectively. I think that is the great asset of this proposal.

In my opinion, this is not in any way compulsory arbitration.

Mr. Moss. I want to thank you for your information.

Mr. ROOSEVELT. My opinion.

Mr. Moss. The information contained herein which I think will be of great value to us when we try to determine what we are going to do.

Mr. ROOSEVELT. Thank you, Mr. Congressman.

Mr. Moss. That is all.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Mr. Secretary, have you studied the so-called Meany proposal that was introduced by Congressmen Staggers and Bennett of this committee?

Mr. ROOSEVELT. No, sir. I have not studied it. I have read about it in the press very briefly.

Mr. NELSEN. The statement has been made in the hearings repeatedly by representatives of the railroad brotherhoods that collective bargaining has really not been seriously underway for a period of many years in view of the fact the possibility of something like this might be in the offing.

In the Meany proposal, the representatives of the House and the Senate would ride herd so to speak on the bargaining to see to it that proper application to the problem has been executed.

In your proposal, or I should say, the President's proposal, do we have any pressure there in the 2-year period that would try to consummate this thing between the groups, the two groups involved? Is there any similar pressure there to effect a resolution in the event this thing becomes enacted by the Congress?

Mr. ROOSEVELT. Of course, the fact that there is a 2-year period is, in a sense, a pressure on the parties to collective bargaining. I must say that I would see no objection to the Congress establishing a joint committee to work with, to mediate with, to encourage collective bargaining by both parties during the 2-year period.

Of course, the administrative branch of the Government will also be actively seeking to bring the parties constantly together, just as Mr. Wirtz, the Secretary of Labor, has been actively seeking to do this for a number of months. Just as the two commissions appointed by

the President, the Rifkind Committee, and the Roseman Committee, while they were preparing their reports, have also been actively seeking to encourage collective bargaining.

Every pressure, congressional and executive branch, should be and will, I believe, continue to be applied to both sides to bargain in good faith and to seek a resolution of their differences.

Mr. NELSEN. In the testimony, Mr. Meany implied that there could be the possibility of some settlement in a very short time.

Under the President's proposal, there is no assurance that work-rule changes would be affected for a 2-year period. It all depends on what the ICC would do, as I understand. So, actually, there could be the possibility of a maintenance of the status quo. There might be a change but we have no way of knowing.

But Mr. Meany did indicate he thought there could be some permanent resolution in a very short time under the proposal submitted. We did hear a very enlightening discussion on the questions.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Kornegay.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Secretary, I would like also to join with my colleagues in commending you on your statement here today to say it is obviously the product of a great deal of research and thought.

How long has it been since you completed your study of the impact on the economy of a rail stoppage?

Mr. ROOSEVELT. As of midnight last night.

We are keeping our study current hour by hour and day by day. For example, we could say to you that we are pleased that there has been no scare buying by industry to any great extent. There has been some stockpiling but not too much.

Although there has been some scare buying by housewives of foods, household drugs, and things like that, industry has generally assumed that the Congress and the President would not permit a long-term strike and so there has not been on the part of industry a scare-buying situation. But we are keeping up to date day by day, hour by hour.

Mr. KORNEGAY. Have you made any official public statements or releases on your findings as you have developed them?

Mr. ROOSEVELT. No, sir. This is the first statement and with these appendixes we have made.

Mr. KORNEGAY. This is the first public disclosure you have made of your findings; is that correct?

Mr. ROOSEVELT. It is the first public disclosure except for the fact that 2 days ago I addressed a group of junior high school and high school students who were participating in the widening horizons program sponsored by the Department of Commerce, and in describing the work of the Department of Commerce and the Office of the Under Secretary, I told them about my work in the field of trying to ascertain the economic impact of a rail shutdown and I gave them two or three highlights of what might be the results. But I don't consider that to be really formal disclosure of the statement I have made today.

Mr. KORNEGAY. Have you or has the Department transmitted to or conferred with the parties to this dispute about your investigations, about your findings, and about the dire impact that a rail stoppage would have on the economy?

Mr. ROOSEVELT. We have discussed with experts in the railroad industry, the trucking, the barge, the aircraft, and shipping industries their abilities, especially the other means of transportation, to absorb that freight which is now carried by rail.

As a result of those discussions and investigations by the Department, we found the rather disturbing fact that only about one-eighth of the total present rail freight could be transferred or diverted to other means of transportation, and that only at the end of 30 days and a very concerted effort by the Government to direct and coordinate the other methods of transportation.

Mr. KORNEGAY. What I am getting at, Mr. Secretary, is that one would almost have to assume that both the carriers and the brotherhoods would realize the effect on the economy of a rail shortage. My thinking is, Has the Commerce Department, as the official agency of the Government responsible for this phase of the situation, actually communicated with the parties to the dispute your findings?

Mr. ROOSEVELT. I should say first that we, of course, have communicated our findings along with and through the Council of Economic Advisers. We disclosed to the President the essentials of this report. Based on this, of course, he made his statements in his message to the Congress in connection with this joint resolution.

As far as the parties are concerned to the dispute, they are well aware of the economic impact of what a shutdown would mean to the Nation.

Mr. KORNEGAY. As I said, one would certainly assume that; but I wanted to find out particularly if you had transmitted these findings.

Mr. ROOSEVELT. Yes, sir.

Mr. KORNEGAY. Thank you very much.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Curtin.

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Secretary, I presume the administration has been following this dispute between the carriers and the brotherhoods very closely during the period since it has been in power, has it not?

Mr. ROOSEVELT. Very closely, and for a long, long time; yes, sir.

Mr. CURTIN. One of the main questions in the dispute seems to be whether or not there has been real sincere collective bargaining on this manning question and crew consist question between November 1959, when the new work rules were promulgated, until early this year; that is, through at least 3 of the nearly 4 years of this period.

It would seem to me if there had been sincere collective bargaining by both parties for that period of 3 years, then a further period of 60 days, or more, without any Government action would be useless.

If, on the other hand, real collective bargaining only started within the last few weeks, as has been said here, then such further period of uncontrolled collective bargaining might be productive.

Do you know the opinion of the administration on this question as to how long the parties have been sincerely trying to get together?

Mr. ROOSEVELT. I would say this: That you can lead a horse to the water trough, but you can't make him drink.

We have been diligently trying to bring the parties together to collectively bargain. I believe there have been sporadic and occasional sincere efforts on both sides throughout the entire period, particularly

going back to the period of the Rifkind Commission and during the period of the Rosenman Commission.

But I would not like to criticize either side by stating that there has not been collective bargaining. There have been serious and honest attempts on both sides. Unfortunately, the results have not been produced.

I would also say that both sides are thoroughly familiar with the positions taken by the other, and collective bargaining, even for a few hours, might have the desired effect of achieving a solution. So, any time added to the process which would permit collective bargaining is useful. I would never say that even if an extra day was possible that was a waste of time. I don't think any extra time is a waste of time.

Mr. CURTIN. Of course, I appreciate your statement in reference to the President's proposal and what it involves, although I must say that I feel that it does involve compulsory arbitration, regardless of the phraseology.

Would you care to comment on Mr. Meany's suggestion that we put off any type of drastic Government action for a short period to see if the parties can now get together without the remedies suggested in the President's recommendation?

Mr. ROOSEVELT. Mr. Congressman, I, of course, would not be in a position to recommend any alternative suggestion to the President's. I do firmly believe that the President's recommendation to the Congress at this point is the only sound solution of the problem and the best means of achieving not compulsory arbitration but collective bargaining which will result in a resolution.

Mr. CURTIN. Thank you, sir.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Hull.

Mr. HULL. I have no questions.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Mr. Secretary, according to your statement, you vigorously support the President's proposal?

Mr. ROOSEVELT. Yes, sir; I do. I think that is clear.

Mr. CUNNINGHAM. There is another proposal which has been referred to as the Meany-Staggers-Bennet proposal. Have you gone into that, sir?

Mr. ROOSEVELT. No, sir. I have not examined it in detail. But, as I said before, I believe that after all the efforts that have been made over the last 4 years by the President and by the two commissions which we appointed, by the Secretary of Labor and his staff, by the Mediation Service, I believe in all sincerity that any alternative to the President's recommendation would not be really a sound resolution of the situation by the Congress.

Mr. CUNNINGHAM. Is it fair, then, for you to say that you do not believe it has merit in solving this dispute?

Mr. ROOSEVELT. No, sir. I don't want to be put in the position of criticizing Mr. Meany's suggestion, but I believe that the President's suggestion is the preferable one at this point.

Mr. CUNNINGHAM. You are familiar, perhaps, with the fact that your brother, Jimmy, introduced the Meany proposal, also?

Mr. ROOSEVELT. Yes, sir; I am. And the great advantage of my family is that we agree to disagree on occasion.

Mr. CUNNINGHAM. Mr. Secretary, we have mentioned the matter of compulsory arbitration and I am firmly convinced that the President's bill is compulsory arbitration and all of the railroad brotherhoods are equally firm in their belief that it is. But we don't need to get into a discussion as to whether it is or is not at this time.

I would like to ask your Department, which is primarily concerned with the economic effects of the strike, for the record, do you have knowledge that your Department was consulted in the preparation of the President's resolution that was sent down here, the one that you adhere to?

Mr. ROOSEVELT. Yes, sir. We were consulted and we participated in the area covered by our Department with regard to the President's message and his recommendation.

Mr. CUNNINGHAM. Mr. Secretary, we have been here for about 10 days hearing the pros and cons. This may be an unfair question, sir, and you may not wish to answer it.

Recognizing the economic impact that would result from a rail stoppage, do you have any opinion as to the points in dispute that you would care to comment on?

Mr. ROOSEVELT. No, sir. I am primarily here before the committee to give the committee the results of our investigations on the economic impact.

The Department of Labor and other branches of the administration are dealing with the points in dispute.

Of course, the Secretary of Commerce did sit on the President's Factfinding Panel which report has already been presented to the committee.

Mr. CUNNINGHAM. Mr. Secretary, in your statement, on page 10, at the end of 1 month, the number of unemployed would rise by approximately 6,500,000 persons and total unemployment would approximate 15 percent of the Nation's labor force, the highest percent since 1939. That is a staggering figure of unemployment and I certainly agree that it is most serious.

However, if there would be a strike, the opinion of the public would come to bear, in my view. I wonder if it would last more than a day or two or three.

Do you, as a matter of philosophy, feel that the impact of a strike is more important than the basic and historical right of labor and management to work out their own dispute without interference?

Mr. ROOSEVELT. Mr. Congressman, you raise a very interesting conflict, and that is the conflict between the right of an individual or a group of individuals joined together in a union in a free country such as ours to protect and fight for their own interests—self-interests. I think self-interest is the best way to describe this right.

There is opposed to this the Nation's interest, the public welfare interest, the interest of all the rest of the American people who are affected by the exercise of the first right of self-interest.

This conflict, of course, arises in staggering proportions in this dispute. It arose some 6 months ago in the dock strike by the longshoremen. It has arisen in the aircraft industry. This conflict is used by some to downgrade the first right in favor of the second. By those people compulsory arbitration makes sense—or to those people compulsory arbitration makes sense.

The position of the Kennedy administration is that this is an extreme solution and is not necessary. There remain to the President and to the Congress methods of accounting in specific situations to resolve the problems of this conflict with regard to a specific situation. And that is fundamentally what the President is trying to do here, to avoid compulsory arbitration which might be used as a precedent in the future in other parallel or similar situations.

I recognize the conflict and, as I said earlier, I think the President's suggestion is the only reasonable means of resolving the situation and still preserving both rights to both the Nation and to the railroad brotherhoods and their membership, to preserve their right of self-interest, their right to strike.

There is no assurance, I might add, that at the end of this 2-year period that the strike might not then occur.

Mr. CUNNINGHAM. I was going to ask you about that, Mr. Secretary.

Conceivably, under this resolution the 2 years could go by and one party or the other may propose a work rule change, and the ICC would approve it. However, after 2 years—somebody argued it might be 4 years because of litigation—however, we will say after 2 years are up, the aggrieved party will still then have the right to strike or a lockout in case of management. So, we are really right back where we started. We hope that won't happen.

Mr. ROOSEVELT. We hope it won't happen, but there is no question but that at the end of this period provided in this joint resolution, it is possible that we might be back where we are today.

Mr. CUNNINGHAM. At the present time, if there is a dispute between labor and management in the railroad industry, say there is a strike, the only way to resolve it is to just knock heads together and try to resolve the difference. There is no recourse to the courts, no strike-breaking provisions are available through the courts. Under the President's proposal, there is. It allows for injunctive procedures so that, for example, if management proposes a change in work rules and the ICC approves, and they are in effect for 2 years and the brotherhoods, as I say, don't approve—they are mad about it—they may strike. If they do, they can be enjoined, and this is a new concept in labor relations so far as this industry is concerned. Is not that true? It suspends the Norris-LaGuardia Act?

Mr. ROOSEVELT. It would be a temporary interim rule and at the end of the 2 years the brotherhoods would then have the right to strike if the Congress did not take further action at that time.

Mr. CUNNINGHAM. I just wanted to make that point.

At the present time, collective bargaining means that one party or the other can lockout or strike.

Mr. ROOSEVELT. Shut down.

Mr. CUNNINGHAM. Shut down. They have to work it out among themselves and the Government cannot interfere.

But, under the President's proposal, the Government can interfere with an injunction to break a strike, even though it is for, as you say, 2 years. Some people say four or longer. So that does set up a new concept.

Mr. ROOSEVELT. I would say it sets up a temporary new concept. It does not destroy the right to strike at the end of that period.

Mr. CUNNINGHAM. But if it destroys the right to strike for 1 day, there is a principle involved; isn't there?

Mr. ROOSEVELT. Of course, there is a principle involved, and that is what I was referring to in my remarks about these two conflicting interests, between the self-interest and the Nation's interest.

It is the opinion of the President quite obviously that the Nation's interest at this point, because of the facts I have presented to the committee this morning, cannot tolerate the economic chaos and disaster which would follow the impact of a shutdown.

Mr. CUNNINGHAM. I agree with you on that point.

Mr. Chairman, just one final question.

We hear now that there is mediation going on and the Staggers-Bennett or James Roosevelt resolution might provide some settlement and it says that every 10 days the committee of Congress shall be informed as to what progress is being made.

Is the chairman of our committee in any position to give the committee any information he has received as to whether during these last several days of intensive mediation any progress is being made?

The CHAIRMAN. I don't believe the Chair is in a position to give any report at this time. We will probably have something on that later.

Mr. CUNNINGHAM. Is the chairman confidentially being kept advised of these mediation efforts?

The CHAIRMAN. The Chair has had some discussions but, as I say, he has no information at this time which he cares to impart. I hope we can get along with this hearing so we can conclude, Mr. Roosevelt.

We have one more witness and I, personally, don't want to stay here tonight. We are going over a lot of these things—over and over—and if we ever do get through with these hearings we will be able to talk about some of these things in executive session.

Mr. CUNNINGHAM. I think Mr. Roosevelt's testimony was most refreshing and had not been gone into before.

I think my time is up.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. I would be glad to begin by yielding to my colleague from California.

Mr. YOUNGER. I understand there is a press release out to the effect that the carriers and employers are further away than when they started 4 years ago.

The CHAIRMAN. That is the great difficulty of these matters. We can get all kinds of rumors and reports, and I would like to urge my colleagues not to formulate any opinions until we are given facts as to what the situation is.

Mr. VAN DEERLIN. Mr. Secretary, at the risk of asking you to be repetitious, you feel that the parties are still so far apart under collective bargaining to date that any effort to continue it, except under the machinery provided by the Kennedy resolution before this committee would be fruitless?

Mr. ROOSEVELT. I would hesitate to say that any attempt——

Mr. VAN DEERLIN. So little opportunity of success that it is not worth trying?

Mr. ROOSEVELT. I believe at the end of the long period of almost 4 years that for us to now rely on a hope that collective bargaining would result in a quick solution, that hope is not sufficient to permit the Congress to just rely on that.

I believe that is the fundamental reason why the President has submitted his proposal in its present form to the Congress. His proposal will provide for 2 years of collective bargaining, but it will also prevent a strike during that period or a shutdown during that period.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rhodes.

Mr. RHODES. Mr. Secretary, if the President's proposal is adopted, would there be any assurance that a strike would not occur within the 2-year period after the decision of the ICC if it were objected to by either of the parties?

Mr. ROOSEVELT. Of course, the ICC has the injunctive right to enforce its decision. This should prevent any formal strike or lockout by either party as a weapon against such an interim rule decided upon by the ICC.

Mr. RHODES. Would it be reasonable to assume that this committee may find an effective compromise which would make the President's proposal more acceptable?

Mr. ROOSEVELT. Mr. Congressman, as a former Member of this body, I am well aware that the wisdom of the Congress can frequently work improvements on recommendations by the executive branch, but, in all honesty, I do not believe, in this case, there could be certainly any substantive modifications which would improve the President's recommendation.

Mr. RHODES. Thank you, Mr. Secretary.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Roberts.

Mr. ROBERTS. I have no questions.

The CHAIRMAN. Mr. Williams, do you have any questions?

Mr. WILLIAMS. Mr. Secretary, let me join the others in welcoming you back to the Congress. I remember our service together with a great deal of pleasure. I recall when you served in Congress you had a very distinguished and active record in support of many of the causes of organized labor. I wonder, if you were still in the Congress, if you would support this bill.

Mr. ROOSEVELT. Yes, sir; I would.

Mr. WILLIAMS. You definitely would?

Mr. ROOSEVELT. Yes, sir.

Mr. WILLIAMS. Would you also support a similar proposal in the event of a pending teamsters' strike under the same circumstances, referring it to the ICC for a 2-year arbitration?

Mr. ROOSEVELT. Mr. Congressman, I learned, during my years in the Congress, not to be a prophet and not to try to foretell what I would feel about what my father used to call an "iffy" situation or an "iffy" question. I can't answer that. It would depend on the circumstances at the time, and my judgment would be based on that.

Mr. WILLIAMS. Let us go to that point just a minute and ask you to speak as Undersecretary of Commerce rather than what you would do as a Member of Congress.

If it is right in the case of a pending railroad strike to submit the matter to the ICC for a 2-year arbitration, why wouldn't it also be equally fair and right for the Department to submit a dispute between the teamsters and management under the same circumstances to the ICC?

Mr. ROOSEVELT. Mr. Williams, I have nothing, nor has the Department done a thorough research job on the economic impacts of a teamsters' strike. We would be glad to undertake such a study if the committee would request it.

My position on this bill is based on what the economic impact of a national shutdown of the railroad system would have on the economy. I am not prepared to tell you, as Acting Secretary of Commerce, what our position would be or what the Kennedy administration position would be in case of a nationwide teamsters' strike. We are not prepared to discuss it or even give you an opinion at this time.

Mr. WILLIAMS. I understand.

I am not asking this question as an antagonist to this bill.

Mr. ROOSEVELT. No. I know that.

Mr. WILLIAMS. I am having some difficulty in seeing why the principle would not be the same in the case of a threatened communications shutdown which would certainly cripple the economy of this country.

Would you advocate, under those circumstances, the very same principle here of submitting this to the Federal Communications Commission for a 2-year arbitration period?

Mr. ROOSEVELT. I can assure you if we are threatened by such a situation that the President will give it very careful consideration and will come up with a suggestion to the Congress at that time.

Mr. WILLIAMS. Do you feel that the principle would be the same?

Mr. ROOSEVELT. The principle involved here is a one-shot, one-deal remedy for a current present threat to the Nation's economy.

Mr. WILLIAMS. In the case of the one-shot, one-deal threat to the economy in a threatened shutdown of communications, would this, also, be the proper remedy?

Mr. ROOSEVELT. I can't answer that.

It would depend on the extent of the shutdown in communications. It would depend on the economic impact on the country. It would depend on the differences between the parties, how serious it was, whether there are other means of achieving a resolution, whether it had gone for 4 years as this had.

There would be many questions which would affect a decision in such a situation.

Mr. WILLIAMS. As I understand it, the administration, taking you at your word, is submitting this as a means of meeting the requirements of a momentary expedient rather than submitting it as a matter of principle which should be followed in the future as a precedent?

Mr. ROOSEVELT. That is correct.

Mr. WILLIAMS. Thank you very much.

The CHAIRMAN. Thank you very much for your appearance and your testimony, Secretary Roosevelt.

Mr. ROOSEVELT. Thank you, Mr. Chairman and members of the committee.

The CHAIRMAN. The next witness will be Mr. Lester P. Schoene, counsel for the Railway Labor Executives' Association.

Mr. Schoene, you may proceed.

STATEMENT OF LESTER P. SCHOENE, COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY WINFIELD M. HOMER, LABOR BUREAU OF THE MIDDLE WEST; AND WILLIAM G. MAHONEY, MULHOLLAND, HICKEY & LYMAN, COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. SCHOENE. Mr. Chairman and members of the committee, my name is Lester P. Schoene. I am a lawyer engaged in the practice of law with offices at 1625 K Street NW., Washington, D.C., a member of the firm of Schoene & Kramer. Since we opened our office in 1944, the major portion of my time has been taken in assisting railway labor organizations, sometimes individually, sometimes collectively, and sometimes on a national basis, in the negotiation of revisions in rates of pay, rules, and working conditions.

I appear here this morning as counsel for the Railway Labor Executives' Association. I have with me on my left, Mr. William G. Mahoney, a member of the firm of Mulholland, Hickey & Lyman, whose Washington offices are in the Tower Building, who will be prepared to supply details if the committee should want them with respect to certain proceedings in which he participated and I did not, but which I will discuss in the course of my testimony.

I also have with me on my right, Mr. W. M. Homer of the Labor Bureau of the Middle West, a firm that has served our association as economic consultants for many years.

At the conclusion of my testimony I would like to call briefly on Mr. Homer to advise the committee concerning the potential impact on lengthening hours of service and reduction in compensation which would result if the recommendations of the Presidential Railroad Commission were or had been adopted.

The CHAIRMAN. Mr. Schoene, if I might interrupt.

We have had a great deal of discussion on the report of the Presidential Railroad Commission and there has been a lot of discussion back and forth from time to time.

However, as a member of the committee, certainly as the chairman of the committee, I have been trying to suggest that we emphasize the matters that are contained in the subcommittee report which information has been provided to the Congress in order to narrow the questions down and therefore bring to a head the issues that are in dispute.

As I have tried to suggest heretofore, if we could center our attention on those questions in dispute I think we can be more helpful to the committee in trying to arrive at a just and fair solution as is possible in this matter.

Mr. SCHOENE. Mr. Chairman, that is exactly my plan. My testimony will deal with our objections to the President's proposal as embodied in House Joint Resolution 565, and then I will wish to explore with the committee alternative approaches which we would recommend. The testimony I referred to on the part of Mr. Homer will be very brief and will, I believe, for the first time present to this committee an important aspect of what can be involved by way of extensions of hours of service and reduction in compensation. But it will be very brief.

My testimony will deal with the subjects that I have already outlined.

Mr. Chairman, I am sure that most members of the committee are acquainted with what Railway Labor Executives' Association is, but I should state for the record that it is an association composed of the chief executives of all the standard railway labor organizations, 24 in number. That includes the five operating organizations who are participants in the rules dispute directly and it also includes all the nonoperating organizations.

These organizations all have a vital interest in the matter before this committee, both because as a matter of procedure, as a matter of protecting the integrity of the Railway Labor Act, as a matter going to the fundamentals of the right of collective bargaining, the right to strike, and as citizens, what the implications of the President's proposals are with respect to our free economy and our democratic system itself.

For the record, I would like to hand to the reporter a list of the organizations affiliated with Railway Labor Executives' Association and for whom I am speaking this morning.

The CHAIRMAN. Let it be included in the record.

(The list referred to follows:)

The organizations represented here through Railway Labor Executives' Association are:
American Railway Supervisors' Association.
American Train Dispatchers' Association.
Brotherhood of Locomotive Engineers.
Brotherhood of Locomotive Firemen & Enginemen.
Brotherhood of Maintenance of Way Employees.
Brotherhood of Railroad Signalmen.
Brotherhood of Railroad Trainmen.
Brotherhood of Railway Carmen of America.
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express & Station Employees.
Brotherhood of Sleeping Car Porters.
Hotel and Restaurant Employees & Bartenders International Union.
International Association of Machinists.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen & Oilers.
International Organization Masters, Mates & Pilots of America.
National Marine Engineers' Beneficial Association.
Order of Railway Conductors & Brakemen.
Railroad Yardmasters of America.
Railway Employees' Department, AFL-CIO.
Sheet Metal Workers' International Association.
Seafarers' International Union.
Switchmen's Union of North America.
The Order of Railroad Telegraphers.

Mr. SCHOENE. Mr. Chairman, in approaching matters that are highly controversial, as the matter before this committee certainly is, I have often found it helpful to see whether there is not some area of agreement, of universal agreement, which can then perhaps be proliferated or extended to find a solution in the area of disagreement.

I believe that in this situation we do have at the center a very definite area of universal agreement. That is agreement upon the proposition that by all odds the most desirable and most to be sought solution to the dispute between the railroads and their operating employees would be a solution arrived at through collective bargaining in the tradition of collective bargaining in this industry and in this country.

Certainly there is no doubt that that is the position of the organizations for which I speak and has been their consistent position for many years with respect to all labor-management disputes.

That has been the consistently announced position of those five organizations who are direct participants in this controversy. Both the Presidential Railroad Commission and Presidential Emergency Board No. 154 emphasized in their reports and recommendations the necessity and desirability of using the processes of collective bargaining to find the solution to the issue in dispute.

The President's message, far from taking issue with that position, itself emphasizes the desirability of preserving and fostering collective bargaining as an objective. In fact, in one of the recitals in the joint resolution which he submitted to you, it is specifically recited that collective bargaining is to be preserved and preferred. The railroad carriers have taken no issue with the general premise as to the desirability of such a solution, at least in their public statements and published announcements. They, too, have subscribed to it, although as I may indicate briefly later, we have some reason to doubt the sincerity of those professions by reason of their conduct.

I have heard expressions from many Members of the Congress, both the House and the Senate, all indicative of what I believe to be unanimous agreement that the best thing that could possibly happen in this situation would be for the parties by agreement to arrive at a solution of their disputes.

This brings me to our first objection to House Joint Resolution No. 565. It does not provide for and does not promote this universally agreed upon most desirable solution.

I know there has been a lot of word chopping about whether this is compulsory arbitration or is not. I have read and heard the rationalization of the administration by which efforts are made to distinguish this procedure recommended by the President from that of compulsory arbitration.

I am not interested in terminology or word chopping. I am interested in practical consequences. So regardless of what verbal appellation may be attached to what the President has proposed here, it certainly has pronouncedly all the objectionable features of compulsory arbitration. It certainly does provide as compulsory arbitration does for imposed changes in rates of pay, rules and working conditions made by a third party or institution without the consent of the parties or of both parties involved.

Those are the major objectionable features inherent in compulsory arbitration and they are undeniably present in the procedures which the President has asked the Congress to adopt in this instance.

Now let me go a bit further and say to you that the distinctions that have been relied upon by the administration to differentiate their proposed procedures from compulsory arbitration in many respects make this procedure worse than compulsory arbitration.

I have had experience with arbitration—not compulsory arbitration but arbitration voluntarily subscribed to and agreed to under the Railway Labor Act—and arbitration, as it is customarily known, whether it is voluntary as it always has been in my experience, or whether it be imposed by law would at least have the virtue of bringing a dispute to a conclusion and permitting any party who felt that

the results were unjust again to exercise the normal procedures of collective bargaining in an effort to regain the ground that had been lost by decision.

Let me give you a specific example of that drawn from my own experience. In 1946, the railway labor organizations generally had proposed a wage increase of 30 cents per hour. The nonoperating organizations, the Brotherhood of Locomotive Firemen & Enginemen, the Order of Railway Conductors, and the Switchmen's Union all agreed to submit that dispute to two arbitration boards who were sitting simultaneously.

The two other train and engine service organizations did not agree to arbitration and their dispute simultaneously came before a Presidential Emergency Board. Both arbitration boards and the Presidential Emergency Board came up with awards and recommendations of an increase of 16 cents an hour, which the employees felt was less than was warranted by the then current almost universal pattern of postwar increases being granted.

All those organizations, however, which submitted to arbitration were, of course, bound to the result. There was no question of accepting it or not accepting it. They had agreed in advance to accept it and they did accept it. But they immediately served notices under the Railway Labor Act for a further increase in wages and in less than 2 months that further proposal was settled by the granting of an additional 2½-cent increase which brought their increase into line with the prevailing pattern for industry generally.

The President's proposal leaves no room for that kind of procedure. If one side or the other goes to the Interstate Commerce Commission and secures approval for changes in rates of pay, rules and working conditions, that is in effect for a period of 2 years unless the parties agree in the interim to change it, and at the end of the 2-year period the dispute is still undisposed of if they have not agreed upon something different from what the Interstate Commerce Commission had approved.

I believe, gentlemen, that one must be very naive and wholly inexperienced in the field of collective bargaining if he believes that if one side or the other goes to the Interstate Commerce Commission and gets something it is asking for which is not agreeable to the other side, that the side that got something is then going to agree to take something less in collective bargaining.

So as a practical matter it is in my judgment, based on many years of experience in collective bargaining, almost inevitable that any change approved by the Interstate Commerce Commission through these procedures will remain the rule for the duration of the 2-year period and at the end of that period the controversy is still unresolved and we are back in the same situation, that either there will be an exercise of the right of self-help, or we will again be told about the intolerability of a railroad strike and its horrendous effects upon the Nation.

This Congress will then again be seeking to devise some solution to the controversy. As I say, at least compulsory arbitration would not have those potentialities, many as its evils are and opposed as we are thoroughly and irrevocably to any compulsory arbitration.

What I am saying to you, in a few words, is that whatever you call it, the President's solution has all the evils of compulsory arbitration and some on top of it.

Our second objection to the President's proposed solution is that the Interstate Commerce Commission is in any event not an appropriate tribunal to be brought into and make decisions about rates of pay, rules and working conditions. Because of the functions that the Interstate Commerce Commission exercises under section 5(2)(f), or under section 5(2) rather, of the Interstate Commerce Act, the President's message seems to imply that it is an institution experienced and well equipped to deal with the kind of issues that it will be called upon to deal with in this controversy.

The exact opposite is true. The Interstate Commerce Commission has no experience in the field of collective bargaining or in the field of fixing rates of pay, rules or working conditions, and it never has had.

From the very beginning it has been the considered and studied and constant policy of Congress to keep the Interstate Commerce Commission out of the field of labor-management relationships in the railroad industry.

In 1888, in approximately 1 year after the Interstate Commerce Act was enacted, Congress passed a law to promote mediation and arbitration of labor disputes, but divorced it specifically from any participation by the Interstate Commerce Commission. That statute was on the books for about 10 years when it was superseded by the Erdman Act having the same objectives.

Under the Erdman Act the Chairman of the Interstate Commerce Commission, not the Commission, as a specific function of his apart from the Commission functions, along with the Commissioner of Labor, was charged with promoting mediation and arbitration and conciliation in disputes.

That function of the Chairman under the law of 1898, is as close as the Commission has ever come at any time to having anything to do with the determination of rates of pay, rules or working conditions. That law was superseded by the Newlands Act which was in effect or which became effective, as I recall, in 1913 and was in effect up to the time that the Government took over the railroads during World War I. During the World War I period, as we all know, the Government itself determined changes in rates of pay, rules and working conditions as the operator of the railroads, but after regular and continued consultation with the representatives of the employees.

Upon the termination of World War I, Congress enacted the Transportation Act of 1920, returning the railroads to private operation and in title III of that statute it contained provisions for dealing with disputes concerning rates of pay, rules and working conditions and setting up the United States Railroad Labor Board which had no connection whatever with the Interstate Commerce Commission.

That legislation was superseded by the Railway Labor Act of 1926 which, as amended since then, is the law now governing labor relations in this industry.

The Interstate Commerce Commission plays no part in the functioning of the Railway Labor Act. So it is, contrary to the implications of the President's message, a complete break with the historical

tradition and with the functions of the Interstate Commerce Commission. The bases on which the personnel of the Commission and the staff have been selected has heretofore included no consideration of their qualifications to pass on labor-management relations.

Within the limited area, however, to which the President refers as indicative of the Commission's qualifications and experience, namely, that of imposing condtions upon certan merger and acqusition transactions for the protection of the public including the employees, that is the function that the Commission exercises under section 5(2)(f) we do have some experience with how the Commission performs in that field to which the President points as showing their experience.

Let me emphasize that that function still has nothing to do with rates of pay, rules or working conditions, but is merely incidental to the function of the Commission in approving or disapproving proposed transactions such as acquisitions, mergers and consolidations, and it has become recognized over the years and embodied in the statute that when the Commission fixes conditions for the protection of the public the employees are a part of the public, too, and that there is a public interest in what happens to employees who may be adversely affected, not through any changes in rates of pay, rules or working conditions that the Commission may order, but through transactions of the railroad corporations that may dislocate or disemploy wholly or in part some of the employees there employed.

Now we have had experience with the Commission's operations in that field, and our experience is not such as to command to us an extension of it into the fixing of rates of pay, rules and working conditions.

I want to discuss briefly a few examples of our experience with the Interstate Commerce Commission in that field. I want to start with the *New Orleans Terminal* case. In that instance the passenger services of the various railroads in New Orleans were being consolidated into the New Orleans Terminal, a very extensive project effecting a great deal of physical rearrangement and rearrangement of employment.

The Commission approved the transaction but provided that protection for employees should extend only to those adversely affected within 4 years from the effective date of its order permitting the commencement of the construction and rearrangement of the terminal facilities.

As I said, that was a very extensive project and a great bulk of the employees would not feel the adverse impact until the construction was completed and the work forces then rearranged which would be more than 4 years after the effective date of the Commission's order.

The Commission, despite our plea that all the employees adversely affected by the transaction should be protected said it had no authority to extend protection beyond 4 years from the effective date of its order.

We had to take them to the Supreme Court of the United States to prove to them that they did have that authority and in *Railway Labor Executives Association* against *United States*, reported in 339 U.S. 142, 1950, the Supreme Court held that the Commission had authority to protect all the employees adversely affected and eventually this resulted in what has become known and has been a pattern type of protective condition as the New Orleans condition.

But we had to take the Commission to the Supreme Court first before we could get the New Orleans conditions. Now I want to turn to another line of experience we have had with the Commission that makes us very apprehensive as to the adequacy of that tribunal to pass upon the issues the President's resolution would refer to them.

As you are well aware, more and more in negotiated agreements, in recommendations of public bodies, Presidential Emergency Boards, the Presidential Railroad Commission, the factor of normal attrition as a means of employee protection where reduction of jobs is involved has become more and more utilized.

In the last few years I have personally participated in the negotiation of a number of agreements on the railroads that recognized that factor as a proper means of cushioning the impact upon existing employees' seniority, and so on, of putting changes into effect gradually, of letting reduced employment manifest itself in the failure to hire new employees rather than in the disemployment of existing employees.

The Interstate Commerce Commission has been urged numbers of times to employ that same device in the establishment of employees protective conditions under section 5(2)(f). The Commission has consistently rejected as a matter of policy the use of attrition as a protective condition.

In this respect I want to start my discussion with the Commission's handling of the Florida East Coast reorganization in 1958. In that proceeding, the Atlantic Coastline and the St. Joe Paper Co., one of the items owned by the Du Pont estate, were competing for control of the Florida East Coast.

The organizations involved were opposed to control by either and felt that either transaction would result in adverse effects upon the employees.

However, a stipulation was made between the organizations and the interests competing for control in which agreement was reached as to what protective conditions should be provided for employees adversely affected if either one acquired control.

Those protective provisions agreed upon by the employees and by the competing parties seeking the ownership of that railroad included attrition.

The Commission's examiner approved the stipulation and recommended in his examiner's report that attrition be included among the protective conditions.

The Commission, however, on its own initiative and contrary to the stipulation of all parties in interest rejected attrition and refused to give that kind of protection.

More recently in the case of the Erie-Lackawanna merger, we have attempted through litigation to secure an interpretation of section 5(2)(f) that would compel the Commission as a matter of law to recognize the principle of attrition for at least the 4-year period referred to in the statute.

We were unsuccessful in that litigation. We took that to the Supreme Court. It is reported as *Brotherhood of Maintenance of Way Employees* v. *United States*, 366 U.S. 169. So the Court has held that the Commission is not required as a matter of law to impose attrition as a condition, but let me emphasize that it in no way implies

that the Commission does not have authority or discretion so to protect the employees.

So the Commission must squarely bear the responsibility for its continued refusal as a matter of the exercise of sound judgment to employ the device of attrition as a protective condition.

It has more recently again reiterated, a rejection of that principle, in the case of the Southern Railway's acquisition of the Central of Georgia. Now, I want to tell you a little more about our experience in connection with the case that I have last referred to, that is the Southern Railway's acquisition of the Central of Georgia.

Up until the Commission's action in that case, what I have previously referred to as the New Orleans conditions had become pretty much standard practice as the conditions to be imposed when a transaction was approved under section 5(2)(f) for the protection of employees.

However, in the *Southern Railway, Central of Georgia* case, the Commission in its original decision, while purporting to prescribe substantially the New Orleans conditions placed a long list of limitations and exclusions on the normal application of the New Orleans conditions, thus limiting very considerably the practical benefits of the conditions compared with previous practices.

However, there was also another matter involved, and that was the question of whether technological changes brought about as a result of the acquisition and new capital made available on the Central of Georgia to provide capital expenditures necessary for technological changes, whether those changes could be considered a consequence of the transaction.

In its original decision, the Commission rejected a carrier contention that those technological changes should be excluded from consideration under the protective conditions.

It held, as it had always held theretofore, that whether any particular employee's, unemployment, or other adverse effect, was a proximate consequence of the transactions authorized was a question of fact to be determined in the individual case, hopefully by agreement of the parties but if not by agreement then through the arbitration provisions that are contained in the conditions.

The Southern Railroad then said in effect, "If these are the conditions we won't go through with the transaction." That should not have been considered a tragedy if they don't want to go through with the transactions, if conditions are imposed that the carrier thinks are too onerous. But, anyway, the carrier petitioned for reconsideration. The employees petitioned for reconsideration in order to try to have removed these restrictions and limitations on the protective conditions that the Commission had included in its original decision.

Thereupon the Commission, without hearing, proceeded to reconsider, denied the relief that the employees requested, and now held specifically, contrary to their original decision, that it is their intention that protection under their protective conditions should not extend to any technological improvements or changes that might be made as a consequence of the acquisition.

We have a suit pending to try to reverse that decision.

Let me turn now to the action of the Commission in the *Richmond Terminal* case, also a recent case. In that instance the Seaboard was

disassociating itself from a joint operation with the C. & O. Railroad and moving its passenger service to the public into the Atlantic Coastline terminal. This meant that about two-thirds of the work that had been done or the bulk of the work, anyway, that had been done in the terminal which the Seaboard had formerly used would be transferred.

The Seaboard employees who were working in that terminal, of course, would follow their work to the new terminal and they would suffer no adverse effect from the transaction, or very slight adverse effect.

The real adverse effect was upon the employees of the C. & O. who constituted about two-thirds of the employees in the original terminal. The Commission held that it could extend protective conditions only to employees of the applicant. The applicant was the Seaboard. It could not protect these two-thirds of the employees who were losing the work because they were employees of the C. & O.

The consequence was an utterly meaningless and practically ineffective kind of protection. We took this to court and on March 23, 1963, a three-judge Federal court in the northern district of Virginia reversed the Commission, and set aside its order. That decision has not been appealed, will not be, and the Commission has now complied with it.

After we took them to court and got them reversed we secured protection for the C. & O. employees. But the Commission in granting that relief makes it a point to emphasize that this turns on the peculiar facts of the individual case, indicating that it is still not accepting the pronouncement of the court as a general principle to be applied in other cases.

Now I am not going to continue this recital of specific instances. I could name many others. These are some of the highlights of our experience with the Interstate Commerce Commission in this field to which the President refers as their being an experienced and expert body.

The significance of all the litigation that I have pointed to lies in part in the fact that we have no basis for seeking relief in the courts unless we are convinced that the protection that the Commission has given to the employees is less than the minimum amount they are required by law to give.

So where the Commission in the exercise of its discretion but without violation of law provides inadequate conditions we have no judicial remedy for that.

We simply have to accept what the Commission is willing to let us have. Now aside from what has been our experience in the substantive field wtih protective conditions, I want to speak briefly also of what we would be confronted with procedurally under the President's proposal.

You will note that under that proposal there is no hearing required. The Commission is invited to look at the record before the Presidential Railroad Commisison, to the recommendations and report of that Commission, to the proceedings of the Emergency Board No. 154, to the report and recommendations of that Board, or so much of it as the Commission may want to look at, and it is entirely possible for the Commission in star-chamber proceedings upon the application of either side here to come down with a pronouncement, having looked

at some undisclosed information and without a hearing and come up with a decision on these vital issues which will then be binding on the parties for 2 years unless they in the meantime agree on something else which I pointed out is practically not likely to occur.

Another matter in the President's proposal which disturbs us very much is the provision that the proceedings of the Commission shall be subject to the procedures and provisions of section 5 of the Interstate Commerce Act.

Now section 5 of the Interstate Commerce Act includes section 5, paragraph 11. When I read the language of paragraph 11 in context—that is, in this context—of determining rates of pay, rules and working conditions, it makes me shudder and I think you will shudder when you read it.

I am not going to read it all to you, but it starts out—

> Plenary nature of authority under section: The authority conferred by this section shall be exclusive and plenary.

About the middle of the section it says:

> Any carriers or other corporations and their officers and employees and any other persons participating in a transaction approved or authorized under the provisions of this section shall be and they are relieved from the operation of the antitrust laws and of all other restraints, limitations, and prohibitions of law, Federal, State, or municipal insofar as may be necessary to enable them to carry into effect the transactions so approved.

I cannot visualize all the possible consequences that may result from this blanket overriding of all Federal, State, or municipal laws by orders of the Interstate Commerce Commission.

I would judge that as a minimum the carriers would contend—I am not saying that I would subscribe to such a contention nor that I wouldn't fight it if it came actually into being—but certainly the carriers as a minimum would contend that if they obtain an order from the Interstate Commerce Commission authorizing a reduction in train or engine crews that this would supersede State laws providing minimum full crews.

That is something which they cannot possibly get by collective bargaining under their proposals or anything else.

The parties can't agree to change State law. But under this paragraph it would certainly be contended that the Interstate Commerce Commission would have that authority. According to figures the carriers have given us in our discussions, 20 to 25 percent of the employees they would like to take off are in States having full crew laws. Perhaps that explains the alacrity with which the railroads came in to support the President's proposal. There may be other reasons, too. But this at least is suggestive of a possible reason.

There is one other area aside from section 5 and the protective conditions, with which we have had some experience with the Interstate Commerce Commission, and I mention it because it, too, is closely related to what we can expect of the Commission if it is assigned the function that the President proposes to assign to it.

I am speaking of the matter of safety of operations. As you know, all these railway labor organizations have from their inception been very much concerned with the safety of operations, and that is certainly understandable because their memberships are engaged in a very

hazardous occupation, and it is in the interest of their membership to reduce hazards as far as possible.

Likewise the matter of safety is involved in the determination of what are appropriate consists of train and engine crews, what are appropriate runs and many other things that are in dispute between the five organizations and the carriers.

You will note that repeatedly in the recommendations of Emergency Board No. 154, they recommend procedures for resolving some of these issues, and they emphasize efficiency of operations, safety of the operation and lack of undue burden on other employees.

Safety figures very prominently. Now the Commission does not have extensive functions in the field of safety, but it is charged with the responsibility for reporting train accidents and through its Bureau of Locomotive Inspection to make checks on locomotives to determine whether they are in condition suitable for safe operation on the road.

It by no means checks or inspects all locomotives. It makes periodic and sporadic spot checks in which they try to get about a 10-percent sample. We have been quite interested in the Commission's performance in that respect.

The CHAIRMAN. The committee will recess now and come back at 2:15.

(Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 2:15 p.m. the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:15 p.m., Hon. Oren Harris, chairman of the committee, presiding.)

The CHAIRMAN. The committee will come to order.

I think you should proceed. I am sure that other members will come along pretty soon, but time is passing on.

Mr. Schoene, you may take up where you left off and proceed.

STATEMENT OF LESTER P. SCHOENE, ACCOMPANIED BY WINFIELD M. HOMER AND WILLIAM G. MAHONEY—Resumed

Mr. SCHOENE. Thank you, Mr. Chairman.

At the time the committee recessed, I had begun a discussion of the relationship of railroad safety of operations to the issues that are in dispute between the carriers and the organizations and was leading to a discussion of the performance of the Interstate Commerce Commission within the relatively limited responsibility that it has in that field.

I had pointed out that the Commission is charged with the responsibility for reporting train and train service accidents and their causes and the casualties resulting from it, and also of conducting inspections of locomotives.

I think there are three rather pertinent aspects of that activity of the Commission with relationship to the problem of whether this is a suitable institution to be entrusted with the determination of working rules that are very largely involved with the safety of operations.

I will discuss three aspects of this matter. The first relates to the effect on safety of the substitution of diesel power for steampower. Second, and leading from that, the sort of condition of rail-

way locomotive power as revealed by Interstate Commerce Commission investigations and reports which has a bearing on what sort of engine crew is required to deal with equipment in that condition when it is on the road.

Third, and perhaps most significant, is what has the Interstate Commerce Commission done or attempted to do with respect to very definite increasing hazards in connection with train operations.

This committee may very well be under the impression that I am sure the bulk of the American public is under that the substitution of diesel power for steam power has resulted in much more reliable equipment.

The impression people have is that these things practically run forever with very little attention, and that compared with stream locomotives you would expect a lower rate of defective locomotives when you are using diesel as against what you have when you are using steam locomotives.

Any such impression is entirely false as revealed by the records of the director of locomotive inspection and the published statistics with respect to it.

During the last decade of steam operation—that is, the pre-World War II decade—the average of train accidents per million locomotive miles was 5.7. Now taking up after the war when dieselization had become virtually complete, taking the 5 years, 1951–55, the rate of train accidents per million locomotive miles had risen to 7.11. That is an increase of 25 percent in the train accident rate.

In 1956, the rate of train accidents again rose to 7.71 per million locomotive miles, and that is an increase or represents an increase over the last decade of steam operation of 35 percent.

We cannot compare statistics across the year 1957 because in that year the Commission changed its rules for reporting, so that statistics before and after are not directly comparable. But taking up after 1957, and taking the period 1958–60, we again had a rise of 13 percent in the rate of train accidents per million locomotive miles.

In the period 1961–62; that is, in the fiscal year 1961–62, in 1 year there was again an increase of 4 percent in the rate of train accidents per million locomotive miles.

While as I said, we cannot compare directly across the 1957 year, there can't be any doubt that the rate of train accidents per locomotive mile today with the diesel locomotives is at least 50 percent higher than the average during the last decade of steam operation.

I told you before lunch that the director of locomotive inspection makes spot checks to make some estimate through sampling of the number of locomotives that are so defective that they should not be allowed to operate on the road without correction.

In 1940, during the steam locomotive period, with respect to those caught in the spot checks, 8.4 percent of the locomotives were found to be so defective that they ought not to operate on the road without the defect being corrected.

Bear in mind that we have no reason to believe that the sampling is inaccurate. This means that the same percentage of uninspected locomotives; that is, of the 90 percent which go out and are not inspected, we have no reason to believe that the percentage of defective locomotives is any different in the 90 percent than in the 10 percent that are actually inspected.

So it is fair to assume that in 1940, 8.4 percent of the locomotives that went out on the road were defective.

In 1960, when dieselization was complete or virtually complete, 10.2 percent of the inspected locomotives were found to be too defective to be safely operated on the line of road. There is another factor to consider in this connection, though.

Typically, your locomotive in the steam era was a single locomotive. Sometimes you had double headers or helpers and so on. But typically, the train was operated with a single locomotive. The typical train in freight service, at least, and oftentimes in passenger service today, consists of four locomotive units, each of which is a separate locomotive as far as these locomotive inspection statistics are concerned.

So if you put together the fact that you have four chances of a defective locomotive as against one, with the rise in the rate of defective locomotives, it is proper to conclude that in today's trains the chances of a defective unit in the locomotive powerplant, which on inspection would be found to be too defective to be safely operated on the road is five times as great as it was in 1940.

Another interesting feature of what is revealed by the records of locomotive inspection is that some railroads have a notoriously bad record in sending defective locomotives out on the line of road. These records go on on individual railroads year after year, and so far as can be ascertained the Commission has made no effort to correct the conditions.

For example, the Chicago & Northwestern Railroad in each of the last 5 years has been found to have almost exactly twice as high a rate of defective diesel units as the average for the country as a whole.

The New Haven Railroad has had about three times as many defective units as the national average in all of these 5 years, and in some of these years has had four times as many defective locomotives on the road as the average for the country as a whole.

Now one would suppose that with responsibility or with concern for doing something to promote railroad safety the Commission either through pressures on the individual railroads that have this kind of a record or through recommendations to Congress or in some fashion would have made some effort to correct that condition, and yet there is no evidence that any such action has been taken.

Now let me add one more aspect. In making these inspections the Commission obtains information as to whether or not the defect found on inspection had been reported prior to the time that it was discovered by the Interstate Commerce Commission inspector.

When you look at the numbers of times that defects found by the Commission to disqualify locomotives for safe railroad operation have been reported before the inspector caught it in the spot checks, the record is really startling.

Referring again to the New Haven Railroad as one with a particularly bad record, and looking only at train accidents in which one of the engine crew was injured—the Commission gets information on those accidents separately from other train accidents—we find in the one fiscal year 1961 there were seven accidents on the New Haven in which locomotive personnel were injured.

In four of those accidents the defect that ultimately caused the accident and injury had been reported in advance, but had gone on uncorrected.

There were 18 advance reports, that is, reports in advance of the accident, of the same defect in the locomotive that caused the accident before the accident occurred.

The CHAIRMAN. Before the accident what?

Mr. SCHOENE. Before the accident occurred. This defect had been reported to the management by the personnel 18 times in 4 of these 7 accidents that caused injury.

In another case there were 19 advance reports, and in another there were 22. We have a record that there had been advance reports of the defective locomotives in every instance in which a train accident attributable to locomotive failure occurred on the New Haven Railroad in the 5 years that we covered in our study.

That is, accidents due to locomotive failure and in which engine service personnel were injured. In 1 instance there had been 58 times that the defect was reported prior to the time of the accident.

Now these figures as to the number of advance reports of defective locomotives prior to the time of inspection have customarily for many years been published in the annual report of the Director of Locomotive Inspection.

While the Presidential Railroad Commission was sitting 2 years ago, the organizations presented these figures to the Commission as evidence of the need for adequate engine personnel, specifically the need for a fireman as well as an engineer on the locomotive, thus bringing to the attention of at least that segment of the public that was following the matter the condition of the equipment with which these employees had to contend. This, one would suppose, should have moved the Interstate Commerce Commission at least at that belated date to attempt some corrective action to reduce the hazards to which the employees are subjected.

Well, the Commission did do something about it. They discontinued publishing the information. For the past 2 years you do not find that information in the annual report of the Director of Locomotive Inspection. The Commission still gets it, and if you are savvy about that you can go down to the Commission and get the information. That is what we have to do when we want to get current figures.

But the response to the disclosure of this condition and its summarization by the unions before the Presidential Railroad Commission was the discontinuance of the publication of the information.

Now, gentlemen of the committee, this is another instance that illustrates the bases of our apprehension at having the Interstate Commerce Commission enter orders determining working rules, conditions under which these employees are supposed to operate, what kind of a crew is a safe crew to operate, orders that the railroads will contend supersede State safety and full crew laws.

With that kind of record in the limited field of safety that the Commission has, gentlemen, we are scared. We can't go along with that.

Now I have told you the objections of all the railway organizations, operating and nonoperating, to the President's proposal as embodied in House Joint Resolution 565. I told you at the outset that I would

also explore, before I finished, the alternatives for congressional consideration.

In approaching consideration of any alternative action, it seems to us that there are two fundamental considerations that must be given dominant weight. The first of these I have already adverted to. That is, there is unanimous universal agreement so far as the record shows, at least, that a solution through collective bargained agreement is to be preferred to any other solution of this dispute.

I have pointed out that that test is not met by the President's proposal. But any other, that is, any alternative approach should meet that test.

A second fundamenal consideration, it seems to me, that may often be lost sight of is the fact that the crisis that is now confronting the Nation has unquestionably been precipitated by the railroads' managements. We have heard much from the railroad witnesses about how important it is to them to get financial relief from what they consider excessive payrolls that result from rules and rates of pay and the pay structure which they say makes them use unnecessary personnel and to overpay them for what they do.

I think in that atmosphere it is easy to lose sight of the fact that the employees also have been trying throughout this whole period to get some relief for themselves. There is no disagreement over the fact that the working conditions of the operating employees on these railroads is obsolete as compared with those of the nonoperating employees and of employees generally throughout industry.

The employees have recognized that and made proposals that are in this dispute, seeking to reduce the weekly and monthly hours of work, seeking to improve the overtime rules, seeking to get away from the burden which practically no other workers in the country bear of having to support themselves at their own expense when they are away from home; and numbers of other proposals which I will not detail but which are recited in House Document No. 142 that contains the President's message and its appendixes.

The employees have as much right as the carriers to be impatient about the complex nature of this dispute and the delay in its disposition. We have people working 56 hours and more a week, 7 days a week, 8 hours a day or more at straight time. Where else in American industry does such a condition prevail? We would like to get those things corrected.

But the organizations have never said to the railroads or to the Nation that "come such and such a date if we don't have these conditions corrected we are going to strike."

The initiative in this matter that brings on the crisis lies squarely with the railroad carriers and they must bear the responsibility for bringing it to the crisis that puts it before you. Those, I say, are criteria by which we must judge alternative solutions.

Basically we feel that it is unfortunate that this matter has come to congressional consideration at this particular point in the development of the dispute. When I say that I want to make it clear that I am not criticizing the President for referring the matter to Congress at this point.

I have sharply disagreed with the President as to his recommended solution. I have given you my reasons for it. But as to his action

in referring it to the Congress I don't want to be understood as being critical, even though I believe the result to be unfortunate.

The President, in the process of the handling of the dispute by the executive branch, had set a reasonable timetable for events to evolve and had made pronouncements as to what would happen if it were not resolved according to that timetable.

When the time ran out on that timetable, he was committed to submit the matter for congressional consideration and I have no criticism of any man who lives up to his commitments. I expect anyone in public or private life to carry out the commitments that he has made.

Nevertheless, I say to you that, basically, we think it is unfortunate that matters have worked out in such a way that this subject now is in the lap of Congress for its consideration. The reason I say that is that, unquestionably, in the period immediately preceding the submission of this dispute for congressional action, very substantial progress had been made in collective bargaining.

You have heard from both sides claims that the other side never got down to serious bargaining. That is normal. I have been in many disputes. In my experience, it is customary that until an agreement is reached each side in collective bargaining says to the other, "Well, now, you are not really being serious. Let us get down to brass tacks." You are not doing that. That is normal. You have a certain amount of reflection of that in this case.

There is, however, an additional element here which I think needs to be taken account of. In what I have said I don't mean one bit to belittle what brotherhood witnesses have told you about the approach of the railroads to this problem. But I think you should have in mind that when this dispute first arose in 1959, both sides recognized the tremendous complexity of the issues that were involved.

That is why the railroads first proposed and finally the organizations agreed that there should be a study commission to investigate all aspects of this, to develop information that would be helpful.

During a large period preceding the setting up of the Presidential Railroad Commission, the parties were developing a procedure for resolution of the dispute. The railroads wanted a commission that would make binding terms. The organizations wanted advice and information. They finally agreed upon the setting up of the Presidential Railroad Commission. That took about a year. The Commission, itself, spent over a year in its investigations. That was a matter of developing information.

So, when you talk about this 4-year period in which no progress was made, you are including a long period that was developmental.

Following the recommendations of the Presidential Railroad Commission, we found that the railroads, in our judgment, felt that they had won from that Commission recommendations that they could never possibly have hoped to achieve in a negotiated settlement. From that time the attitude, continuing up to this day, has been to seek imposed solutions.

The first contention was that notwithstanding the expressed reservations, that the procedures of the Railway Labor Act would still govern after recommendations of the Commission had been made, the carriers took the position that the organizations were obligated by agreement to accept those recommendations.

When it was made clear to them by officials of the executive branch of the Government that this was not the case, they conducted perfunctory negotiations, closed out the negotiations and the organizations invoked the services of the National Mediation Board. The carriers determined when those were to be brought to a conclusion and every pressure was to get the procedures of the Railway Labor Act over with so that a crisis could be precipitated.

The carriers, of course, have a different view from mine about this. I have reviewed this only in order to lay the foundation for what I am next going to say. And that is that, notwithstanding the very sincere convictions of these organizations, that the railroads have been seeking imposed solutions rather than a collective bargaining agreement, there can be no doubt that substantial progress was made in the period following the report of Emergency Board No. 154 and you have that before you in the record.

The President appointed a six-man subcommittee of his Committee on Labor-Management Policy, a very eminent committee, consisting of two members of the Cabinet, the Secretary of Labor and the Secretary of Commerce, a well-known railroad president, a well-known outstanding industrialist outside the railroad industry, the president of the American Federation of Labor, CIO, and the chairman of the Railway Labor Executives Association, the organization I represent here today.

That Committee made a factual investigation as to what had developed and its report to the President is contained in House Document No. 142. I ask you most sincerely, look at the progress that is reported on pages 14 and following of this document.

First, with respect to the matter of the use of firemen, the Committee reported on various offers that had been made and then says that—

> The Secretary of Labor on July 5 suggested that the parties accept the recommendations of the Emergency Board qualified by specific conditions as a basis for the establishment of a general rule to be in effect for 2 years.

And then further details of what the Secretary had proposed. This is July 5, less than a month ago.

The Committee says that this recommendation was accepted by the carriers but because it included a terminal arbitration clause, the brotherhoods rejected it. This would indicate to me that insofar as the substance is concerned of what reduction there was to be in the number of firemen over a 2-year period, the carriers had receded from their position that they are going to get rid of all the firemen in freight and yard service; the brotherhoods had receded from their position that they had to keep them all on.

It had come down to a substantive basis on which there was virtual agreement, but the problem was, How do you resolve terminal disputes? I am not indicating that might not be a tough thing to resolve. It might be. I am not saying that this is virtual agreement but I am pointing out to you that on this most difficult of all issues in the dispute very great progress had been made by the time this Committee reported to the President. The report is dated July 19. That is less than 2 weeks ago.

Look at what they said about the other issues. The second issue, that of traincrew consists which has been generally regarded as one of the major problems, the Committee said developments since the

report of the Emergency Board have narrowed considerably the area of disagreement. Based upon a proposal made by the Secretary of Labor on June 19, both parties have agreed in principle to a procedure for handling the problem.

Isn't that progress as compared with the position of the parties when this dispute had its inception?

Mr. FRIEDEL. Will you read the next line?

Mr. SCHOENE. I am reading from page 14.

Mr. FRIEDEL. Read the next line.

Mr. SCHOENE (reading):

> However, the brotherhoods proposed to limit its application to crew consist situations which deviate from the generally prevailing pattern of one conductor and two brakemen. The carriers indicated that the brotherhoods' modification would be acceptable if it did not apply to certain classes of service. They referred specifically to branch lines, secondary main lines, and main lines equipped with newly developed or automated control equipment.
>
> The carriers accepted but the brotherhoods rejected the July 5, 1963, proposal of the Secretary of Labor that the remaining differences be submitted to arbitration.

I am sorry if you felt, Mr. Friedel, that by stopping where I did I was concealing anything. I certainly didn't mean to imply that the issue was resolved. But here again we are getting down to, while there may be some very thorny issues left, very great progress has been made since the report of the Emergency Board.

With respect to the manning of self-propelled vehicles, let me say here again I am not going to take the time of the committee to read all of these paragraphs in detail. I just point out what I believe are the salient things.

That discussion concludes with the sentence, "Indications are that this matter may be settled if other issues are resolved." With respect to the matter of interdivisional runs, "recent discussions indicate that an agreement may be reached once the manning issues, firemen and crew consists, and compensation issues are resolved."

On the matter of the combination of road and yard service, the Committee doesn't offer as much encouragement as it does on the other issues. But still there is no indication that an impasse had been reached.

The concluding portion there is that the brotherhoods maintain that this should be handled locally and the carriers feel minimum criteria should be developed as suggested by the Emergency Board. It is not as encouraging as on some of the other issues, but still progress from the original position.

With respect to compensation, wage structure, and fringe benefits, the committee concluded that the brotherhoods have indicated a willingness to discuss these issues. The carriers have accepted the recommendations. The carriers having accepted the recommendations take the view that further discussions on compensation issues cannot be undertaken until the firemen and other manning issues are resolved. That is purely a question of timing and sequence. They haven't discussed those issues because these other issues the carriers have felt should first be disposed of.

Now you come to employment security and the committee concludes that the committee has been informed that the employee representatives advised the Emergency Board that in the interests of reaching an

accord if a satisfactory settlement could be reached on all other matters in dispute, this proposal would be withdrawn. That is not going to be a stumbling block to a settlement.

Finally, with respect to training of train and engine service employees, the committee says that discussions of this proposal have been largely deferred pending resolution of related manning issues.

Now, gentlemen, when you read that report—and we must believe it is a factual report by responsible public citizens to the President of the United States—you cannot escape the conclusion that the timetable ran out at the wrong time. It is unfortunate that this falls to this Congress for resolution at this time. However, we can't help that it is now in the lap of Congress.

It goes very much against my grain to discuss with you any alternative proposals that restrict the right to strike. I share very deeply the concern that a number of the members of the committee expressed on various occasions, including this morning, about what happens to the whole subject of collective bargaining in the railroad industry if a strike of these proportions is so devastating to the Nation that Congress must prohibit it.

Yet, I must take cognizance of the fact that probably Congress will not tolerate a railroad strike on a national basis of any extended duration. This brings us up against very practical considerations.

What can be done most consistently with the traditions of railway labor conditions and collective bargaining in this industry? I believe that while there is no ideal solution through Government action, that given the premise that some Government action may be required, that the best solution is that which was proposed by Mr. Meany and which is before this committee in the form of House Joint Resolution 579, introduced by Mr. Staggers and also introduced, I believe, by a number of other members of the committee.

While it bothers me to support any infringement of the right to strike, a deferral of that right is not alien to the Railway Labor Act, provided that concomitantly the carriers are required to maintain the status quo. That is the situation that we have under section 10 of the Railway Labor Act. Although it doesn't specifically say you can't strike, it has always been considered that during the period that an Emergency Board is sitting and for 30 days after it has made its report, neither side is permitted to make any changes in the conditions out of which the dispute arose and collective bargaining continues.

As I understand it, what House Joint Resolution 579 would do is to extend status quo for an indefinite period, for such period as Congress might decide by keeping constant watch on it. During the period of extension the parties are directed to engage in collective bargaining. It withdraws for that period from both sides equally the right to use self-help.

In that respect, it differs very markedly from the President's proposal, because the President's proposal while on the one hand saying to the employees you may not strike, you may not make any changes, at the time says to the railroads, you may make the changes that these employees are not agreeable to, provided the ICC will approve it.

That is a very different thing from the restriction that is imposed on the right to strike and on the right to make changes. During this period, it would substitute for the economic sanctions normally ap-

plicable, the oversight of Congress. I don't think that is ideal. I have great faith in Congress. I have great faith in our democracy. Much as I disagree with individual Members of Congress at times, I have great faith in the wisdom of Congress in making wise solutions to our national problems.

Still, it is not a substitute—an adequate substitute—for the free competitive bargaining that we are used to. But who can think of a better way? I can't.

This proposal specifically employs the traditional instruments of mediation and conciliation as well as negotiations for a resolution of the dispute and leaves any definitive change to be made in the work rules or working conditions to an agreement of the parties

That, gentlemen, it seems to me, is as close to a good solution as any that can be found through Government action. It is certainly far superior to the President's proposal and unanimously the organizations represented in the Railway Labor Executives Association, for which I speak, will endorse and support it. They are equally unanimously opposed to the President's proposal.

Now, finally, we come to the question: Is that kind of a solution fair to the carriers?

I have no doubt that in the mind of many Members of Congress that a question arises: Well, these railroads have been wanting some relief for a long time. They have repeatedly postponed putting their changes unilaterally into effect. Is it fair to subject them to further delay that might result?

Let me point out to you in the first place that there is no evidence at all that the enactment of that joint resolution would result in any delay beyond the delay that would occur through the enactment of the President's proposal. Unless an agreement is reached, the carriers can't make any rule changes under the President's proposal until they get the approval of the Interstate Commerce Commission and the resolution says that the Commission should decide those applications as expeditiously as possible, within 120 days if practicable. That is 4 months. So, if it is practicable to make a decision on one application for one rules change in 4 months, then in that length of time a rules change might become effective.

Based on the report of the subcommittee of the President's Labor Management Advisory Committee, based on what Mr. Meany told you yesterday, I would suppose that it is entirely possible that in less time than that an agreement on the entire subject matter might be reached and there would be no necessity for any applications to anybody. So, it cannot be assumed that the further activity through collective bargaining and mediation proposed in Resolution 579 would in any way delay the effectuation of whatever rules changes may be agreed upon.

But those things are speculative. I can't give you any guarantee as to how long it would take. So, let us suppose that it takes longer, that there would be some delay. I would like to direct your attention to the fact that the public bodies who have considered this subject have not considered that this is a change that ought to be made precipitously.

The Presidential Railroad Commission, although it recommended specific changes to be made in a short time, nevertheless at the outset

of its report, reporting the fundamental considerations giving rise or the fundamental considerations that guided them in arriving at their conclusion, had this to say, on page 7. They said:

> It is our view that railroad management and the operating brotherhoods should consciously plan the decade of the 1960's as a period of transition and adaptation to the new arrangements herein proposed.

So, if it is all accomplished by the end of 1963, suppose it takes 6 months, is that a catastrophe? Well, the railroads say it would be because they are bleeding to death.

When Mr. Loomis magnanimously and generously acceded to the requests of this committee that they postpone crisis action for another 30 days, he pointed out and wanted you to know that this is draining the life-blood of an anemic industry. That is not what the Presidential Emergency Board said.

I am not going into the matter of how anemic or nonanemic this industry is. But Emergency Board Number 154 did hear evidence on that subject and they told us about it in their report. This is on page 5, what the Emergency Board said and this is the report that the carriers say they accept 100 percent.

This Emergency Board said:

> We were impressed with the evidence submitted to us that the vitality and earning capacity of the railroads as a whole are improving, that the productivity of its workers is rising at a rapid rate, and that the industry can face the future with confidence and even optimism.

This is not a description of anemia.

Mr. Chairman, that concludes my discussion.

Particularly in view of your remarks when I referred to what I was going to ask Mr. Homer to talk about, I have asked Mr. Homer to cover that subject matter within a matter of 3 or 4 minutes at the outside. He is going to talk about some computations and statistics on which the Senate committee requested him to submit a memorandum and I would like the permission of the committee to have Mr. Homer submit that same memorandum to this committee as part of the record, not today, but when it is submitted to the Senate committee, which will be on Monday.

May I have that permission, sir?

The CHAIRMAN. You may submit it for the record.

(The matter referred to follows:)

MEMORANDUM

EFFECT OF PAY STRUCTURE RECOMMENDATIONS OF THE PRESIDENTIAL RAILROAD COMMISSION ON THE COMPENSATION, HOURS, AND EMPLOYMENT OF RAILROAD OPERATING EMPLOYEES

(Submitted by Winfield M. Homer, economic adviser of the Railway Labor Executives Association supplementing his testimony before the House of Representatives Committee on Interstate and Foreign Commerce on H.J. Res. 565, Friday, August 2, 1963)

The pay structure recommendations of the Presidential Railroad Commission will cut the earnings of approximately 80,000 railroad operating employees, while increasing their hours of service, and substantially reducing employment in road and yard occupations.

Extensive computations as to these effects of the Presidential Railroad Commission recommendations were submitted to Presidential Emergency Board No. 154. The methods employed in these computations, as fully detailed in that proceeding for the benefit of that Board and the carriers, have been summarized in memorandums and tables attached hereto.

In summary, the effects of the recommendations would be as follows:

PAY REDUCTIONS

Through freight engineers.—7,731 (80.86 percent of the total) will get pay cuts averaging $1,289.

Through freight conductors.—4,956 (61.58 percent) will get pay cuts averaging $1,435.

Local freight engineers.—3,641 (60.56 percent) will get pay cuts averaging $3,209.

Local freight conductors.—2,965 (52.19 percent) will get pay cuts averaging $2,943.

Passenger engineers.—4,113 (84.97 percent) will get pay cuts averaging $1,164.

Passenger conductors.—3,357 (82.25 percent) will get pay cuts averaging $1,158.

Total road service engineers.—15,485 (75.85 percent) will get pay cuts averaging $1,707.

Total road service conductors.—11,281 (63.32 percent) will get pay cuts averaging $1,749.

Total road service engineers and conductors combined.—26,766 (70.01 percent) will get pay cuts averaging $1,725.

Basic information was not compiled by the Presidential Railroad Commission for making computations of this character for firemen and brakemen. However, the firemen and brakemen would have assignments virtually identical to engineers and conductors, and they would suffer reductions of similar magnitude. Engineers and conductors are approximately 40 percent of total road operating employees. Based on that fact and the expectation that firemen and brakemen will be similarly affected, it is estimated that 65,000 road operating employees in all classes will receive cuts in pay.

Estimates for yard service employees cannot be made with the same degree of precision as those submitted above for road service employees. However, some such employees will receive pay cuts. Almost all of the nearly 16,000 yard engineers now work a 6- and 7-day week. Under the Presidential Railroad Commission recommendations, they cannot convert to the 5-day week without suffering a tremendous reduction in pay. Thus, the total number of employees who ultimately will suffer from the Presidential Railroad Commission recommendations will exceed 80,000.

Many employees would suffer pay cuts far in excess of the average of $1,725:

Through freight engineers.—1,634 will suffer annual wage losses of over $2,400. Among these, some will receive cuts of over $5,300.

Through freight conductors.—1,360 will suffer annual wage losses of over $2,100. Among these, some will receive annual wage losses of over $5,800.

Local freight engineers.—2,046 will suffer annual wage losses of over $2,400. Among these, over 600 will receive annual wage losses of over $6,600.

Local freight conductors.—1,324 will suffer annual wage losses of over $2,500. Among these, over 300 will suffer annual wage losses of $6,900.

Passenger engineers.—298 will suffer annual wage losses of over $2,500. Among these, four will receive cuts in annual wages of over $5,100.

Passenger conductors.—185 will suffer annual wage losses of over $2,300. Among these, some will receive cuts in annual wages of over $6,300.

INCREASED HOURS

The pay reductions set forth above could be made effective even though the hours of the employees were being increased under the leeway prescribed for the carriers in the Presidential Railroad Commission recommendations. Approximately 1.4 hours could be added to the assignments of most of the employees, this would bring about an average increase of about 1 hour per trip. receive for a minimum day. When considered with reference to all road employees, this would bring about an average increase of about 1 hour per trip. This would constitute an average increase for freight service employees of 12 to 15 percent and for passenger employees of 20 percent.

REDUCTION IN EMPLOYMENT

An increase of this magnitude in the hours of employees would make it possible for the carriers to reduce employment proportionately—or by about 15 percent.

Evidence submitted by the carriers in the proceeding before the Presidential Railroad Commission corroborates this estimate. In that proceeding, the carriers made a study of 190 engineers on the Chicago, Burlington & Quincy Railroad, showing their earnings and hours. They then showed how they would put their proposals into effect, and detailed the hours and earnings which would result for each individual engineer. The hours of the employees under the carrier plan would be increased substantially, and the earnings reduced, and 29 employees out of 190 studied) would be eliminated.

It is impossible for the employees to know who, where and exactly how many jobs will be cut out by the carriers in applying the wage structure and assignment revisions recommended by the Presidential Railroad Commission. Given the experience and ingenuity of railroad management, a great many jobs will be eliminated. If 15 percent of the jobs are eliminated (with an increase in hours of the individuals working by about 15 to 20 percent), between 20,000 and 30,000 positions will be cut out. This, of course, does not take account of the thousands who will be eliminated as a result of the manning recommendations of the Presidential Railroad Commission.

COMPUTATION OF ESTIMATES

INTRODUCTORY NOTE

The following tables are designed to show the impact of the recommendations of the Presidential Railroad Commission on hours and compensation of operating employees, based on the following assumptions:

(1) Elimination of all so-called duplicate time payments for local freight employees on a daily basis; continuance of all constructive allowances except initial and final terminal switching, and intermediate yard switching for other classes; and elimination of initial and final terminal delay allowances for employees working in excess of 8 hours.

(2) Application of rates and overtime bases recommended by the Presidential Railroad Commission to all classes.

(3) The absorption of all overtime of daily based local freight employees by employees who are working less than 8 hours; no other changes in miles or hours of assignments.

The Presidential Railroad Commission recommended that local freight employees running less than 100 or 110 miles should be placed on an hourly basis. The following calculations have been made on the basis of 110 miles in applying this recommendation. There would be no significant difference in the results if 100 miles had been used instead of 110 miles.

DESCRIPTION OF METHOD USED IN ESTIMATES

The estimates of the impact on road operating employees' earnings of the Presidential Railroad Commission recommendations are based on comparisons of computed earnings under the recommended rates and overtime bases with the actual earnings as stated on tables 2 to 7, pages 95 to 100, of the Commission's report.

Since the employee trips and average earnings are distributed in class intervals of miles and hours, some basic technical assumptions were necessary in the computations. It was assumed that all trips in each group were worked at the midpoint of the hours and miles in their class intervals.

The tabulations used showed total earnings, including the effects of graduated wage rates, any differentials or higher than standard rates and any arbitrary payments associated with the trips tabulated. In all services, the recommended rates stated in the Commission report on page 137 were used in estimating the pay under the Commission's proposals. In through freight service these were the rates of the average weight on drivers and car basis scales. As the Commission stated in the footnote to that table, application of these average through freight rates tends to overstate the actual wage scales that will apply to the proposed new "freight" service classes. Arbitraries were added to computed earnings under the Commission's recommendations on a basis of the average

total value of all arbitraries in each service as shown in the pay structure study, table 89, page 111. Where specific arbitraries were eliminated, their average values as stated in tables 10 to 18, pages 19 to 28 of the pay structure study, were deducted.

Since the pay structure study was based on the earnings of employees during the 6 months ended December 31, 1960, a 2-percent increase was applied to such earnings to conform to the wage increase effective March 1, 1961.

It was not possible to allow for the different characteristics of certain classifications such as short turnaround passenger service and converted through freight employees; however, this circumstance should not substantially affect the totals. Comparisons could be made only for engineers and conductors since they were the only classes for which the three-way (hours, miles, and earnings) information was available.

The assignments of firemen in terms of hours worked and miles run can be expected to be the same as for engineers; and the hours and miles for brakemen would be the same as for conductors. The basic rate increases for firemen, however, recommended by the Presidential Railroad Commission were less than those recommended for engineers; and the basic rate increases recommended for brakemen were less than those recommended for conductors. As a result, the extension of the conclusions reached for engineers and conductors will substantially understate the pay cut which would be received by firemen and brakemen. Nevertheless, in estimating the impact of these recommendations on all classes, it was assumed that the effect on engineers would also apply to firemen and the effect on conductors would also apply to brakemen.

SUPPLEMENTARY TECHNICAL NOTE

In the proceedings before Emergency Board No. 154, the carriers as well as the employees submitted estimates on the overall effect of the Presidential Railroad Commission recommendations. Some sections of their estimates for through freight and passenger employees were comparable to those made by the organizations. The average decreases for all employees were very close to the employees' estimates, as the following figures indicate:

Average effect on compensation of all employees

[In percent]

Class and service	Average increase or decrease in compensation	
	Employees' estimate	Carriers' estimate
Engineers:		
Through freight	−10.72	−10.6
Passenger	−8.02	−7.5
Conductors:		
Through freight	−8.23	−8.0
Passenger	−5.87	−7.1

Source of basic data: Interstate Commerce Commission, statement M-300, for 1960; "Report and Pay Structure Study of the Presidential Railroad Commission."

The carriers did not compute the number of employees who would be affected. Nevertheless, in these two services, the close agreement in the figures showing the effect of the Commission recommendations on total pay tends to corroborate the estimates of such numbers made by the employees.

The carriers made no attempt to determine the extent to which the local freight employees' earnings would be affected by rearrangement in assignments, and their estimates for local freight employees are not comparable to those herein submitted by the organizations.

Proportion of employees getting pay increases and reductions

[Related to average employment, year 1960]

Class and service	1960 employment	Percent receiving—		Number receiving—	
		Increases	Decreases	Increases	Decreases
Engineers:					
Through freight	9,561	19.14	80.86	1,830	7,731
Local freight	6,012	39.44	60.56	2,371	3,641
Passenger	4,841	15.03	84.97	728	4,113
Total road service	20,414	24.15	75.85	4,929	15,485
Conductors:					
Through freight	8,048	38.42	61.58	3,092	4,956
Local freight	5,686	47.81	52.19	2,718	2,968
Passenger	4,082	17.75	82.25	725	3,357
Total road service	17,816	36.68	63.32	6,535	11,281

Distribution of employees by annual wage loss or increase under Presidential Railroad Commission [1]

ENGINEERS

Annual wage loss or gain per employee	Employees suffering wage loss		Employees receiving wage gain	
	Percent	Number	Percent	Number
Passenger service:				
Under $648.50	34.16	1,654	10.93	529
$648.50 to $1,296.99	20.24	980	2.65	128
$1,297 to $1,945.49	12.81	620	.17	8
$1,945.50 to $2,593.99	11.61	562	.77	37
$2,594 to $3,242.49	1.54	75		
$3,242.50 to $3,890.99	4.53	219	.17	8
$3,891 to $4,539.49				
$4,539.50 to $5,187.99				
$5,188 to $5,836.49	.09	4	.09	4
$5,836.50 to $6,484.99				
$6,485 to $7,133.49				
$7,133.50 and over			.26	13
Total	84.97	4,113	15.03	728
Through freight service:				
Under $485.40	33.95	3,246	16.76	1,602
$485.40 to $970.79	6.22	595	1.12	107
$970.80 to $1,456.19	4.27	408	.68	65
$1,456.20 to $1,941.59	18.55	1,774	.15	14
$1,941.60 to $2,426.99	.78	75	.15	14
$2,427 to $2,912.39	7.77	743		
$2,912.40 to $3,397.79	6.31	603	.19	18
$3,397.80 to $3,883.19	1.65	158		
$3,883.20 to $4,368.59	.24	23	.05	5
$4,368.60 to $4,853.99	.63	60	.05	5
$4,854 to $5,339.39	.39	37		
$5,339.40 and over	.10	10		
Total	80.86	7,731	19.14	1,830
Local freight service:				
Under $604.38	9.94	598	9.15	550
$604.38 to $1,208.75	6.78	408	7.10	427
$1,208.76 to $1,813.13	5.21	313	4.42	266
$1,813.14 to $2,417.51	4.57	275	4.26	256
$2,417.52 to $3,021.89	7.89	474	8.04	483
$3,021.90 to $3,626.27	3.15	189	3.31	199
$3,626.28 to $4,230.65	3.15	189	2.05	123
$4,230.66 to $4,835.03	2.21	133		
$4,835.04 to $5,439.41	3.15	189	.63	38
$5,439.42 to $6,043.79	2.05	123		
$6,043.80 to $6,648.17	2.05	123	.47	28
$6,648.18 and over	10.41	626		
Total	60.56	3,641	39.44	2,371

See footnote at end of table.

Distribution of employees by annual wage loss or increase under Presidential Railroad Commission[1]—Continued

CONDUCTORS

Annual wage loss or gain per employee	Employees suffering wage loss		Employees receiving wage gain	
	Percent	Number	Percent	Number
Passenger service:				
Under $576.28	20.87	852	13.14	536
$576.28 to $1,152.55	29.00	1,184		
$1,152.56 to $1,728.83	19.11	780	3.25	133
$1,728.84 to $2,305.11	8.81	360	.54	22
$2,305.12 to $2,881.39	1.08	44		
$2,881.40 to $3,457.67	.14	6	.68	28
$3,457.68 to $4,033.95	1.36	56		
$4,033.96 to $4,610.23			.14	6
$4,610.24 to $5,186.51	.14	6		
$5,186.52 to $5,762.79	1.63	67		
$5,762.80 to $6,339.07				
$6,339.08 and over	.14	6		
Total	82.25	3,357	17.75	725
Through freight service:				
Under $531.40	12.19	981	28.93	2,328
$531.40 to $1,062.79	9.49	764	7.81	629
$1,062.80 to $1,594.19	19.07	1,535	.93	75
$1,594.20 to $2,125.59	3.91	315	.09	7
$2,125.60 to $2,656.99	13.30	1,070		
$2,657 to $3,188.39	.19	15	.37	30
$3,188.40 to $3,719.79	2.60	209	.19	15
$3,719.80 to $4,251.19	.65	52	.09	7
$4,251.20 to $4,782.59	.09	7		
$4,782.60 to $5,313.99				
$5,314 to $5,845.39				
$5,845.40 and over	.09	7		
Total	61.58	4,956	38.42	3,092
Local freight service:				
Under $631.54	11.54	656	22.34	1,270
$631.54 to $1,263.07	5.31	302	4.95	281
$1,263.08 to $1,894.61	9.52	541	6.04	343
$1,894.62 to $2,526.15	2.56	146	3.66	208
$2,526.16 to $3,157.69	5.31	302	4.21	239
$3,157.70 to $3,789.23	1.10	63	2.56	146
$3,789.24 to $4,420.77	1.10	63	1.10	63
$4,420.78 to $5,052.31	1.10	63	.18	10
$5,052.32 to $5,683.85	2.56	146	2.75	156
$5,683.86 to $6,315.39	3.11	177		
$6,315.40 to $6,946.93	2.93	167		
$6,946.94 and over	6.04	343		
Total	52.19	2,968	47.81	2,718

[1] Annual wage gains and losses have been determined from the losses and gains per trip multiplied by the average number of trips for each class of service, which were as follows for 1960:

Passenger engineers	324	Passenger conductors	279
Through freight engineers	243	Through freight conductors	266
Local freight engineers	302	Local freight conductors	316

Distribution of road service trips by number of additional straight-time hours which could be worked at proposed pay rate without increasing employee earnings

ENGINEERS

Additional hours	Through freight	Local freight	Passenger straight-away
0.5	173	44	100
1.0	14	0	122
1.5	254	53	259
2.0	59	5	252
2.5	394	15	289
3.0	303	4	1
3.5	247	14	20
4.0	189	2	3
4.5	83	7	0
5.0	36		0
5.5	73		0
6.0			2
6.5			1
Average hours	3.04	1.73	1.80
Percentage of employees affected	88.64	22.71	89.58
Total additional hours per day [1]	25,764.00	2,362.02	7,806.60
Total additional hours per day all classes			35,932.62
Hours which could be added without increasing earnings beyond daily minimum pay under Presidential Railroad Commission recommendations			20,414

CONDUCTORS

0.5	73	25	60
1.0	23	24	1
1.5	132	40	100
2.0	86	15	5
2.5	171	18	168
3.0	36	9	44
3.5	300	8	158
4.0	16	4	38
4.5	99	3	46
5.0	5		8
5.5			1
6.0			
6.5			1
Average hours	2.71	1.75	2.71
Percentage of employees affected	87.53	26.74	85.37
Total additional hours per day [1]	19,089.24	2,660.00	9,444.35
Total additional hours per day, all classes			31,193.59
Hours which could be added without increasing earnings beyond daily minimum pay under Presidential Railroad Commission recommendations			21,379

[1] Based on 1960 employment.

Mr. HOMER. My name is Winfield M. Homer. I am a labor relations consultant with offices at 1010 Connecticut Avenue NW., in this city.

During the last year, I have made an extensive study on the effects of the Presidential Railroad Commission's recommendations on the earnings, the hours, and the employment of operating employees.

In summary, the adoption of the Presidential Railroad Commission recommendations would have the following effect: First, it would cut the earnings of about 70 percent of the road passenger and freight engineers, conductors, firemen, and brakemen by an average of about $1,700 per man-year.

Secondly, some yard employees, as distinguished from road employees, would also be reduced in pay, particularly yard engineers now working 6 and 7 days a week, who would suffer cuts in pay by

20 percent or more if they go to the 5-day workweek at the rates recommended by the Presidential Railroad Commission.

The wage structure recommendations have a lesser impact on yard employees than on the road employees, but many of them also will be sharply reduced in their earnings.

Overall, for all classes, I estimate that more than 80,000 of these operating workers would suffer cuts in earnings.

Although the average for the road service employees would be about $1,700 per year per individual, there would be many employees in freight and passenger service who would receive cuts of $2,000, $3,000, $4,000, and even more if the Presidential Railroad Commission recommendations were placed into effect.

Now, while their pay was being cut, many of these road employees would also be required to work longer hours. I estimate that the hours of freight service employees, those in through freight service, would increase about 12 to 16 percent and that the hours of through passenger service employees would increase by as much as 20 percent or more, and that with these increases in hours the estimates I have given you on the reduction in their compensation would not be significantly reduced.

The increased hours of individuals working would have also the effect of reducing employment. I have estimated that the 15 to 20 percent increase in hours would result in the loss of 20,000 or more jobs in these classifications. This is a reduction in addition to the reductions which would result from application of the firemen, the crew consist recommendations and the other so-called manning recommendations of the Presidential Railroad Commission.

I will be glad, as Mr. Schoene said, to supplement this brief statement with a detailed, very specific statement by occupation, with supporting memorandums, explaining the sources of my materials and the methods I used in reaching these particular estimates.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Homer, and thank you, Mr. Schoene. You have given a very detailed analysis of this entire picture from your viewpoint, of course indicating your familiarity with the problem and various contentions of the parties, and I am glad to have had the benefit of your presentation here.

I know other members of the committee have, too, because of your association with this problem and your knowledge of the legalistic phase of it as well as the factual situation involved.

Mr. SCHOENE. Thank you, Mr. Chairman.

The CHAIRMAN. I don't know just how many questions members may have.

As far as I am concerned, you have covered it exceedingly well and there are not too many questions left unless somebody wishes to engage in argument about some of the presentation.

I think perhaps there might be some questions.

Mr. Roberts.

Mr. ROBERTS. Mr. Chairman, I certainly agree with what the chairman said about the adequacy of Mr. Schoene's statement. He has covered the situation very well.

I would like for him to go into one phase. He detailed several instances of handling, not to his satisfaction, of various situations by

the ICC. One thing in his statement that struck me is that under the administration resolution this business of a star chamber proceeding that you spoke of, I would like for you to cover that just very briefly again, if you would, for my benefit.

Mr. SCHOENE. I had primary reference to section 3 of House Joint Resolution 565 which says that in acting upon an application filed pursuant to section 1, the Commission shall give due consideration to the effect of the proposed rule upon adequate and safe transportation service to the public and upon the interests of the carrier and the employees affected, giving due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154 and to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation following the Emergency Board report. As a condition of its approval of any interim rule involving directly or indirectly the reduction of existing manning requirements or practices, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected as provided under section 5(2)(F) of the Interstate Commerce Act and with due consideration to the recommendations of the Presidential Railroad Commission and Emergency Board 154 relating to the retention of job rights for senior employees, relocation expenses and earnings protection to less senior employees transferred to other jobs by the employing carrier preferential hiring rights, displacement allowances, supplemental severance allowances and retraining of employees.

There is nowhere any requirement that the parties be heard in this connection. It invites the Commission to consider, ex parte, records before other tribunals and recommendations of other tribunals, with no requirement whatever that there be any hearing at which the parties may be allowed to present evidence or to receive firsthand consideration of evidence by the Interstate Commerce Commission.

Mr. ROBERTS. No right of cross-examination?

Mr. SCHOENE. There is no such provision.

Mr. ROBERTS. If I understand you correctly, then, for 2 years after whatever action is taken by the Commission, no right of appeal on the part of the aggrieved party?

Mr. SCHOENE. No right of appeal unless, as in these other cases, we should feel that something less by way of protection had been accorded than was the minimum requirement of the statute. We have had to go to court repeatedly with the Commission under such conditions. Sometimes we have lost; sometimes we have won. More often we have won.

Mr. ROBERTS. Then on appeal the only thing that would be before the court could be an ex parte proceeding?

Mr. SCHOENE. That is my understanding of what can happen under this joint resolution.

Mr. ROBERTS. Then if you were not to succeed on appeal, say that the brotherhoods lost in the Supreme Court, then we are right where we started from in the beginning; is that right?

Mr. SCHOENE. That is right.

Mr. ROBERTS. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Schoene, I was very impressed and pleased with the evidence you have given of the various cases that the ICC have decided. As far as I know, that is all new evidence in this case.

With regard to the resolution which was sent to us by the President, if the National Mediation Board were substituted for the ICC, would that be agreeable to you and your group?

Mr. SCHOENE. No; it wouldn't, Mr. Younger, for a variety of reasons.

As I think has been made clear throughout these hearings, the brotherhoods consider the issues here involved to be so vital to the employment opportunities of the people they represent that they have not felt that the responsibility for reaching an ultimate decision with respect to them could be delegated to any outside party; that they had to reserve judgment on that for themselves.

That is why they would not agree to a Presidential Railroad Commission in the first place, although they were agreeable to a commission, not a commission that would have the authority to make binding terms.

But superimposed on that, you have now the very practical fact that the result of that Commission's report was very shocking to these employees. It was quite different from what they had reason to expect on the basis of the record would emerge.

We just have to face, as a practical matter, the fact that any further adjudication in this field is bound to be influenced, to a large degree, by what we consider a very shocking report. We were happy to find that before Emergency Board No. 154, although that Board couldn't be expected to redo the work of the Commission that extended over 13 months, that they did approach it openmindedly and came up with recommendations which differ in very material respect from those of the Presidential Railroad Commission, and an approach more closely to an acceptable solution.

Still in this context, the brotherhoods would not be willing to submit these issues to determination by any outside institution. I should add to that with respect to the particular matter of using the National Mediation Board as a tribunal, the functions of that Board are primarily mediatory, conciliatory. They must have the confidence of both the railroad industry and the railroad unions.

I believe it would be unwise to put them in an adjudicatory capacity in issues of this sort, even if the brotherhoods were willing to accept adjudication by any tribunal.

Mr. YOUNGER. In the case of the resolution which was introduced by Mr. Staggers and Mr. Bennett, known as the Meany proposal, would it be satisfactory to substitute the National Mediation Board for the congressional committee and that they watch over the negotiations and report to the President every 10 days.

Mr. SCHOENE. I don't think we would have any objection to that, but I would doubt that it would then be as acceptable to the Congress.

The resolution proposed by Mr. Meany and introduced by Mr. Staggers and Mr. Bennett and others, does provide that the Mediation Board as well as the Secretary of Labor are directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement. Both the Secretary of Labor and the National Mediation Board are directed to report to a

congressional committee, so that the Congress would be kept currently informed as to the progress.

At least, it has been my reflection in appraising Mr. Meany's suggestion that that kind of participation or at least oversight and keeping informed on the part of Congress would be more acceptable to Congress than the suggestion that you make.

So far as our organizations are concerned, although this comes as a completely new suggestion to me and I have not consulted any of the organizations, I don't believe that they would have any objection to that kind of modification if, in the judgment of Congress, that were more acceptable than what Mr. Meany proposed.

Mr. YOUNGER. What is the effect on the nonoperating employees under the resolution proposed by the President?

Mr. SCHOENE. It has a variety of effects. These organizations, all of them, are fundamentally concerned with the preservation of the integrity of the collective bargaining process in this country. That is probably the most fundamental aspect that affects all of labor as well as the operating and nonoperating organizations. But there are several other matters involved, too.

The nonoperating organizations have currently pending proposals that they served on the railroads throughout the country on May 31.

Some of the organizations served various proposals prior to that time for wage increases, changes in working conditions, improvements in vacations, and so on.

The carriers have counterproposed very drastic revisions in their working conditions, complete destruction of craft or class lines, complete unilateral authority in the carrier to assign work and to transfer work and to contract out work and so on, and have proposed to consolidate all of their counterproposals with all the pending proposals of the nonoperating organizations, and if you please, set up a commission similar to the Presidential Railroad Commission with authority to make binding determinations.

So while they are not in this dispute they are immediately and currently confronted with proposals from the carriers to adopt the kind of procedures that have proved so disastrous in the handling of this dispute.

In addition to that, very severe collateral economic effects could be imposed on many nonoperating employees if some of the carrier proposals or the Presidential Commission recommendations were put into effect.

I have in mind as the most obvious illustration, although by no means the exclusive one, the matter of interdivisional runs which if carried as far as the carriers might wish to carry it under their proposals might result in the relocation or elimination of division points where the great bulk of the nonoperating employees live and work.

They would be disrupted in their employment. They would be dislocated. Simply as an effect of carrier action taken pursuant to, let us say, an ICC order, the immediate effect could be severe and adverse on many thousands of nonoperating employees.

For that reason, among others, each of the nonoperating organizations has kept a very careful eye on the progress of this dispute from its inception.

Mr. YOUNGER. It is true that the organizations which you represent are opposed to seizure?

Mr. SCHOENE. I think that in the present context of the matter that would be true. I do believe, as I think Mr. Meany expressed himself here, and I am in accord with him, that if the time must come when the right to collective bargaining to which the keystone is the right to strike must be subordinated to compulsory arbitration or adjudicatory imposition of changes of rates of pay, rules, and working conditions, that ought not to be done for private profit under the system of private management that we have.

I want to say to you, Mr. Younger, I have discussed this question with you before, that I am deeply devoted to the American free enterprise system, to the profit motive, to the competitive system, and to the right of free contract which includes the right of free contract between management and labor.

I would much regret, and I think I am speaking for my constituent organizations, to see the time come for that principle to be compromised. But if it must be compromised and labor deprived of its rights, then we would have to say with Mr. Meany that should not be done for private profit.

If employees are going to be forced to work under conditions not agreeable to them, then they should work for government, and for a government that is responsible for seeing that adequate service to the public, not in terms of what is most profitable to a private corporation, but in terms of public need, will be provided.

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

The CHAIRMAN. Mr. Friedel?

Mr. FRIEDEL. Mr. Schoene, I want to compliment you on your statement.

Mr. SCHOENE. Thank you, Mr. Friedel.

Mr. FRIEDEL. I gather that you put a lot of time, and had many sleepless nights, evidently living with the problem to state all the facts.

Mr. SCHOENE. I have.

Mr. FRIEDEL. You are for House Resolution 579 and opposed to President's Resolution 565 and you said there is no criticism of the President. I am going to speak my mind about the problem that is confronting me and the other members of this committee.

Mr. SCHOENE. May I say, Mr. Friedel, I said I had no criticism to make of the President about submitting the matter for congressional consideration at this time, although I thought that was an unfortunate development.

I was deeply critical of the President's proposed solution.

Mr. FRIEDEL. I am glad for the correction. You made a lot of statements. One that they have four diesel motors and it created five times more defects than before with the steam locomotive. You fail to mention that sometimes they used three stream locomotives. I have seen it done myself.

If you compare one diesel with one steam locomotive, that is one thing. You also spoke of 7 days a week, 56 hours a week, with no overtime. You failed to mention that 3 and 4 hours was considered a workday.

So it proves to me that there is a lot of mediation necessary and this thing can go on indefinitely. You also made a statement that this

was thrown in our lap. I would like to throw it back in the lap of the ones that are affected, and that is labor and management and lock them in a room and keep them there until they reach an agreement.

Today is August 2, and I have heard it said over and over again if we don't pass this legislation, labor and management can get together and resolve their problems.

Between August 2 and the 29th they ought to get together. Are they negotiating now?

Mr. SCHOENE. Yes; they are.

Mr. FRIEDEL. Seriously. Are they making any headway?

Mr. SCHOENE. Mr. Friedel, I am not personally participating in those negotiations, and if I were in a position to appraise exactly what is occurring I would believe it to be unwise for me to attempt to expound it here before this committee.

It is a very important fact in the course of mediation that in order for it to succeed, complete confidence must be observed. There have been revelations here on the Hill by some participants which I thought should not have been revealed because this raises questions.

Why did the Secretary of Labor and the National Mediation Board conduct the matter this way? I think when they are conducting mediation we have to leave it to their judgment. I have not asked them why they didn't show our people some proposals that the carriers say they gave them and which we saw for the first time in carrier testimony.

Mr. FRIEDEL. I am in favor of free collective bargaining. Let us lock the negotiators in and let them bargain in good faith. If we adopt House Joint Resolution 579 we can come back in 10 days and say they are not bargaining in good faith and nothing will be settled. If you look at page 3 of Document 142, the effects of a prolonged national railroad strike, and after hearing the Acting Secretary of Commerce, Franklin D. Roosevelt, Jr., this morning and using your own statement, we have a crisis confronting the Nation. It worries me.

I have had sleepless nights. I know my responsibility. I am going to vote for what I think is right for all the people. But I still think that the groups can get together before the 29th, get locked up in a room and make them come out with a bargained agreement.

That is all I have to say, Mr. Chairman.

Mr. SCHOENE. I share your hope and your expectation.

Mr. FRIEDEL. The President's request covers some of the things you mentioned. You said they were not far apart. There was some progress made.

Now if they are locked in together with an understanding they must come out with an agreement, I think they can do it. We can't afford to have a strike, and we want to keep free collective bargaining. I think if they are this close to agreement with two Presidential Commissions to guide them and with the help of Secretary of Labor, this dispute can be settled without legislation.

I hope the Chair will instruct them today to bargain 24 hours a day if necessary, until they come out with an agreement.

Mr. SCHOENE. I hope that the chairman can give such instructions and that they will be efficacious.

The CHAIRMAN. The Chair has no comment at this time.

Mr. Nelsen?

Mr. NELSEN. Mr. Chairman, I missed a part of the statement. I was necessarily absent from the room. I have no questions.

I thank the gentleman for his very thorough statement.

The CHAIRMAN. Mr. Van Deerlin?

Mr. VAN DEERLIN. No, thank you, Mr. Chairman—unless it might be possible to amend Mr. Friedel's plan so that the air conditioning be turned off in the negotiation room.

The CHAIRMAN. Mr. Schoene, thank you very much. The only comment I have, I asked Mr. Walrath, the Chairman of the Interstate Commerce Commission, if they would conduct hearings under the usual procedures on applications that might be filed with them, and his answer was that they would.

I also asked him if the Administrative Procedures Act would apply, and he said it would.

I asked him if there was judicial review and he said there was.

Mr. SCHOENE. Of course, there is the limited kind of judicial review that I have described. Insofar as holding of hearings is concerned, I have no doubt that Chairman Walrath's statement is made in good faith. But there is no assurance in this law that we would be entitled to the hearing.

We do know from concrete experience in cases that now come before them, and I cited you the Central of Georgia acquisition by the Southern Railroad, where now under existing procedures on a matter of reconsideration, they held a hearing before, but when it came to specific items of reconsideration, without a hearing, they rejected our claims for relief and gave relief to the carriers which they had previously rejected in their original decision and did that without hearing.

The CHAIRMAN. I do not question your feeling of sincerity that you have expressed with reference to your experience with the Interstate Commerce Commission.

I cannot share your views, however, that because you might have not received every decision favorable to your viewpoint—maybe that is going a little too far, too—I would say because you were dissatisfied with some of the decisions of the Interstate Commerce Commission that would cast a reflection on the Commission with reference to its capability.

I know I disagree a lot of times with various individuals and groups and organizations. Some of my constituents disagree with me sometimes. But I do not share the view that we should condemn an established agency that has been set up for a given purpose on the part of our Government, because we do not get the kind of decision we would like to have from them.

Mr. SCHOENE. May I comment on that, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. SCHOENE. I think I should be clear on the fact that every lawyer dislikes losing a case or not getting the results he hopes for. I have won cases and I have lost cases. That is part of the day's work.

I wasn't attempting here to impeach the Interstate Commerce Commission on account of its performance on matters that have been entrusted to it in the past, but rather to put before you our experience with that performance as a criterion for judgment as to whether it is

suited, it is the kind of institution that is suitable for extension of its functions into this new field.

The CHAIRMAN. Of course, the real crux of the questions here in my judgment is of the same character and nature of many of the things that have been entrusted to the ICC over the years.

Automation is part of it. Job protection is part of it. Working conditions and rules are part of it. Safety is part of it.

Those matters have been entrusted to the Interstate Commerce Commission for many years. I share your feeling that there are some things in dispute here that I wish had not been referred as a part of the jurisdiction the way I have observed it at the moment.

That leads me to the other thing that I wanted to say. I think I understood your feeling with reference to the action of the President. You were not critical of the President himself, but you were critical of the method that he proposed.

Mr. SCHOENE. That is right.

The CHAIRMAN. From your viewpoint I would say that the criticism is no doubt justified. But I have the feeling that the President had reached the point, taking the advice of all of those that had reported to him and advised him, and that he had consultation with, that something had to be done. He was endeavoring to preserve true collective bargaining insofar as he possibly could which has been, as you know, his fundamental feeling and belief during his service. I think the President would have been subjected to probably more severe criticism had he not done something and I commend him for taking positive action in an effort to assume that responsibility.

This business of compulsory arbitration has been kicked around just like featherbedding to where it has become a household word. Built into this resolution, and I see many defects in the resolution, is the principle of collective bargaining and the encouragement of collective bargaining. It is all throughout.

I suppose that will remain the question in controversy. There will be some who say it is, and some who say, "No, it is not so intended."

Mr. SCHOENE. That is right. You have heard me very courteously and generously, Mr. Chairman, and members of the committee. I have told you what I have to say. It is now up to you.

The CHAIRMAN. And as usual you have done an excellent job and I want to compliment you for it and on behalf of the committee, thank you for your presentation.

Mr. SCHOENE. Thank you.

The CHAIRMAN. Thank you for your appearance here.

Mr. SCHOENE. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. The committee will be in recess until—these hearings will be in recess—until Tuesday of next week at 10 o'clock.

Mr. NELSEN. Mr. Chairman, might I make a suggestion? One of the things that has bothered me is the posting of work rules. I have had the impression that the carriers could post work rules that they might design. But it is my understanding that in the event of a dispute there are a great number of steps that must be taken before a work rule can be posted.

Before this hearing is over I hope we can have each step made very clear in the record so that we can understand that you can't just post any work rule that somebody might suggest right out of the sky, shall we say.

The CHAIRMAN. Mr. Moss asked for certain information and we agreed to get such information as we can in that respect. But, as I indicated to Mr. Moss, I personally did not want to get involved in this question of requiring the parties to submit proposals and counter-proposals, and so forth, because I do not think we want to get into the actual bargaining.

Mr. NELSEN. Mr. Chairman, I am referring to the statement that has been made relative to the posting of the 1959 rules. Under the circumstances, as brought out in the testimony by yourself at the point where it was in controversy, nothing but the 1959 rules could have been posted.

I think that should be made clear because of operation under the law. That is my point. Thank you, Mr. Chairman.

The CHAIRMAN. Yes; that is right. That is already a part of the record. It is procedure and we will be glad to discuss the procedure sometime and bring the gentlemen up to date on it.

I intend to call an executive session of this committee on Tuesday morning next week at 10 o'clock at which time I am going to have the Secretary of Labor come back to this committee to give the committee a complete status report on this situation and a brief explanation of what it is at this point or at that point.

We have heard that progress is being made. We hope so. We have heard that it is not. I think the only way we can get the status of this entire matter is to get the man who is in a position and is supposed to know most about where it is and what the situation is. So it will be the purpose of the committee in executive session to have a complete up-to-date report on the situation next Tuesday morning at 10 o'clock.

The committee is adjourned.

(The following material was submitted for the record:)

THE CARRIERS' REPLY TO THE MEMORANDUM SUBMITTED BY THE ORGANIZATIONS ON AUGUST 5, 1963, ENTITLED "EFFECT OF PAY STRUCTURE RECOMMENDATIONS OF THE PRESIDENTIAL RAILROAD COMMISSION ON THE COMPENSATION, HOURS, AND EMPLOYMENT OF RAILROAD OPERATING EMPLOYEES"

The data and conclusions contained in the memorandum referred to above are so spurious and misleading as to indicate an abysmal ignorance of the characteristics of the work and assignments of railroad operating employees or a conscious and premeditated desire to deceive.

The purpose of this reply is to illustrate, by example, the nature and significance of the erroneous conclusions and representations contained in the memorandum.

1. ALLEGED PAY REDUCTIONS IN THROUGH FREIGHT SERVICE

(Pps. 2, 3, 12, 13, and 16 of the memorandum)

The organizations' computations of the number of through freight service engineers that would receive reductions in take-home pay and the amounts of such reductions under the rules and rules changes recommended by the Presidential Railroad Commission are based upon the data appearing in the table on page 97 of the report of the Commission. It is not possible to determine from the memorandum precisely what formula was applied to the data contained in this table to support the conclusions reached. Possibly some extrapolation of percentages was used. However, regardless of the formula used, the effect of its application was to multiply the earnings shown in the table by 102 percent (to reflect increases in rates of pay since the period during which the Commission's study was made), and to multiply the number of trips shown in the table by 1,127 (because the table shows the results of a sample of about 1.5 percent of the total runs completed during 1 calendar week of operations).[1]

[1] See p. 2 of appendix, vol. II, to the report of the Commission.

It is then assumed that each through freight service engineer makes a total of 243 runs or trips per year, and that each of the trips of each such engineer involves uniform miles and hours of service producing uniform earnings for each trip in the precise amounts shown in 1 of the 102 categories of runs reported in the Commission's table, as adjusted in the manner described in the preceding paragraph.[2]

These fantastic assumptions lead to the conclusion that the current annual earnings of through freight engineers are as follows:

Number of men	*Average annual earnings*	*Number of men*	*Average annual earnings*
14	$18,893	5	$14,906
5	17,588	9	14,621
9	17,520	5	14,563
5	16,748	5	14,551
5	16,531	5	14,529
9	15,601	14	14,288
5	15,543	9	14,225
5	15,136	37	14,033

With further progressive reductions in earnings for engineers allocated to each of the remaining 86 categories reported in the Commission's table, the last four of which are these:

Number of men	*Average annual earnings*	*Number of men*	*Average annual earnings*
42	$6,568	334	$6,442
218	6,508	5	6,408

NOTE.—Cf. the supported earnings of the 146 engineers allocated to the first 16 categories shown above with the alleged reductions in earnings of 130 engineers shown on the last 4 lines of the table appearing at the bottom of p. 13 of the organizations' memorandum.

The figures themselves are proof of their inaccuracy. The organizations assume that 478 through freight engineers earn in excess of $11,386 per year; and that 7,068 such employees earn less than $8,989 per year. However, currently effective mileage limitation and promotional rules, which appear in all agreements between the carriers and the organizations representing their engine service employees, limit the maximum earnings to full-time through freight engineers assigned to four-unit diesel locomotives during an entire 12-month period to $11,386 per year and fix the minimum earnings of all such engineers at $8,989 per year.

Furthermore, in order to construct current earnings at the levels used by the organizations in preparing their estimates of reductions in earnings, it was necessary to assume the following variations in hours on duty per week:

Number of men	*Average weekly hours*	*Number of men*	*Average weekly hours*
46	67.6	111[1]	53.6
32	62.9	1,595	16.3
37	58.3	506	11.7

[1] 7 intermediate categories omitted.

These figures are also erroneous on their face. See also hours assumed for local freight engineers, infra, calculated by the same formula.

The organizations' constructions of supposed current earnings of through freight service engineers thus ignore the following indisputable facts:

1. The number of trips made by road operating employees over any selected period of time vary greatly. Relatively few through freight engineers make even approximately 243 trips or tours of duty during a 12-month period. See table 146 in appendix volume II to the report of the Presidential Railroad Commission. Through freight engineers in assignments involving short runs, inconsiderable hours on duty, and relatively lesser earnings per trip usually make more than 243 trips per year; while engineers in long runs involving a greater number of hours on duty and greater trip earnings make a lesser number of trips.

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[2] The number of engineers allocated to each such category may be determined by multiplying the number of runs shown in each category by 1,127 and dividing by 243.

2. The characteristics of runs and the compensation received for runs in a single assignment vary considerably from day to day and from week to week.

3. Employees typically move from one assignment to another, depending upon their seniority rights, variations in the characteristics of assignments, and their evaluation of the attractiveness of the assignments that are available to them.

4. Both the maximum and minimum earnings of engine service employees are prescribed by the so-called mileage limitation and promotional rules which appear in all agreements covering such employees. The organizations' calculations assume that only 2,015 through freight engineers, 21.1 percent of the total, have earnings that fall within the maximum and minimum earnings limitations established by these rules.

5. Approximately 20 percent of the service performed by the 9,561 through freight engineers, referred to in the table on page 13 of the memorandum, is performed in converted through freight service to which local freight rates apply. Failure to make appropriate adjustments for this fact results in substantial distortions in hours and miles of service attributed to the through freight engineers allocated to the 102 categories used by the Presidential Railroad Commission in its table on page 97 of its report.

The methodology used by the organizations in calculating the earnings of through freight service engineers under the rules and rules changes recommended by the Presidential Railroad Commission is subject to all of the vices and deficiencies which characterize the organizations' calculations of current earnings—and in addition, two further erroneous assumptions are made:

6. It is assumed that each through freight service engineer receives constructive allowances and arbitrary payments equal in amount to the average amount of such allowances and payments received by all such employees (although obviously this is not true); that all through freight engineers receive switching arbitraries equal in amount (although tables 10 and 15 in appendix volume II to the report of the Commission show that such arbitraries are received by relatively few of such employees); and that no through freight engineer will receive terminal delay allowances under the rules recommended by the Presidential Railroad Commission on runs involving more than 8 hours of service.

7. It is assumed that there will be no changes in the present characteristics of the assignments of through freight service engineers under the rules and rules changes recommended by the Presidential Railroad Commission, although changes in assignments and rearrangement of the work would be inevitable. (See pp. 22–25 of the supplemental rebuttal statement of the carriers, filed with the Senate Commerce Committee on Aug. 5, 1963.) In calculating supposed reductions in earnings of local freight service engineers, the memorandum assumes changes in the characteristics of the assignments of such employees which would necessitate changes in the characteristics of the assignment of through freight engineers. (See infra.)

The overall effect of these defects and impurities in the methodology and calculations of the organizations is substantially to overstate the number of employees whose take-home pay would be reduced by the recommendations of the Presidential Railroad Commission, and to magnify the amounts of such reductions as might actually occur under the proposed rules and rules changes. The only accurate or reliable information that is available with respect to these matters has been submitted in the supplemental rebuttal statement for the carriers, which was filed with the Senate Committee on Commerce on August 5, 1963.

2. ALLEGED PAY REDUCTIONS IN LOCAL FREIGHT SERVICE

(Pps. 2, 4, 12, 14, and 16 of the memorandum)

Precisely the same errors have been made by the organizations in calculating supposed reductions in earnings in all other grades and classes of service covered by the memorandum.

As to some classes and grades of service, the conclusions reached are even more absurd than those made with respect to the assignments and earnings of through freight service engineers, discussed supra. For example:

The organizations' computations of the number of local freight service engineers that would receive reductions in take-home pay, and the amounts of such reductions, under the rules and rules changes recommended by the Presidential Railroad Commission, are based upon the data appearing in the table on page 99 of the report of the Commission. Acceptance of the formula applied

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by the organizations to these data (in calculating reductions in earnings) would compel the ludicrous conclusion that the earnings of individual full-time local freight service engineers range from $7,031 to $19,407 per year, as follows:

Number of men	*Average annual earnings*	*Number of men*	*Average annual earnings*
47	$19,407	57	$15,701
9	19,041	28	15,698
19	18,908	28	15,677
19	18,196	9	7,734
38	18,078	(1)	
47	17,978	38	7,674
19	17,619	39	7,662
19	17,579	19	7,514
38	17,558	19	7,493
37	17,341	9	7,311
57	17,148	28	7,296
66	16,966	28	7,242
38	16,812	9	7,209
28	16,797	76	7,194
9	16,338	28	7,191
28	16,045	38	7,085
19	15,804	28	7,034
19	15,752	66	7,031
28	15,734		

[1] 123 intermediate categories omitted.

The above supposed current earnings of local freight service engineers may be compared with the supposed reductions in such earnings, under the rules and rules changes recommended by the Presidential Railroad Commission, which appear on page 14 of the organizations' memorandum.

These assumed variations in earnings require the following concomitant preposterous variations in hours on duty:

Number of men	*Average weekly hours*	*Number of men*	*Average weekly hours*
455	89.8	550	49.2
332	84.0	617	43.4
380	78.2	465	37.6
541	72.4	228	31.9
750	66.6	199	26.1
750	60.8	114	17.4
636	55.0		

Conclusions reached with respect to the supposed numbers and amounts of pay reductions in local freight service, under the rules and rules changes recommended by the Presidential Railraod Commission, are made even more farcical by assuming that a substantial amount of overtime now worked by local freight service crews would be absorbed by increases in the hours of through and local freight service crews that now work less than 8 hours per trip or tour of duty.

3. ANALYSIS OF STATEMENTS OF MR. J. E. WOLFE BEFORE THE SENATE COMMITTEE ON COMMERCE JULY 31, 1963

Pages 24 to 36 of the memorandum filed by the organizations with the Senate Committee on Commerce on August 5, 1963, contain what is described as an analysis of the data supplied to the committee by carrier witness J. E. Wolfe relating to average increases in average hours on duty required to maintain average take-home pay of through freight and passenger service employees under the rules and rules changes recommended by the Presidential Railroad Commission.

The alleged analysis erroneously suggests that all assignment are like the assignments used for supposed illustrative purposes; and that change in such assignments, under the rules and rules changes recommended by the Presidential Railroad Commission, would be limited to changes in hours or changes in hours and miles comprehended by runs included in existing assignments—i.e., that there would be no increase in the number of runs now included in assignments

or any other changes in the characteristics of such assignments except those referred to in the memorandum.

More detailed data with respect to increases in hours on duty required to maintain take-home pay in the various classes and grades of through freight and passenger service, under the rules and rules changes recommended by the Presidential Railroad Commission, is presented in the supplemental rebuttal statement for the carriers that was filed with the Senate Committee on Commerce on August 5, 1963. These data support the statements of the witness J. E. Wolfe, referred to in the organizations' memorandum. By way of illustration, the following summary table is submitted dealing with the matter of maintenance of take-home pay in freight service.

Item	Through freight service	All freight service except short local service	All freight service
A. Average hours worked per week	35.0	35.0	37.3
B. Earnings per hour worked	$5.22	$4.79	$4.56
C. Weekly earnings (A×B)	$182.70	$167.65	$170.09
D. Proposed average hours worked per week	36.0	36.0	37.9
E. Proposed earnings per hour worked	$4.86	$4.55	$4.49
F. Proposed weekly earnings (D×E)	$174.96	$163.80	$170 17
G. Ratio of proposed weekly earnings to current weekly earnings (F÷C)	95.8	97.7	100.0

"Through freight service" (column 2) includes converted through freight service. "All freight service except short local service" (column 3) is described as "freight service" in the Report of the Presidential Railroad Commission. "All freight service" (column 4) includes all service paid freight service rates under existing rules.

Estimated hours per week in columns (2) and (3) are rounded approximations based on the overall freight service hours in column (4), which show that average weekly earnings will be maintained with an average increase of only 0.6 hours per employee per week.

The foregoing examples of misuse of available data, abuse of statistical methods and use of insensate assumption are merely illustrative. All of the material contained in the organizations' memorandum is misleading. Further detail will be supplied if requested.

THE MONONGAHELA CONNECTING RAILROAD CO.
ALIQUIPPA AND SOUTHERN RAILROAD CO.
THE CUYAHOGA VALLEY RAILWAY CO.

JULY 31, 1963.

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

DEAR MR. CHAIRMAN: Reference is here made to House Joint Resolution 565 concerning the railroad rules dispute.

The companies herein represented are all class I common carrier railroads. Usually categorized as terminal switching railroads, they originate line-haul moves by collecting shipments at industrial sources and interchanging them to a connecting line-haul carrier for movement to ultimate destination, and they complete the line-haul move for the major trunk lines by transferring to ultimate industrial destination those cars and commodities interchanged to them by said carriers. In addition to the foregoing, these railroads move commodities from one mill or plant to another on their own lines, and they also perform so-called intraplant or industrial switching for industries served. The major industry served by the railroads here represented is the Jones & Laughlin Steel Corp., the country's fourth largest steel producer.

As previously stated, the three railroads here represented are class I railroads with all the "boons" and "banes" of any other class I railroad. They are covered by the Railway Labor Act, the rules and regulations laid down by the Interstate Commerce Commission, Railroad Retirement and Unemployment Insurance Acts, etc., and their approximately 2,000 employees are also represented by the standard railroad brotherhoods via twenty different bargaining units.

As terminal switching is strictly a yard-type operation, operating employees are called yardmen, and their contractual labor agreement work rule terms are almost identical with those of yardmen employed by the major lines.

As I understand proposed H.J. Res. 565, it is intended to prevent, or at least postpone for a minimum of 2 years, a railroad strike over the so-called manning and related issues. It is felt that the economic impact of such a work stoppage would be intolerable. With this I am in complete accord. I do seriously question, however, the effectiveness of such proposed legislation if its jurisdiction and application is limited to that segment of the railroad industry represented only by the Eastern, Western and Southeastern Carriers' Conference Committees. Such selective legislation would defeat the very purpose for which intended. It might keep the steel, automobile and other associated industries operating by prohibiting a work stoppage on the line-haul railroads, but on the other hand, it would permit almost all of them to be effectively shut down by a work stoppage on railroads such as ours by the same operating brotherhoods over the identical manning rules which have precipitated the present crisis. Under such circumstances, the proposed controversial resolution would obviously be futile.

It is my contention that if legislation is enacted to temporarily or permanently settle the problem, such legislation should be all-inclusive and nondiscriminatory in its application, and that it cover all disputes of the nature here involved whether they be presently going through the procedures of the Railway Labor Act or whether such procedures have been exhausted. The purpose of the legislation, if enacted, is to avoid work interruption and resultant economic havoc due to the manning issues and related subjects. Unless such legislation is all-inclusive of every carrier having the problem, its end purpose will be thwarted and defeated.

There have been numerous strikes and threats of strikes on railroads such as ours over the years involving the very issues here present. The frequency and intensity of these disputes have increased in recent years. A general shutdown of heavy industry and the resulting shutdown of suppliers, fabricators and manufacturers which would ensue from a work stoppage on a railroad such as ours, if such should occur, would have very serious economic impact on the public, railroad employees and railroads.

I abhor the necessity of governmental intervention in a matter such as this. However, if intervention is determined to be necessary and machinery is set up to handle the subject, such machinery should be available, as the need arises, to anyone faced with the exact or related issue.

A copy of this letter is being forwarded to each member of your committee, and I respectfully request that it be made a part of the hearings record in this matter.

Yours very truly,

J. L. HADLEY.

(Whereupon, at 4:15 p.m., the committee recessed, to reconvene at 10 a.m., Tuesday, August 6, 1963, in executive session.)

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